

CWP-23078-2013

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

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Date of Decision: 20.10.2015

Kanwarpal

... Petitioner(s)

Versus

State of Haryana 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: Ms. Sharmila Sharma, Advocate,
for the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Ravi Gakhar, Advocate for
Mr. Jagdish Manchanda, Advocate,
for respondent Nos.4 to 11.

Paramjeet Singh, J.

Instant writ petition has been filed under Article 226 of the
Constitution of India for setting aside the order dated 01.02.2013
(Annexure P-10 (Colly)).

Brief facts of the present case are to the effect that
respondent Nos.4 to 11 filed application (Annexure P-1) for partition of

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land before the Assistant Collector-Ist Grade, Balla against petitioner-Kanwar Pal, his father-Prem Singh and his brothers-Ram Pal, Surender Pal and Inder Pal @ Inderjit. The said application was admitted for partition and after completing procedural formalities, mode of partition was approved with regard to 514 kanals and 3 marlas of land. Thereafter, *Naksha Bey* was called to which objections were filed by the respective parties. Vide order dated 08.12.2010 (Annexure P-6), Assistant Collector-IIInd Grade decided objections and approved *Naksha Bey*. Against that, respondent Nos.4 to 8 preferred appeal before the Collector, Assandh, who set aside the order dated 08.12.2010 (Annexure P-6) and remanded the case to the Assistant Collector-IIInd Grade for fresh decision. Being dissatisfied, the petitioner and others filed appeal before the Commissioner, Rohtak Division, Rohtak. When the appeal was pending before the Commissioner, applicant-Ajayab Singh @ Ajaib Singh (respondent No.6 herein) moved application for withdrawal of application for partition with liberty to file afresh. The Assistant Collector-Ist Grade, Ballah, vide impugned order dated 01.02.2013, allowed the application and stopped the proceedings in the partition application. Hence, this petition.

It would be apposite to mention here that the impugned order dated 01.02.2013 has been annexed with the present petition as Annexure P-10 (Colly.). In fact, both the orders dated 01.02.2013 are verbatim the same.

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

Learned counsel for the petitioner vehemently contended that once the partition is admitted and the Assistant Collector-Ist Grade/IIInd Grade proceeded with the partition, then an applicant cannot be allowed to withdraw the application. The other co-sharers who are party in the application, are also required to be afforded opportunity whether they want to proceed with the partition application, as after the admission of application for partition, every applicant and respondent who happen to be co-sharer in the land sought to be partitioned, become applicant. Therefore, the impugned order dated 01.02.2013 is against the law and not sustainable in the eyes of law.

Per contra, learned State counsel and learned counsel for respondent Nos.4 to 11 vehemently opposed the contentions of learned counsel for the petitioner and contended that an applicant has every right to withdraw the application for partition filed by him. The impugned order has been passed correctly in accordance with law.

I have considered the rival contentions of learned counsel for the parties.

It would be apposite to reproduce Section 118 of the Punjab Land Revenue Act, 1887 (as applicable to Haryana only) (for short, 'the Land Revenue Act') reads as under:

“118. Disposal of other questions- (1) When there is a question as to property to be divided, or the mode of

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making a partition, the Revenue officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under sub-section (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue-officer by the authority to whom the appeal has been preferred the Revenue-officer shall stay proceedings pending the disposal of the appeal.

(3) If the applicant for partition is dissatisfied with an original or appeal order under this section, and applied for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue-officer thinks fit.

(4) When an applicant withdraws under the last foregoing sub-section the Revenue-officer may where the other applicants if any desire the continuance of the proceedings, continue them in so far they relate to the partition of the shares of those other applicants”.

Section 118(3) of the Land Revenue Act provides that if applicant seeking partition is dissatisfied with an original or appellate order under the provisions of Section 118 of the Land Revenue Act, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue-officer thinks fit. Section 118(4)

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of the Land Revenue Act clearly states that when applicant withdraws in view of Section 118(3), then the Revenue-officer may where the other applicants if any desire the continuance of the proceedings, continue with them in so far they relate to the partition of the shares of those other applicants.

In the present case, the petitioner is one of the respondents in the application for partition. He has approached this Court on the ground that he was always interested to continue with the partition proceedings as major part of partition proceedings i.e. *Naksha Bey* has already been approved after deciding objections by the competent authority. His grievance is that no opportunity of hearing was given to the present petitioner, who is a respondent in the application for partition, to continue with the proceedings, rather same have been stopped vide impugned order dated 01.02.2013 (Annexure P-10) which is contrary to Section 118(4) of the Land Revenue Act. Admittedly, once the application for partition is admitted, every applicant and respondent virtually become applicants because proceedings before the Revenue-officer/Assistant Collector-Ist Grade/IIInd Grade are neither in the nature of civil suit, nor the application is a type of plaint, but it only refers that there is a joint land which is sought to be partitioned in accordance with the settled principles of partition of agricultural land.

In view of above discussion specifically Section 118(4) of the Land Revenue Act, the impugned order dated 01.02.2013 is not

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sustainable and accordingly, the same is set aside. The Assistant Collector-Ist Grade, Ballah is directed to proceed with the partition application and continue with the proceedings since the petitioner wants to proceed with the application. The proceedings shall commence from the stage from where the same were stopped in the application. Parties through their counsel are directed to appear before the Assistant Collector-Ist Grade, Ballah on 19.11.2015.

20.10.2015
parveen kumar

(Paramjeet Singh)
Judge