

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

LPA- 1785-2015 (O&M)

Pronounced on : 17th February, 2016

Chander Kanta, deceased through LR **.... Appellant**

VERSUS

Davinder Parmar and others **..... Respondents**

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE LISA GILL

Present: **Mr.Kanwaljit Singh, Senior Advocate, with**
Mr.B.B.S.Randhawa, Advocate, for the appellant.

Mr.Sumeet Mahajan, Senior Advocate, with
Mr.Amit Kohar, Advocate, for respondent No.1.

Mr.Atul Nehra, Advocate, for respondent No.2.

Mr.D.K.Nagar, Advocate, for respondents No.5 and 6.

RAJIVE BHALLA, J.

Randeep Singh Parmar, legal heir of Smt. Chander Kanta (since deceased), daughter of Avtar Singh and sister of Kulbir Singh Parmar (respondent No.15) and Sukhbir Singh @ Lakhbir Singh (respondent No.16), challenges order dated 29.10.2015, allowing CWP-24409-2014, whereby order dated 29.08.2014, passed by the Financial Commissioner, Punjab, remitting the matter to the Assistant Collector, Ist Grade Garhshankar, has been set aside.

Before narrating the facts, the contentions and recording our opinion thereon, it would be appropriate to point out that the land, in dispute, measuring 390 kanals and 06 marlas, though owned

by the appellant and the private respondents, is in exclusive possession of Kulbir Singh Parmar and Sukhbir Singh @ Lakhbir Singh (respondents No.15 and 16 respectively), real brothers of Chander Kanta. The property was originally owned by Raj Singh. After the demise of Raj Singh, the property was inherited by his sons in equal share. Avtar Singh, a son, on his death left behind a widow Gurbachan Kaur (who had also passed away), Balbir Singh a son (since deceased) represented by Davinder Kaur Parmar (respondent No.1) and Jasveera Anoop Minhas (respondent No.2), Gurdeep Singh (another son of Avtar Singh), has also passed away but is represented by Inderjit Parmar, Jasneera and Harminder Singh (respondents No.4, 5 and 6 respectively). Sartajbeer Singh, Kulbir Singh and Sukhbir Singh (respondents No.3, 15 and 16 respectively) are three sons of Avtar Singh (deceased) and a daughter Chander Kanta now deceased is represented by the appellant Randeep Singh Parmar.

The other private respondents namely Rabindra Raj Parmar (respondent No.7), Bimla Roy Parmar (respondent No.8), Suevera Mavis Williammson (respondent No.9), Romila Sarah (respondent No.10) are the progeny of Ranvir Singh from his marriage to respondent No.11 is the alleged divorced wife.

Chander Kanta, the appellant and the private respondents are co-sharers in land measuring 309 kanals and 06 marlas, situated in village Basiala Tehsil Garhshankar, District Hoshiarpur. Devinder

Parmar widow of late Balbir Singh and Jasveera Anoop Minhas, daughter of late Balbir Singh (respondents No.1 and 2), filed an application, before the Assistant Collector, Ist Grade, Garhshankar, for partition of the aforesaid land by arraying all the co-sharers. The applicants alleged that as the entire land is in possession of Kulbir Singh and Sukhbir Singh, sons of Avtar Singh, the land be partitioned. The Assistant Collector, Ist Grade, Garhshankar vide order dated 30.11.2011, recorded that as the respondents cannot be served personally, they are ordered to be served by 'munadi' (proclamation in the village). As none of the respondents put in appearance after 'munadi', they were proceeded against ex-parte.

The Assistant Collector, Ist Grade, Garhshankar sanctioned the mode of partition and the various proposed plans etc. received from the Halka Patwari but Inderjit Parmar (recorded as Interjit Kaur) in the order, filed an application through her counsel for setting aside ex-parte proceedings. As the Assistant Collector was informed that Ranvir Singh, respondent No.8, in the application, has passed away and thus directed the impleading of his legal representative. An application was filed and the legal representatives were impleaded. As recorded in this order, the LRs of respondents No.8 filed an application through Anoop Kumar stating that their interest is common with the applicants. The LRs were, therefore, transposed as applicants. Another application was filed for setting aside the ex-parte proceedings on behalf of Kulbir Singh and Sukhbir

Singh and eventually after examining the matter, partition proceedings concluded. Chander Kanta, however, did not participate in partition proceedings and remained ex-parte. A perusal of the record, however, reveals that Kulbir Singh and Sukhbir Singh, her real brothers participated in partition proceedings.

Kulbir Singh and Sukhbir Singh filed separate writ petitions namely CWP-12883-2012 and CWP-16713-2012, challenging the partition. An interim order was passed directing parties to maintain status quo but it was modified, vide order dated 05.10.2012 by directing that status quo would operate to the extent of the shareholding of the petitioners and if the petitioners are not in possession of land "more than their share" status quo shall not operate.

Kulbir Singh Parmar filed LPA-1723-2012 against this order which was disposed of on 16.11.2012 in the following terms: -

"During pendency of the appeal, counsel for the private respondents have stated that they have no objection, if the appellant selects any portion of the land in accordance with his shareholding of 34 kanals approximately.

Counsel for the appellant states that he has no objection to this statement provided, possession is delivered, subject to protection of the rights of the parties in the pending writ petition.

We have heard counsel for the parties and modify the impugned order in the following terms: -

"Possession of the land, in dispute, shall be delivered to the parties in accordance with their shareholdings. The appellant shall be entitled to select any portion of the joint land in accordance with his shareholding of approximately 34 kanals. The arrangement so made shall however, be subject to the outcome of the writ petition. In case, any modification is made in the Sanad Takseem, parties would be bound to implement the modified Sanad Takseem. Disposed of accordingly."

The parties thereafter appeared before the Assistant

Collector, Ist Grade, Garhshankar exercised their options regarding land that was to fall to their share but during pendency of these proceedings, Chander Kanta filed CWP-7493-2013, which was disposed of vide order dated 30.04.2013 by directing her to approach the Financial Commissioner. The already pending petitions, filed by Kulbir Singh and Sukhbir Singh were also disposed of in similar terms. Chander Kanta filed SLP bearing CC No.22818-22820 of 2013 before the Hon'ble Supreme Court which was dismissed on 13.01.2014 with a direction to the Financial Commissioner to decide the matter without being influenced by any observation made by the High Court apparently alluding to earlier order dated 16.11.2012 regarding the choice to select land passed in LPA-1723-2012.

The Assistant Collector, Ist Grade, Garhshankar had in the meanwhile partitioned the land on 17.07.2013. Kulbir Singh and Sukhbir Singh filed an appeal before the Collector which was dismissed on 14.08.2013. The Assistant Collector, Ist Grade, Garhshankar issued the Sanad Takseem and separated the land of the parties. The revisions namely revisions filed by Chander Kanta, Kulbir Singh and Sukhbir Singh, came up for consideration before the Financial Commissioner, which were allowed by setting aside the order passed by the Assistant Collector and directing that partition proceedings be commenced afresh. The other co-sharers (respondents herein) filed a writ petition challenging the order passed by the Financial Commissioner.

The writ petition has been allowed, the order passed by the Financial Commissioner has been set aside and the Assistant Collector Ist Grade has been directed to proceed from the stage at which proceedings were pending before him after passing of order dated 16.11.2012 in LPA-1723-2012 and order dated 13.01.2014. The impugned order is primarily based upon an inference that the interest of Kulbir Singh, Sukhbir Singh and Chander Kanta was common and challenge to partition proceedings is an attempt by Kulbir Singh and Sukhbir Singh to perpetuate their possession. The Assistant Collector, Ist Grade, Garhshankar has been directed to calculate how much excess land is in the possession of Chander Kanta, Kulbir Singh and Sukhbir Singh and they shall then deposit Rs.30,000/- per acre, per annum, from the date of filing of the application i.e. 01.04.2010 for payment to shareholders who have remained out of possession.

We have heard counsel for the parties, perused the impugned order, the order passed by the Financial Commissioner and the order passed by the Assistant Collector, Ist Grade Garhshankar.

A partition of agricultural land requires the Assistant Collector, where practicable to affect personal service on all co-sharers and in case such service is not feasible, service by proclamation or by post. A perusal of the record reveals that Chander Kanta is a resident of Shimla but no attempt was made to serve her at Shimla. The summons issued at the village address were

returned with a report that she has gone abroad. A relevant extract from the order passed by the Financial Commissioner reads as follows: -

“13.....The petitioner was reported to have gone abroad, by process server whereas, she was residing at Shimla and she had never gone abroad. The service of petitioner has not been conducted in the legal manner and no respondent can be condemned un-heard according to cardinal principles of law. Delay in filing the petition stands condoned because the petitioner was not having knowledge of order of partition. It may also be added that the Hon'ble High Court had relegated to file petition before financial commissioner vide order dated 30.4.2013 and the present petition was filed on 24.5.2013. Therefore the petition has to be disposed on merits instead of technical objections of limitation.

14. It may be pointed out that although Hon'ble High Court had disposed of CWP filed by the petitioner while asking to Sukhbir Singh and Kulbir Singh to get share of land according to choice, but the order of Hon'ble High Court was challenged in Hon'ble Supreme Court. SLP was dismissed while directing the Financial Commissioner to decide the matter without being influenced by any observation made by the High Court. Therefore, I have to dispose of petition according to direction of Apex Court. The service of the petitioner can not be presumed to have been effected in a legal manner because the process server made a very vague and casual report that some respondents including the petitioner had gone abroad although she was residing at Shimla. No effort was made to effect the service of petitioner at Shimla, whereas petitioner is stated to be residing at Shimla in the application for partition itself.

15. In ROR No.433 of 2013, I am of the view that order dated 30.4.2013 passed by Hon'ble High Court in CWP No.16713 and 12883 of 2012 the parties were relegated to appear before Financial Commissioner and he was directed to decide the matter within six months in view of these orders. Parties should have appeared before this court for hearing in the matter for decision of petition after the High Court order. However proceedings were initiated before Assistant Collector Ist at instance of Smt. Davinder Parmar one of the share holder. It is stated in order dated 17.7.2013 of A.C. 1st grade that in CWP No.12883 of 2012 titled as Kulbir Singh versus State of Punjab, Hon'ble High Court passed order dated 30.4.2013 where A.C. 1st grade initiated the proceedings on the basis of order dated 16.11.2012 passed by Division Bench of High Court in LPA No. 1723 of 2012. The Division Bench order was followed by Single Bench in CWP 12883 and 17613 of 2012 and relegated the parties to the Court of Financial Commissioner for decision in view of order of Division Bench. While the case was under consideration before this Court, the matter was taken up by A.C. 1st Grade without awaiting the order of this court which was to be passed in pursuance of order dated 30.4.2013 of Hon'ble High Court. Although the counsel for Chander Kanta made a statement before A.C. 1st Grade that Financial Commissioner is seized of the matter in view of the order of Hon'ble High Court. Therefore proceeding before A.C. 1st grade may not be continued. However A.C. 1st grade proceeded further and decided the partition case.

16. In ROR 886 of 2013 filed by Kulbir Singh and Sukhbir Singh it is alleged that the orders dated 17.7.2013 of A.C. 1st Grade and order dated 14.8.2013 of Collector were passed in contravention of the orders dated 30.4.2013 of Hon'ble High Court directing the Financial Commissioner Appeals to decide the matter after taking choice of Kulbir Singh and Sukhbir Singh. However, the A.C. 1st decided the matter of partition of land vide order dated 17.7.2013 which amounts to violation of order of Hon'ble High Court.

17. Prima facie A.C. 1st grade has wrongly taken cognizance of the

matter. The points taken up by the petitioner to challenge the orders of lower courts has substance since there were lacunas in the service of respondents in the partition matter and Financial Commissioner was directed to decide the revision against the order of A.C. 1st Grade. In the light of these circumstances order dated 30.11.2011 and 1.2.2012 of A.C. 1st Grade as well as order dated 17.7.2013 passed by A.C. 1st Grade and order dated 14.8.2013 of Collector, Garhshankar are set aside and case is remanded to Assistant Collector 1st Grade, Garhshankar to decide the partition matter afresh after affording due opportunity to all the co-sharers. All the three petitions stands disposed of.”

A perusal of the aforesaid order reveals that the Financial Commissioner has held that service was never effected upon Chander Kanta and that the Assistant Collector despite liberty granted to Kulbir Singh and Sukhbir Singh to approach the Financial Commissioner, did not wait for decision of the revisions and decided the application posthaste. The Financial Commissioner, therefore, remitted the matter to the Assistant Collector Ist Grade, directing him to proceed with the matter afresh.

The writ petition filed by the private respondents other than Kulbir Singh and Sukhbir Singh has been allowed, the order passed by the Financial Commissioner has been set aside by primarily holding that even though Chander Kant was residing at Shimla but as her interest in the land was common, it is being looked after by her real brothers, the grievance put forth by Chander Kanta is not bonafide as it has been raised at the behest of her brothers Kulbir Singh and Sukhbir Singh who are in possession of the entire land and seek to perpetuate their possession. It has also been held that the appellant has not levelled any allegation of fraud or misrepresentation and, therefore, a mere plea of non-service cannot

lead to setting aside of the partition particularly when her brothers, who had similar interest, were defending her interest before the revenue authorities. The impugned order also goes on to hold that though the Supreme Court has held that the Financial Commissioner shall decide the matter uninfluenced by orders passed by the High Court but as the Assistant Collector had almost concluded the partition and merely formal nakhsa “ERRI” and sanad takseem were required to be issued, the Financial Commissioner was not justified in remitting the matter for adjudication afresh.

The findings, so recorded, are not entirely incorrect as it is not uncommon for co-sharers in possession to set up another co-sharer to challenge partition proceedings to perpetuate their possession. We may have accepted the reasons assigned in the impugned order that as Kulbir Singh and Sukhbir Singh were representing the interest of Chander Kanta they set up Chander Kanta to perpetuate their possession, particularly as Chander Kanta has not pleaded any prejudice to her rights in the allotment of 34 kanals land but cannot ignore that the Supreme Court directed the Financial Commissioner to decide the revision filed by Chander Kanta uninfluenced by order dated 16.11.2012. The Financial Commissioner, therefore, rightly construed the order passed by the Hon'ble Supreme Court as sufficient to require a re-examination of the matter particularly the matter regarding service. The findings of fact recorded by the Financial Commissioner that Chander Kanta was

never served, have not been set aside or adversely commented upon but an inference of service has been drawn from the fact that her brothers were pursuing the matter on her behalf and she has been allotted a parcel of land. The inference drawn may be justified but in the facts of the present case particularly when the Supreme Court had directed the Financial Commissioner to decide the matter regarding service of Chander Kanta, the question of deemed service or knowledge could not have been relied in the peculiar facts and circumstances of the present case.

At this stage, it would be appropriate to point out that none of the other co-sharers including Kulbir Singh and Sukhbir Singh have filed any appeal for reasons that are not far to seek. Kulbir Singh and Sukhbir Singh participated in partition proceedings, were allotted land but have not been able to point out by any clear and cogent pleadings or arguments that any prejudice has been caused or that they have been allotted land that is less than their shareholding or is in any manner contrary to the mode of partition or the naksha bey.

Be that as it may as service was never effected upon Chander Kanta and there is no evidence that Kulbir Singh and Sukhbir Singh were looking after her interest or filed objections on her behalf, we allow the appeal, set aside the impugned order and restore the order passed by the Financial Commissioner but only to the extent of allowing Chander Kanta to file objections to the naksha

bey within 15 days of parties putting in appearance. If the objections so filed lead to a modification of the land allotted to Chander Kanta or the parties, the Assistant Collector, Ist Grade, may make such alterations in the land allotted to co-sharers after inviting objections but affirm the direction issued by the learned Single Judge, which reads as follows: -

“In view of these facts and conduct of respondent nos. 4 to 6, the Assistant Collector Ist Grade is directed that he would calculate how much excess possession is with Kulbir Singh Parmar, Sukhbir Singh and Chander Kanta (now represented through legal heirs). This Court deems it fit and proper that Assistant Collector Ist Grade shall also examine the respective shares and determine who are in excess possession than their entitlement. It is common that shareholder in excess possession continue to delay partition and enjoy the fruits of excess land in his/her possession. Whosoever is in excess possession, he will have to deposit the amount @ Rs.30,000/- per acre per annum from the date of filing of the application for partition i.e. 01.04.2010 and the same shall be paid to the shareholders who remained without possession.”

We have affirmed this direction as respondents No.4 and 6 against whom this order is primarily directed, have not challenged the order passed by the learned Single Bench. The directions shall be carried into effect by the Assistant Collector, Ist Grade, Garhshankar, as regards Kulbir Singh and Sukhbir Singh @ Lakhbir Singh.

Parties are directed to appear before the Assistant Collector, Ist Grade, Garhshankar, on 16.03.2016 for further proceedings. The partition be concluded within three months of the aforesaid date.

[RAJIVE BHALLA]
JUDGE

17th February, 2016
shamsher

[LISA GILL]
JUDGE