

Civil Writ Petition No. 27028 of 2016

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

Civil Writ Petition No. 27028 of 2016

Date of Decision: 23.12.2016

Om Parkash and others

.....Petitioners

Vs.

Financial Commissioner, Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 30.8.2016 (Annexure P-4) passed by the Financial Commissioner, Haryana, whereby he dismissed the revision petition filed by the petitioners against the order dated 26.10.2010 (Annexure P-3) passed by the Commissioner, Hisar Division and also the remand order dated 7.9.2009 (Annexure P-2) passed by the Collector, Fatehabad, directing Assistant Collector 2nd Grade, Bhuna, to decide the case of partition afresh, in accordance with the settled principles of partition.

Heard learned counsel for the petitioners.

The first argument raised by learned counsel for the petitioners was that oral family partition should not have been out-rightly rejected by the respondent revenue authorities, irrespective of the fact that said oral family partition did not find any reference in the relevant revenue record.

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After giving due consideration to the primary contention raised by learned counsel for the petitioner, it has not been found worth acceptance, for the reason that it would go contrary to the basic principle of partition. Had there been a family partition amongst co-sharers, then some of the co-sharers to the present litigation would not have completely denied the said family partition. Once the alleged oral family partition was in serious dispute and was not the admitted fact, coupled with the fact that it was not having even a passing reference in the relevant revenue record, the respondent revenue authorities committed no error of law, while ignoring the same. It is so said, because if even oral family partition is to be accepted, then parties would require to lead their evidence to that effect. Once the other co-sharers seriously disputed the proposal putforth by the petitioners, basing their claim on the oral family partition, petitioners would have no indefeasible right to put their claim on the basis of said disputed oral family settlement.

The next argument raised by learned counsel for the petitioners was based on the site plan, available at page 54 of the paper book, to contend that since the petitioners have raised some constructions on the land under their possession, said land was rightly allotted to the share of the petitioners.

The abovesaid argument raised by learned counsel for the petitioners to this extent is well justified. However, it is equally true that under the garb of some constructed portion on the land under their possession, petitioners cannot claim that their possession on the entire land must be kept intact at the time of partition. No doubt, petitioners would be entitled for allotment of constructed portion in their share and also some more land adjoining to the constructed portion, so as put it to its optimum

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use. However, this contention of learned counsel for the petitioners cannot be accepted that their total possession should be kept intact.

The respondent revenue authorities rightly proceeded on a positive and constructive approach, with a view to do complete and substantial justice between the parties, so as to ensure that none of the parties to the partition should get the land of much higher value and that too, at the cost of other co-sharers. It is so said, because it is also the basic principle of partition that every co-sharer should be allotted his share out of more valuable land as well as out of less valuable land. If out of all the co-sharers, one co-sharer wants allotment of his total share of land out of more valuable land, such an unreasonable request cannot be accepted. While proceeding on this basic principle of partition, possession has to be disturbed to that extent in the very nature of things. This is what has been done by the respondent revenue authorities, while passing all the three impugned orders, recording their concurrent findings of facts. Having said that, this Court feels no hesitation to conclude that none of the impugned orders has been found suffering from any patent illegality or perversity and the same deserve to be upheld.

Bare perusal of the impugned order dated 30.8.2016 (Annexure P-4) passed by the learned Financial Commissioner will make it crystal clear that the matter was reconsidered appreciating all the relevant aspects in the correct perspective. The relevant part of the order, which deserves to be noticed here, reads as under:-

As regards the first issue, there is no shadow of doubt that where private partition is not reflected in the revenue records, the plea of private partition cannot be taken note of and hence, is nonest in

the eyes of law. As a consequence of the same, no notice can be taken of the same while finalizing mode of partition or at any subsequent stage of partition, i.e. preparing 'naksha bey' or 'naksha zeem' (sanad takseem) etc.

As regards the second issue, there is no scintilla of doubt that it is fundamental principal of partition that every co-sharer should be given land of equal value and having similar potential. The judgment of Hon'ble Punjab and Haryana High Court in the case of Vikas Gupta Vs. Financial Commissioner, Revenue, 2015 (1) RCR (civil)676 has fortified the said view, which turn is based on Hon'ble Apex Court judgment in the case of Kulvinder Kaur and others Vs. Jit Singh and others, 2011 AIR CC 2894. Hence, it is well settled that possession alone cannot be the determining factor for effecting the partition and when there was considerable variation in the quality of the land, the possession will have to be disturbed. It is very much possible that land near abadi becomes valuable as it can be used even for building purposes and its advantage should not accrue only to one of the co-sharers, being in possession, as has been held in Rohan Been VS. Mahoob Ali Khan, 1941 LLT 21.

As regards the third issue, in view of inference drawn in issue No.2, it can be safely concluded that there was patent infirmity in the initial order of mode of partition dated 29.5.2009 passed by AC 2nd Grade, wherein it had been specifically mentioned in clause 3 that existing possession was to be retained. However, same was corrected subsequently on 9.12.2009 after intervention of SDO (civil)-cum-Ld. Collector vide its order dated 7.9.2009. In deciding the mode of partition, a number of considerations have to be kept in view within

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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 in making improvements and some adjustment has 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 LT 94 and Ram Chander Versus Singh, 2008 (4) Civil Court Cases 002 (P&H) (FB).

As regards the fourth issue, in view of the inferences drawn in issues No.2 and 3, it is held that the orders dated 26.10.2010 and 7.9.2009 passed by Ld. Commissioner, Hissar Division, Hisar and SDO (civil)-cum-Ld. Collector Fatehabad are in accordance with law and there is no infirmity in them in any way.

It is the settled proposition of law, as laid down by a Full Bench of this Court in Bhatru VS. Ram Sarup, 1981 PLJ 204 (F.B.) that till the joint land is partitioned, all co-sharers would be deemed to be in possession on every parcel of land. Even if the petitioners have purchased some land near their ancestral land, that can be only one issue for consideration, but it will again not grant any indefeasible right to the petitioners to keep their total possession intact on the joint land. It goes without saying that in compliance of the impugned remand order passed by the Collector, the Assistant Collector 2nd Grade, will ensure that constructed portion must be allotted to petitioners, so that no prejudice is caused to them. It is also true that invariably before finalisation of the partition, Assistant Collector 2nd Grade, should inspect the site himself, so as to know the fact situation obtaining at the site, which will always facilitate him to arrive at a just conclusion.

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Under the abovesaid circumstances, it can be safely concluded that so far as all the three impugned orders are concerned, none of the impugned orders has been found suffering from any patent illegality or perversity and the same deserve to be upheld, for this reason also. Further, no prejudice has been shown which might have been caused to the petitioners by passing 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

23.12.2016
Ak Sharma

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