

CWP Nos.18924 and 18957 of 2009 (O&M) and
CWP No.3118 of 2010 (O&M)

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

1. CWP No.18924 of 2009 (O&M)
Date of decision : 24.03.2017

Love and others

...Petitioners

Versus

State of Punjab and others

...Respondents

2. CWP No.18957 of 2009 (O&M)
Date of decision : 24.03.2017

Baljit Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

3. CWP No.3118 of 2010 (O&M)
Date of decision : 24.03.2017

Randhir Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vikas Singh, Advocate for petitioners
(In CWP Nos.18924 and 18957 of 2009)

Mr. Raj Kumar Gupta, Advocate for petitioners

(In CWP No.3118 of 2010)

Mr. Arun Jain, Sr. Advocate with
Mr. Vikas Mohan Gupta, Advocate for respondent No.4
(In CWP No.3118 of 2010)
for respondent No.5 (In CWP Nos.18957 and 18924 of 2009)

Mr. Yatinder Sharma, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

CM No.4954-CWP of 2015

Prayer in the application is for impleading the Shiv Lal as respondent No.5 and to delete the already impleaded respondent Nos.5 and 6 from the array of amended memo of parties.

It has been stated in the aforementioned application, that in pursuance to the notice of the writ petition, report came that respondent No.5-Shiv Lal has died. In pursuance thereof, respondent Nos.5 and 6 were impleaded as the LR's of Shiv Lal. However, in Civil Court proceedings, Shiv Lal had put in appearance that he is alive and had not died.

It is in this backdrop of the matter, application has been filed for impleading Shiv Lal as respondent No.5 and to delete the already impleaded respondent Nos.5 and 6 from the array of amended memo of parties . Reply has been filed to the application.

I am of the view that if such application before the trial Court has been allowed, similar order is required to be passed in the present writ petition.

Resultantly, application aforementioned i.e. CM No.4954-CWP of 2015 is allowed and Shiv Lal is impleaded as respondent No.5. Order

dated 21.05.2012 impleading respondent Nos.5 and 6 is hereby modified to the extent aforementioned.

The factum of the father being alive is being endorsed by the sons of respondent No.5-Shiv Lal.

Main Cases

This order of mine shall dispose of aforementioned three writ petitions.

Main contest is in CWP Nos.18924 of 2009 and 18957 of 2009.

The facts are being taken from CWP No.18924 of 2009 titled as Love and others Vs. State of Punjab and others.

Mr. Vikas Singh, learned counsel appearing on behalf of petitioners submits that there were three co-owners i.e. Shiv Lal, Raj Kumar Hardial Singh and Surat Singh. The land at the hands of Shiv Lal was declared surplus by the Collector vide order dated 25.06.1976 (Annexure P-3) i.e. 597 Kanals 19 marlas equal to 28.37 hectares. The petitioners in two writ petitions are none else but the vendee of Raj Kumar Hardial Singh whereas petitioners in CWP No.3118 of 2010 represented by Mr. Raj Kumar Gupta, Advocate, are vendees of Surat Singh.

He submits that petitioners had purchased the land from one of the co-owner i.e. Raj Kumar Hardial Singh of a specific portion/possession and by virtue of having the land declared surplus, area falling under that category, thus, having a grievance challenge the aforementioned order by filing an appeal before the Commissioner. The Commissioner vide order dated 30.09.1986 (Annexure P-4) remanded back the matter to the Collector

to undertake the exercise under Section 13 of the Punjab Land Reforms Act, 1972, in essence, regarding the division of the shares amongst the co-owners. However, during the interregnum, civil suit was filed by Shiv Lal. The trial Court granted the decree of joint possession of 1/3rd shares in favour of Shiv Lal vide judgment and decree dated 29.02.1960, in essence, conferring a symbolic possession and ownership of 1/3rd shares. The appeal preferred by the petitioners was dismissed by the lower Appellate Court and RSA bearing No.656 of 1960 vide judgment dated 13.10.1971 also met with same fate. In support of his contention, he has relied upon judgment rendered by this Court in *Prithvi Raj Vs. State of Punjab, 1993(3) RRR 219*.

Per Contra, Mr. Arun Jain, learned Senior Counsel assisted by Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of Shiv Lal submits that permissible area at the hands of Shiv Lal-the landowner is in actual possession of the vendees and in that regard, execution application in pursuance to the aforementioned judgment and decree has been allowed and revision petition bearing No.3270 of 2013 is stated to be pending in this Court. He submits that grievance of the petitioners cannot be vindicated and redressed herein, at the best they have a right to claim the damages against the Vendor as in the absence of the partition, specific boundary of the specific area could not have been done, in essence, the sale is of excess area by Raj Kumar Hardial Singh and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

The shorn of the facts noticed above and in order to avoid repetition of the same, question which has to be seen is whether in such circumstances, the remedy for the parties would be to seek the partition of the land, answer would be 'Yes', but not independently as for that purpose, Legislature in wisdom had already taken care of in view of Section 13 of the Punjab Land Reforms Act, 1972. For the sake of brevity, same is reproduced herein below:-

“13. Power to separate share of landowners in joint lands:-

(1) Where a person owns land jointly with other persons and his share of such land or part thereof has been or is to be declared as surplus area, the Collector, on his own motion, may, after summary enquiry and after affording to such a person an opportunity of being heard, separate his share of such land or part thereof on the land owned by him jointly with the other persons.

(2) Where, after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the Collector shall also be competent to separate the surplus area of such a person out of the area of Land obtained by him after consolidation in the manner referred to in sub-section (1).”

On reading of the aforementioned provisions, it is evident that Collector on the application submitted by any of the effected party is enjoined upon obligation to undertake the exercise by separating the share of the land or part thereof in the land owned jointly or with other persons.

While I was dictating the order, it has been apprised that land

of the co-owners was situated in 3-4 villages and according to Mr. Vikas Mohan Gupta, Advocate, the possession of some part of the land at the hands of petitioners is a constructed portion. Question would be arrived that whether in such circumstances, Collector would have a jurisdiction or Civil Court. The law on this point is no longer res integra in view of the judgment rendered by Division Bench of this Court in *Surjit Singh Vs. Financial Commissioner, Appeals-II, Punjab and others, 2012(5) RCR (Civil) 683*, wherein it has been held that if the status of the land is partly constructed and agricultural, remedy would be of Civil Court and not Revenue Court. Relevant part of the same read as under:-

“It is true that the agricultural land, which is part of an estate, which has been defined under the Land Revenue Act, cannot be partitioned by the Civil Court in view of Section 158(2) of the said Act. But, when the agricultural land before partition loses its nature as such by the acts of the parties, particularly, who is seeking partition, then such land cannot be partitioned by the revenue Court. During the partition before the Revenue Officer, a co-sharer can raise an objection that the land, which has been shown in the revenue record as agricultural and assessed to land revenue, should not be partitioned as the same due to the acts of the other co-sharer, who is seeking partition, loses its nature as an agricultural land. Exactly this thing has happened in the present case and by taking into consideration the subsequent development and the acts of the appellant himself, the revenue Court refused to partition the land with liberty to the appellant to seek the remedy of partition before the Civil Court. In Auja Singh's case (supra), cited by the learned counsel for the appellant,

some observations have been made by the Division Bench of this Court which do not support the case of the appellant, rather those observations support the case of the respondent. These observations read as under:-

*“No doubt, if a particular property is a abadi land and does not fall under the definition of land, the revenue authorities have no jurisdiction to partition the same but in this case, there is no evidence to prove that at the time the land in dispute was ordered to be partitioned by the Revenue Officer, it was abadi land and was not agricultural land. The order of partition was passed by the Revenue Officer on 22.9.1970, Exhibit D11. The suit land at that time was entered in the revenue papers and it was assessed to land revenue. So, apparently the Revenue Officer, who partitioned the land, had the jurisdiction to partition the same and as such, the order of partition is valid. Before this order could be held to be invalid, the plaintiff, we think, was required to produce evidence which could show that **at the time the order of partition was passed, the suit land was not being used for agricultural purposes, but was being used as abadi land.** There is, however, no evidence in this behalf nor any such evidence was referred to by the learned counsel for the appellant. Learned counsel for the appellant-plaintiff has simply tried to press into service the written statement filed by defendant No.1. No doubt, defendant No.1 in his written statement alleged that the installations and structures on the suit land raised by defendant No.1 were existing for the last 20 years, but this averment made by defendant No.1 was not binding on defendant No.2*

*who had raised the plea that the suit land had already been partitioned. So, qua defendant No.2, the plaintiff cannot take advantage of any averment made in the written statement filed by defendant No.1. The plaintiff was required to produce some evidence **which could show that at the time the suit land was ordered to be partitioned, it was no more an agricultural land, but was being used as abadi land.**” (Emphasis Added)”*

Leaving this question open, I set aside the order of the Collector, Financial Commissioner and Commissioner (Annexures P-6, P-8 and P-10) and give the liberty to the petitioners to take remedy in accordance with law keeping in view of observations made herein above as to whether either Collector or Civil Court would have jurisdiction for determination of the shares.

Let this exercise be undertaken by the petitioners within a period of two months from the date of receipt of certified copy of the order and any of the Forum which takes cognizance or jurisdiction of the matter is directed to dispose of the matter as expeditiously as possible within a period of one year.

Accordingly, CWP Nos.18924 and 18957 of 2009 are disposed of in aforesaid terms.

As regards the third writ petition i.e. CWP No.3118 of 2010, Mr. Raj Kumar Gupta, Advocate, submits that his client is vendee of Surat Singh and with regard to that, Mr. Arun Jain, learned Senior Counsel on taking instructions from Mr. Vikas Mohan Gupta, Advocate submits that

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they have no grievance qua the claim of the petitioners as they have not been informed of excess possession of permissible area at the hands of Shiv Lal.

In view of the aforementioned, order under challenge vis-a-vis claim of the petitioners in third writ petition i.e. CWP No.3118 of 2010 is hereby set aside.

Writ petition stands disposed of in aforementioned terms.

24.03.2017

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No