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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11924-2012 (O&M)
Date of decision : 23.02.2017

Kesar Singh and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Rana, Advocate
for the petitioners.

Ms. Lavanya Paul, AAG, Punjab.

Mr. Kanwal Goyal, Advocate
for respondent No.3.

Mr. R.P. Singh Ahluwalia, Advocate
for respondent No.54.

AMIT RAWAL, J. (ORAL)

The petitioners, who are the respondent Nos.7 to 12 & 17 to 24 in an application filed under Section 111 of the Punjab Land Revenue Act (for short 'the Act') by Mr. Mohinder Kaur/respondent No.3, represented by Mr. Kanwal Goyal, are aggrieved of the order dated 15.03.2012 (Annexure P-3) and all subsequent proceedings, whereby the final order of partition along with *sanad taksim* was passed in favour of respondent No.3.

Mr. Vijay Rana, learned counsel appearing on behalf of the petitioners submits that no service as per the provisions envisaged, under Section 20 of the Punjab Land Revenue Act, had been effected. The *mushtri munadi* as reflected in zimini orders annexed along with the written

statement of respondent No.3 do not reflect the satisfaction of service. Though, it has been ordered to be done time and again. There is a complete procedure being prescribed under the aforementioned provisions of the Act. In this regard, he has drawn the attention of this Court to the aforementioned provisions which read as under:-

"Mode of service of summons: - (1) *A summons issued by a Revenue-officer shall, if practicable, be served (a) personally on the person to whom it is addressed or failing him (b) his recognized agent or (c) an adult male member of his family usually residing with him.*

(2) *If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or if that person does not reside in the district in which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.*

(3) *If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue-officer so directs, be served by delivery of a copy thereof to such of those persons as the Revenue-officer nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.*

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(4) *A summons may, if the Revenue-officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866.*

(5) *When a summons is so forwarded in a letter, and it is proved that the letter was properly addressed and duly posted and registered, the Revenue-officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post."*

This Court called upon Mr. Rana, learned counsel representing the petitioners, to apprise as to how and what manner, the petitioners have been affected by the mode of partition, had they been contesting the matter on merits. The answer was that the petitioners with specific boundaries had purchased the land way back in the year 1983, suggested mode of partition/*sanad taksim* do not reflect the disturbance of possession.

Mr. Kanwal Goyal, learned counsel appearing on behalf of respondent No.3 do not deny the zimini orders rather submits that on three occasions, the *mushtri munadi* was effected. The Assistant Collector recorded the satisfaction and thereafter, passed an *ex parte* order. The intention of the petitioners is *mala fide*, much less, an attempt to tire out the applicant, who had purchased the shares on the premise that in earlier round of litigation. the application filed under Section 111 was dismissed and in appeal, the petitioners herein, were the respondents, who were represented through their counsel and therefore, they cannot be expected to have no knowledge of the proceedings. It is a most *mala fide* and unscrupulous effort on the part of the petitioners, thus, the petition deserves to be dismissed with exemplary cost.

Similar is the arguments of Mr. R.P. Singh Ahluwalia, learned counsel appearing on behalf of respondent No.54 and Ms. Lavanya Paul, AAG, Punjab.

I have heard the learned counsel for the parties and appraised

the paper book and gone through the zimini orders, extracted in their replication upto 06.11.2002 and onwards, in the written statement filed on behalf of respondent No.3 and as well as the order dated 05.04.2006 (Annexure R-3/4), wherein the matter had been remanded back, in which, the petitioners were, according to the counsel for respondent No.3, were the respondent(s).

Though on technical point i.e. on going through the aforementioned provisions of the Act, something survives in favour of the petitioners, owing to non-compliance of the provisions of Section 20 *ibid*, and on this aspect, the impugned order dated 15.03.2012 (Annexure P-3) is liable to be set aside by remanding back the matter, but on equity, they do not stand on the touchstone of the reasonability, much less, fairness, thus, I deem it appropriate to impose a cost of the litigation, much less, time being spent in the courts to be paid to the learned counsel for the respondent No.3, who was the applicant before the Revenue Court.

Resultantly, the impugned order dated 15.03.2012 (Annexure P-3), is hereby set aside and the matter is remitted back to the Assistant Collector, 1st Grade, Sunam Udham Singh Wala, to decide the application moved under Section 111 of the Act, after affording the opportunities of hearing, as expeditiously as possible preferably within a period of six months from the date of receipt of the certified copy of the order.

Learned counsel for the parties and as well as the parties through their counsel are directed to appear before the Assistant Collector on 10.03.2017.

The office report reveals that the other respondents have been

proceeded *ex parte* before this Court, if it is so, then the proceedings can initiate in their absence.

In the partition proceedings, if the application is instituted at the instance of one of the co-sharers by arraying the other, all the parties, thus, can be either the plaintiff or the defendant, because their rights would be determined in the partition proceedings being co-sharers.

However, this order shall be subject to the cost of ₹ 50,000/- which shall be paid to Mr. Kanwal Goyal, learned counsel appearing on behalf of respondent No.3.

Disposed of, accordingly.

23.02.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No