

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

CWP-17463-2013

Date of decision : 08.09.2015

Dolly Gambhir

..... Petitioner

Vs

Gurpreet Kaur & others

..... Respondents

Coram : Hon'ble Mr. Justice Rakesh Kumar Jain

Present : Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

Mr. Umesh K. Kanwar, Advocate
for respondent No.1.

Mr. P.P. Chahar, DAG, Haryana.

Rakesh Kumar Jain, J. (oral)

The matter involved in this case has arisen from the partition proceedings. The petitioner has challenged the order passed by Financial Commissioner dated 01.05.2013 (Annexure P-12) vide which the revision petition filed by respondent No.1 has been allowed.

The petitioner and respondent No.1 were co-sharer in Khewat No. 346 Khata No. 367 Mustatil No. 66 Killa No. 1/1(7-12), Mustatil No. 67 Killa No. 4(3-14), 5(8-0), total Kitta 3 Rakba 19 kanal 6 marla and Khewat No. 121, Khata No. 124, Mustil No. 56, Killa No. 10/1 (0-11), Kitta 1, Total Rakba 0 Kanal 11 Marla, Total 19 Kanal 17 Marla situated in the revenue estate of village Alipur, Tehsil Sohna, District Gurgaon.

The petitioner filed an application under Section 111 of the Punjab Land Revenue Act, 1887 (for short the Act) before the Assistant Collector, Ist Grade, Sohna for seeking partition of the aforesaid land. Respondent No.1 was served through registered post on her address i.e. A-2/111, Rajouri Garden, New Delhi. When respondent No.1 did not appear despite service through registered post, the Assistant Collector Ist Grade also ordered for proclamation at the land in the village. Respondent No.1 did not appear and thereafter the mode of partition was prepared on 11.11.2009. No objection was filed to the mode of partition and, hence, the authorities were directed by the Assistant Collector Ist Grade to prepare Naksha "B". Naksha "B" was accordingly prepared by the Halqa Patwari as per which 2/3rd share belonging to the petitioner being 13 Kanal 5 Marla and 1/3rd share belonging to private respondent No.1 being 6 Kanal 11 Marlas was partitioned. Assistant Collector Ist Grade, vide his order dated 23.12.2009, accepted Naksha "B" and directed the Girdawar to prepare Naksha "Jeem" which was followed by Sanand Takseem (partition deed). After the issuance of Sanand Takseem, respondent No.1 filed an appeal against the order dated 23.12.2009 whereby Naksha "B" was approved alleging that she was not duly served and was wrongly proceeded against ex parte. The said appeal was allowed by the Collector, Gurgaon vide his order dated 18.10.2010. The

petitioner challenged that order before the Commissioner of the Division. His appeal was allowed vide order dated 07.07.2011. Thereafter respondent No.1 filed a revision petition before the Financial Commissioner (Revenue) under Section 16(1) of the Act, which has been allowed vide impugned order dated 01.05.2013.

Counsel for the petitioner has argued that as per Section 20(4 & 5) of the Punjab Land Revenue Act, 1887 the respondent was duly served by registered post and also there was a proclamation in the village where the land is situated but despite that respondent No.1 did not appear and was rightly proceeded against ex parte. Otherwise also on merits, it is submitted that no loss has been caused to respondent No.1, as projected by way of site plan, which is on record as mark "A", in which land after partition, falling to the share of the petitioner is shown in red colour and to the share of respondent No.1 in blue colour. It is submitted by learned counsel for the petitioner that petitioner and respondent No.1 have been given land on the road side, in proportion, as the petitioner has got 2/3rd and respondent No.1 has got 1/3rd in the land under partition. It is also submitted that in the appeal filed by respondent No.1, there is no averment that they were not served through registered post. He has also referred to Section 27 of the General Clause Act, 1887 (for short the Act of 1887) to contend that once the

summons were sent through registered post and it was not received back then presumption is that the said summon was served upon the addressee if the address on the registered post was correct. In this regard he has referred to the grounds of appeal filed by respondent No.1 which contains her address on which summons through registered post were sent.

In reply, counsel for respondent No.1 has submitted that there is an error in the order of the Financial Commissioner as it is the mandate of Section 20(1) that the summon should be served personally upon the parties to the lis. It is also submitted that though the front portion as depicted in part 'A' has been given in the partition but he was given one Marla less land than his share. In this regard learned counsel for respondent No.1 has submitted that there is no deficiency of land which has been given to respondent No.1 but still in order to bury the hatchet he is ready to pay the prevalent market price of the said one Marla land to respondent No.1. However, counsel for respondent No.1 has straightway refused to accept it and has stated that he has no instructions to accept the offer of the money against one Marla of land.

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

The purpose for serving notice upon the other party is only to secure presence to invite objections, if any, to the

application filed under Section 111 of the Act. Though Section 20 (1) of the Act provides that service should be effected personally upon the respondent or in his absence upon adult male member of his family usually residing with him but it is also provided in Section 20(4) of the Act that service can be effected through registered notice as well. It is not the case of the respondent that she has not received the summons through registered post as no averment has been made in her grounds of appeal. It is also an admitted fact borne out from the record that summons were sent through registered post on the address, given by respondent No.1 herself in her grounds of appeal. In these circumstances, Section 27 of the Act of 1887 would come into play which provides that service shall be deemed to be effected, if the address is correct and sent by registered post. In this case, both address is correct and the summon was admittedly sent through registered post coupled with the fact that there is no denial in the grounds of appeal filed by respondent No.1 before the Collector when she had challenged the ultimate order passed for preparation of Sanand Takseem. Even otherwise I am satisfied that justice has been done to the parties because both the parties have got equal front portion on the road as depicted in mark "A" in the site plan and insofar as the issue of deficiency of one Marlas land is concerned, the petitioner has very fairly made an offer for giving the price of

one Marla land to respondent No.1 but the respondent No.1 is adamant not to accept the same.

Thus, in view of the aforesaid, I am of the considered view the present petition is allowed and the impugned order is set aside.

(Rakesh Kumar Jain)
Judge

08.09.2015
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