

Harpal Singh Vs. Harmohinder Singh and Others

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Court : Punjab and Haryana

Decided On : Feb-15-2013

Appellant : Harpal Singh

Respondent : Harmohinder Singh and Others

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH Civil Revision No.4436 of 2011 (O&M) Date of decision: February 15, 2013 Harpal Singh .Petitioner versus Harmohinder Singh and others .Respondents Coram: Hon'ble Mr.Justice A.N.Jindal Present: Mr.N.R.Dahia, Advocate for the petitioner.

Mr.J.C.Batra, Advocate for the respondents.

A.N.Jindal, J The petitioner has challenged the two orderS.one dated 16.9.2008 passed by the Additional District Judge, Chandigarh, partly accepting the appeal and the other dated 8.5.2011 passed by the Civil Judge (Jr.

Division).Chandigarh, dismissing the objection petition filed qua the report of the Local Commissioner dated 25.3.2010, qua the property, regarding which preliminary decree for partition has been passed and the application for final decree was pending.

At the very outset, learned counsel for the respondent has raised the preliminary objection that the order passed qua the report of the Local Commissioner was not amenable to revision.

In this regard, he has referred to the judgment delivered by the Apex Court in the case of *Rajinder & Co.versus Union of India and others* 2003 (1) R.C.R.(Civil) 755 wherein it was observed as under :- 2.

We cannot appreciate why the High Court had interfered with that part of the order passed by the trial Court appointing a commission for inspecting the site and to file a report and to measure the work done by Respondent.

The learned counsel for the appellants submits that respondent will not be made responsible for the cost or expenses which may be involved in the commission to file the report.

The question whether the Commissioner's report is finally acceptable or not would be decided by the Court de hors the order passed by the authority concerned.

In the light of the said innocuous position, it was not necessary for the High Court to alter the trial court's order.

We, therefore, set aside the impugned order of the High Court and restore the order of the trial court in full measure, with the rider that this action will be without prejudice to Civil Revision No.4436 of 2011 (O&M) -2- the right of the parties to substantiate the respective contentions regarding the tenability or untenability of the Commissioner's report and its conclusions.

This judgment clearly holds that the question whether the Commissioner's report is acceptable or not would be decided by the court de hors the order passed by the authority concerned.

As such the revision petition was not maintainable.

This Court also took the same view from time to time.

This Court in case Civil Revision No.1873 of 2010, titled as *The Bassi Arkh Scheduled Caste Coop.*

*Land Owing Society LTD.versus Atma Singh son of Bachan Singh and otheRs.*decided on 1.6.2011 has also observed that the order of refusal or

appointment of the Local Commissioner is not amenable to revision.

However, the case regarding the decision as to how and in what manner the final decree has to be passed is still pending before the court.

Though some objections have been raised by the petition regarding the report of the Local Commissioner, yet the same do not finally decide the rights of the parties.

It is still for the court, while passing the final decree, to decide whether the report has to be accepted or not.

As such, no revision was maintainable.

Resultantly, this revision petition being not maintainable is dismissed.

February 15, 2013 (A.N.Jindal) deepak Judge

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