

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.2140 of 2014 (O&M)
Date of Decision: March 19, 2015

Pawan Singh

.....Appellant

versus

The Financial Commissioner, Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present:Mr.Dinesh Ghai, Advocate, for the appellant.

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1. Whether Reporters of 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?

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 27.11.2014, whereby learned Single Judge has dismissed the appellant's writ petition in a matter arising out of the partition proceedings.

[2] It is not in dispute that the appellant and private-respondents are co-sharers in the land which is a joint holding, situated within the revenue estate of village Bohar, Tehsil and District Rohtak. One of the private-respondent applied for partition of the land and as per the order dated 7th August, 2007 (Annexure P-1) passed by the Assistant Collector, 1st Grade, Rohtak, the appellant (who was respondent No.1) was duly served but he refused to accept the summons and did not turn up on the date of hearing. Consequently, ex-parte proceedings were initiated. Thereafter, on 5th November, 2007, the Assistant Collector, 1st Grade, Rohtak, finalized the Naksha

Bay (site-plan depicting the proposed shares of each co-sharer). Since there were no objections against the draft site-plan, the same was finalized and further proceedings were initiated.

[3] The appellant did not move any application before the Assistant Collector, 1st Grade, Rohtak to recall the order dated 7th August, 2007, on the plea that he was not a resident of village Bohar or that he was residing in a different village, namely, Kishangarh Meham. The appellant, however, filed an appeal on this ground which was dismissed by the Collector and so was the fate of his further appeal and revision petition upto the Financial Commissioner. Haryana.

[4] Still aggrieved, the appellant challenged the aforesaid orders in a writ petition which has been dismissed by the learned Single Judge.

[5] There can indeed be no quarrel that no order prejudicial to a party need be passed without hearing such affected person. The contention on this analogy raised on behalf of the appellant, however, cannot be entertained for the reason that as per the record, he declined to accept the notice and he never applied to the Assistant Collector, 1st Grade, Rohtak for the recall of order dated 7th August, 2007. Equally important question that arises for consideration is whether the observance of principles of natural justice is ceremonial for every situation or it can be dispensed with also? The law is well settled. While alleging non-observance of principles of natural justice, the party has to prove consequential prejudice also.

[6] In the instant case, learned Single Judge, after referring to the findings of fact given by the authorities, has

arrived at a definite conclusion that the appellant is entitled to 2½ acres of land and the same has been allocated, keeping in view his possession. Learned Single Judge has thus concluded and rightly so that one of the oftenly recognized parameters in partition proceedings, namely, protection of the possession to the extent it is possible, has been duly adhered to. That being so, the appellant cannot be allowed to retain possession of the land in excess to his share, if any, as held by the learned Single Judge.

[7] It is true that the appellant has filed an affidavit at the appellate stage to say that he is in possession of the land to the extent of his share only. If that is so, no prejudice can be said to have been caused to him.

[8] No case to interfere with the order passed by the learned Single Judge is made out.

[9] Dismissed.

[SURYA KANT]
JUDGE

March 19, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE