

CWP-1546-2015

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

CWP-1546-2015

Date of Decision: 10.09.2015

Jawahar Singh

... Petitioner(s)

Versus

Assistant Collector Ist Grade (Naib Tehsildar), Moonak 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. M.K.Singla, Advocate,
for the petitioner.

Mr. Suresh Singla, Addl. A. G. Punjab.

Mr. J.S.Dhaliwal, Advocate,
for respondent No.2.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 07.11.2012 (Annexure P-7) whereby mode of partition has been approved.

Brief facts of the case are to the effect that respondent No.2- Mohinder Singh filed application dated 26.05.2009 (Annexure P-1) for partition of land measuring 27 kanals 8 marlas bearing khasra Nos.54//15 (6-16), 16(4-12), 55/11(8-0) and 20(8-0), situated at village

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Makror Sahib. After effecting service upon the parties, Assistant Collector Ist Grade, Moonak proceeded with the application and Naksha Arra was called and statements of parties were recorded before framing mode of partition.

It is the case of the petitioner that mode of partition has been approved without following its standard procedure. The mode of partition is contrary to the settled principles of law as the land is required to be partitioned keeping in view the nature, nearness to the road, quality of land i.e. *nehri*, barani, chahi etc. It is also averred that even date of recording the statements has been wrongly mentioned and record has been fabricated.

In pursuance of notice of motion, Sh. Harsimarn Singh, Tehsildar, Moonak has filed reply on behalf of respondent No.1.

However, learned counsel for respondent No.2 does not intend to file reply.

At this stage, learned counsel for the petitioner states that he does not press the aspects of fabrication of records and is only aggrieved against the mode of partition.

Learned counsel for respondent No.2 has not seriously opposed the contentions of learned counsel for the petitioner.

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

Admittedly, mode of partition (Annexure P-7) has been

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passed without following its settled principles of law. It is nowhere mentioned that watercourse and passages will be provided for the entire area and they will be treated as common share of the parties. Even clause (3) of the mode of partition which provides that partition will be done keeping in view the possession, but it has not been mentioned that if need be, the same can be disturbed according to the needs at the time of partition. Keeping in view the nature, nearness to the road, quality of land i.e. *nehri*, barani, chahi etc., the land has to be partitioned equally between the shareholders.

In view of above, the impugned order dated 07.11.2015 (Annexure P-7) is set aside and matter is remanded to respondent No.1- Assistant Collector Ist Grade, Moonak with a direction to frame the mode of partition afresh in accordance with law. Parties through their counsel are directed to appear before respondent No.1 on 20.10.2015.

Disposed of in the aforementioned terms.

10.09.2015
parveen kumar

(Paramjeet Singh)
Judge