

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6326 of 2013
Date of decision:20.01.2015

Raghubir Singh

....Petitioner

Versus

Jagpal Singh & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.A.P.Bhandari, Advocate, for the petitioner.

Ms.Vandana Sharma, Advocate, for
Mr.Rajesh Lamba, Advocate, for respondent No.1.

G.S.Sandhawal J.(Oral)

Challenge in the present revision petition is to the order dated 30.09.2013 whereby the Civil Judge (Jr.Divn.), Faridabad had dismissed the application of the petitioner-defendant No.1, for rejection of the plaint. The Trial Court has relied upon a judgment of this Court in **Giani Ram & others Vs. Ompati & others 2008 (1) RCR (Civil) 619** to come to the conclusion that if the partition proceedings are challenged on the ground that the same were not conducted in accordance with the prescribed procedure, then the jurisdiction of the Civil Court is not barred.

A perusal of the suit filed by the respondent-plaintiff would go on to show that it was his case that he was a co-sharer in the land measuring 19 kanals 7 marlas, situated in Village Jawan, Tehsil Ballabgarh, District Faridabad. He had been handed over physical possession of the suit property, by defendant No.2 and he was cultivating 11 kanals 6 marlas of land shown in rectangle No.86 killa No.85. The said defendant had not been seen by any person of the village. The present petitioner-defendant No.1, being the real brother, was not having the

IInd Grade, moved an application for partition and only impleaded defendant No.2 and did not implead defendants No.3 to 5, who were having possessory rights. Defendant No.2 was alleged to have received the summons but nobody had seen that person in the village for the last 40 years and he never had any LRs. The plaintiff had never received any summons in the partition proceedings and the procedural part was not done including the preparation of naksha KE, KH, GE, without following the due procedure of law. The thumb impression of Charan Singh, Amar Singh and Kishan were taken for using in the partition proceedings and accordingly, it was submitted that the partition proceedings dated 01.12.2010 were totally illegal. The service having not been effected and the order was only for the benefit of defendant No.1, without following proper procedure. The matter was challenged in the Civil Court, placing reliance upon the judgment in Giani Ram (supra).

Detailed written statement was filed by defendant No.1 dated 05.10.2011 that the suit of partition was instituted on 01.12.2010 against the plaintiff and one Charan Singh and it was accepted on 08.04.2011 by the Assistant Collector, 2nd Grade and possession was handed over on 16.07.2011. The defendants were in actual physical possession of land measuring 4 kanals 16 marlas and there was no relationship with the plaintiff as co-sharer. Charan Singh had not preferred any appeal against the order of partition and the plaintiff could not approach this Court as the Court had no jurisdiction. The plaintiff was estopped by his act and conduct, to file the suit as he was properly served but he refused to see the summons of the Court and service was effected upon him through the process of munadi. Even thereafter, he had failed to come present and he was, accordingly, proceeded against *ex parte* on 09.02.2011. He did not file any application before the Court of the Assistant Collector, IInd Grade for

expired and the suit was barred under Section 158 of the Punjab Land Revenue Act, 1887 (for short, the 'Act'). It is submitted that the father of the plaintiff had cultivated the suit land after his death and thereafter, defendant No.1 was continuing and he had also got demarcated his land vide demarcation dated 30.03.1996. It was also admitted that there were 224 kanals of other khewats and not of the khewat which was partitioned between defendant No.1 and the plaintiff and defendant No.2 and it was denied that any fraud had been pleaded. Resultantly, the jurisdiction of the Civil Court was challenged.

After a period of more than 2 years from filing of the written statement dated 05.10.2011 had expired, the application under Order 7 Rule 11 CPC was filed on 30.03.2013, placing reliance upon the judgment of this Court in **Krishan Vs. State of Haryana & others 2009 (4) RCR (Civil) 353** that the aggrieved person could invoke the jurisdiction of the Financial Commissioner under Section 16 of the Act and the Civil Court had no jurisdiction. The application was contested by filing reply on the ground that after more than 2 years, the application had been filed. The defendants were wanting to delay the matter and are unnecessarily harassing the plaintiff-petitioner and the Civil court had jurisdiction to try the issue. Resultantly, the impugned order has been passed.

The necessary facts have already been noticed, while reproducing the pleadings. The petitioner had initially taken a plea regarding the jurisdiction of the Court and let the trial proceed. After 2 years, the application was filed. This Court, in the case of **Giani Ram** (supra), has specifically held that once the partition proceedings have not been conducted in accordance with law, then Civil Court will always have jurisdiction and it could not be held that the Civil Court's jurisdiction is barred under Section 158 of the Act. It is settled principle that the

under the Act has been scrupulously adhered to. Specific allegations of fraud has been levelled by the plaintiff against the defendant as to how partition proceedings had been conducted at his back and allegedly, munadi had been got conducted and the defendant No.1 was never in possession.

A five Judges Bench of this Court in *State of Haryana Vs. Vinod Kumar 1986 (1) PLR 222* held that where the procedure followed, as prescribed under the statute, has not been adhered to, the jurisdiction of the Civil Court to adjudicate on the matter and to determine whether the legality or the validity of the order passed by the Tribunal or the Authority could not be denied. Thus, in every case, it is to be seen whether the provisions of the Act have not been complied with or the statutory Tribunal had not acted in conformity with the fundamental principles of judicial procedure.

In such circumstances, once the issue has already been raised, it would be proper if the matter is decided after leading of the evidence. In case it is found that the Civil Court does not have jurisdiction or the procedure followed was in accordance with law, the suit can always be dismissed on that account.

The Apex Court in *Dhruv Green Field Ltd. Vs. Hukam Singh & others (2002) 6 SCC 416* laid down the principles of the exclusion of the power of the Civil Court and held that wherever the order complained is of nullity, the Civil Court would retain its jurisdiction. The principles laid down reads as under:

“10. In the light of the above discussion, the following principles may be re- stated:

(1) If there is express provision in any Special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein lead to a conclusion in regard to exclusion of jurisdiction of a civil court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can

safely be concluded that the jurisdiction of the civil court is barred, If however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.”

Reliance placed upon the judgment in the case of Krishan (supra) pertains to writ petition whereby it was observed by this Court that a person cannot be left without a forum to seek recourse once the sanad takseem has been prepared and can approach the High Court or the Financial Commissioner. The judgment is not on the issue of rejection of plaint under Order 7 Rule 11 CPC.

In such circumstances, the view which has been followed by the Trial Court cannot be said to be suffering from any illegality, which would warrant interference under Article 227 of the Constitution of India, under the supervisory jurisdiction of this Court and accordingly, the present revision petition is dismissed. However, it is made clear that anything observed herein is only for the purpose of deciding the present revision petition and shall not prejudice the Civil Court, while deciding on merits on the basis of evidence led before it.

20.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE