

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

**Civil Writ Petition No. 2812 of 1995
Date of Decision: 13.7.2016**

Gurnam Singh

.....Petitioner

Vs.

Financial Commissioner (Appeals), Punjab and others

.....Respondents

Civil Writ Petition No. 2813 of 1995

Gurnam Singh and another.

.....Petitioners

Vs.

Financial Commissioner (Appeals), Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. D. Khanna, Advocate
for the petitioners.

Mr. Yatinder Sharma, Additional A.G. Punjab.

Mr. B.S. Bhalla, Advocate
for the respondent- Smt. Swaranjeet Kaur.

RAMESHWAR SINGH MALIK J. (ORAL)

These two writ petitions are directed against the orders passed by the revenue authorities in a matter where the parties to the litigation were seeking partition of the joint land.

Facts are hardly in dispute. There were different co-sharers who were having specified shares in the joint khewat. However, during the pendency of these two writ petitions, some co-sharers have sold the land of their share, as pointed out by learned counsel for the parties. Basic contention raised on behalf of the petitioners in both these petitions is that

partition proceedings were not being carried out strictly in accordance with mode of partition which caused serious prejudice to the aggrieved parties.

Heard learned counsel for the parties.

A bare reading of the impugned orders would show that Assistant Collector 1st Grade, inspected the spot on 28.1.1987 after the matter had already been remanded by the Collector. In fact, instant partition proceedings are pending between the parties for the last more than three decades. In the interregnum, title of the land has changed hands, as noticed hereinabove. These two writ petitions have been filed by two co-sharers which show that none of the parties to the litigation was satisfied with the impugned orders. All the co-sharers were feeling aggrieved in one way or the other.

It is also pertinent to note, as rightly pointed out by learned counsel for the petitioners, that Smt. Swaranjeet Kaur purchased land from one of the co-sharers, which is the subject matter of the partition proceedings. She approached revenue authorities and got the partition carried out without any notice to the other co-sharers. This material fact has not been disputed by learned counsel for Smt. Swaranjeet Kaur and it also stands corroborated by the affidavit dated 4.7.2014 of S. Darshan Singh Sidhu, Assistant Collector 1st Grade (Tehsildar). In this regard, learned counsel for the parties are ad-idem that the said order dated 4.7.2014, would be liable to be ignored with a view to restart the partition proceedings, from the stage before the mode of partition was approved. Vide order dated 14.5.2014 passed in civil miscellaneous No. 5501-CWP-2014 in CWP No. 2813 of 1995, this Court ordered that any proceedings that take place in the meanwhile, shall be subject to final decision of the writ petition.

A bare reading of the order dated 16.1.1989 passed by the Commissioner, Patiala Division, would show that one of the co-sharers was not allotted any land out of the land known as "Niainwala" land which was stated to be more valuable. In fact, it has gone undisputed before this Court that partition was not as per mode of partition.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders are liable to be set aside and the same are accordingly set aside.

Consequently, the matter is remanded to Assistant Collector 1st Grade, Sangrur. He is directed to restart the partition proceedings from the stage before finalisation of mode of partition and after hearing all the interested parties, he shall finalise fresh mode of partition, strictly in accordance with law. It is further directed that since the matter is pending for the last more than three decades, The Assistant Collector 1st Grade, Sangrur, shall make every endeavour to conclude the partition proceedings at an early date and preferably within a period of six months by passing an appropriate order, in accordance with law.

With the abovesaid observations made and directions issued, both these writ petitions stand allowed, however, with no order as to costs.

All the pending civil miscellaneous applications also stand disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

13.7.2016
Ak Sharma