HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.21835 of 2016
Date of decision:21.10.2016

Sukhpal Kaur

...Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajnish K. Gupta, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 07.10.2016 passed by the Financial Commissioner, whereby revision petition filed by the petitioner was dismissed and the orders passed by the Assistant Collector 1st Grade as well as the Collector in a case of partition of land, were upheld.

Heard learned counsel for the petitioner.

Placing reliance on a judgment of this Court in '***Raghu Nath and others Vs. Commissioner, Rohtak Division, Rohtak and others 2013 (2) R.C.R. (Civil) 459***, learned counsel for the petitioner submits that petitioner has not been allotted the land as per quality thereof. He prays for setting aside the impugned order, by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the petitioner has not challenged the mode of partition and only the subsequent proceedings are being challenged by the petitioner by way of instant writ petition, the entire case of the petitioner is based on wholly misconceived presumption. It is so said because once the mode of partition was permitted to be finalized by the petitioner without raising any objection thereto, the Financial Commissioner was well within his jurisdiction to say that petitioner cannot be permitted to raise objection against the mode of partition, at this belated stage. Further argument, raised on behalf of the petitioner that built-up house in khasra No.160/1 has not been allotted to the petitioner, has been found factually incorrect, because the same, as a matter of fact, was allotted to the share of the petitioner.

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.*
>
> *(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 the judgment, relied upon by the learned counsel for the petitioner, is concerned, there is no dispute about the observations made therein. However, close perusal of the cited judgment makes it clear that it is of no help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme

Court in **<u>Padmasundara Rao (Dead)</u> Vs. <u>State of Tamil Nadu and others,</u> 2002 (3) SCC 533.**

Learned Financial Commissioner discussed each and every relevant aspect of the matter, before passing the impugned order, which has been found based on cogent findings. The relevant operative part of the order passed by the learned Financial Commissioner, which deserves to be noticed here, reads as under:-

> *"As per clause 4 of the mode of partition sanctioned on 07.12.2015, the tuks were required to be made by disturbing possession and the copy of Naksha 'Zeem' at page 50 of the revision petition, Khasra No.160/1 has been allotted to Sukhpal Kaur i.e. the present petitioner and not the respondent. This fact is also proved in the copy of the Aks Sajra, at page 52 of the written arguments filed by counsel for the petitioner, wherein Rectangle 27, Khasra No.160/1 in yellow colour has been allotted to the present petitioner and Ms. Amrit Brar. Therefore, it cannot be said that provisions of mode of partition have been violated and also built up house of the petitioner has been allotted to the tak of the present respondent.*
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> *The Collector, Fazilika in his order 31.05.2016 gave detailed finding on the grounds taken by the petitioner viz., Lakhmir Singh, tenant on land in dispute was not made a necessary party, submission of the partition application under Section 111 of the Punjab Land Revenue Act, 1887 by GPA/SPA and also other grounds taken in the appeal. The Collector came to the conclusion that grounds taken by the petitioner were frivolous and no wrong or irregularity has been committed in the partition proceedings by the Assistant Collector, Grade-I. Since the Collector passed a detailed order on the grounds taken by the petitioner and there is nothing on the file which provide for taking a different view by this Court. Therefore, I fully agree with the observation of Collector,*

Fazilika order dated 31.05.2016.

I have considered the grounds taken in the revision petition, written arguments of the counsel for the petitioner and also gone through the application for vacation of stay filed by the counsel for the respondents. In his written arguments, the petitioner did not file any reply and remained silent on a particular issue raised by the respondents, in their application for vacation of stay, that the built-up house in Khasra No.160/1 has been allotted to the petitioner. Ld. counsel for the petitioner during the arguments submitted that the built-up house in Khasra No.160/1 falls in share of the petitioner and allotted to the petitioner in the instrument of partition. Further, the objections about the quality of the land were supposed to be filed by the petitioner before the Assistant Collector Grade-I, at the time of the preparing the Mode of Partition. The objections on the mode of partition cannot be raised at this stage. It seems that the present revision petition has been filed to delay the partition proceedings."

During the course of hearing, when confronted as to what was the prejudice caused to the petitioner by passing the impugned order, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It is neither pleaded nor argued on behalf of the petitioner that she has not been allotted her due share in the joint land. Further, a bare perusal of the coloured site plan (Annexure P-12) would show that the land allotted to the petitioner, shown in pink colour, is abutting the road. Remaining land, which has been kept in joint khewat, is also either touching the road or it is connected with the road at one point. In this view of the matter, it can be safely concluded that the petitioner is in most advantageous position even as per the site plan Annexure P-12. Under these circumstances, it is established on record that no prejudice of any kind, whatsoever, has been caused to the petitioner by passing the impugned order, which may warrant interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 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 the impugned order has not been found to be suffering from any patent illegality or perversity. 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 above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

21.10.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No