

Chander Parkash Vs. Ved Parkash and ors.

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Court : Punjab and Haryana

Decided On : Feb-22-1991

Reported in : (1991)99PLR606

Judge : K.P. Bhandari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 26, Rule 14 and 14(2); Chandigarh (Sales of Sites and Buildings) Rules, 1960 - Rule 14; [Constitution of India](#) - Articles 14 and 21; Capital of Punjab (Development and Regulation) Act, 1952 - Sections 20

Appeal No. : C.R. No. 3266 of 1989 (O and M)

Appellant : Chander Parkash

Respondent : Ved Parkash and ors.

Advocate for Def. : Anil Malhotra, Court Appointed Adv.; Hemant Kumar, Adv.

Advocate for Pet/Ap. : V.K. Kapur, Adv.

Disposition : Petition allowed

Judgement :

K.P. Bhandari, J.

1. Petitioner's father owned House No. 50 Sector 10-A, Chandigarh, measuring 500 sq yards which property was inherited by the sons and daughters of the deceased. The respondents filed a suit for partition of the property and in that suit a preliminary decree dated 30-9-1988 was passed by the Additional Senior Sub Judge, Chandigarh. On appeal against the aforesaid preliminary judgment and decree, passed by the trial Court, District Judge, modified the findings of the trial Court on issues No. 1, 2, 3 and 4 on 1-9-1984.

2. The proceedings for passing of the final decree were taken up by the Subordinate Judge. The Subordinate Judge appointed Shri R. S. Walia, Advocate, as Local Commissioner to suggest the mode of partition. The Local Commissioner submitted his report dated 7-2-1989. Against the report submitted by the Local Commissioner, petitioner Chander Parkash submitted objections. The Subordinate Judge vide his order dated 31-7-1989 rejected the objections. The Subordinate Judge recorded a finding that according to the report of the Local Commissioner, the property in dispute cannot be partitioned by metes and bounds. The Court also came to the conclusion that according to the rules framed by the Union Territory, Chandigarh Administration, it is not permissible to partition the property by metes and bounds. The petitioner filed review petition before the Subordinate Judge for review of the order dated 31-7-1989 which was dismissed by order dated 31-7-1989.

3. Now the petitioner has come up in this revision petition in this Court. The counsel for the petitioner submitted that the Subordinate Judge was in error in holding that the property in dispute cannot be partitioned. He submitted that the house in dispute can be partitioned by metes and bounds. With the permission of the Court, he amended the grounds of revision. By way of amendment, he challenged Rule A of the Chandigarh (Sales of Site and Buildings) Rules 1960, which prohibits fragmentation of any property in Chandigarh. He pleaded that the aforesaid Rule is arbitrary, unreasonable and capricious and so far as it prohibits the partition of the property in Chandigarh. The rule it is submitted is violative of Article 14 of the Constitution. It is further submitted that the rule making power has been conferred on the Government under Section 22 of the Capital of Punjab (Development and Regulation) Act, 1952. It is submitted that the Act has been

enacted to vest in the State Government the legal Authority to regulate the sale of buildings, sites and to frame building rules on the pattern of municipal bye laws and for the planned development of the city. It further submitted that there is no provision in the Act to prohibit the partition of the property by metes and bounds. It is submitted that rule making power of the State Government end in so far as it prohibits the partition of the property in the city by metes and bounds. It was contended by the counsel for the petitioner that the aforesaid rule is ultra vires because it is beyond the powers of the rule making power of the State Government.

4. Notice of this revision petition was given to the Standing Counsel for the Union Territory Administration, which, was added as a party to the proceedings vide my order dated 2nd of February, 1990. Mr. Ashok Bhan, Senior Advocate appeared for the Union Territory Administration, Chandigarh.

5. In this case, in order to determine whether the property in dispute can be partitioned, Shri Ravindra Partap, Architect was appointed as Commissioner He submitted his report to the Court together with plans Annexures B and C Mr. Ravindra Partap also appeared as a witness in the Court. He has proved his report. In his statement before the Court, he has deposed that he has 17 years experience in the line. He has further deposed that he is fully conversant with the architectural work and report has been prepared keeping in view the building bye-laws of the Chandigarh Administration. According to the report, he has also worked out the value of the house in dispute. In cross examination he has admitted that the existing structure consists of two bed rooms, one guest bed room, kitchen, verandah, bath and latrine. The value of the land has been determined after taking into consideration the value of the plot and building of the similar nature. According to the report, five independent apartments can be constructed on the plot. He has prepared the scheme in Annexure 'B'. He has stated that five independent apartments of 900 sq ft covered area can be constructed on the plot He has valued the property at Rs. 10,79,650/- He has determined the value of apartments as follows :--

(i) Ground Floor :Apartment I : Rs. 3,16,800/--Apartment I : Rs. 3.71,700/-(ii) First floor havingtwo apartments with1868 sq. ft. as covered area.Value of one apartment : Rs. 3,63,300/-(iii) Second floor : Rs. 3,36,800/-

According to his report, the property can be partitioned in the manner indicated in his report.

6. The respondents were given opportunity to produce evidence' in rebuttal but the counsel for the respondents stated that his clients do not want to produce any evidence in rebuttal. He relied upon the report of the Local Commissioner and submitted that the property in dispute cannot be partitioned.

7. Mr. Ashok Bhan, learned counsel for the Union Territory contended that in view of the provision of Rule 14, no partition of the property by metes and bounds is permissible on inheritance and according to him the parties can enjoy the property jointly. There can be informal arrangement for living. He pointed out that the Chandigarh Administration permits sale of share in the house But it is does not allow sale of specific portion of the house. He gave the instance of the permission granted by the Chandigarh Administration to Mr. Y. P. Gandhi to dispose of his share of house in Sector 4, Chandigarh.

8. Mr. Anil Malhotra, Advocate, was appointed by the Court to assist it. He strongly contended that the object of the Capital of Punjab (Development and Regulation) Act, 1952 is to regulate the construction of the buildings on the same pattern as is provided under the various municipal bye laws. He invited my attention to the statement of objects and reasons of the Act which were published in the Punjab Government Gazette (Extraordinary) of 19-12-1952, which reads as under :--

'The construction of the New Capital of Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal bye-laws so long as a properly constituted local body does not take over the administration of the city. The Capital of Punjab (Development and Regulation) Bill, 1932, seeks to carry out the above objects and to repeal the Capital of Punjab (Development and Regulation) Act, 1952, which is President's Act and is due to

expire in April, 1953. Vide Punjab Government Gazette Extraordinary, dated 23rd July, 1952, pp. 677-78'.

He further submitted that there is no provision in the Act from which it can be gathered that the Act is intended to regulate inheritance or succession of the property in Chandigarh. He also submitted that there is no prohibition in the Act to partition the property by metes and bounds. He further submitted that provision of Rule 14 in so far as it prohibits partition of a property by metes and bounds is outside the rule making powers conferred on the Government under Section 20 of the Act. He also submitted that the provision of Rule 14 in so far as it prohibits the partition of the property in Chandigarh by metes and bounds is arbitrary, unreasonable and capricious. Mr. Hemant Gupta, counsel for the respondent submitted that according to the report of the Commissioner, the property in dispute can be partitioned by metes and bounds and, therefore, the only method to partition the property is to put it for sale and distribute the sale proceeds.

9. The counsel for the petitioner submitted that Local Commissioner proceeded ex-parte in the case without adequate reason. Even the Local Commissioner did not submit report after the inspection of the house in dispute. He further submitted that detailed objections were submitted against the Local Commissioner but the Court did not duly examine the objections. The Court did not give the opportunity of producing evidence before disposing of the petition. He submitted that the Court acted contrary to the principles of natural justice in disposing of the objections without giving the petitioner an opportunity to produce evidence in the case. It is also argued by the counsel for the petitioner that the Commissioner did not submit the report within the period fixed by the Court. Mr. Hemant Gupta, counsel for the respondents, submitted that the property in dispute can be partitioned by metes and bounds.

10. I have carefully examined the report of the Commissioner as well as the orders of the Court, The Court in this case acted casually in disposing of the objections of the petitioner. The Court did not give any -opportunity to the petitioner to produce the evidence. Pro- vision of Order 20 Rule 14 C P. C. lays down the procedure which the Court should follow on the receipt of the report of the Commissioner.

The provision of Order 26 Rule 14 (2) C. P. C. specifically lays down that the Court after hearing the objections which the parties may make to this report or reports shall confirm, vary or set aside the same. Before disposing of the objection, it was necessary for the Court to examine the Commissioner and afford the opportunity to the petitioner to produce evidence. A Division Bench of the Lahore High Court in *Nasir Ahmad v. Sarfaraz*, (1935) 37 P. L. R. 252, considered the provision of Order 26 Rule 14, C. P. C. and observed as follows : --

'Although there is no provision in the Civil Procedure Code entitling a party who objects to the report of the Commissioner to produce evidence in support of his objections, Order 26, Rule 14 provides that the Court after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same. This implies that the parties are entitled to substantiate their objections, but in such cases, as a rule of practice, the Commissioner should first be examined with reference to the objections. If any, and if it appears from the statement of the Commissioner that there is ground for further enquiry into any matter which is raised in the objections, then the parties should be allowed to produce evidence or the Commissioner directed to amend his report accordingly.'

The interpretation given by the Lahore High Court in *Nasir Ahmad's* case (supra) is correct and in consonance with the principles of natural justice. I am in full agreement with the view taken by the Division Bench of the Lahore High Court, in view of the above legal position, it was necessary for the Court to examine the Commissioner and also afford an opportunity to produce evidence in order to substantiate his objection. Admittedly, no opportunity was given in this case and therefore, the order of the Court rejecting the objections summarily cannot be sustained and I therefore, set aside the same. Likewise, it was also incumbent upon the Court to recall this order rejecting the objection of the petitioner as the said order was passed without affording an opportunity to the petitioner to produce the evidence. The order of the Court was clearly contrary to the principles of natural justice. The report of the Commissioner in the present case which has been accepted by the Court is also prima facie very superficial. He has not even cared to inspect the house in dispute before giving the report. When the house was locked he should have reported to the Court for obtaining appropriate order

for unlocking the house. The report submitted by him without inspecting the house is totally meaningless. In this way, the Commissioner has exceeded his jurisdiction in submitting the report without inspection of the house.

11. It has further been brought to my notice that the Commissioner was required to submit report by 27-7-1987. Time for submission of the report was not extended. The report was submitted on 7 2 1989, when the time for submission of the report has already expired. This also appears to be an illegality committed by the Commissioner as well as by the Court.

12. In view of the above discussion, I am clearly of the view that the impugned orders are clearly illegal as the Court has acted illegally and with material irregularity in deciding the objection. These orders are liable to be set aside by this Court in exercise of the revisional jurisdiction under Section 115 of the C P. C. read with Article 227 of the [Constitution of India](#). Consequently, I hereby set aside the impugned orders.

13. I have carefully considered the evidence on record and the arguments of the counsel for the parties. The Subordinate Judge on the basis of the report of the Local Commissioner has come to the conclusion that the house in dispute cannot be partitioned by metes and bounds and therefore, the house should be put to auction and sale proceeds should be disbursed between the parties in accordance with their shares. It is settled principle of the law that in a suit for partition proceedings, property should be partitioned by metes and bounds and sale of the property should be effected in extreme cases as a last resort. The Local Commissioner as well as the Subordinate Judge considered the existing conditions of the land. They did not apply their mind that according to modern architecture within the permissible covered area sanctioned by the Bye-Laws of the Chandigarh Administration, five apartments can be constructed on the plot in dispute. Copy of the report of the Architect together with the plan is P.W. I/A. So according to the evidence of the architect, area can be earmarked for construction on the first floor, second floor and third floor. According to the report, space can be allocated to the parties on partition through metes and bounds for five apartments. He has also worked out the valuation of the property in dispute.

He has also worked out the valuation of five apartments.

14. The Architect in his evidence has pointed out that the Housing Board has constructed flats on the area measuring 500 sq. yards. Now when there is a shortage of land for construction purposes and the prices of land have gone very high, it is almost beyond the means of common men to construct a house with single unit. A person of ordinary means cannot spend 10 to 12 lacs of rupees for purchase of land and a sum of 5 to 6 lacs for construction purposes. According to the view taken by the trial Court, in case of death of a land-owner, his sons and daughters cannot divide property by metes and bounds as they cannot retain the same and; per force, they must sell it. This approach is wholly contrary to the present concept of socialist Democratic Republic enshrined in the preamble of the Constitution. We must find ways and means to accommodate people, so that they are provided shelter. The Subordinate Judge did not keep in view that according to the modern architecture five apartments can be built and the same can be allocated to the parties. The property in dispute can be divided by metes and bounds. Space can be allocated by five apartments. The co-shares who are allotted apartments should be required to deposit money in excess to their share in Court within one month from the date of allocation. The remaining co-sharers should be paid their shares in cash, recovered from the other co-owners. So, I set aside the finding of the learned Subordinate Judge that the property in dispute cannot be partitioned.

15. Another reason given by the learned Subordinate Judge is that according to the Rules framed by the Chandigarh Administration, property cannot be fragmented. Relevant Rule 14 reads as under :--

'Fragmentation : No fragmentation of any site or building shall be permitted.'

16. This rule has been interpreted by the trial Court as prohibition to divide property in dispute by metes and bounds. Mr Ashok Bhan, learned Senior Advocate, appearing for the Union Territory, Chandigarh, has submitted that on the death of an owner of the house, the property can be inherited by his heirs. Even a share of the property in dispute in Chandigarh can be sold by an owner of the property. However, he submitted that the aforesaid provision of rule bars

division of property by metes and bounds. Mr. Hemant Gupta has also supported the submission of Mr. Ashok Bhan I have carefully considered the submissions made at the Bar Is it permissible in the present day set up, when the cost of land is so high, that under our Constitutional set up, the rule making authority, to prohibit partition of the property by metes and boun is It shall necessarily result in the sale of the property in question because division by metes and bounds is prohibittd and the people at large would not have any shelter to live. The Supreme Court in *Atam Prakash v. State of Haryana and Ors.*, (1986-1)89 P L R 329 (S. C.) emphasised the significance of principle of social democratic republic as embodied in the preamble of the Constitution. Considering the preamble of the Constitution and Article 14 of the Constitution, the Supreme Court struck down the provisions of Section 15 of the Punjab Pre-emption Act so far as it granted right of pre-emption on the ground of relationship It also deserves to be noticed that Article ;39(b) and 39(c) of the Constitution lays down that the State shall ensure that ownership and control of material sources be distributed for common good and do not result in concentration of economic wealth to the common detriment. It is also significant to note that Supreme Court in *M/s Sahhtistar Builders v. Narayan Khimula Tatame*, A. I. R. 1990 S. C. 630 has laid down that right to reasonable residence is included in the right of life guaranteed by Article 21 of the Constitution. The directive principles of State policy laid down in the Constitution cast responsibility on the State to provide shelter to citizens. The Supreme Court in *Ajay Hasia etc. v. Khalid Mujid Sehravardi*, A. I. R. 1819 S. C. 487. has laid dawn that if the State acts arbitrarily in executive or legislative capacity, its action would necessarily be discriminatory and would violate the provisions of Article 14 of the Constitution. Similar principle has been followed by the Supreme Court in *Rumana v. I.A.A.A.*, A. I. R. 1979 S. C. 1628. and *Central Inland Water Corporation v. Broyo*, A. I. R. 1986 S. C. 571.

17. In the background of the aforesaid constitutional provision, provision of Rule 14 which bans partition of the property by metes and bounds are arbitrary, unreasonable, capricious and contrary to the objects given in the preamble of the Constitution and Directive Principles of State Policy. The provisions of Rule 14 deny to the citizens Tight to reasonable residence because the property cannot be divided by metes and bounds So, the Rule 14 is clearly violative of Articles 14 and

21 of the Constitution. There is another aspect of the matter which also deserves consideration. The rule has been made by the Chandigarh Administration, acting under Section 20 of the Capital of Punjab (Development and Regulation) Act. The aims and objects of the Act, as have been referred to above, are intended only to authorise the State Government to make rules on the pattern of Building Bye-laws framed by the various Municipal Committees. In other words, the Act is intended to make provision for planned development of the town. The Act nowhere deals with the right of inheritance or partition. The Act is completely silent on this point. When the Act does not provide for inheritance, succession and partition, it is difficult to understand how a rule can be framed under the Act, which may bar division of property by the owner by metes and bounds. A rule which runs contrary to the provisions of Act is liable to be struck down (See *Shivdev Singh v. State of Punjab*, A. I. R. 1963 S. C. 365) The rule is clearly outside the scope of rule making power so far it prohibits division of property by metes and bounds. The rule as interpreted by the trial Court that neither 6-Kanal, nor 5 Kanal. 4-Kanal, 3-Kanal, 2-Kanal, 1-Kanal or 10 Marlas buildings can be partitioned by metes and bounds. In every case after the death of the land owner, the property must be sold by the heirs to enjoy it separately. In my opinion, the rule goes beyond the limits of reasonableness and travels beyond the rule making power. So, I hereby declare the provisions of Rule 14 to be illegal, ultra vires, null and void, being beyond the rule making power and I further hold that the rule is hit by Articles 14 and 21 of the Constitution.

18. I must hasten to add that there are abundant rules regulating the plan of construction in Chandigarh. The non-existence of Rule 14 does not in any way, hamper the planned development of the town. It must be clarified that building must be constructed according to the bye-laws of Chandigarh Administration.

19. It is settled principle of law that while allowing partition, persons who are in possession of the property should be given the choice to retain the said portion on partition of the property by metes and bounds. The valuation of the property determined by Mr. Ravindra Partap Architect is just and fair and deserves to be accepted. According to him five independent apartments can be constructed on the property in dispute. He has also given valuation in his report. So, the property should be divided as indicated in the report by Mr. Ravindra Partap Architect.

Therefore accepting his report, I order that the property should be divided by metes and bounds according to the report. The petitioner has been in possession of a portion of the property on the ground floor and while allocating the property in dispute, his possession should be respected and he should be accommodated on the ground floor. The remaining portions shall be allotted by the trial Court by draw of lots. The co-sharers who are given flats should deposit the amount in excess of their share in the trial Court within six months. On deposit of the amount, the remaining co-owners will be paid their share out of the money deposited by the other co-owners.

20. Before I leave the matter, it must be mentioned that these rules were framed 30 years ago. According to the changed conditions of society, it is necessary that the Chandigarh Administration should have a second look on these rules and make necessary changes in them, so that they may conform to the provisions of the Preamble, Directive Principles of State Policy and the Fundamental Rights' enshrined in the Constitution. In the neighbouring urban area of Panchkula, the Haryana Urban Development Authority have allowed more and more area for construction purposes on the plots, so that more and more housing accommodation can be provided. In view of the scarcity of the housing accommodation, it is necessary for the Chandigarh Administration to have a second look for the rules and should make necessary changes which are called for in these rules, to suit the present day society. It may be mentioned that the Haryana Housing Board Act, 1971, has been adopted by the Chandigarh Administration, acting under Section 74 of the Act. The Chandigarh Housing Board has framed regulations called Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979. These regulations permit construction of flats, in Chandigarh, on the plots earmarked by the Chandigarh Administration. So, The concept of flats has been introduced in Chandigarh as well. Due to increase in population, more and more accommodation would be necessary. As the prices of land and building materials have gone very high, it would be very difficult for a person to own a separate house of 500 or 300 sq. yards. The more and more residential units shall have to be constructed in accordance with the rules and Bye-Laws of the Chandigarh Administration. This shows that construction of flats is permissible in Chandigarh. If the Housing Board can construct flats, the other

citizens can also construct the flats.

21. For the reason aforesaid, this revision petition is allowed and the impugned order of the Subordinate Judge are set aside and-the trial Court is directed to divide the property by metes and bounds in accordance with the observations made above. In the peculiar circumstances of the case, the parties are left to bear their own costs.

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