

CWP No. 26045 of 2013

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

**CWP No. 26045 of 2013(O&M)
Date of Decision : 15.09.2015.**

Maan Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

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. Vikram Singh, Advocate for the petitioners.

Mr. Rajneesh Chadwal, D.A.G., Haryana.

Mr. Parminder Singh, Advocate for respondents No. 5 to 23.

Paramjeet Singh, J.(Oral)

Instant petition has been filed under Article 226 of the Constitution of India for quashing the order dated 16.09.2013 (Annexure P-9) passed by respondent No. 1, order dated 07.09.2012 (Annexure P-8) passed by respondent No. 2 and order dated 19.08.2011 (Annexure P-7) passed by respondent No. 3 vide which appeal of the petitioners was dismissed whereby the prayer of the petitioners for setting-aside ex-parte

proceedings and allowing them to join the proceedings from the initial stage, has been declined. Challenge is also to the orders dated 11.09.2009 (Annexure P-2), 23.12.2010 (Annexure P-5) and 25.02.2011 (Annexure P-6) passed by respondent No. 4, whereby the application dated 28.07.2010 (Annexure P-4) filed by the petitioners for setting-aside the ex-parte order dated 11.09.2009 (Annexure P-2) has been dismissed vide order dated 23.12.2010 (Annexure P-5) and subsequently Mode of Partition has been sanctioned vide ex-parte order dated 25.02.2011 (Annexure P-6).

Brief facts of the case are that an application for partition of land was filed by the respondents in which the petitioners were proceeded against ex-parte on 11.09.2009. The petitioners moved an application on 28.07.2010 for setting-aside the ex-parte order, which was dismissed on 23.12.2010. Against that order, an appeal was preferred by the petitioners, which was allowed vide order dated 19.8.2011 (Annexure P-7) and they were given liberty to join proceedings at that stage whereas the mode of partition had already been sanctioned on 25.02.2011 and *naksha bey* was also prepared.

I have heard learned counsel for the parties and gone through the case file.

Once the Appellate Authority has recorded a finding that the petitioners were wrongly proceeded against ex-parte then there was no question of directing them to join proceedings from the stage where the

proceedings are on that date. They should have been allowed to join proceedings from the initial stage. Petitioners should have been given opportunity to file reply to the application. Thereafter they should have been heard at the time of framing mode of partition and then opportunity should have been provided to file objections to *naksha bey*.

Counsel for the respondents candidly states that he has no objection if the petitioners are given opportunity to file reply.

Since the concession has been given by the learned counsel for the respondents, the impugned orders are set-aside. The petitioners are permitted to file reply and if they choose to do so, they should file reply on the first date of appearance positively. If they do not file reply, as aforesaid, they shall not raise any objection with regard to the partition.

The partition shall be done expeditiously in accordance with law, preferably within a period of six months from the receipt of certified copy of this order.

In the aforesaid terms, the present petition is disposed of.

September 15, 2015.
kanchan

(PARAMJEET SINGH)
JUDGE