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

CWP No.10480 of 1999(O&M)
Date of decision : 25.05.2017

Guldin and others .... **Petitioners**

versus

Financial Commissioner, Haryana and others .... **Respondents**

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. C.B.Goel , Advocate for the petitioners.

Mr.Rajbir Singh, AAG, Haryana.

Mr.A.K.Rana, Advocate
for respondents No. 15 and 20.

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AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of order dated 1.10.1997 rendered by the Financial Commissioner who has set aside the orders dated 9.2.1993 and 19.8.1993 passed by the Collector and Commissioner, by virtue of which they allowed the prayer of the private respondents, herein while entertaining the application of the petitioners for partition on the premise that the fathers of the petitioners have been reflected as co-owners of the property in the revenue record and, therefore, Naksha Bay was ordered to be drawn while allowing the prayer of the petitioners.

Mr.C.B.Goel, learned counsel appearing for the petitioners submits that since the private respondents had knowledge of the partition proceedings, they could have come forward with the application but the order of summoning, according to him, is not sustainable as no person has come forward to be impleaded as co-sharer. It is a settled law that all the co-sharers are required to be impleaded for the purpose of partition of a property. The revenue record shows that the names of fathers of petitioners namely Juma, Khakhi and Ramzan were recorded as co-sharers.

Per contra, learned counsel for the State submits that the impugned order is passed by the Financial Commissioner is not erroneous. Vide order dated 09.11.2000 this Court had issued notice of motion to the respondents and as per the order dated 20.12.2005 , despite service, no body had put in appearance on behalf of the private respondents and they were proceeded against ex parte. Thereafter on 01.05.2006, the writ petition was admitted. Admittedly, there is no interim order staying further proceedings as a consequential effect of the order of the Financial Commissioner. In essence, whether the partition proceedings have culminated into passing of the order of partition or execution has been done as per the provisions of Section 122 and 123 of the Punjab Land Revenue Act, 1887.

Be that as it may, the fact remains that the order of the Collector and Commissioner in my view are based on the revenue record which shows that the fathers of the petitioners namely Juma, Khakhi and Ramzan have been recorded as co-sharers. It was incumbent upon the authorities to include their names but the Financial Commissioner has gone on a different tangent by holding that once the factum of partition proceedings was known to the petitioners they should have joined the proceedings themselves is not a correct approach. Resultantly the order is not maintainable and is set aside subject to the condition that in case the final proceedings have culminated into mode of partition, the order of Financial Commissioner would survive, otherwise the petitioners would also have an opportunity to challenge the mode of partition in accordance with law. In case the mode of partition is not done, the remedy of the petitioners is to file a civil suit as there is no limitation to challenge the aforementioned finding based upon the title.

Petition stands disposed of accordingly.

(AMIT RAWAL)
JUDGE

May 25, 2017
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No