

CWP-11089-2002

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of Decision: 07.10.2015

Paramjit Singh

... Petitioner(s)

Versus

Financial Commissioner (Appeals), Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Arun Jindal, Advocate for
the petitioner.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. J.S.Thind, Advocate,
for respondent No.5.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 08.04.2002 (Annexure P-5) passed by respondent No.1-Financial Commissioner, order dated 18.05.1999 (Annexure P-3) passed by respondent No.2-Commissioner Jalandhar Division, Jalandhar and order dated 03.08.1995 (Annexure P-2) passed by respondent No.3-SDM-cum-Collector, Baba Bakala and order dated 22.03.1995 (Annexure P-1) passed by respondent No.4-Assistant Collector-Ist Grade, Baba Bakala.

Brief facts of the case are to the effect that respondent No.5-

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Surjit Singh filed application for partition of joint holding and the petitioner was arrayed as respondent in the said application as his father died on 17.09.1982. In the proposed mode of partition, possession was to be kept intact. The petitioner herein filed written objections dated 20.10.1994 specifying that he has been given less area than his entitlement. It was categorically pleaded that Lakha Singh son of Sunder Singh (respondent No.9 in the partition application), one of the share holders, had already sold land measuring 4 kanals 6 marlas comprised in khasra no.753/1(2-13), 754/1 (1-13) on 21.04.1977, vide registered sale deed dated 21.04.1977 to Balwant Singh (father of the petitioner) and Karnal Singh sons of Diwan Singh. Respondent No.4- Assistant Collector-Ist Grade vide impugned order dated 22.03.1995 (Annexure P-1) dismissed the objections on the ground that there is no entry regarding the sale deed in jamabandi for the year 1988-89. Aggrieved against the order dated 22.03.1995 (Annexure P-1), the petitioner preferred appeal before respondent No.3-Collector, Baba Bakala which was dismissed vide impugned order dated 03.08.1995 (Annexure P-2). Being dissatisfied, the petitioner preferred revision before respondent No.2- Commissioner, Jalandhar Division, Jalandhar which has also been dismissed vide impugned order dated 18.05.1999 (Annexure P-3). Thereafter, the petitioner challenged the impugned orders (Annexures P-1 to P-3) before respondent No.1- Financial Commissioner, who dismissed the revision petition vide impugned order dated 08.04.2002

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(Annexure P-5) mainly on the ground that the petitioner is entitled to 4 kanals 1 marla of land but he is in possession of 4 kanals 17 marlas of land and he has not raised question of title and further observed that Karnail Singh, brother of late Balwant Singh, has not challenged the partition. It is the case of the petitioner that the Financial Commissioner has ignored the civil court judgment and decree dated 19.03.2002 (Annexures P-6 and P-7, respectively) passed by Civil Judge (Sr.Divn.), Baba Bakala vide which the petitioner and Karnail Singh have been declared to be owners in possession of 4 kanals and 6 marlas of land purchased by Balwant Singh-father of petitioner and Karnal Singh from Lakha Singh, one of the co-sharers vide registered sale deed dated 21.04.1977. Hence, this writ petition.

In pursuance of notice of motion, respondent No.5 filed reply with the averments that mode of partition was prepared and same was never challenged, therefore, no revision or appeal lies. The petitioner has claimed 4 kanals 6 marlas of land on the basis of alleged registered sale deed dated 21.04.1977 which was never recorded in the revenue record and the said land was lying in the name of Lakha Singh. In partition proceedings, double land cannot be got partitioned and this material fact has been concealed by the petitioner. It is also prayed that Karnail Singh has not challenged the partition proceedings. Other averments made in writ petition have been denied and dismissal of petition has been prayed for.

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I have heard learned counsel for the parties and perused the record.

Perusal of record clearly reveals that respondent No.12 herein i.e. Lakha Singh, one of the co-sharers, sold land to Balwant Singh, father of the present petitioner and Karnail Singh. It is pertinent to mention here that Karnail Singh and petitioner-Paramjit Singh being brother and son of Balwant Singh, respectively, have been impleaded as respondent Nos.2 and 4 in the application for partition. Balwant Singh and Karnail Singh had purchased 4 kanals and 6 marlas of land from Lakha Singh, one of the co-sharers vide registered sale deed dated 21.04.1977. Admittedly, there is no dispute regarding sale of property by Lakha Singh, who is respondent No.12 in writ petition and respondent No.9 in partition application. The petitioner and Karnail Singh being plaintiffs were also party in the civil suit. The petitioners have claimed their rights on the basis of sale deed dated 21.04.1977 which is held to be valid by the civil court vide judgment and decree dated 19.03.2002 (Annexures P-6 and P-7, respectively) whereby rights of petitioner and Karnail Singh have been determined. Otherwise also, mutation does not confer any title. A person who claims on the basis of sale deed, he can agitate his claim in partition matter, otherwise it will affect the rights of said purchaser. The petitioner purchased the land in 1977 i.e. much prior to the filing of application for partition and civil court decree exists in his favour. Once Balwant Singh, father of the present petitioner and

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Karnail Singh have been impleaded as party in the partition application, they have every right to claim on the basis of sale deed dated 21.04.1977 and certainly, the same is liable to be deducted from the share of Lakha Singh from whom Balwant Singh, father of the present petitioner and Karnail Singh had purchased the land. Accordingly, the writ petition is allowed and the impugned orders (Annexures P-1 to P-3 and P-5) are set aside. Respondent No.4- Assistant Collector-Ist Grade, Baba Bakala is directed to decide the matter afresh, in accordance with law, preferably within six months after inviting objections and affording opportunity of hearing to the respective parties and allot the area to the parties as per their entitlement as mentioned in the sale deed and affirmed by the civil court vide judgment and decree dated 19.03.2002 (Annexures P-6 and P-7, respectively). It is clarified that whatever the share of the petitioner may be in addition to the sale deed, the same would also be allotted to him according to his share in the property and area proportionate of the sale deed would be deducted from the share of Lakha Singh from whom Balwant Singh, father of petitioner and Karnail Singh had purchased the land. Parties through their counsel are directed to appear before Respondent No.4- Assistant Collector-Ist Grade, Baba Bakala on 20.11.2015.

07.10.2015
parveen kumar

(Paramjeet Singh)
Judge