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

**Civil Writ Petition No. 21498 of 2016
Date of Decision: 17.10.2016**

Bakshish Singh Jhauj

.....Petitioner

Vs.

Financial Commissioner, (Appeals), Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashwani Chopra, Sr. Advocate with
Mr. Gursher Singh Bhandal, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 5.5.2016 (Annexure P-9), passed by the Financial Commissioner (Appeals), Punjab-respondent No.1 in a case of partition of land, thereby upholding orders dated 7.7.2008 (Annexure P-3) passed by the Commissioner, Jalandhar Division-respondent No.2, dated 10.2.2006 (Annexure P-2) passed by Sub Divisional Magistrate-respondent No.3 as well as order dated 30.8.2005 (Annexure P-1) passed by Assistant Collector, 1st Grade-respondent No.4, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned orders.

Learned senior counsel for the petitioner submits that respondents authorities have wrongly recorded that counsel appearing on behalf the petitioner before Assistant Collector 1st Grade, did not raise any objection. He further submits that no such instructions were passed on by the petitioner to his counsel. There was no necessity to provide another path shown in dotted blue line in the site plan (Annexure P-6) through the pink coloured land of the petitioner, dividing the land of the petitioner and his other co-sharers. He would next contend that this was the reason that Financial Commissioner, in the earlier round of litigation, passed a factually correct and legally justified order dated 22.11.2012 (Annexure P-5). Since that order was set aside by this Court vide order dated 17.11.2014 passed in CWP No. 19662 of 2013 (Shinda Singh and another Vs. State of Punjab and others) (Annexure P-7), filed by the private respondents, without discussing actual merits of the case, the said order could not have been treated against the petitioner. He concluded by submitting that since the Financial Commissioner has misdirected himself, while passing the impugned order dated 5.5.2016 (Annexure P-9), the same is liable to be set aside, alongwith other orders passed by Assistant Collector 1st Grade, Collector as well as Commissioner. He prays for setting aside the impugned orders (Annexures P-1, P-3 and P-9), by allowing the present writ petition.

Having heard learned senior counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the peculiar fact situation of the case in hand, writ petition has been found without any merit and the same is liable to be dismissed, for the following more than one reasons.

The basic order dated 30.8.2005 was passed by the Assistant Collector 1st Grade, Nawanshahar, thereby ordering partition of land in question, strictly as per approved mode of partition. A bare reading of this order would show that procedure laid down under the relevant provisions of Punjab Land Revenue Act, 1887, ('the Act' for short), was strictly followed before passing the impugned order (Annexure P-1). Statements of both the parties were recorded and considered on 19.8.2003 for proposing the mode of partition, keeping the possession intact. Case was adjourned for inviting objections from the parties.

Applicant-predecessor-in-interest of respondent No.5 herein, raised some objections to the proposed mode of partition. However, no objection was raised on behalf of petitioner. It is specifically so recorded by Assistant Collector 1st Grade at page 24 of the paper book. Objections filed by applicants-predecessor-in-interest of respondent No.5 were rejected and the mode of partition was approved for the purpose of partition of land, keeping the possession intact.

Petitioner did not file any appeal against the approved mode of partition. However, it was challenged by the applicants-predecessor-in-interest of respondents No. 5 and 6, but their appeal was dismissed by the Collector vide order dated 4.2.2005. Accordingly, Assistant Collector 1st Grade proceeded further and the papers for final partition were produced by the field staff on 23.6.2005. These papers for final mode of partition were shown to counsel for both the parties and they were directed to file their written objections.

It is pertinent to note here that learned counsel for both the parties got their statements recorded to the effect that they have received papers of final proposed partition from field staff and the same were found correct, because of which they had no objection against the proposed partition. Since there was no written objection filed or oral objection raised on behalf of either of the parties to the proposed partition, on the basis of already approved mode of partition, Assistant Collector 1st Grade rightly passed the impugned order dated 30.8.2005 (Annexure P-1).

Petitioner and his co-sharers-brothers filed their appeal against the abovesaid order dated 30.8.2005 before the Collector, however, the same was found without any merit and was dismissed vide order dated 10.2.2006 (Annexure P-2). Their revision also met the same fate before the Commissioner, Jalandhar Division, who passed the impugned order dated 7.7.2008 (Annexure P-3), recording that since no objection was raised on behalf of the petitioners either to the mode of partition or to the final proposed partition, orders passed by the lower revenue authorities were legally sustainable.

Dissatisfied, petitioners filed their revision before the Financial Commissioner vide Annexure P-4 which came to be accepted by the Financial Commissioner vide order dated 22.11.2012 (Annexure P-5). Respondent No.5 and his other co-sharers approached this Court against the abovesaid order dated 22.11.2012 (Annexure P-5), by way of CWP No.19662 of 2013, which was allowed vide order dated 17.11.2014 and the same reads as under:-

> "Petitioners are aggrieved by the order dated 22.11.2012 passed by Financial Commissioner, Punjab. Operative part whereof reads as under:-
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> "*As it is clear from the map available on the*

record that a passage already existed to the parcel of the land of the respondents. Under these conditions there was no need to provide new passage to the respondent. Accordingly, the revision petition is accepted and the parties are directed to appear before the AC-I Grade on 03.01.2013 who shall pass the order after giving opportunity to both the parties to lead their evidence."

Mr. Kang, learned counsel for the petitioners contends that the order is non-speaking and cryptic. Financial Commissioner reversed the findings recorded by the lower revenue authority without referring to the material on record. He submits that matter needs to be remitted to the same authority for a decision afresh.

Prayer for remand is not opposed by learned State counsel. Without expressing any opinion on the merits of the case, it appears that the order passed is non-speaking in nature. Same is, thus, set aside and the matter is remitted to the same authority for a decision afresh after hearing the parties.

Petition is allowed in the aforesaid terms."

Petitioners did not file any LPA against the abovesaid order dated 17.11.2014. After the matter was remanded by this Court vide abovesaid order and the Financial Commissioner was again seized of the matter, petitioners got a Local Commissioner appointed, who submitted his report dated 12.10.2016 (Annexure P-8). However, bare perusal of the report of Local Commissioner would show that it was submitted by the same counsel who appeared on behalf of the petitioners, before the Financial Commissioner at the time of passing of the order dated 22.11.2012 (Annexure P-5). This seems to be the reason that learned senior counsel for the petitioner did not place reliance on the report of the Local Commissioner.

In compliance of the abovesaid order passed by this Court, the impugned order (Annexure P-9) came to be passed by the Financial Commissioner. Each and every relevant aspect of the matter was examined, considered and rightly appreciated in the correct perspective before passing the impugned order Annexure P-9. The relevant operative part of the impugned order passed by the Financial Commissioner, which deserve to be noticed here, reads as under:-

> *"I have considered the arguments of counsel for both the parties and gone through the orders of lower courts as well as report of Local Commissioner. The partition was finalized by AC 1st Grade on 30.8.2005. As per sanctioned mode of partition a passage was to be provided to the taks of every co-sharer according to need. Respondents have specifically stated that the common passage from shamlat land is not convenient to them to cultivate their fields. Therefore they have rightly been provided path from the joint land under partition by AC 1st grade. The partition has been finalized in the presence and concurrence of both the parties; the plea of the petitioners that statement regarding correctness of partition papers (Naksha Zeem etc.) was wrongly made by their counsel, is not tenable. The plea of the counsel for the petitioners has been duly considered by both the lower courts i.e. Commissioner and Collector and was rejected. So far as report of Local Commissioner is*

> *concerned, it may be noted that the Local Commissioner has failed to point out as to whether the path provided in the partition is more convenient to the respondent than the common path which already exists i.e. bricks path made by gram Panchayat being used by whole village; Further the Local Commissioner has also failed to mention as to how much wide is the common passage; therefore I reject the report of Local Commissioner. Since it is a partition of land between the private parties and easy and convenience access to the respective parcels of land is to be kept in view while finalising the partition; it is not that only the petitioners have to bear the cut in their land for carving out the passage, but both the parties have to suffer. Therefore, I do not find any illegality in the orders of lower courts as well as partition finalized by the Act 1st Grade. Accordingly revision petition is dismissed being devoid of any merit."*

Once the petitioners did not raise any objection at both the material stages of the litigation, i.e, firstly against the proposed mode of partition and secondly, against the proposed final partition on the basis of approved mode of partition, they would have lost their right to challenge the same very mode of partition. It is so said, because in the partition proceedings, once the mode of partition is finalised, the partition proceedings come to an end. If no appeal is filed against the order finalising the mode of partition, then the instrument of partition prepared on the basis of approved mode of partition cannot be challenged, because preparing an instrument of partition is only a step further to execute the mode of partition and such order finalising the partition on the basis of approved mode of partition would no more be appealable.

In the present case, it is a matter of record that petitioner neither filed any objection to the proposed mode of partition, nor challenged the order approving the mode of partition by way of an appeal. It is also not the case of the petitioner that final partition was contrary to the approved mode of partition. Once the petitioners failed to do so and accepted the order of finalising the mode of partition, they would have no right to challenge the subsequent orders, finalising the partition which was based on approved mode of partition, particularly when they also did not raise any objection to the proposed final partition.

The view taken by this Court also finds support from the judgment of this Court rendered in **Lala Ram Vs. Financial Commissioner, Haryana, 1992 PLJ 45.** The relevant observations made by this Court in para 6 of the judgment, which can be gainfully followed in the present case, read as under:-

> *6. Sections 110 to 126 contained in Chapter IX of the Act deal with partition. While section 110 is with regard to the effect of partitions of estates and tenancies on joint liability for revenue and rent for purposes of the Land Revenue Act, section 111 is with regard to riots of a joint owner of land or a joint tenant or a tenancy in which the Tight Of Occupancy subsists, to apply to a revenue officer for partition of his share in the land or tenancy, as the case may be. Section 112 is with regard to restriction and limitation on partition. It contains provisions giving power to the revenue officers to refuse partition pertaining to any embankment, water-course, well or tank, grazing ground or any land which is occupied as the site of a*

town or village and is assessed to land revenue. Section 113 contains provisions with regard to issuance of notices to interested parties and the rights of such parties to raise an objection to partition proceedings. Section 114 is with regard to addition of parties to the partition application. Section 115 of the Act vests power in the revenue officer to disallow partition if in his opinion there is good and sufficient cause to do so. Section 116 deals with procedure on admission of partition applications. Sections 117 and 118 which contain a clue to the answer of the question under consideration need to be reproduced here:

> *"7. Disposal of questions as to title in property to be divided:- (1) Where there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent court, or he may himself proceed to determine the question as though he were such a Court.*
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> *(2) Where the revenue officer himself proceeds to determine the question, the following rules shall apply, namely :*
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> *(a) If the question is one over which a Revenue Court has jurisdiction, the Revenue Officer shall proceed as Revenue Court under the provisions of the Punjab Tenancy Act, 1887.*
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> *(b) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgment and decree containing the particulars required by the Civil Procedure Code to be specified therein.*

(c) An appeal shall lie from the decree of the Revenue Officer under clause (b) as though that decree were a decree of a Subordinate Judge in an original suit.

(d) Upon such an appeal being made, the District Court or High Court, as the case may be, may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal.

(e) From the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such a further appeal is allowed by the law for the time being in force."

116. Disposal of other questions:- (1) Where there is a question as to property to be divided, or the mode of making a partition, the Revenue Officer shall, after such inquiry as he deems necessary record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under sub-section 0) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the authority to whom the appeal has been preferred the Revenue Officer shall stay proceedings pending the disposal of the appeal.

(3) If an applicant for partition is dissatisfied with an original or appellate order under this society' and applies for permission to withdraw from the proceedings in so far they relate to the partition of his share, he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit.

(4) When an applicant withdraws under the last foregoing sub-section, the Revenue Officer may, where the other applicants if any desire the continuance of the

proceedings, continue them in so far they relate to the partition of the shares of those other applicants."

A perusal of the two sections that have been quoted above would show that it is under these sections that the questions of title and mode of making partition are determined. Once the aforesaid questions are determined, the partition proceedings, in so far as the tights of the parties are concerned, come to an end. Section 119 contains provisions about administration of property excluded from partition whereas section 120 contains provisions with regard to distribution of revenue and rent after partition. In so far as section 121 of the Act is concerned, it only says that when partition is completed the Revenue Officer will cause an instrument of partition to be prepared and the date on which the instrument of partition is to take effect would be recorded therein. Section 122 of the Act is only with regard to delivery of possession of property allotted on partition. Section 123 deals with affirmation of partition privately effected. Sections 124 to 126 are only with regard to power to make rules as to costs of partitions, redistribution of land according to custom and details of officers who may be empowered to act under the chapter dealing with partition proceedings. A perusal of the scheme of partition contained in Chapter IX would manifest that after the mode of partition is determined, the partition proceedings come to an end, and in so far as the p reparation of instrument of partition is concerned it is only an executory act. An appeal has been specifically provided against an order dealt with by Section 118, i.e., the mode of partition. In case such an appeal is filedwithin 15 days from the date of determination of the mode of partition and the institution of such an appeal has been certified to the Revenue Officer, it amounts to an automatic stay of proceedings pending disposal of the appeal. If the orders specifically dealt with in the Act against which An appeal is provided or which otherwise determine the rights of the parties, like an order *refusing partition, or determining title of the parties, are not appealed against and the partition proceedings are permitted to go on till finalisation of the mode of partition then the consequential orders which only implement what has been determined earlier cannot be the subject-matter of appeals. Mr. Sharma, however, on the strength of decision rendered by Himachal Pradesh High Court reported as* ***Khem Dutt v. Palkia, 1984 RRR 535 (H.P.) : 1982 PLJ 391*** *and decision rendered by Financial Commissioner, Punjab, reported as* ***Kartar Singh v. Kapur Singh, 1971 PLJ 677****, has endeavoured to persuade me to take a different view. A perusal of the aforesaid judgments, however, would show that the point under consideration was not at all involved in the aforesaid two cases. It was only held in the said cases that preparation of the instrument of partition is not a mere formality but it is a necessary document to make a partition decree effective and that it is the date given in the instrument of partition from which the partition is to take effect and also that the possession even if delivered to the parties before the partition was made effective would not extinguish the status of the parties as a co-sharer. It is, no doubt, true that the instrument of partition has necessarily to be prepared but the fact remains that the said instrument only records what has already been determined. It is a formal document that has to be prepared only to recognise the fact of partition. The very fact that it has to be necessarily drawn does not mean that it is appealable. A perusal of various sections that have been referred to above would manifest that the instrument of partition is a step in execution of partition which has already taken place. Once all the necessary steps of effecting partition have been taken then a party to proceedings cannot raise objections in drawing the instrument of partition It is just like a decree which is to follow the judgment. It is only these orders which affect the rights of the parties that are appealable and the document, viz. the instrument of partition* *which is only a step towards execution of the order of partition shall not be appealable. Faced with this situation, Mr. Verma contends in alternative that the appeal filed by the petitioner against orders dated 16th June 1988, should be treated to be an appeal against orders dated 10-1987 and 5-5-1988. He further contends that the delay in filling appeal against orders dated 5th October, 1987 and 5th May, 1988, should be condoned in the interest of justice. This course is neither legally permissible nor equitable in view of the facts and circumstances of this case. The grounds to challenge orders dated 5th October, 1987 purpose and 5th May, 1988 are of a different variety and some illegality, impropriety or failure of justice has necessarily to be pointed out. In the petitions filed in this court not a word has been mentioned as to how and in what manner the proceedings conducted by the revenue officer were either illegal or improper or caused in any manner injustice to the petitioner. Mr. Verma, however, points out from the grounds of appeal taken before the Collector such illegalities or improprieties but even the perusal of the grounds taken before the Collector do not depict any specific point raised. These grounds are of general nature only and even in regard to such allegations nothing has been pointed out to this court. In order to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, the petitions must, in order to entitle himself to any relief, show that manifest injustice has been caused to him as a result of the impugned orders. When nothing at all has been either stated or shown that any injustice, much less manifest injustice, has occurred to the petitioner no relief can be granted to him. It requires to be noticed here that the interest of numerous persons has intervened. The answering respondents have allotted plots to the people who, in turn, have paid huge amounts towards cost of land and internal and external development charges either to the respondents or the Government."*

So far as argument raised by learned senior counsel for the petitioner that statement of counsel for the petitioner was incorrectly recorded by Assistant Collector 1st Grade as well as by the higher revenue authorities that he did not raise any objection against the proposed mode of partition, is concerned, the same has been found wholly misplaced, for the reason that no such application was ever moved on behalf of the petitioner that he never passed on such instructions to his counsel. If the petitioner was feeling aggrieved against abovesaid statement made by his counsel on his behalf, petitioner was least expected to move an appropriate application immediately before the Assistant Collector 1st Grade to withdraw such statement, if it was erroneously recorded. However, petitioner did nothing in this regard for the reasons best known to him.

Similarly, once the order Annexure P-5 was set aside by this Court vide its abovesaid order dated 17.11.2014 (Annexure P-7) and petitioner did not challenge the said order by way of Letters Patent Appeal, the order passed by this Court would definitely be binding between the parties. Petitioner cannot be permitted to say that order passed by this Court would not be binding on him because merits of the case were not discussed in detail. The order was passed by this Court in the presence of learned counsel for the petitioner and the said order was not challenged any further. In such a situation, Financial Commissioner was also bound to follow the observations made by this Court in its order dated 17.11.2014 (Annexure P-7) and rightly kept the same in mind, while passing the order Annexure P-9.

Once the petitioner accepted the proposed mode of partition, approved mode of partition as well as proposed final partition, without raising any kind of objection, at any material stage, before passing the impugned final order of partition dated 30.8.2005 (Annexure P-1) by the Assistant Collector 1st Grade, petitioner would have no case either on facts or in law to challenge the legality thereof. Again, petitioner once failed to challenge order Annexure P-7 passed by this Court by way of LPA, there was hardly any scope left for the petitioner to challenge the impugned order passed by the Financial Commissioner (Annexure P-9). Further, no prejudice or substantial injustice has been shown which might have been caused to the petitioner, by passing of the impugned orders, warranting interference at the hands of this Court, while exercising its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

So far as providing of another passage to the respondents, shown in dotted blue line in the site plan (Annexure P-6), which seems to be the crux of the argument raised by learned senior counsel for the petitioner, is concerned, the same has also been found misplaced and not worth acceptance. A bare reading of the site plan (Annexure P-6) would show that path provided in dotted blue lines through the land of the petitioner, up to the land of private respondents, shall also be beneficial to the petitioner and his other co-sharers. Petitioner would have his fields on both sides of this passage which will certainly facilitate him and his other co-sharers to put their land to its optimum use.

In the absence of passage in question, petitioner as well as private respondents would have no easy access to the farthest corner of their respective land, causing difficulty to all the co-sharers of the land, in taking their bullock-carts or tractors close to the interior part of their respective fields. Under these circumstances, it can be safely concluded that petitioner shall also be benefited by the passage provided to the private respondents through the fields of the petitioner. All the respondent revenue authorities have recorded concurrent findings of facts, thereby committing no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason as well.

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 instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

17.10.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No