

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

Civil Writ Petition No.27400 of 2013

Date of Decision: April 08, 2016

Pavittar Singh

...Petitioner

Versus

Financial Commissioner (Revenue) Punjab & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

Present: Mr.A.S.Gill, Advocate,
for the petitioner.

Mr.S.S.Chandu Majra, Addl.AG, Punjab.

Mr.Balram Singh, Advocate,
for respondent No.5.

Paramjeet Singh Dhaliwal, J.(Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 03.09.2013 (Annexure P-14) passed by respondent No.1-Financial Commissioner (Revenue) Punjab, the order dated 05.10.2010 (Annexure P-11) passed by respondent No.2-Additional Commissioner (Appeals) Jalandhar and the order dated 14.06.2010 (Annexure P-9) passed by the Collector-cum-SDM, Jalandhar-I whereby, the order dated 01.02.2010 (Annexure P-8) passed by respondent No.4-Assistant Collector 1st Grade-cum-Tehsildar, Jalandhar-I, has been set aside.

Brief facts of the case are that Parminder Singh-respondent No.5 filed an application for partition with respect to the land measuring 115 kanals 8 marlas situated within the revenue estate of village Partap Pura, Tehsil and

District Jalandhar. Notice of the application was issued to the petitioner. He appeared and filed written statement. Respondent No.4-Assistant Collector 1st Grade-cum-Tehsildar, after considering the respective contentions of the parties, decided to proceed with the application and thereafter, the other formalities were completed. Ultimately, the proposed mode of partition was approved vide order dated 13.10.2009 (Annexure P-6). Against that, certain objections (Annexure P-7) were filed by the petitioner and the fresh order was passed on 01.02.2010 (Annexure P-8) making amendment in the proposed mode of partition (Annexure P-6). Order dated 01.02.2010 reads as under:-

“The spot inspection of the land meant for partition was conducted on 30.11.2009 in presence of both the parties. On the spot houses are existing, which are in possession of Pavittar Singh second party and the motor has also been installed by Pavittar Singh. Partition will be conducted by maintaining the possession. A copy of this is being sent to Halqa Kanugo, Pholriwal and it is requested that Naksa Arra, Irri Aksh Sajra and field book be prepared and sent before 16.02.2010.”

Against that order, the respondent no.5 filed an appeal before the Collector-cum-SDM, Jalandhar-1. The Collector vide order dated 14.06.2010 (Annexure P-9) set aside the order dated 01.02.2010 and directed respondent No.4-Assistant Collector 1st Grade, Jalandhar-1 to decide the partition according to the first mode of partition vide which the possession could be disturbed. The petitioner preferred an appeal before respondent No.2-Additional Commissioner (Appeals), Jalandhar, which was dismissed vide order dated 05.10.2010 (Annexure P-11). Being dissatisfied, the petitioner further preferred revision before respondent No.1-Financial Commissioner (Revenue) Punjab, Chandigarh which has also been dismissed vide impugned order dated 24.01.2012 (Annexure P-13). Hence the present writ petition.

In pursuance of notice of motion, the respondents appeared and filed their replies. Respondent no.5 in his reply averred that the petitioner has come to this Court at a belated stage. It is further averred that partition can only be made by giving valuable land to the parties as per their share, therefore the earlier mode of partition, as upheld by the Collector, Commissioner and Financial Commissioner is legal and valid. The possession of the parties is required to be disturbed in order to give share in valuable land to all the parties as per their entitlement.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that the petitioner has entered into an agreement with respondent no.5 and has also obtained a civil court decree (Annexure P-15) whereby respondent no.5 has been restrained from dispossessing the plaintiff from the house constructed in the agricultural land forcibly, illegally and unlawfully except in due course of law. He further contended that the parties are in possession of specific land and their possession should be protected. It is further contended that agreement (Annexure P-3) has been admitted by the respondent no.5 and he has admitted the same in the civil suit. The revenue authorities have not taken into consideration the agreement with regard to the property in question. Learned counsel further contended that the house is joint and the parties will claim their respective rights in accordance with law.

On the other hand, learned counsel for respondent no.5 vehemently contended that the petitioner has never raised the plea with respect to the agreement (Annexure P-3) in the written statement filed before the Assistant Collector 1st Grade. Learned counsel further contended that the

decree passed by the Civil Court is only to the effect that the possession can be taken in accordance with law and not illegally and forcibly. He further contended that the land has been shown to be joint in the revenue record and as such, for that reason, the application for partition was filed.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, the application for partition was filed and the petitioner was given a notice of the same to which the petitioner filed his reply. After considering the reply, the Assistant Collector 1st Grade-cum-Tehsildar, Jalandhar, came to the conclusion that the application for partition should be proceeded with. The petitioner never challenged the said order of respondent No.4-Assistant Collector 1st Grade-cum-Tehsildar. It was only at that stage the question of title could have been raised by the petitioner by making reference to the documents including the agreement in question. Otherwise also, in the Civil Court decree there is only a mention of the house and no khasra number has been assigned to the house. Be that as it may, even if it is presumed that the said house is in the agricultural land which is subject matter of partition, the area of the house and the tubewell can also be protected by keeping it in joint possession, since it will be only in the interest of the parties. Once Civil Court passed injunction restraining dispossession except in accordance with law, then the possession will be delivered after determining the share of the parties and allowing the same as per *Nakshay bey*. I do not find any illegality or perversity in the orders passed by respondent No.4. Respondent No.4-Assistant Collector 1st Grade-cum-Tehsildar, has wrongly amended the mode of partition by observing that the possession should be kept intact. The very purpose of the application for partition is that joint land is to

be partitioned and the same is required to be partitioned as per the share of the parties and keeping in view the value of the land. If the possession of one of the co-sharer is on the entire land then he is only entitled to land as per his share according to value of the land. If the petitioner was aggrieved against the partition then he could have challenged the same before the appropriate Court on the basis of document i.e agreement and could have asked for stoppage of further partition proceedings. Once the proceedings have commenced and the mode of partition has been approved then the petitioner cannot agitate the same before the Assistant Collector 1st Grade-cum-Tehsildar at a belated stage. In view of the above, I do not find any merit in the present petition and the same is dismissed.

However, it is made clear that the constructed part of the house shall be allotted to the petitioner, although the same has not been specifically mentioned in the mode of partition and this is only done in the interest of justice. Aggrieved party will be at liberty to prove before appropriate Court/authority that construction was jointly made . If the plea is accepted, then that party should be compensated accordingly.

April 08, 2016
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(Paramjeet Singh Dhaliwal)
Judge