

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.11313 of 2009

Date of Decision:-12.05.2015

Naresh Kumar

.....Petitioner.

Versus

The Financial Commissioner (Revenue), Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ashwani Bura, Advocate for the Petitioner.

Mr. Sandeep S. Mann, Sr. DAG Haryana.

Mr. Rajinder Goel, Advocate for respondent no.2-Seema Devi.

JASWANT SINGH, J.(ORAL)

The petitioner-Naresh Kumar filed an application for partition of land to the extent of his share measuring 11 Kanals 9 Marlas out of the total joint holding measuring 21 Kanals 11 marlas as fully described in the application situated in village Fatehpur, District Kaithal.

There was no dispute qua the extent of shares and possession of the parties. The mode of partition was finalised on 19.07.2007 (P-1). Since none of the respondents had claimed any separation of their shares except Phoolo Devi, it was agreed that a separate *Kurah-Tuk* for the applicant Naresh Kumar and Phoolo Devi (respondent no.5 therein) would be prepared. It is evident that rest of the co-sharers were to remain in joint possession in a separate *Kurah*. It was also provided that a Path measuring

2 Karam width Water Course etc., would be given to the *Kurahs*. Accordingly *Naksha Be* was prepared on 6.9.2007. Since no objections were filed, *Naksha Zeem* was ordered to be prepared on 13.12.2007. The *Sanad Taksim* was prepared on 17.01.2008. The warrants of possession were also executed as per *rapatnamcha* dated 6.5.2008.

Subsequently one of the co-sharers respondent no.2-Seema Devi (respondent no.4 in the partition proceedings) filed a revision on 25.7.2008 before the Financial Commissioner, Haryana seeking quashing of the proceedings solely on the ground that she has been wrongly ordered to be proceeded ex-parte vide order dated 7.12.2006 by the Assistant Collector, IInd Grade, Fatehpur Pundri, Kaithal during the initial stage of partition proceedings. The learned Financial Commissioner vide impugned order dated 19.05.2009 (P-7) recorded a finding that since Seema Devi was not served properly and wrongly proceeded ex-parte set aside whole proceedings and remanded the matter back for fresh determination.

This Court while issuing notice of motion on 30.07.2009 recorded as under:-

“ *Learned Counsel for the petitioner contends that the 'Sanad Takseem' dated 17.1.2008 (Annexure P-3) has been set aside by the learned Financial Commissioner, Haryana vide order dated 19.5.2009 (Annexure P.7) merely on the ground that Seema Devi (respondent no.2) had been proceeded against ex-parte and the matter has now been directed to be decided afresh. It is submitted that the entire proceedings cannot be nullified merely because one of the co-sharers has been proceeded against ex parte especially when the interest of the*

co-sharer who has been proceeded against ex-parte is substantially represented by the order co-owners. A reference has been made to the 'Sanad Takseem' (Annexure P.3) to contend that the petitioner has been given land measuring 11 Kanals 9 Marlas along with the other co-sharers and Seema Devi along with other co-sharers has been given land measuring 10 Kanals 2 Marlas. It is not shown as to what prejudice has been caused to Seema Devi (respondent no.2). It is further submitted that possession has also changed and in this regard report no.584 dated 6.5.2008 (Annexure P.5) has been recorded.

Notice of motion for 17.11.2009.

Meanwhile operation of the order dated 19.05.2009 (Annexure P.7) passed by the learned Financial Commissioner shall remain stayed. ”

Subsequently the parties were also referred for Mediation since the grievance of Seema Devi is that no separate path has been provided for access to the parcel of land in her possession. The Mediation proceedings unfortunately have failed.

After hearing learned Counsel for the parties as also perusing the record produced by Prakash Chand, Naib Tehsildar, Pundri, it becomes evident that in the partition proceedings initiated by petitioner-Naresh Kumar, he had impleaded the co-sharers, namely Sheo Nath, Phimo Devi widow of Sheo Ram, Bachni Devi, Seema Devi daughters of Sheo Ram, Phoolo Devi widow of Santu as respondents. It is not disputed that the mother of Seema Devi, namely, Phimo Devi and sister Bachni Devi were

also served in the partition proceedings. It is also not in dispute that the said mother and sister including Sheo Nath and the widow of Santu did not file any claim for separate possession to the extent of their shares except Phoolo Devi. It is also not in dispute that the mother and sister of Seema Devi stood duly served. Therefore, it cannot be accepted that Seema Devi was not aware of the pending partition proceedings (it is not the case that relations between her and her mother and sister were not good) and, therefore, even if some irregularity had been committed while ordering her to be proceeded ex-parte, the facts did not warrant interference at the instance of respondent no.2-Seema Devi much after the entire partition proceedings stood completed and possession accordingly delivered. The remaining grievance of the respondent no.2-Seema Devi that she has not been provided with any separate access to her parcel of land, pales into insignificance since they have continued to remain in joint possession for which a separate *Kurah* having a proper path stands already sanctioned.

In view of the above, the present writ petition is allowed and the impugned order dated 19.05.2009 (P-7) is set aside.

(JASWANT SINGH)
JUDGE

May 12, 2015
Vinay