

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

CWP-16266-2013

Date of decision: 08.10.2015

Kuldeep Singh

..... Petitioner

versus

The Financial Commissioner (Revenue), Punjab & others

..... Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Ajay Singla, Advocate
for respondent No.5.

RAKESH KUMAR JAIN, J. (Oral)

An application for partition was filed by respondent No. 5 under Section 111 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act') before the A.C. Ist Grade, Phillaur. The following order was passed by A.C. Ist Grade on 5.12.2004 :-

“File is presented. Counsel for the parties is present. Sh. Mohan Lal appeared on behalf of respondent No.1. Vakalatnama is submitted. Jhalman has died. Registered envelops were issued. Therefore, the service of remaining respondents be done through mustri-munadi and the case is adjourned to 23.08.04.

*Sd/-
AC Ist Grade
05.08.2004”*

2. Thereafter on 27.1.2006, following order was passed :-

"File is presented. Counsel for the parties is present. No objection has been submitted against the proposed mode of partition and therefore the proposed mode of partition is hereby sanctioned. The copy of the same is sent to Halqa Kanugo so that he can prepare the partition papers for dated 15.02.2006.

Sd/-

AC Ist Grade"

3. On the adjourned date i.e. 15.02.2006, the following order was passed :-

"File is presented. Counsel for the parties is present. Partition papers has not been received and the same is awaited, the case is adjourned to 21.03.2006.

Sd/-

AC Ist Grade"

4. And on 31.7.2006, the application for partition was dismissed for non-prosecution with the following order :-

"File is presented. The case was called. Neither the counsel for the applicant nor the counsel for the respondent and neither the parties are present. The case is dismissed in default for want of prosecution."

Sd/-

AC Ist Grade

31.07.06"

5. Respondent No.5 thereafter filed an application for restoration of the partition application on 22.08.2006. On that date, the following order was passed :

“On dated 22.08.06 counsel for the applicant has submitted an application through its parties for setting aside the order dated 31.07.06 vide which the case was dismissed in default. The copy of the same is given to counsel for the respondent. The case is adjourned to 29.09.2006 for reply.

Sd/-

AC Ist Grade 22/8”

6. On the adjourned date i.e. 29.09.2006, the following order was passed :-

“File is presented. Counsel for the applicant is present. Neither the counsel for the respondent nor the party is present and neither the reply has been submitted. The case was considered. The partition papers sent by the field staff i.e. Mark-A, Mark -B, Mark -C are hereby approved.”

Sd/-

AC Ist Grade

29.09.06”

7. Counsel for the petitioner has submitted that at the time of allowing the application for restoration, the Assistant Collector Ist Grade had finalised their partition proceedings as the partition papers sent by the field staff i.e. Mark-A, Mark-B, Mark-C were approved. The petitioner had challenged the order dated 29.09.2006 before the Collector, Phillaur. The appeal was adjourned sine die to await the final outcome of the civil suit which was filed by the petitioner disputing the question of title of respondent No.5.

8. Respondent No.5 challenged the order of the Collector dated 28.02.2007 before the Commissioner, Jalandhar Division, Jalandhar. The appeal was allowed on 01.06.2009 and the revision filed by the petitioner before the Financial Commissioner (Revenue), Punjab was dismissed on 12.02.2013. Hence, the present petition has been filed.

9. Counsel for the petitioner has submitted that the Assistant Collector Ist Grade, Phillaur has erred in law in passing the order dated 29.09.2006 because on that date he was only to deal with the application filed by respondent No.4 for restoration of his application for partition. The proper procedure would have been followed after allowing the application for restoration of the partition proceedings. The application for partition was to be dealt with but the Assistant Collector Ist Grade not only restored the application for partition filed by respondent No.5 but also finalized the partition proceedings in the absence of the present petitioner. In this regard learned counsel for the respondent has submitted that *Naksha Bey* and *Naksha Zeem* were prepared and sanctioned and he also referred to the report dated 22.08.2006 which is at page 21 of the paper book, wherein it is mentioned "*application allowed Sd/- 11.09.06*".

10. According to respondent No.5, application was filed on 11.09.2006 and not on 29.09.2006 but at the same time he has been fair enough to submit that there is no order recorded on 11.09.2006 about the further proceedings to have not been

ordered to be carried out after 11.09.2006.

11. On the other hand, learned counsel for the petitioner has drawn the attention of the Court to the order dated 11.09.2006, as per which the case was adjourned to 29.09.2006 and on that day application for restoration was allowed and the partition proceedings were finalised.

12. I have perused the record and considered the rival contentions of learned counsel for the parties and am of the considered opinion that Assistant Collector Ist Grade has committed a patent error while passing the order dated 29.09.2006 as on that date he was only to consider the application for restoration of the partition proceedings and once the partition application was restored, he was to adjourn the case for further proceedings, especially, when the counsel for the respondent was not present, however, his presence was incorrectly recorded in the zimini order i.e. presence of counsel for respondent No.1 was recorded, namely, *"Sh. Mohan Lal Kaushal, counsel for Kuldeep Singh respondent No.1"*.

13. The fact mentioned above, only indicates grave illegality and irregularity in the order dated 29.09.2006 passed by the Assistant Collector Ist Grade in deciding the application for partition. Accordingly, the present petition is hereby allowed and the order dated 29.09.2006 and all further proceedings arising therefrom are set aside. The parties are directed to appear before the Assistant Collector Ist Grade, Phillaur on

6.11.2015, who would start the partition proceedings afresh after allowing the application for restoration filed by respondent No.5.

The present petition is allowed with ₹ 20,000/- as costs.

(RAKESH KUMAR JAIN)

JUDGE

08.10.2015

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