

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.294 of 2009

1. Chandrika Prasad Kesharwani, aged 55 years, S/o late Shri Murit Ram Kesharwani,
2. Kedarnath Kesharwani, aged 51 years, S/o late Shri Murit Ram Kesharwani,
3. Smt. Mohar Bai Kesharwani, aged 58 years, W/o Shri Bala Ram Kesharwani,

All are residents of Moghapara, Sheorinarayan, Tahsil Nawagarh, Distt. Janjgir-Champa (C.G.)

(Non-applicants)
---- Petitioners

Versus

1. Mangal Ram Kesharwani, aged 55 years, S/o late Shri Badri Prasad Kesharwani,
2. Anil Kumar Kesharwani, aged 45 years, S/o late Shri Badri Prasad Kesharwani,
3. Arun Kumar Kesharwani, aged 43 years, S/o late Shri Badri Prasad Kesharwani,
4. Bablu Ram Kesharwani, aged 40 years, S/o late Shri Badri Prasad Kesharwani,

Respondents 1 to 4 are residents of Moghapara, Sheorinarayan, Tahsil Nawagarh, Distt. Janjgir-Champa (C.G.)

(Applicants)

5. Hira Lal Kesharwani, aged 40 years, S/o Shri Murit Ram Kesharwani, R/o Village Kharaud, Tahsil Pamgarh, Distt. Janjgir-Champa (C.G.)
6. Smt. Ramkali Bai Kesharwani, aged 50 years, W/o Shri Hari Kesharwani, R/o Village Saragaon, Tahsil Champa, Distt. Janjgir-Champa (C.G.)
7. Smt. Shail Kumari Kesharwani, aged 42 years, W/o Shri Rameshwar Prasad Kesharwani, R/o Village/Tahsil Nawagarh, Distt. Janjgir-Champa (C.G.)

8. Smt. Hira Kumari, aged 35 years, W/o Shri Kumar Kesharwani, R/o Budhwari Chowk, Korba (C.G.)
9. The Commissioner, Land-Record, Chhattisgarh, Raipur.
10. Assistant Settlement Officer, Kasdol, Distt. Raipur (C.G.)
---- Respondents

For Petitioners: Mr. Vivek Tripathi, Advocate.
For Respondents No.1 to 4: -
Mr. Rajeev Shrivastava, Advocate.
For State/Respondents No. 9 and 10: -
Mr. Dheeraj Kumar Wankhede, Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/11/2016

1. Extent of share between the petitioners and the respondents, of land was adjudicated by the civil court in a civil suit for partition filed by one of the parties. The jurisdictional civil court by its judgment and decree directed that Badri Prasad Kesharwani will get one half share in the suit property whereas, Chandrika Prasad Kesharwani, Kedarnath Kesharwani and Smt. Mohar Bai Kesharwani each one will get $\frac{1}{4}^{\text{th}}$ share in the suit land, and respondents No.5 to 8 herein will get $\frac{1}{4}^{\text{th}}$ share in the property. The total suit land which is agricultural land i.e. available for partition is 15.524 hectares and total khasra number is 37 situate at Village Gidhouri, Tahsil Kasdol. The judgment and decree of the civil court was affirmed by the first appellate court and also by the High Court of Madhya Pradesh in second

appeal.

2. Shri Badri Prasad Kesharwani made an application before the Assistant Settlement Officer for partition of land as per the provisions contained in Section 178 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code'). On the said application for partition filed under Section 178 of the Code, a regular revenue case was registered by the Assistant Settlement Officer, Kasdol for making partition and a proclamation was issued and parties were noticed in the said application. Reply was filed and *fard batwara* report was called from the concerned Halka Patwari. The Assistant Settlement Officer by its order dated 15-4-1999 considered the objection of non-applicants No.1 to 3 therein / petitioners herein and rejected the objection and proceeded for partition of land and made partition as per the order.
3. It is pertinent to mention here that earlier, an order was passed by the Assistant Settlement Officer which was challenged in appeal and it was set aside by order dated 12-2-1999.
4. The order of the Assistant Settlement Officer dated 15-4-1999 making partition was assailed by the petitioners herein by way of appeal before the Settlement Officer, Raipur and the Settlement Officer, Raipur by its order dated 11-1-2000,

allowed the appeal filed by the petitioners herein holding that the partition made by the Assistant Settlement Officer dated 15-4-1999 was not in accordance with Rule 4 of the Rules Regarding Partition of Holding made under Section 178 of the Code and remanded the matter to the Assistant Settlement Officer to make fresh partition following Rule 4 of the said Rules framed under Section 178 of the Code.

5. Feeling aggrieved against the order of the Settlement Officer, respondents No.1 to 4 herein preferred a revision before the Commissioner, Land Records and the Commissioner, Land Records by its impugned order dated 5-9-2008, set aside the order of the Settlement Officer and restored the order of the Assistant Settlement Officer against which this writ petition under Article 227 of the Constitution of India has been filed stating inter alia that the learned Commissioner, Land Records has committed legal error in interfering with the order passed by the Settlement Officer by which the Settlement Officer directed for partition of land after following Rule 4 of the Rules framed under Section 178 of the Code for partition of holding.
6. Mr. Vivek Tripathi, learned counsel appearing for the writ petitioners, would submit that the learned Commissioner, Land Records is absolutely unjustified in interfering with the well reasoned order passed by the Settlement Officer in which it has clearly been held that the Rules framed under

Section 178 of the Code were not followed while making partition and contrary to Rule 4 of the Rules Regarding Partition of Holding, each survey number has been subdivided, not a single survey number as a whole has been allotted to one person and productivity and contiguity of the plots has not been taken into consideration while making partition and the basis of productivity has also not been determined on the basis of kind of soil and therefore the order passed by the Commissioner, Land Records be set aside and that of the Settlement Officer be restored and thereby the order of fresh enquiry and compliance of Rule 4 of the Rules framed under Section 178 of the Code be restored.

7. Mr. Rajeev Shrivastava, learned counsel appearing for respondents No.1 to 4, would support the impugned order and submit that the learned Commissioner has rightly held that Rule 4 of the Rules framed under Section 178 of the Code has been complied with in its letter and spirit and each objection raised by the petitioners has been duly considered by the Assistant Settlement Officer while making partition and as such, it cannot be held that Rule 4 framed under Section 178 of the Code for partition of holding has not been complied with rather it has been religiously complied with and therefore the order passed by the learned Commissioner, Land Records deserves to be upheld. He

would further submit that the scope of jurisdiction under Article 227 of the Constitution of India which is supervisory in nature is extremely limited and the finding of fact recorded by the Commissioner, Land Records is not liable to be interfered with. Therefore, the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made therein and also gone through the record with utmost circumspection.
9. In order to consider the plea raised at the Bar, particularly the question of compliance of the Rules framed under Section 178 of the Code for partition of holding, the Partition Rules deserve to be noticed.
10. Rules 2, 3, 4, 5, 6 and 7 of the Rules Regarding Partition of Holding framed under Section 178 of the Code read as follows: -

"2. On receipt of the application the Tahsildar shall hear the applicant in person and if after hearing the applicant it appears to him that the case does not fall under sub-section (3) of section 178, he shall cause to be served in accordance with the provisions of rules 11 to 16 in the First Schedule to the said Code, notices in Form A appended to these rules on the co-tenure-holders requiring them to appear before him and state their objections, if any, on a day to be specified in the notice, which shall not be less than thirty or more than sixty days from the date of issue of the notices. He shall also cause a proclamation in Form B appended to these rules to be published in accordance with the provisions of rule 17 in the First Schedule to the

said Code stating his intention to partition the holding.

3. If, after hearing the applicant, co-tenure-holders and any other persons appear, it appears to the Tahsildar, that there is sufficient reason for disallowing the partition, he shall, by order in writing, reject the application.

4. If the Tahsildar does not reject the application, he shall proceed, after determination and recovering from the applicant the costs of making partition, to effect the partition either personally or through such agency as he may appoint. So far as practicable, whole survey numbers/plot numbers shall be allotted and recourse to sub-division should be taken only in rare cases. So far as possible compact areas of land should be allotted to each party and care should be taken to ensure that the productivity of the area allotted to each party is in proportion to his share in the holding. Such productivity should be determined on the basis of the variety of the soils in the holding and their present condition.

5. The assessment of the holding shall be distributed in proportion to the shares held in the holding by the various co-tenure-holders. While apportioning the assessment, the fractions of a Naya Paisa shall be ignored.

6. After the partition has been completed, the Tahsildar shall hear any objections which the parties may make, and shall either amend or confirm the partition. The partition shall take effect from the commencement of the agricultural year next following the date of such amendment or confirmation.

7. In case the interest of one co-tenure-holder is to be sold to another co-tenure-holder willing to purchase it, the price of the interest to be sold shall be determined in accordance with the following principles: --

(1) If a price agreed between the parties, such price should be accepted if it appears to have been arrived at bona fide.

(2) If no price is agreed upon and accepted it shall be determined and fixed having regard to--

(a) the rates on which similar lands in the village or in its neighbourhood were sold during the last three years;

(b) results of enquiries into the value of land, if maintained under Sub-section (1) of Section 63 of the Code in the neighbourhood.

(c) if no sales have taken place in the village or in its neighbourhood or if there is no record results of enquiries under clause (b) the price may be determined as far as possible, in accordance with the provisions of the Land Acquisition Act, 1894, ignoring the extra 15 percent for compulsory acquisition."

11.A careful perusal of the aforesaid Rules which are made for partition of holding under Section 178 of the Code would reveal that the competent authority is required to notice to the other side in Form A. Rule 4 clearly provides that so far as practicable, whole survey numbers / plot numbers shall be allotted and recourse to sub-division should be taken only in rare cases. It has also been provided that so far as possible compact areas of land should be allotted to each party and care should be taken to ensure that the productivity of the area allotted to each party is in proportion to his share in the holding and the basis of productivity is also to be determined on the basis of the variety of the soils in the holding and their present condition. Rule 5 provides that the assessment of the holding shall be distributed in

proportion to the shares held in the holding by the various co-tenure-holders. Rule 6 provides that after the partition has been completed, the Tahsildar shall hear any objections which the parties may make, and shall either amend or confirm the partition.

12. The question for consideration is whether such exercise has been undertaken by the Assistant Settlement Officer before directing partition.

13. A bare perusal of the order of the Assistant Settlement Officer would show following facts: -

1. The Assistant Settlement Officer has called the report of *fard batwara* from the Patwari.
2. Most of the tenure-holders agreed for partition of each survey number.
3. The sub-division of each khasra number will not effect the cost of land and kind of land.

14. In fact, the order of the Assistant Settlement Officer is blissfully silent about the consideration / compliance of Rule 4 of the Rules regarding partition of holding and at one paragraph after overruling the objection it has been directed that in accordance with the *fard batwara* report filed by the Halka Patwari, the partition be made whereas, the learned Assistant Settlement Officer was required to comply Rule 4 of the Rules framed under Section 178 of the Code

religiously and scrupulously. The Assistant Settlement Officer could have recorded a finding that it is not practically possible to allot the whole survey number to one tenure-holder and recourse to the sub-division is necessary and the productivity of land allotted to the parties in proportion to the share has not been determined on the basis of the variety of the soil in the holding. Rule 6 of the said Rules has also not been complied with. It nowhere appears that after the partition is completed, the Assistant Settlement Officer has heard the objections again and has confirmed the partition. In fact, the order of the Assistant Settlement Officer nowhere indicates that he has even adverted to Rules 4, 5 and 6 of the Rules framed under Section 178 of the Code and the Assistant Settlement Officer has remained impressed with the *fard batwara* report filed by the Patwari and was further impressed with the consent given by some of the tenure-holders except the petitioners and proceeded to make partition. Such a course is contrary to Rules 4, 5 and 6 of the Rules framed under Section 178 of the Code and is clearly impermissible in law.

15. The Settlement Officer in appeal filed by the petitioners rightly considered and held that Rule 4 of the Rules framed under Section 178 of the Code has not been complied with in its letter and spirit by the Assistant Settlement Officer and remanded the matter to the Assistant Settlement Officer for

complying Rule 4 of the said Rules and to pass fresh order which has been interfered with by the learned Commissioner, Land Records by the impugned order.

16.The Commissioner, Land Records is the revisional authority.

The revisional authority is expected to advert to the Rules applicable for partition, but it appears that the revisional authority did not advert to the legal provisions applicable while making partition and simply after recording submissions of the parties in one paragraph held that the order passed by the Assistant Settlement Officer making partition deserves to be upheld. The revisional authority is expected to consider the pleas of the parties and the provisions applicable and the findings of the lower authorities for arriving at a conclusion, which has not been done here by the revisional authority and the well reasoned order passed by the Settlement Officer has been interfered in perfunctory manner ignoring that the Assistant Settlement Officer has failed to comply Rule 4 of the Rules made for partition of holding.

17.As a fall out and consequence of aforesaid discussion, the order passed by the revisional authority i.e. the impugned order passed by the Commissioner, Land Records, Raipur is hereby set aside and the order passed by the Settlement Officer, Raipur is hereby restored. In consequence thereof, the Assistant Settlement Officer, Kasdol is directed to make

partition of the suit land in accordance with the Rules Regarding Partition of Holding framed under Section 178 of the Code and quoted herein above within three months from the date of receipt of a copy of this order, after hearing both the parties. The Assistant Settlement Officer / competent authority is directed to pass a detailed and reasoned order clearly showing the compliance of Rules 4, 5 and 6 of the Rules framed under Section 178 of the Code quoted herein, while making an order of partition.

18.It is made clear that this Court has not passed any order on merits and the competent authority will make partition on its own merit, in accordance with law. Parties are directed to appear before the Assistant Settlement Officer, Kasdol on 21-11-2016. A copy of this order be sent to the Collector, Baloda Bazaar to ensure that this order is complied with within the stipulated time, as the matter is old one and the decree was passed on 9-12-1988.

19.In view of the above, the writ petition stands disposed of.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge