

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

**Civil Revision No.5934 of 2015 (O&M)
Date of Decision: 29.08.2016**

**Harjinder Singh
Vs**

.....Petitioner

Ajmer Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Deepak Bhardwaj, Advocate
for the petitioner.

Mr. R.K. Shukla, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J

[1]. In this revision petition, order dated 30.07.2015 (Annexure P-4) passed by Additional Civil Judge (Sr. Divn.) Patiala has been assailed on the ground that the application under Order 7 Rule 11 read with Section 151 CPC filed by the defendant/petitioner for rejection of plaint before the trial Court was illegally dismissed.

[2]. Defendant Nos.1 and 2 filed the application for rejection of plaint on the ground of no cause of action and jurisdiction of civil Court being barred under Section 158(2) of Punjab Land Revenue Act (hereinafter to be referred as 'the Act'). Petitioner alleged that the Revenue Authorities after giving full

opportunities of hearing to all the co-sharers passed the order of partition and the same was assailed in the civil suit. The filing of suit was claimed to be barred by limitation as the plaintiff had challenged the orders dated 10.03.2010 and 13.04.2010 passed by the Revenue Authorities by way of filing civil suit on 26.05.2014.

[3]. Learned counsel for the petitioner contended that once the partition of land is finalised under the Punjab Land Revenue Act, Civil Court has no jurisdiction under Section 158(2) of the Act. Jurisdiction of civil Court is ousted and the civil Court is debarred from entertaining any question as to the allotment of land made in partition proceedings of agriculture land. Once there is no dispute regarding title of land, civil Court has got no jurisdiction to entertain any question arising out of partition proceedings. According to learned counsel, even in case of defective procedure adopted by the Revenue Officer, the same would not give any jurisdiction to the civil Court in view of clear ouster in terms of Section 158(2) of the Act.

[4]. Learned counsel for the petitioner argued that Section 111 of the Act, governs the procedure for partition of agricultural land. Jurisdiction of civil Court is ousted under Section 158(2) of the Act. Once no dispute regarding title is pending or involved in

the partition, civil Court cannot take cognizance of the issue and the jurisdiction would be barred. Learned counsel submitted that even if, there was violation of principles of natural justice or the partition having been conducted or carried out in the absence of any party without notice to him, the partition cannot be challenged in civil Court. At the most, it could be challenged before the Authorities in hierarchy i.e. in Appellate or Revisional jurisdiction. The civil Court has got jurisdiction only when question of title is involved. In support of his contentions, learned counsel relied upon **Sukhbir Kaur and another vs. Gurjit Kaur and others, 2012(3) RCR (Civil) 94; Harjinder Singh vs. Kesar Singh and others, 2014(2) PLR 188** and **Balbair Singh and others vs. Ram Kumar and others, 2014(2) L.A.R. 533.**

[5]. Per contra learned counsel for the respondents submitted that if the partition proceedings are not conducted as per the procedure prescribed and in utter violation of principles of natural justice, the civil Court has got all the jurisdiction under Section 9 CPC and the bar created under Section 158(2) of the Act does not attract. Learned counsel relied upon **Gurbax Singh s/o Chanda Singh vs. The Financial Commissioner & another, 1991 PLJ 190** to contend that if the Authorities under the special statute commits grave violation of the procedure,

the civil Court has all the jurisdiction. In support of his contention, learned counsel also relied upon **Giani Ram and others vs. Ompati and others, 2008(1) RCR 619.**

[6]. It is a settled principle of law that at the stage of application under Order 7 Rule 11 CPC, the averments made in the plaint are to be appreciated. In the suit for declaration filed by the plaintiff, challenge has been made to the order dated 10.03.2010 and *Sanad Taksim* dated 13.04.2010 issued by the Assistant Financial Commissioner, Ist Grade, Patiala in a partition case in respect of land shown in the headnote of the plaint being illegal, null and void. It was alleged in the plaint that the partition was conducted in complete violation of settled principles of law inasmuch as that defendant Nos.3 and 4 in collusion with defendant Nos.1 and 2, completed the alleged partition proceedings at the back of the plaintiff and *Sanad Taksim* was also issued. Thereafter defendants kept mum for four years and suddenly on 13.05.2014, came to the spot and tried to dispossess the plaintiff. Plaintiff alleged that cause of action accrued to him only when defendant Nos.1 to 4 tried to dispossess him from the suit land. Plaintiff claimed himself to be owner in exclusive possession of the land measuring 27 *Bighas* 0 *Biswa*. Apparently, question of title has been raised by the plaintiff. *Ex parte* proceedings were carried out against the

plaintiff before the Revenue Authorities and they were not heard by the Revenue Authorities. The orders of the Revenue Authorities have been claimed to be illegal, null and void and were passed without following proper procedure and were against the principles of natural justice.

[7]. The perusal of precedents cited on behalf of the petitioner have arisen at the stage of Regular Second Appeal. The suit was tried in a full-fledge trial, where both the parties availed their legal remedies and at the stage of Regular Second Appeal, the question of law was answered. The instant case is at initial stage, where the application under Order 7 Rule 11 read with Section 151 CPC was filed. Therefore, at this stage only the averments in the plaint are to be appreciated.

[8]. Learned counsel for the petitioner brought to the notice of the Court the case titled as **Nazam vs. Harjinder Singh and others**, where plaintiff was also impleaded as respondent No.11. He was duly represented by the Lawyer and order dated 30.04.2013 was passed. According to learned counsel, the proceedings hereinabove were in respect of same partition proceedings whereas civil suit in question came to be filed at a later stage.

[9]. Having considered the arguments on either side, I am

of the view that at this stage, the contentions raised by the petitioner cannot be appreciated inasmuch as that the only averments in the plaint are to be appreciated. The knowledge based on order dated 30.04.2013 can be adequately proved by the petitioner during trial by way of proving the pleadings of the case before the Revenue Authorities. No defence of the defendants can be taken notice of at this stage. The requirement in terms of Order 7 Rule 11 CPC viz-a-viz. limitation would be gone into by the trial Court on the basis of facts and circumstances as the limitation is also a mixed question of law and facts. The non-maintainability of the suit and bar of jurisdiction of civil Court would also be adequately adjudicated upon on the basis of evidence. The defendants would be at liberty to ask for framing of particular issue to be a preliminary issue, if so advised.

[10]. Looked from any angle, I do not find any jurisdictional error in the impugned order and this revision petition is accordingly dismissed.

August 29, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No