

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3930 of 2014 (O&M)

Date of Decision: 12.12.2017

Kewal Singh

.....Petitioner

Versus

Avtar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Verma, Advocate
for the petitioner.

Mr. Munish Gupta, Advocate
for respondents No. 1 to 4.

ANITA CHAUDHRY, J

This petition is directed against the order dated 24.4.2014 (Annexure P-5) vide which the application filed by the petitioner/plaintiff seeking amendment in the plaint has been dismissed.

It is necessary to notice the facts as were disclosed by the parties.

Kewal Singh petitioner filed a suit seeking partition of a house, the details of which were given in the plaint of the suit. The suit was filed in March 2012. The defendants appeared and filed their written statement on 5.6.2012. After the filing of the written statement, the defendants approached the revenue authorities in June 2012 and filed an application seeking partition of the properties which included the house in question.

Those proceedings were finalized and *sanad takseem* was prepared. An

objection had been taken by the plaintiff there that a house was constructed

and therefore the revenue authorities had no jurisdiction but it was rejected.

The plaintiff approached the lower Court with an application seeking amendment of the plaint to challenge the orders passed in the partition proceedings. That application has been rejected by the trial Court by giving the following reasons:-

“5. After hearing the rival contentions of Ld. Counsel for both the parties and going through the facts of the case, I am of the opinion that the suit site alongwith other property has been finally partitioned by A.C. Ist Grade, Mahilpur. It is admitted by the plaintiff that the objections were filed by the plaintiff regarding the said facts before the A.C. Ist Grade, Mahilpur. The plaintiff has not filed any appeal against order of partition in the Appellate Court. Thereafter, instrument of partition was drawn, which amounts to the decree of the court. In execution of partition order possession was delivered to owners as per order of partition. The plaintiff did not file any objection in the execution proceedings. The share according to ownership of the plaintiff has been allotted to him in the other joint land and he has been put into possession of the same at the spot. The plaintiff has not challenged the order of the Revenue Court before the competent authority. The date of order of partition was dated 27.6.2013 and the plaintiff filed this application on 28.2.2014. The site of Khasra no. 33 has been allotted to the co-sharers who were in possession at the spot as there was not dispute with regard to existing construction. Plaintiff was not in possession on any part of Khasra No. 33. The application of plaintiff is not maintainable, as this will cause injustice to the other side which cannot be compensated in any manner. The plaintiff was present during partition proceedings and remained silent and also taken possession during execution of that order. Convincing with the submissions made by counsel for the defendants No. 1, 2, 5 and 9, the abovesaid application of the

plaintiff for amendment of the plaint is dismissed. To come upon 14.5.2014 for plaintiff evidence.”

The submission on behalf of the petitioner is that his suit was proper in point of time and house had been constructed and there are various judgments in which the view is that when the property is constructed then the revenue authorities have no jurisdiction to partition the property and it is only the Civil Court which has the jurisdiction. The counsel further submits that the defendants had even disputed his title and when there is a dispute regarding title the revenue officers had to stay their hands so that the title could be decided and in a hurried manner the revenue authorities had effected partition.

The submission on the other hand is that besides the house there were some other properties which were subject matter of partition. It was urged that the plaintiff had contested that petition and could have filed appeal and after partition, *sanad* was prepared and possession has been taken over. The counsel further submits that the case is now fixed for rebuttal evidence.

The defendants had filed the written statement in June 2012. They did not mention in the written statement that they were approaching the revenue authorities. In the same month they approached the revenue authorities and filed an application seeking partition of agricultural land and the disputed property and those proceedings were finalized within two months. A perusal of the written statement shows that the defendants had disputed the title of the plaintiff. The property is stated to be constructed. The plaintiff was wanting to amend the plaint and introduce the subsequent events. The lower Court had gone wrong in rejecting the application. The

Division Bench in *Surjit Singh versus Financial Commissioner Appeals-II, Punjab and others 2012 (5) R.C.R (Civil) 683* had held that when the plots are carved out and houses are constructed on agricultural land then the agricultural land before partition loses its nature by the acts of the parties and such land cannot be partitioned by the revenue Court. The amendment is necessary and the trial Court had erred while dismissing the application.

The petition is allowed. The petitioner would file the amended plaint within 15 days from today. The counsel would inform his parties so that there is no delay. Since the case had reached at the rebuttal stage therefore the trial Court would ensure that there is no delay and it would give only two adjournments each to the parties to complete their evidence.

(ANITA CHAUDHRY)
JUDGE

December 12, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes