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

**Civil Writ Petition No. 23977 of 2016
Date of Decision: 21.11.2016**

Harnek Singh

.....Petitioner

Vs.

The Financial Commissioner, Revenue, Punjab and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr R.K. Bansal, Advocate
for the petitioner.

****

**RAMESHWAR SINGH MALIK J. (ORAL)**

Present writ petition is directed against the order dated 26.5.2016 (Annexure P-13) passed by the Financial Commissioner, Punjab, whereby he dismissed the revision filed the petitioner and upheld the order dated 17.12.2010 (Annexure P-7) passed by Assistant Collector 1st Grade, Balachaur, District Hoshiarpur, issuing deed of partition (Sanad Taqseem), after completing partition proceedings.

Heard learned counsel for the petitioner.

The only argument raised by learned counsel for the petitioner that petitioner was not granted due opportunity of being heard, has been found factually incorrect and contrary to the record. A bare perusal of zimni order dated 25.6.2010 (Annexure P-6), available at page 44 of the paper book, would make it crystal clear that when the petitioner could not be served in the ordinary process, as he claimed himself to be posted in Madhya Pradesh while serving in Army, proclamation was got conducted in the village of the parties. When the petitioner did not appear before the Assistant Collector 1st Grade, even after conducting munadi proceedings, he was proceeded ex parte, vide order dated 25.6.2010 (Annexure P-6). Petitioner never sought to get the ex parte proceedings set aside, which were taken vide Annexure P-6 and in the meantime, partition proceedings came to be concluded vide impugned order dated 17.12.2010 (Annexure P-7), when the deed of partition (Sanad taqseem) was issued by the Assistant Collector 1st Grade, Balachaur.

During the course of hearing, when confronted with the abovesaid factual aspect of the matter, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. When two relevant site plans (Annexure P-3 and P-9) are compared with each other, it becomes crystal clear that the petitioner has been allotted his due share in the joint khewat. It is neither pleaded nor argued case on behalf of the petitioner that he has been allotted less area than his entitlement.

So far as khasra number 335 is concerned, it has been divided in equal portions, which is clear from Annexure P-9. Remaining share of the petitioner has also been allotted to him by keeping possession of the parties intact, which is the basic principle of partition. Having said that, this Court feels no hesitation to conclude that neither the Assistant Collector 1st Grade, Balachaur, nor the Financial Commissioner committed any error of law, while passing their respective impugned orders and the same deserve to be upheld.

Before passing the impugned order (Annexure P-13), Financial Commissioner, re-considered the matter and rightly found that petitioner was having no case either on facts or in law. The relevant operative part of the impugned order passed by the Financial Commissioner, which deserves to be noticed here, reads as under:-

> *"I have heard argument of counsel for the petitioner and contesting respondent No.1. The main dispute between the parties in the partition finalised by AC 1st relates to Kh. No. 335, abutting the road, in which according to petitioner horizontal piece of land has been given to all the co-sharers, whereas he was in possession of front portion of the land in question and according to mode of partition the partition is to be effected by keeping the possession intact. Copy of partition map available in the file of Collector seen in court. No doubt the mode of partition provides for keeping the possession intact, but it does not mean that where one shareholder is in possession of the land abutting the road, the other co-sharers are to be ignored. Law is very clear on this issue that in joint land, each co-sharer has share in every inch of land. Revenue authorities while making partition of land has to ensure that land abutting the road is given to all the co-sharers in proportion to their share in the joint land. Hence I do not find any illegality in the partition done by the Act 1st grade. Accordingly, the revision petition is dismissed being devoid of any merit."*

It is also clear from the impugned orders that partition proceedings have been finalised, strictly in accordance with the mode of partition, which was never challenged by the petitioner. Once the mode of partition became final between the parties, subsequent orders, being only executory in nature, would not be the subject matter of appeal or revision, unless it is specifically pleaded and shown by the aggrieved party that final partition was not carried out, as per mode of partition. It is not the case in hand.

The view that has been taken by this Court also finds support from the judgment of this Court in **Lala Ram Vs. Financial Commissioner, Haryana, 1992 PLJ 45** and an order dated 17.10.2016 passed in **Civil Writ Petition No. 21498 of 2016 (Bakshish Singh Jhauj Vs. Financial Commissioner, (Appeals), Punjab and others).**

The relevant observations made by this Court in para 6 of its judgment in **Lala Ram's case** (supra), 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.*
>
> *(2) Where the revenue officer himself proceeds to determine the question, the following rules shall apply, namely :*
>
> *(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."*

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**

21.11.2016
*Ak Sharma*

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