

Rekha Rani VS. Harbans Kaur and others.

CNR No. PBHOC0-00466-2016

CIS No. CM/51/2016

Present: Sh. Diwakar Mahajan, Advocate for applicant.
Sh. B.S. Chauhan, Adv. for respondents No. 1 to 4.
Sh. Inderjot Singh, Ld. GP for the respondents No.
5 & 6.

1. Arguments heard on the Objections filed by objector/LR of respondent No. 2 to the report of Local Commissioner. It has been averred in the objections that the Local commissioner has submitted false Mode of partition whereby he has wrongly proposed to give land measuring 13 kanals 5 marlas in his Mode no. I, 0 kanal 12 marlas in his proposed Mode No. II and III. It has been further averred that Western portion shown blue, East - 28, West - 28, North – 2 and South - 1, 4 marlas 6 Sarsahis is the land in illegal possession of the defendant trespasser. It has been further averred that the said land either should be kept as joint property of all co-sharers including plaintiff or proportionate share of each co-sharer including plaintiff has to be deducted while allotting share of plaintiff and the other co sharer. It has been further averred that portion shown passage with measurements East - 28 karams, West 28 karams, North- 3 and South- 3 Karams = $28 \times 3 = 84/9 = 9$ marlas 3 Sarsahis. It has been further averred that plaintiff has to give share of land under passage. It has been further averred that 9 marlas 3 Sarsahis + 4 marlas 6 Sarsahi is = 14 Marlas 0 Sarsahi in total becomes impartible (non-partiable) out of the suit land and the share of the plaintiff to contribute the 14 marlas 0 Sarsahis comes to more than 2 marlas 3 Sarsahis under all circumstances. It has been further

averred that plaintiff has left with her share to be given to her comes to less than 1 marlas 1 ½ Sarsahi but the local commissioner has proposed to give the plaintiff as per his Mode more than her share. It has been further averred that waste/encroached property illegally added/allotted in joint Kurah of defendants No.1 to 4 and others which is to be deducted from all the co sharers as per recorded share. It has been further averred that no Field Book of bifurcated Khasra number was made and attached with the report of local commissioner. It has been further averred that excessive land has been allotted to the plaintiff and it is to be deducted from her Kuras and the deficient land has to be given/added to the Kurah of other defendants. It has been further averred that under these circumstances, the report of the local commissioner is liable to be set aside. Hence, these objections.

2. Upon notice, reply to the objections have been filed by the DH, in which, preliminary objections have been taken to the effect that the objections are misconceived and are not maintainable; objections are wrong, false, baseless, therefore, are not sustainable in the eyes of law; objections have been filed with malafide intention with ulterior motive to prolong the proceedings of the case; objector has not come to the court with clean hands, hence, the objections are liable to be dismissed; present objections are filed after thought and have filed by the objector with the oblique motive to harass the plaintiff and to give colour to their case. On merits, it is contended that Local Commissioner has submitted correct mode of partition as he was directed by court vide order dated 10.09.2019. It has been further contended that local commissioner has correctly proposed to

give land measuring 0 Kanal 13 Marlas 5 Sarsahi to the plaintiff in his Mode No.1 and 0 Kanal 12 Marlas in his proposed Mode No.2 and 3 as per court orders. The local commissioner has gave his report after measuring the land from every angle where the Abadi or houses are constructed the local commissioner maintained the same in his report. It has been further contended that she has purchased on land measuring 13 Marlas 5 Sarsahi from Harbans Kaur, the mother of the defendant no. 2, 3 and 4 vide sale deed dated 28.03.2007 with laying 15 feet street. So, there is no need to give land under passage to the plaintiff. Remaining contents have been controverted, coming up with a prayer for dismissal of the objections.

3. I have perused the case file and have heard the ld. Counsel for both parties. As per copy of sale deed dated 28.3.2007 executed by Harbans Kaur, aged about 77 years of age, widow of Sher Singh, son of Hari Singh, r/o Mukerian, Distt. Hoshiarpur with respect of land measuring 13.5 marlas out of the suit property in favour of plaintiff Rekha, daughter of Gurdeep Singh, son of Chain Singh, r/o Mukerian, Distt. Hoshiarpur. Vide said sale deed, the property subject matter of sale deed was sold with boundaries i.e. East Swarni, West Shashi, North Thakur Laghwal and South road and Dalit Singh. In the said sale deed, a street has also been reflected to be of 15 feet. Now, in the instant case, in compliance of order of this Court, three modes of partition have been suggested by Local Commissioner. In the First mode of partition, the local commissioner has suggested as follows:-

- 1). That plaintiff has been provided land measuring 0K-13M-5S and her share is not kept in pucca street.

- 2). That the constructions present at the spot are remained intact. Even the street is kept at the spot.
- 3). That where pucca street is situated, it is kept as such. The share of Central Government has been carved out separately and it has also been allotted share in Street as per its share.
- 4). That the owners who are shown in revenue record but did not come present at the spot, their shares are kept as joint.
- 5). That the owners who have already covered their share by way of raising construction over the suit land, their shares are kept intact but they have not been provided any share in the pucca street.

In the Second mode of partition, the local commissioner has suggested as follows:-

- 1). That plaintiff has been provided land measuring 0K-12M and her remaining share covered in pucca street.
- 2). That the constructions and street present at the spot are remained intact.
- 3). That share of Central Government has been carved out separately and it has also been allotted share in Street as per its share.
- 4). That the owners who are shown in revenue record but did not come present at the spot, their shares are kept as

joint. Their shares are not carved out separately.

5). That the owners who have already covered their share by way of raising construction over the suit land, their shares are kept intact but they have not been provided any share in the pucca street.

6). That the share of Central Government is separated in two separates kuras because in khasra no. 31//14/1/10 there is a construction which has not been established in favour of any one.

In the Third mode of partition, the local commissioner has suggested as follows:-

1). That plaintiff has been provided land measuring 0K-12M and her remaining share is kept in pucca street.

2). That the constructions present at the spot are remained intact. The share of Central Government has been carved out separately and it has also been allotted share in Street as per its share.

3). That the owners who are shown in revenue record but did not come present at the spot, their shares are kept as joint.

5). That the owners who have already covered their share by way of raising construction over the suit land, their shares are kept intact but they have not been provided any share in the pucca street, as no share of them left.

The perusal of the above-said all three modes of partition as suggested by the local commissioner reveals that in all of them, the shares of all the contesting parties parties were properly carved out, while keeping the construction of the parties intact. The present objections have been filed just to delay the proceedings of present case. Thus, the instant objections are hereby dismissed and disposed off. Further costs of Rs. 2000/- is also imposed to be paid by objectors in DLSA, Hoshiarpur. Now to come up on 20.8.2022 for production of payment receipts and for consideration.

Date of order
12.8.2022
Saurabh, Steno*

Amardeep Singh Bains, PCS
Addl. Civil Judge (Sr. Divn)
Mukerian, Hoshiarpur.
(UID No.PB0335)

Dictated on : 12.8.2022
Transcribed on : 12.8.2022
checked on : 12.8.2022
Signed on : 12.8.2022

Amardeep Singh Bains, PCS,
Addl. Civil Judge (Sr. Divn)
Mukerian, Hoshiarpur.
(UID No.PB0335)