

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

**Civil Writ Petition No. 13380 of 2016  
Date of Decision: 12.7.2016**

Fakiria and others

....Petitioners.

Versus

Surjit Singh @ Ajit Singh and others

.....Respondents.

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. R.S. Budhwar, Advocate  
for the petitioners.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

**CM Nos. 7725 to 7727 of 2016**

Applicants, by way of these three identical applications, seek permission to implead legal representatives of Late Sarv Sh. Mahinder Singh-respondent No. 20 (ii), Deva Singh-respondent No.21 and Sarwan Singh-respondent No.38.

After hearing learned counsel for the applicants, all these three applications are allowed for the reasons stated therein, however, subject to all just exceptions.

CMs stand disposed of.

Present writ petition is directed against the judgment and decree dated 31.1.2015 (Annexure P-10) passed by the learned District Judge, Kurukshetra, whereby first appeal filed by the petitioners against the impugned judgment and decree dated 4.3.2011 (Annexure P-8) passed by the learned Gram Nayaylaya, was dismissed.

Brief facts of the case, as noticed by learned District Judge, in para 2 of the impugned judgment dated 31.1.2015, are that suit land was measuring 54 kanals 11 marlas, as fully spelt out in para Nos. 1 (i) and (ii) of the plaint. It was further pleaded that father of plaintiff No.1 namely Rachna Ram had purchased 2½ shares, Hari Ram (since deceased) purchased 1½ shares, Kishna (since deceased) purchased 1½ shares and Mansa (since deceased) purchased 1½ shares, out of total seven (7) shares in the land as detailed in para No.1 (i) of the plaint, vide sale deed dated 18.2.1953 and mutation No. 513 to that effect was sanctioned on 7.2.1954. Thereafter, jamabandi for the year 1954-55 was prepared. It was pleaded that in the jamabandi for the year 1959-60, revenue officials had wrongly mentioned the shares in total as eight (8) shares and further wrongly mentioned the share of Hari Ram, predecessor-in-interest of defendants Nos. 1 to 19, as 2½ shares instead of 1½ shares and said mistake was continuing whereas, out of total seven (7) shares, said Hari Ram (since deceased) was having only 1½ shares. It was pleaded that later on, defendants No.1 to 7 had filed an application for partition of suit land before Assistant Collector 1<sup>st</sup> Grade, Thanesar and obtained the partition orders dated 14.11.2003 and 26.4.2004 on the basis of wrong entries in the revenue record qua land measuring 30 kanals 11 marlas, as fully spelt out in para No.1 (i) of the plaint. Similarly, appellate courts have also passed orders on

16.3.2004 and 30.8.2005 on the basis of wrong entries of revenue record and as such above said partition orders were illegal, null and void, inoperative, nonest and liable to be set aside inter alia on the grounds that defendants No. 1 to 19 were not owners of 2 ½ shares out of total seven (7) shares in the land detailed in para No.1 (i) of the plaint, whereas, they were owners of 1½ share only; that defendants No. 1 to 19 were also not in possession of 2 ½ shares out of total seven (7) shares in the said land and that defendants No. 1 to 7 were not entitled to get the orders of partition of more than 1 ½ shares out of total seven (7) sharers and the said orders by revenue authorities were passed behind the back of the plaintiffs. On 15.12.2004, having come to know about the wrong entries in the revenue record in favour of defendants No.1 to 19, plaintiffs had requested said defendants to get the revenue entries corrected, but to no avail. It was further pleaded the plaintiffs also requested revenue officials to make necessary corrections in the revenue record, which also remained barren of results. All these facts and circumstances culminated in the institution of the suit by the plaintiffs.

It has gone undisputed on record that petitioners were party to the partition proceedings before the revenue authorities. As pointed out by learned counsel for the petitioners, a consent order was passed. The matter was taken up in appeal before the Collector as well as before the Commissioner, Ambala Division. After completion of partition proceedings, Assistant Collector Grade 1<sup>st</sup>, Thanesar, issued *sanadh taqseem* (deed of partition) on 26.4.2004. Order dated 30.8.2005 passed by the Commissioner, Ambala Division, was Ex. P10. The abovesaid order passed by the Commissioner, Ambala Division, became final between the

parties, as the petitioners did not challenge it any further.

Instead of taking the matter to its logical end before the higher revenue authorities, petitioners tried to take a somersault and challenged the abovesaid orders passed by the revenue authorities by way of suit for declaration before the Gram Nayaylaya, seeking correction of revenue record right from the year 1959 onwards. Said civil suit filed by the petitioners came to be dismissed by the learned Gram Nayaylaya, vide impugned judgment and decree dated 4.3.2011. Feeling aggrieved, petitioners filed their first appeal which was also dismissed by the learned District Judge, Kurukshetra, vide impugned judgment dated 31.1.2015 (Annexure P-10).

During the course of hearing, learned counsel for the petitioners could not substantiate any of his arguments as to how the civil court would have jurisdiction in view of of Section 158 of the Punjab Land Revenue Act, 1887 ('the Act' for short). He has also failed to substantiate his other arguments on merits of the case. No explanation, whatsoever, has been given by the petitioners as to why they left earlier litigation midway and did not challenge the order passed by the Commissioner, Ambala Division. Further, learned courts below have rightly recorded concurrent findings to the effect that neither suit was maintainable nor the revenue authorities can be directed to correct revenue record right from year 1959.

The cogent findings recorded by learned District Judge deserve to be noticed here and the same read as under:-

"In order to understand the controversy raised between the parties, it is necessary to notice the provisions of Section 158 (1) and 158 (2) (xvii) and (xviii) of Punjab Land

Revenue Act, 1887 (hereinafter referred to as " Act') which read as under:-

158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers:-Except as otherwise provided by this Act-

(1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue officer is empowered by this Act to dispose of or take cognizance of the matter in which the State Government or any Revenue Officer exercises any power vested in it or him by or under this Act and in particular--

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely:-....

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought ;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical redistribution or as to the distribution of land revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy"

A reading of the above provisions goes to show that the order of the revenue authorities cannot be challenged in the Civil Court. In other words, the jurisdiction of the Civil Court is barred, in all the matters which can be raised before the revenue authorities.

In the instant case, defendants No.1 to 7 had moved an application bearing case No. 7-T dated 22.1.1993

before the Assistant Collector 1<sup>st</sup> Grade, Thanesar, for partition of suit land. It is pertinent to mention here that appellants (plaintiffs) were impleaded as respondents in the said partition proceedings. In those proceedings, vide order dated 14.11.2003, Assistant Collector 1<sup>st</sup> Grade, Thanesar, while hearing the parties concerned accepted the naksha be. Impugning the legality of said order, appeal was preferred before Collector, Thanesar, who after hearing the parties concerned, dismissed the said appeal vide order dated 16.3.2004 (Ex.P-9). Still feeling aggrieved, parties concerned had filed revision before Commissioner, Ambala Division, who after hearing the parties, finding no cause in favour of revisionists dismissed the revision petition vide order dated 30.8.2005 (Ex.P-10). It is pertinent to mention here that during the course of abovesaid proceedings sanand taksim had already been prepared on 26.4.2004 by Assistant Collector 1<sup>st</sup> Grade, Thanesar, and possession was also delivered to the parties concerned. Keeping in view above said aspects, once a party availed of departmental remedy and even revision against order dated 16.3.2004 was dismissed by the Commission and the said order has become final, it is not open to the appellants (plaintiffs) herein to assail the order on the same grounds before the Civil Court in the present form. Appellants (plaintiffs) herein while participating in partition proceedings were well entitled to raise the plea before the authorities concerned that record of rights was not being maintained as per respective shares of the parties, but instead of raising said plea, they went on to conclude partition proceedings. In this scenario, the present suit, thus, would be hit by principle of res judicata. Doctrine of merger which is well recognized principle in law would squarely apply to the facts of present case and decision of the Commissioner in which both the orders against the appellants (plaintiffs) herein were passed remained unchallenged. The orders became final between the parties and therefore, even on this ground, the

contention of learned counsel for appellants (plaintiffs) is not tenable. To this effect reliance can also be placed on ruling **"Rawant Ram Versus Havita Shree" 1998 (3) RCR (civil) 686 (P&H)**. In this view of the matter, claim raised by appellants (plaintiffs) is not entitled to succeed.

No other point has been urged or argued before me in this appeal.

As a sequel to above said findings, instant appeal preferred by appellants (plaintiffs) impugning the legality of judgment and decree dated 4.3.2011 being devoid of merits is dismissed with costs. Decree sheet be prepared, accordingly. Record of trial court alongwith copy of this judgment be sent back to quarter concerned, forthwith. File be consigned to record room, after due compliance."

A bare reading of both the impugned judgments passed by the learned courts below would make it crystal clear that the petitioners had no case either on facts or in law. In fact, they had been trying to misuse the process of law. Leaving the litigation before the revenue authorities midway, without challenging the order passed by the Commissioner, Ambala Division, any further, they filed suit for declaration which was not even maintainable, in view of the statutory bar under Section 158 of the Act.

It is also not in dispute that suit property was the same which was subject matter of partition proceedings before the revenue authorities. Parties were also the same. There was no change in the circumstances. In such a situation, doctrine of merger as well as principle of res-judicata would also apply against the petitioners. Neither any patent illegality has been pointed out by learned counsel for the petitioners in either of the impugned judgments, nor the impugned judgments and decrees rendered by the learned courts below have been found suffering from any jurisdictional error or patent illegality, which may warrant interference at the hands of this

Court, while exercising its writ jurisdiction under Sections 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, instant writ petition stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

12.7.2016  
*AK Sharma*