

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

CR No. 788 of 2016 (O&M)
Date of Decision: 20.09.2017

GURDIAL SINGH AND ANR

-PETITIONERS

VS

SHASHI BALA AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Shubhankar Baweja, Advocate,
for the petitioners.

Mr. Aayush Gupta, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

Petitioners have filed the present revision petition against the order dated 07.01.2016 passed by Civil Judge (Junior Division), Kurukshetra whereby the application under Order 7 Rule 11 CPC filed by the petitioners for rejection of plaint was dismissed.

Learned counsel for the petitioners submitted that by virtue of Section 158 of the Punjab Land Revenue Act, civil Court has got no jurisdiction in the partition proceedings. The application for partition was filed in the year 2003 and the same was finalized in the year 2008. Respondent No.1/plaintiff purchased the land from co-sharers and the factum of sale was duly reflected in the revenue record even before final order of

partition.

Learned counsel for respondent No.1 submitted that the plaintiff-respondent No.1 has specifically pleaded in para no.4 of the plaint that the Halqa Patwari had already filed a list of owners with reference to their shares in the Khewat on 25.09.2007 before the Assistant Collector, 1st Grade, Thanesar. The name of plaintiff-respondent No.1 was duly shown at Serial No.13 in the said list. Land measuring 20 Kanals was purchased by the plaintiff and he was co-sharer to that extent. Infact, plaintiff had purchased land measuring 28 Kanals 1 Marla from the co-sharer in the said Khewat prior to filing of list of owners. Mutation was also sanctioned in favour of the plaintiff. The Patwari did not submit the true facts in the aforesaid list. The factum of the plaintiff being owner of the property had come in the knowledge of the defendant even before ordering final partition amongst the co-sharers.

In view of the controversy with regard to carving of path from the land of the plaintiff, a question of title if any was to be addressed by the Court on the basis of pleas of the parties. It is a settled principle of law that in case question of title is involved before the Revenue Officer, then Revenue Officer is bound to consider the said issue before ordering partition.

Three options would be available before the Revenue Officer. The Revenue Officer is bound to see whether infact

question of title is involved or not? If he finds that question of title is involved, then he has to decide that question of title by converting itself in a regular Court. If he sees that some intricate question of law and facts are involved, then he can refer the matter for civil adjudication before the competent civil Court. In any case the authority under the Act has to act in accordance with law. If the authority acts illegally and against procedure, then in view of **Gurbax Singh vs Financial Commissioner, 1991 PLJ 192 (SC)** and **State of Haryana and Ors vs Vinod Kumar and Ors., 1986 (1) PLR 222 (FB)**, the civil Court has got all the jurisdiction under Section 9 of CPC to decide. Even otherwise, at the stage of Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen.

All the pleas in respect of jurisdiction and limitation can be adequately decided by the civil Court at the appropriate stage.

No case is made out to reject the plaint in terms of Order 7 Rule 11 CPC at this stage.

This revision petition is, accordingly, dismissed.

20.09.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No