

Civil Writ Petition No. 23170 of 2016

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

Civil Writ Petition No. 23170 of 2016

Date of Decision: 9.11.2016

Birmati

.....Petitioner

Vs.

The Financial Commissioner, Revenue, Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Amrita Nagpal, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 2.8.2016 (Annexure P-6) passed by the Financial Commissioner, Haryana, whereby revision petition filed by the petitioner against the orders dated 11.12.2013 (Annexure P-2) and dated 22.5.2015 (Annexure P-4) passed by the Collector, Kaithal, and Commissioner, Ambala Division, were upheld, petitioner has approached this Court by way of instant writ petition.

Heard learned counsel for the petitioner.

Facts are hardly in dispute. Petitioner purchased land out of joint khewat and stepped into the shoes of her vendor. Accordingly, petitioner became co-sharer in the joint khewat. In spite of the fact that petitioner was put in possession of a particular khewat number, land was still in the joint khewat. Since the petitioner was in possession of a particular khasra number

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which was more valuable, having been situated close to the village, thus, in a better and advantageous situation, she got a clause incorporated in the mode of partition that possession of the parties shall be kept intact. When respondent No.5, who moved the application for partition, raised objection to the abovesaid clause of the mode of partition that land should be partitioned keeping in view its value and quality, the said objection was over-ruled by Assistant Collector 1st Grade, vide order dated 14.5.2013 (Annexure P-1).

Feeling aggrieved, respondent No.5 filed her appeal before the Collector, which was rightly allowed vide impugned order dated 11.12.2013 (Annexure P-2). Petitioner filed her appeal before the Commissioner, Ambala Division, who dismissed the same vide impugned order dated 22.5.2015 (Annexure P-4). Revision filed by the petitioner also met the same fate at the hands of the Financial Commissioner vide order dated 2.8.2016 (Annexure P-6). Hence this writ petition.

A combined reading of all the three impugned orders passed by the Collector, Commissioner and Financial Commissioner would make it crystal clear that none of the respondent revenue authorities committed any error of law, while passing their respective impugned orders. It is so said, because the impugned orders have been found based on the settled principles of partition. The basic fallacy in the argument raised by learned counsel for the petitioner is that the petitioner wants to keep the possession intact, despite knowing fully well that it was contrary to the basic principles of partition. It is so said, because in the very nature of things, possession has to be disturbed to a reasonable extent, so as to strike a balance between the

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parties. That is what has been done by all the three revenue authorities. Having said that, this Court feels no hesitation to conclude that the impugned orders have since not been found suffering from any patent illegality or perversity, the same deserve to be upheld.

The argument raised by learned counsel for the petitioner also runs counter to two Full Bench judgments of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and **Ram Chander Vs. Bhim Singh, 2008 (3) RCR (Civil) 685**.

Finally, the case was re-considered by the Financial Commissioner, who recorded cogent findings which have been found based on sound reasons. The relevant operative part of the impugned order passed by the Financial Commissioner, which deserves to be noticed here, reads as under:-

“I have gone through the contents of revision petition, arguments put forth by both the parties, orders dated 22.5.2015 and 11.12.2013 passed by Ld. Commissioner, Ambala Division, Ambala and Ld. Collector, Kaithal, respectively, connected provisions of Chapter 18 of the Haryana Land Records Manual, relevant sections of Punjab Land Revenue Act, 1887, as applicable to Haryana and various rulings in the matter. Before arriving at a conclusion, the following issues need to be decided:-

a) Whether owning of possession can be the determining factor, while framing mode of partition?

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b) Whether land situated near Abadi, entitles a share holder to get the same, if in exclusive possession?

c) Whether there is any infirmity in the order dated 14.5.2013 passed by AC 2nd Grade?

d) Whether the orders dated 22.5.2015 and 11.12.2013 passed by Ld. Commissioner, Ambala Division, Ambala and Ld. Collector Kaithal respectively are in accordance with law?

As regards the first issue, it is well settled that possession alone cannot be the determining factor for affecting the partition and when there was considerable variation in the quality of the land, the possession will have to be disturbed. Further, in deciding the mode of partition, a number of considerations have to be kept in view within the framework of equity, fairness and practical convenience. There is no shadow of doubt that rule of possession has to operate to the extent of each co-sharer's share in each type of land making allowance for the cost and labour spent by the occupier for making improvements and some adjustment will have to be made, where entitlement and possession do not match exactly. The said view finds support from the judgment in the case of Narender Singh Vs. Jagdip Singh, 1981 LLT 94 and Ram Chander Versus Bhim Singh, 2008 (4) Civil Court Cases 002 (P&H) (FB)

As regards the second issue, as held in Roshan Deen Vs. Mahboob Ali Khan and others, 1941 LLR 21, land near Abadi becomes valuable as it can be used even for the building purposes and its advantages should not accrue only to one of the co-sharers, who happened to be in possession of it but the advantage should accrue to the entire propriety body and the mere fact that the vendees were in possession of the land, could not put the vendees to a disadvantage. Hardeva & another Versus State of Haryana & others, 2013 (2) RCR (civil) 897 quoted by respondent also supports the said findings.

As regards the third issue, in view of inference drawn in issues No.1 and 2, it can be easily concluded that there are no rational basis, so as to incorporate a clause of retaining possession in the mode of partition, knowing fully well about the existence of land in two different parcels-one situated near the Abadi deh and another away, especially having different kind and quality.

As regards the fourth issue, it can be easily concluded that Ld. Collector has rightly upset the order dated 14.5.2013 passed by Act 2nd Grade, being contrary to above principles which are required to be followed which finalizing mode of partition.”

During the course of hearing, learned counsel for the petitioner

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could not point out any patent illegality or perversity in the impugned orders. Further, no prejudice or substantial injustice of any kind, whatsoever, has been pointed out 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 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 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

9.11.2016
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Whether speaking/reasoned Yes/No
Whether reportable: Yes/No