

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

CR No.2248 of 2017.

Date of Decision: 06.04.2017.

Mahipal

....Petitioner.

VERSUS

Ram Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.P. Sharma, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 23.01.2017 by virtue of which learned Additional Civil Judge (Senior Division), Kanina allowing the application filed by respondent-defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure (for short, 'the Code') rejected the plaint of the petitioner-plaintiff.

The submissions made Mr. J.P. Sharma, learned counsel representing the petitioner have been heard.

From the order assailed by the petitioner, it transpires that a suit had been filed by the petitioner-plaintiff challenging partition proceedings conducted by competent revenue authorities with regard to agricultural land measuring 391 Kanals 6 Marlas comprised in Khewat No.93, Khatoni No.120, situated in the revenue estate of village Sehlang, Tehsil and District Mahendergarh. The further relevant facts are that after the Naksha Bey was confirmed on 07.04.1997, the petitioner filed an appeal

before learned Collector which was disposed of vide order dated

09.07.1997. On a revision filed before Divisional Commissioner, Gurgaon Division, the case was remanded to Assistant Collector Ist Grade vide order dated 10.05.2002 with direction to decide the petition as per rules. Therefore, Naksha Bey was prepared and partition order was passed on 30.04.2003. The petitioner again challenged the said order by filing appeal which was dismissed vide order dated 09.09.2003. On an appeal preferred against the order dated 09.09.2003, the matter was again remanded to Assistant Collector Ist Grade by Commissioner vide order dated 28.08.2009. Against the said order, an appeal was filed before learned Financial Commissioner which was allowed and order of remand passed by Divisional Commissioner was set aside. The petitioner filed Civil Writ Petition No.9001 of 2014 before this Court challenging orders passed by the revenue authorities but his writ was dismissed vide order dated 08.07.2014. It is thereafter that the petitioner filed the civil suit challenging the partition proceedings.

On an application filed by respondent No.1 Raj Kumar under Order VII Rule 11 of the Code, learned trial court finding the suit to be not maintainable allowed the application and rejected the plaint.

Learned counsel for the petitioner argues that the reason assigned by learned trial court for rejecting the plaint that the Civil Court has no jurisdiction to entertain any question arising out of the partition proceedings conducted by the revenue authorities, is erroneous and illegal. The petitioner had prayed that the partition proceedings had not been conducted as per the procedure laid down under the Punjab Land Revenue Act, 1887 (for short, 'the Act of 1887') and on that ground the suit filed by

The findings of learned trial court for allowing the application of the respondent and rejecting the plaint filed by the petitioner are as under:-

“Admittedly, right to partition is governed by Section 111 of the Punjab Land Revenue Act and under Section 158(2) (xviii) of the Punjab Land Revenue Act and the jurisdiction of the Civil Court is ousted. Section 158(2) (xviii) bars a Civil Court from hearing any question as to allotment of land made in the partition proceedings of agricultural land. Thus when in partition proceedings before revenue officer there is no dispute as to the title to the land to be partitioned, Civil Court has no jurisdiction to entertain any question arising out of such proceeding. The fact that procedure of the revenue officer was defective would not give a Civil Court jurisdiction in view of clear ouster set forth in the Act. Learned counsel for the petitioner has failed to show any illegality or perversity in the orders of the revenue authorities. Only ground is that principles of natural justice have not been allowed. This contention cannot be accepted. Petitioner was party to the proceedings. He had been appearing in the proceedings and had the opportunity to challenge the orders of revenue authorities which according to him were not in accordance with law. Admittedly in the present suit the proceeding have been challenged till Hon'ble High Court and have become final after dismissal from Hon'ble High Court. No any specific ground of violation of natural justice has been shown so to admit the present suit on the basis of violation of principles of natural justice.”

As noticed in the above order, the only ground on which the petitioner challenged the partition proceedings conducted by the revenue authorities was that the principle of natural justice had not been followed. In

objection that the partition proceedings had not been conducted by the revenue authorities as per the provisions of the Act of 1887. The petitioner had availed all remedies available to him under the Act of 1887. He had also exercised the right of challenging orders passed by the revenue authorities by filing a writ petition before this Court and that too stands dismissed. The partition proceedings had attained finality between the parties and Section 158(2)(xviii) of the Act of 1887 bars a Civil Court from hearing any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical redistribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy. The suit filed by the petitioner was nothing but abuse of the process of the Court. Thus, learned trial court rightly rejected his plaint.

Finding no illegality, perversity or jurisdictional error warranting interference in the order of learned trial Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

06.04.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**