

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1 CR No.7148 of 2014 (O&M)
Date of decision:17.03.2016

M/s Hamir Real Estate (Pvt.) Ltd. ... Petitioner

Vs.

Rajinder Kaur ... Respondent

2 CR No.7149 of 2014 (O&M)

M/s Hamir Real Estate (Pvt.) Ltd. ... Petitioner

Vs.

Rajinder Kaur ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Adarsh Jain, Advocate
for the petitioner (in both cases).

Mr. Parvinder Singh, Advocate
for the respondent (in both cases).

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing No.7148 of 2014, wherein, the order passed on application filed under Order 7 Rule 11 of the Code of the Civil Procedure, at the instance of the petitioner-defendant, has been rejected and in CR

No.7149 of 2014, an application seeking amendment of the plaint, at the instance of the respondent-plaintiff has been allowed.

Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. Adarsh Jain, Advocate appearing on behalf of the petitioner-defendant submits that suit for separate possession by way of partition of the suit land was not maintainable, for the reasons that on 8.12.2008 (Annexure P-3), an application for partition of land measuring 13 kanals 16 marlas was filed before the revenue Court. The proceedings were finalized by the revenue Court in the year 2012 and thereafter, Sanad Taksim was finalized on 02.01.2013. The written statement in the aforementioned suit was filed on 30.09.2011 and the specific objection vis-a-vis jurisdiction of the Civil Court was taken as per the provisions of Section 158 of the Punjab Land Revenue Act, 1887. The respondent-plaintiff did not disclose the factum of passing of the order dated 18.08.2011 (Annexure P-5), whereby, an application challenging the jurisdiction of the revenue Court has been rejected and appeal filed against the same, vide order dated 13.09.2011 (Annexure P-6), has also been dismissed by the Collector, whereas, the present suit had been filed on 19.09.2011. On realising that suit seeking partition in view of the partition proceedings which culminated into Sanad Taksim, sought the amendment of the suit seeking challenge to the partition proceedings conducted by the revenue Court being illegal, null, void and beyond the jurisdiction and the said application has erroneously

been allowed by the trial Court. In support of his contention, he has relied upon the judgment rendered by the Division Bench of this Court in **Fauja Singh vs. Pritam Singh 1993(2) R.R.R. 640**, wherein, it has been held that where a particular property is in abadi land and does not fall within the definition of land, revenue authorities would not have any jurisdiction to partition the same. Once an order of partition, instrument of partition has been prepared, the plaintiff has no right to get suit land re-partitioned from the Civil Court and the aforementioned finding has been reiterated by the Single Bench of this Court in **Sukhbir Kaur vs. Gurjit Singh and others 2012(3) R.C.R.(Civil) 94; Rai Jasbir Singh vs. Balwant Singh and others 2006(1) RCR (Civil) 12 and Raj Kumar vs. Katu Ram @ Chhotu Ram and others 1995(1) R.R.R.709**. However, the Court below erroneously dismissed the application holding that it is being mixed question of fact and law and can be seen at the time of final adjudication of the suit. Even otherwise, the amendment seeking to incorporate the declaration, is an afterthought as the respondent-plaintiff had not approached the Court with clean hands by withholding particulars of the partition proceedings, therefore, the amendment should not be allowed as it does not fall within the expression “despite exercise of due diligence” and prays for allowing of the revision petitions and setting aside of the impugned orders. He further submits that remedy to challenge 'Sanad Taksim' was to file appeal under Section 16 (1) of Punjab Land Revenue Act, before

Financial Commissioner. In this regard, relied upon judgments of the Hon'ble Supreme Court in **Amar Khan and others vs. State of Punjab and others 2009(1) RCR (Civil) 741** and **Mohannakumaran Nair vs. Vijayakumaran Nair 2008(1) RCR (Civil) 21**, to contend that question of jurisdiction is to be seen at the time of filing of suit and not with reference to future date.

Mr. Parvinder Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that application seeking partition was filed on 08.12.2008, but on 02.01.2009, the petitioner-defendant obtained the CLU (change of land use) converting the nature of land into commercial. This fact has been specifically pleaded in paragraph 10 of the plaint. Before the revenue Court, an application for dismissal of the partition was filed as it was filed against the dead person. After that, an application dated 10.12.2010 was filed before the Tehsildar to ascertain the outcome of partition proceedings vis-a-vis whether such proceedings are pending or not. Thereafter, an application was filed challenging the jurisdiction of the revenue Court on account of change of nature of land but the same has erroneously been dismissed vide order dated 12.09.2011 and Sanad Taksim has been passed after filing of suit, i.e., on 20.01.2013. Once the character and nature of the property changed from agricultural to commercial, therefore, revenue Court did not have the jurisdiction, then the final partition proceedings dated 16.11.2012 (Annexure P-7) and Sanad Taksim are without jurisdiction and rightly so, the amendment

in the suit was sought by way of declaration of the aforementioned orders. In support of his aforementioned contentions, relied upon the Division Bench judgment of this Court rendered in **Surjit Singh vs. Financial Commissioner Appeals-II, Punjab and others 2012(5) R.C.R.(Civil) 683**, wherein, the judgment rendered in Fauja Singh's case (supra) has also been discussed and the view expressed in Fauja Singh's case helped the case of the party to ascertain the jurisdiction of the revenue Court. He, thus, prays for dismissal of the revision petitions.

I have heard learned counsel for the parties and appraised the paper books and of the view that there is no merit in the revision petitions, for the reasons that it is conceded position on record that CLU (change of land use) has been sought on 02.01.2009 and application filed vis-a-vis challenging the jurisdiction of the revenue Court had been dismissed, vide order dated 18.08.2011 (Annexure P-5) and the appeal filed therein though has also been dismissed on 13.09.2009 on the premise that land in jamabandi has been shown as 'chahi'. The said findings have been challenged and therefore, in my view, once the nature of the land has been converted into commercial, the Civil Court will have the jurisdiction to try and deal with the application/petition/suit for partition and the aforementioned view of mine is supported by the judgment rendered by this Court in Surjit Singh's case (supra), wherein, the Division Bench after considering the submissions made

by the parties held as under:-

“8. After considering the submissions made by the counsel for the appellant, we do not find any force in the same. It is uncontroverted fact that after filing the partition application, the appellant himself has carved out plots on the land in their possession for residential purposes on which construction has been raised by the purchasers. This factum of large scale construction in and around the land in dispute and construction of roads and houses on the plots carved out has been confirmed by the Local Commissioner. Undisputedly, the subsequent development had taken place before the final order of partition was passed. Initially, at the time of confirmation of the mode of partition, the respondent raised objections in this regard.

9. It is true that the agricultural land, which is part of an estate, which has been defined under the Land Revenue Act, cannot be partitioned by the Civil Court in view of Section 158(2) of the said Act. But, when the agricultural land before partition loses its nature as such by the acts of the parties, particularly, who is seeking partition, then such land cannot be partitioned by the revenue Court. During the partition before the Revenue Officer, a co-sharer can raise an objection that the land, which has

been shown in the revenue record as agricultural and assessed to land revenue, should not be partitioned as the same due to the acts of the other co-sharer, who is seeking partition, loses its nature as an agricultural land. Exactly this thing has happened in the present case and by taking into consideration the subsequent development and the acts of the appellant himself, the revenue Court refused to partition the land with liberty to the appellant to seek the remedy of partition before the Civil Court. In Auja Singh's case (supra), cited by the learned counsel for the appellant, some observations have been made by the Division Bench of this Court which do not support the case of the appellant, rather those observations support the case of the respondent. These observations read as under:-

“No doubt, if a particular property is a abadi land and does not fall under the definition of land, the revenue authorities have no jurisdiction to partition the same but in this case, there is no evidence to prove that at the time the land in dispute was ordered to be partitioned by the Revenue Officer, it was abadi land and was not agricultural land. The order of partition was passed by the Revenue Officer on 22.9.1970, Exhibit D11. The suit land at

that time was entered in the revenue papers and it was assessed to land revenue. So, apparently the Revenue Officer, who partitioned the land, had the jurisdiction to partition the same and as such, the order of partition is valid. Before this order could be held to be invalid, the plaintiff, we think, was required to produce evidence which could show that at the time the order of partition was passed, the suit land was not being used for agricultural purposes, but was being used as abadi land. There is, however, no evidence in this behalf nor any such evidence was referred to by the learned counsel for the appellant. Learned counsel for the appellant-plaintiff has simply tried to press into service the written statement filed by defendant No.1. No doubt, defendant No.1 in his written statement alleged that the installations and structures on the suit land raised by defendant No.1 were existing for the last 20 years, but this averment made by defendant No.1 was not binding on defendant No.2 who had raised the plea that the suit land had already been partitioned. So, qua defendant No.2, the plaintiff cannot take advantage of any averment made in the written statement filed by defendant

No.1. The plaintiff was required to produce some evidence which could show that at the time the suit land was ordered to be partitioned, it was no more an agricultural land, but was being used as abadi land. (Emphasis Added)”

In these circumstances, the respondent-plaintiff has sought the amendment of plaint by challenging the partition proceedings. The final partition proceedings though have been passed on 16.11.2012, which, according to the respondent-plaintiff, are without jurisdiction in view of the factum of change of land use. These facts have to be seen by the Court whether the order of partition is valid in law, therefore, the suit at threshold cannot be dismissed. Even the factum of raising of construction has been admitted in the written statement, but for deciding the application, the averments made in suit have to be seen. Thus, view expressed by the trial Court in declining the application filed under Order 7 Rule 11 of the Code of Civil Procedure being mixed question of facts and law is accordingly upheld. I do not find any illegality in the impugned orders and the same cannot be said to have been passed without jurisdiction.

As regards, the application seeking amendment of the plaint, I am of the view that suit is at the initial stage and the respondent-plaintiff had two options to challenge the partition proceedings, either to file writ or to invoke the jurisdiction of the Civil

Court under Section 9 of the Code of Civil Procedure. Even otherwise, it is settled law that any order passed without jurisdiction of Civil Court can be interfered. The amendment is in view of change of nature of land, seeking declaration by challenging impugned order is essential and necessary for adjudication of lis. Both the parties shall be at liberty to lead evidence in support of their respective claims vis-a-vis jurisdiction of Civil Court, much less, authenticity and jurisdiction of the revenue Court in passing of the partition orders but the suit at the threshold, cannot be rejected by invoking the provisions under Order 7 Rule 11 of the Code of Civil Procedure.

There is no dispute to the judgments cited by Mr. Mittal and as well as CLU has been taken as in Amar Khan's case (supra), it has been held that remedy to challenge 'Sanad Taksim' is by way of writ, but it nowhere dealt with a situation that instead of writ, aggrieved party can seek vindication by filing suit, then same would not be applicable to the present case. I am of the view that suit cannot be dismissed by invoking the provisions of Order 7 Rule 11 of the Code of Civil Procedure.

Keeping in view the aforementioned facts and circumstances of the present cases, the impugned orders are upheld and the revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

March 17, 2016
savita