

CWP No.22512-2013

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

CWP No.22512-2013

Date of Decision: 19.01.2015

Kuldeep Singh

... Petitioner(s)

Versus

Financial Commissioner, 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.Sherry K. Singla, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. A. G. Punjab.

Mr. G.S.Dhaliwal, Advocate,
for respondent No.5.

Mr. G.S.Nagra, Advocate,
for respondents No.6-A and 6-B.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the order dated 21.08.2013 (Annexure P-8) passed by respondent no.1-Financial Commissioner, Punjab, order dated 07.03.2012 (Annexure P-6) passed by respondent no.2-Commissioner, Patiala Division, Patiala and order dated 26.09.2010

CWP No.22512-2013

(Annexure P-5) passed by respondent no.3-Sub Divisional Magistrate-cum-Collector, Ludhiana.

In short, facts are to the effect that respondent No.5-Nirmal Singh filed two separate applications for partition of land measuring 24 kanals and 234 kanals 14 marlas, situated in village Kakowal, Tehsil and District Ludhiana on the ground that parties are shown to be in exclusive possession on the basis of some oral family settlement. The partition applications were filed for issuance of a direction that land may be partitioned keeping in view the possession of the parties intact. The petitioner filed reply to said applications and raised objection that question of title is involved and civil suit is already pending between the parties. After considering the material on record, respondent No.4-Assistant Collector Ist Grade, Ludhiana, vide order dated 28.07.2010 (Annexure P-4), adjourned the matter *sine die* till the decision of the civil court. Feeling aggrieved, Raghubir Singh, father of respondents No.6-A and 6-B filed appeal which has been allowed vide impugned order dated 26.09.2010 (Annexure P-5) whereby appeal preferred against the order dated 28.07.2010 (Annexure P-4) passed by respondent No.4, has been allowed and order dated 28.07.2010 has been set aside. Feeling aggrieved, the petitioner preferred an appeal before the Commissioner, Patiala Division, Patiala which has been dismissed vide impugned order dated 07.03.2012 (Annexure P-6). Against that, the petitioner preferred revision before the Financial Commissioner, Punjab which has also been

CWP No.22512-2013

dismissed vide impugned order dated 21.08.2013 (Annexure P-8).

Hence, this writ petition.

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

The matter in hand is squarely covered by the decision rendered by a Division Bench of this Court in LPA-1972-2012, titled '**Gurdev Kaur vs. State of Punjab and others**', decided on 17.05.2013 wherein it has been held as under:

“We have heard counsel for the parties, perused the impugned orders as well as orders passed by revenue authorities. Chapter IX of 1887 Act prescribes the procedure for partition of agricultural land. Section 117(1) of the said enactment reads as follows:-

“117. Disposal of questions as to title in property to be divided: - (1) When there is a question as to title in any of the property of which partition is sought, the Revenue-officer may decline to grant the application of partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.”

If during partition proceedings, a question of title arises, section 117(1) requires a revenue officer, to reject the application till the decision of the question of title or to decide the question himself. As a necessary consequence, if a civil suit is pending, an Assistant Collector, exercising power under Chapter IX, has no jurisdiction to proceed with partition proceedings or record an opinion on a question of title as the final arbiter on a question of title is a Civil Court. Thus, where a civil suit is pending, a revenue officer shall pass

CWP No.22512-2013

an order keeping partition proceedings in abeyance, to await outcome of the civil suit.

Admittedly, a civil suit is pending inter parties. In this view of the matter, the appeal is allowed and the impugned orders are set aside. Partition proceedings shall continue but final order shall not be passed till such a time as the civil suit is decided. The Civil Judge(Junior Division) Amloh shall make every effort to decide the suit within six months from the receipt of a certified copy of this order.”

In view of law laid down in ***Gurdev Kaur's case (supra)***, impugned orders (Annexures P-5, P-6 and P-8) are set aside. Consequently order dated 28.07.2010 (Annexure P-4) passed by respondent no.4-Assistant Collector Ist Grade is restored. Status quo with regard to possession shall be maintained till such a time as the civil suit is decided. The civil court shall make every effort to decide the suit within six months from the receipt of a certified copy of this order.

Disposed of.

19.01.2015
parveen kumar

(Paramjeet Singh)
Judge