IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 1070 of 2015 (O&M)

DATE OF DECISION : 04.09.2015

Joginder Singh and others

.... APPELLANTS

Versus

Financial Commissioner Cooperation, Punjab and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Ravish Bansal, Advocate,
for the appellants.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 23.03.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 13713 of 2010) filed by the appellants challenging the orders of the revenue authorities passed in partition proceedings, has been dismissed.

Though there is delay of 01 day in re-filing and 19 days in filing the appeal and the appellants have filed applications (CM Nos. 2227-28-LPA of 2015) for condoning the said delay, yet we have heard learned counsel for the appellants and have gone through the impugned order as well as the orders passed by the revenue authorities.

In this case, the partition proceedings were initiated in the year

1992. Vide order dated 30.06.2000 (Annexure P-2), the Assistant Collector Ist Grade, Shahkot, finalised the partition as per the approved mode of partition. The appellants were allotted 181 kanals of land as per their share. Aggrieved against the said order, the appellants filed appeal before the Collector, Shahkot, which was dismissed vide order dated 28.11.2000 (Annexure P-3). The revision filed by the appellants against the said order was also dismissed vide order dated 08.10.2001 (Annexure P-4). The second revision filed by the appellants before the Financial Commissioner, Cooperation, Punjab, was accepted vide order dated 19.04.2004 (Annexure P-6) and the matter was remanded back to the Assistant Collector Ist Grade, Shahkot, on a limited issue of adjusting the land measuring 20 kanals 6 marlas, which was alleged to be in possession of the appellants. The said order was challenged by some of the respondents by filing CWP No. 9488 of 2004 before this court. Vide order dated 12.08.2004 (Annexure P-7) passed by this court, with the consent of the parties, the aforesaid order dated 19.04.2004 was set aside and the matter was remitted back to the Financial Commissioner to decide the revision petition on merits in accordance with law. Thereafter, the Financial Commissioner, vide order dated 06.11.2009 (Annexure P-8) dismissed the revision petition filed by the appellants, while observing as under :-

> *"I have perused the record on file and have heard the arguments of the learned counsel. It is clear from the record that partition proceedings are going on between the parties*

> *from many years and various orders have been passed by the revenue courts at different times. According to the present position, the partition proceedings have been completed and `Sanad Takseem' has already been issued and possession has already been delivered. Apart from that partition has been affected in revenue papers also. Commissioner Jalandhar Division vide his order dated 8.10.2001 has specified in his order that in compliance of the order of Assistant Collector Grade-I dated 30.6.2000, possession has been delivered on 17.9.2000 and in this way partition proceedings have been completed.* ***In mode of partition also it has been written that the possession of the parties should be kept intact as far as possible.*** *It is clear that on the basis of partition proceedings, revenue officer has to see that all the parties be allotted land according to their due share keeping in mind the price of land. Therefore, while partition, disturbance of possession upto some extent is obvious. In these circumstances, I feel that at this stage there is no basis to accept this revision petition and the orders passed by the lower courts are in accordance with law. Therefore, this revision petition is ordered to be dismissed."*

The appellants challenged the aforesaid orders dated 30.06.2000; 28.11.2000; 08.10.2001; and 06.11.2009, by filing CWP No. 13713 of 2010, which has been dismissed by the learned Single Judge vide the impugned order, while making the following observations :-

> *"The mere grievance of the petitioners is that while laying down the mode of partition, their possession on some portion has been disturbed and in lieu of the same, another parcel granted, which is on a slightly elevated level, cannot be*

> *accepted to be a ground for setting aside the whole partition. It has to be accepted that while effecting partition, possession of the parties has to be protected as far as possible, however, the same is not the only criteria for effecting mode of partition. It is rightly noticed that the parties on the basis of partition proceedings are to be allotted land according to their due shares keeping in mind the price of the land and while partition disturbance of possession up to some extent is obvious.*
>
> *In the present case, merely because the petitioners have been allotted a portion of agricultural land, which is at a higher level, cannot vitiate the entire partition proceedings, apart from putting the clock back now after 14 years of settled possession would also be highly unjust."*

Learned counsel for the appellants argued that the revenue authorities, while carrying partition of the joint land, disturbed the possession of the appellants and allotted them some inferior land, which was not in their possession. He further argued that the Financial Commissioner has committed grave illegality while deciding the matter contrary to the direction issued by this court vide order dated 12.08.2004.

Both the aforesaid contentions raised by learned counsel for the appellants are not sustainable. After setting aside the order dated 19.04.2004 passed by the Financial Commissioner remanding the matter to the Assistant Collector Ist Grade, this court vide order dated 12.08.2004 remitted back the matter to the Financial Commissioner directing him to decide the matter on merits. Accordingly, the Financial Commissioner decided the matter on merits. It cannot be said that the said decision, in any manner, is contrary to the direction issued by this court. Secondly, as per the mode of partition, partition was to be effected while keeping in view the possession of the parties, but in case a party was in possession of more than his share, then his possession was to be disturbed. Even in cases, where there are different qualities of land and a party is in possession of better land to the extent of more than his share, then his possession is also to be disturbed. These facts are to be seen by the revenue authorities while partitioning the land. In this case, the partition was carried out in accordance with the mode of partition and the same was upheld by four revenue authorities. The partition has already been affected and accordingly, possession of the land has been delivered. Change in the revenue record has already been made. We do not find any illegality or perversity in the orders passed by the revenue authorities while partitioning the joint land, which have been rightly upheld by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 04, 2015
ndj

(MAHAVIR S. CHAUHAN)
JUDGE