

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.27929 of 2013
Date of decision:29.9.2016**

Jai Parkash and others

...Petitioners

Versus

Financial Commissioner Revenue Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Mani Ram Verma and
Mr.Nipun Verma, Advocate for the petitioners.

Mr.R.K.Doon, AAG, Haryana.

Mr.Rajiv Sharma, Advocate for respondents No. 3 to 11.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 23.5.2013 (Annexure P-8) passed by the Financial Commissioner, Haryana, whereby revision petition filed by the petitioners was dismissed and the order dated 15.3.2011 (Annexure P-5) passed by the Assistant Collector 1st Grade, Kharkhoda, dismissing the application of the petitioners for partition of the land in question, was upheld.

Notice of motion was issued and in compliance thereof, written statement was filed on behalf of respondents No. 3 to 11.

Heard learned counsel for the parties.

It is a matter of record that as per jamabandi Annexure P-1, land in question was the ownership of Pana Diwan and the co-sharers of Pana Diwan were in possession of the land. Panchayat had never been

recorded as owner of the land, because it was exclusive possession of Pana Diwan. However, since the Gram Panchayat was questioning the absolute ownership of Pana Diwan, some co-sharers of Pana Diwan filed a civil suit for declaration against the Gram Panchayat and Gram Sabha. Dispute was filed in representative capacity under Order 1 Rule 8 of the Code of Civil Procedure.

After completion of pleadings of the parties, the learned civil court framed three basic issues, which read as under:-

1. Whether the plaintiffs are owners and in possession of the suit land” OPP
2. Whether the disputed land is shamlat deh and does vest in the Gram Panchayat? OPD
3. Whether the civil court has got no jurisdiction to try the suit? OPD”

Since the issue of shamlat deh was not involved between the parties to the civil suit, it was rightly held by the learned civil court that it had the jurisdiction to decide the suit for declaration filed by the plaintiffs. Specific findings were recorded on issue No.3 in this regard. Finally, the suit for declaration filed by some of the co-sharers of Pana Diwan, in representative capacity, was decreed by the learned civil court vide its judgment and decree dated 11.3.1981 (Annexures P-6 and P-7). Since the Gram Panchayat was not having any title qua the land in question, it did not challenge the above-said civil court decree any further and it became final between the parties.

On the basis of said civil court decree, petitioners filed an

application for partition. Nobody raised any objection about the question of title. Mode of partition was prepared as per zimni order dated 5.10.2010 available at page 31 of the paper-book. However, at that stage of partition proceedings, impugned order dated 15.3.2011 (Annexur P-5) came to be passed by the Assistant Collector 1st Grade, Kharkhoda, which is an order without jurisdiction. It is so said because once the above-said civil court decree has attained finality between the parties, which was binding on the revenue courts as well, Assistant Collector 1st Grade had no jurisdiction to pass the impugned order, raising the issue of title on his own. It is pertinent to note here that as a matter of fact, no question of title was involved in the present case, because land was recorded as absolute ownership of Pana Diwan.

Had the Gram Panchayat been claiming any title, it would have brought on record the relevant material before the learned civil court but it did not do so, because the Gram Panchayat was never the owner of land in question. Again, the Gram Panchayat did not challenge the above-said judgment and decree passed by the learned civil court, which had already attained finality between the parties. Having said that, this Court feels no hesitation to conclude that Assistant Collector 1st Grade misdirected himself, while completely misreading the true import of civil court judgment and decree and the impugned order dated 15.3.2011 passed by the Assistant Collector 1st Grade, Kharkhoda, cannot be upheld.

Rightly feeling aggrieved against the above-said impugned order (Annexure P-5), petitioners approached the Financial Commissioner, who also failed to appreciate the factual as well as legal aspects of the

matter, while passing the impugned order dated 23.5.2013 (Annexure P-8). Financial Commissioner proceeded on an ill founded presumption that since some land was being used for common purposes, Gram Panchayat would have some interest in it. Even if some portion of the land was being used for common purposes, still the Gram Panchayat would not acquire any title qua the land of shamlat Pana Diwan. In fact, the Financial Commissioner has not recorded any such finding that some portion of the land owned by Panna Diwan was being used for common purposes of the village community as a whole. If some part of the land was being used for common purposes only qua co-shares of Pana Diwan, still the Gram Panchayat would have no right to question the same.

Under these circumstances, it can be safely concluded that there was not even the remotest scope to hold that the question of title was involved in the present case. The Financial Commissioner also exceeded his jurisdiction, while trying to ignore the civil court decree which had already attained finality in favour of the petitioners. Further, civil court was well within its jurisdiction to hold on issue No.3 that it had the jurisdiction to decide the case because plaintiffs were not seeking any declaration for excluding the suit land from the ambit of *shamlat deh*. Since the Financial Commissioner has failed to appreciate this relevant aspect of the matter, while passing the impugned order, the same has caused manifest injustice to the petitioner and it cannot be upheld.

Learned counsel for private respondents No. 3 to 11 submits that since respondents No.3 to 11 are also the co-sharers of Panna Diwan and they also want partition of the Pana Diwan land, as per the share of its

co-sharers, he has the instructions not to oppose the present writ petition. Similarly, learned counsel for the State was justified in contending that since the State has no interest in the present litigation, he does not intend to contest the instant writ petition.

In the circumstances of the case, learned counsel for the private respondents as well as learned counsel for the State were well justified in making the above-said respective statements. The partition application moved by the petitioners was rightly being considered but Assistant Collector 1st Grade, illegally passed the impugned order (Annexure P-5) at the stage when the partition proceedings were about to be completed. Thus, the impugned order dated 15.3.2011 (Annexure P-5) passed by the Assistant Collector 1st Grade as well as impugned order dated 23.5.2013 (Annexure P-8) passed by the Financial Commissioner, Haryana, are liable to be set aside.

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 opinion that since the respondent revenue authorities have exceeded their jurisdiction, while passing their impugned orders, same cannot be sustained. Accordingly, the impugned order dated 15.3.2011 (Annexure P-5) passed by the Assistant Collector 1st Grade, Kharkhoda as well as impugned order dated 23.5.2013 (Annexure P-8) passed by the Financial Commissioner, Haryana are hereby set aside.

Consequently, Assistant Collector 1st Grade, Kharkhoda-respondent No.2 is directed to proceed further with the partition

proceedings, right from the same stage, when the impugned order dated 15.3.2011 (Annexure P-5) was passed. Since the matter is pending consideration for quite some long time, Assistant Collector 1st Grade, Kharkhoda-respondent No.2 shall make an endeavour to decide the matter at an early date by passing an appropriate order, strictly in accordance with law, but in any case within a period of six months from the date of receipt of a certified copy of this order.

With the above-said observations made and directions issued, the instant writ petition is allowed, however, with no order as to costs.

29.9.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No