

CWP No. 14951-2011

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

CWP No. 14951-2011 (O & M)

Date of Decision:12.02.2015

Smt. Piari

... Petitioner(s)

Versus

Financial Commissioner, Appeal-I, Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr.G.S.Nagra, Advocate,
for the petitioner.

Mr. L.S.Virk, Addl. A. G. Punjab.

Mr. Sandeep Jain, Advocate,
for respondent no.5.

Mr. R.S.Athwal, Advocate,
for respondents no.6(a) to 6 (c).

Paramjeet Singh, J.

CM-1939-CWP-2015

The present application is for impleading the legal representatives of deceased-Mansa Ram (respondent no.6), who is stated to have expired. The legal representatives of deceased-Mansa Ram are mentioned in para 2 of the application. It is stated that there is no other legal heir of deceased-Mansa Ram except the persons mentioned in the

CWP No. 14951-2011

application.

Heard.

Application is allowed, subject to all just exceptions. The persons mentioned in the application are ordered to be impleaded as legal heirs of deceased for the limited purpose of pursuing this petition. Registry is directed to make necessary correction in the memo of parties.

CWP No. 14951-2011

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 12.12.2006 (Annexure P-7) passed by respondent no.3-Collector, Nawanshahr, order dated 28.07.2008 (Annexure P-8) passed by respondent no.2-Commission, Jalandhar Division, Jalandhar and order dated 05.05.2011 (Annexure P-15) passed by respondent no.1-Financial Commissioner, Appeal-I, Punjab.

Brief facts of the case are to the effect that respondent no.5 filed application (Annexure P-1) for partition of land measuring 92 kanals 17 marlas, situated within the revenue estate of village Barnala, Tehsil and District SBS Nagar, before Assistant Collector Ist Grade Nawanshahr. After the receipt of notice in partition application, the petitioner and others appeared and filed reply taking plea that family partition had taken place between elders of the parties about 20 years back in pursuance of which parties are in separate possession of their respective share. It was also pleaded that possession may be kept intact.

CWP No. 14951-2011

After completing necessary formalities, mode of partition was approved by the Assistant Collector Ist Grade and thereafter *Naksha Bey* was called. Objections were called to the *Naksha Bey* and ultimately Assistant Collector-Ist Grade approved the *Naksha Bey* vide order dated 21.02.2005 (Annexure P-4). Against that, the petitioner preferred appeal before the Collector which was accepted and matter was remanded to the Assistant Collector Ist Grade with a direction to decide the matter afresh by passing a detailed order, vide order dated 30.03.2006 (Annexure P-5). In pursuance of remand order passed by the Collector, Assistant Collector Ist Grade, vide order dated 26.07.2006 (Annexure P-6), ordered that partition may be effected keeping the possession intact and field staff was asked to prepare the partition papers. Against the order dated 26.07.2006 (Annexure P-6), respondent no.5 filed appeal before the Collector which was accepted and matter was again remanded to the Assistant Collector Ist Grade with a direction to effect the partition strictly according to the mode of partition already framed on 15.11.2002, vide impugned order dated 12.12.2006 (Annexure P-7). Against that, the petitioner filed appeal before the Commissioner, Jalandhar Division, Jalandhar which was dismissed vide impugned order dated 28.07.2008 (Annexure P-8). Against that, the petitioner filed revision before the Financial Commissioner, Appeal-I, Punjab which was also dismissed vide impugned order dated 05.05.2011 (Annexure P-15). Hence, this writ petition.

CWP No. 14951-2011

In pursuance of notice of motion, respondent no.5 put in appearance and filed written statement with the averments that mode of partition was approved on 15.11.2002 and thereafter partition proceedings had continued for finalization of partition. Once mode of partition has become final, partition is to be carried out in accordance with the same as per law.

Replication was filed to the written statement of respondent no.5.

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

Learned counsel for the petitioner vehemently contended that land was partitioned 20 years back and in pursuance thereto, the parties are in possession of their respective shares. Now established possession of the parties cannot be disturbed by way of partition. Learned counsel made reference to the photographs (Annexure P-14) and site plan (Annexure P-12) which is stated to be prior to the partition.

Per contra, learned State counsel and learned counsel for respondents no.6(a) to 6(c) vehemently opposed the contentions of learned counsel for the petitioner and contended that admittedly land has been shown joint in revenue records. As per jamabandis for the years 1992-93 (Annexure P-10) and 1997-98 (Annexure P-11), land has been shown to be joint whereas possession khasra numberwise has been shown in favour of respective co-sharers. It is merely for the purpose of

CWP No. 14951-2011

cultivating the land, rather it is still joint in the revenue records. No settlement has been effected between the parties. If there would have been some settlement, the same should have been reflected in the revenue records or some writing must have been there. Learned counsel further contended that possession of parties has been kept intact as far as possible. Reference in this regard has been made to jamabandis (Annexures P-10 and P-11) to indicate the possession. Learned counsel further contended that parties have been given land on the main road as per their share. Respondent no.6 has ½ share in the total land whereas petitioner and respondent no.5 are having remaining half share.

Learned counsel for respondent no.5 did not raise objections, rather stated that he is the real sufferer, not the petitioner. Respondent no.5 has not been given land according to his possession.

I have considered the rival contentions of learned counsel for the parties and with their valuable assistance perused the record.

Perusal of column no.5 of jamabandi for the years 1992-93 (Annexure P-10) and 1997-98 (Annexure P-11) reveals that some of land has been shown to be in joint cultivation of the parties and shareholders have also been shown in separate possession. The column no.5 of jamabandis (Annexures P-10 and P-11) specifies khasra numbers in possession of the parties. Perusal of jamabandi (Annexure P-11) reveals that Fakiria, father of respondent no.6, is shown to be in possession of separate khatoni no.935. All the khasra numbers have been compared.

CWP No. 14951-2011

As per jamabandis, major share of khasra numbers belongs to Fakiria and partition is carried out by preparing compact *taks* in order to avoid fragmentation. Many a times, possession of one of the co-sharers is required to be disturbed. The site plan (Annexure P-12) which is stated to be depicting the actual physical possession prior to partition, does not apparently appears to be justified as land has been partitioned in such a manner that one of the shareholders was not given land on the main road.

However, site plan (Annexure P-13) shows that land touching the main passage has been partitioned in a manner that everybody should get share according to his entitlement, therefore, possession of some of khasra numbers has been disturbed. When compact *taks* are prepared, disturbance of possession to some extent is natural. Perusal of site plan (Annexure P-13) makes it clear that respondent no.6 is having half share in the entire land whereas the petitioner is having $\frac{1}{4}$ share and respondent no.5 having $\frac{1}{4}$ th share. In this manner, the petitioner and respondent no.5 are bound to get proportionate share on the main passage/road.

Learned counsel for the petitioner has failed to show that there is any variation in the quality of land of these *taks* or there is any violation of mode of partition. Everybody has been given land in a compact *tak* as shown in site plan (Annexure P-13). When the land is partitioned as per its quality and keeping in view the principles of consolidation and prevention of fragmentation, possibility of disturbance

CWP No. 14951-2011

of possession to some extent is permissible.

In view of above, no indulgence is called for in the impugned orders.

Dismissed.

No order as to costs.

12.02.2015

parveen kumar

(Paramjeet Singh)
Judge