

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

**CWP No.8049 of 2015
Date of Decision: 08.09.2015**

Manjit Singh

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. AG, Punjab.

None for respondents No.5 and 6.

RAKESH KUMAR JAIN, J. (ORAL)

This petition has been filed challenging the order dated 18.09.2014 passed by respondent No.1 (Annexure P-7), order dated 11.12.2013 passed by respondent No.2 (Annexure P-6), order dated 09.09.2010 passed by respondent No.3 (Annexure P-5) and order dated 20.11.2009 passed by respondent No.4 (Annexure P-3).

It is submitted that the partition proceedings were initiated by Gian Kaur. The petitioner has purchased the land to the extent of half share from Shingara Singh (husband of Gian Kaur) who sold 10 kanal 7 marlas of land to the petitioner. After the land was sold, the petitioner laid down underground pipeline on the land purchased by him and thereafter Gian Kaur had filed the partition application. Aggrieved against the mode of partition, the petitioner filed an objection in regard to the pipeline laid by him but the said part of the dispute has not been decided by the AC 1st

Grade when the objection filed by the petitioner was dismissed. It is also submitted that later on Gian Kaur has also sold her half share i.e. 10 kanal 7 marla to respondent No.6, meaning thereby that she does not have any share in the land in question, which is sought to be partitioned. Respondent No.6 does not want himself to be impleaded as a party in the partition application. The petitioner has impleaded respondent No.6 in the present petition but despite notice having been served upon him, he did not appear and was proceeded against *ex parte* vide order dated 13.08.2015.

The petitioner has assailed the order of AC 1st Grade dated 20.11.2009 which has been passed on an application for partition in which the objection has been raised by the petitioner, which has not been dealt with. It is also submitted that the appeal filed by the petitioner against the said order was dismissed only on the ground of delay of 22 days.

I have heard learned counsel for the parties and after considering the facts and circumstances with their able assistance, am of the considered opinion that order under challenge, dated 20.11.2009 does not record the reason to deal with the objection raised by the petitioner to the mode of partition. Moreover, the appeal of the petitioner should not have been dismissed by the Appellate Court on the ground of 22 days' delay in filing of the appeal which was otherwise explained by the petitioner.

In view of the fact that both Gian Kaur and Shingara Singh have already sold their land and thus have no interest in the partition proceedings, the objections raised by the petitioner should have been dealt with by AC 1st Grade objectively more so when the petitioner has urged that after purchasing the land from Shingara Singh he has laid underground pipeline.

In view of the aforesaid discussion, the present petition is allowed, the impugned orders are hereby set aside and the matter is remanded back to AC 1st Grade, Kapurthala to pass a speaking order giving appropriate reasons.

The parties are directed to appear before the AC 1st Grade on 05.10.2015.

08.09.2015

Bhumika

**(RAKESH KUMAR JAIN)
JUDGE**