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

**CWP-15801-2011 (O&M)
Date of decision : 19.05.2017**

Dulia @ Duli Chand (Deceased through LRs)

... Petitioner(s)

Versus

Financial Commissioner, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay S. Kajla, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Vikram Singh Dhakla, Advocate
for respondent No.7.

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AMIT RAWAL, J. (ORAL)

CM-7491-CWP-2017

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of the petitioner-Dulia @ Duli Chand have been brought on record.

Amended memo of parties is taken on record.

CM-7492-CWP-2017

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the Khasra Girdawaries (Annexures P-10 and P-11) are taken on record subject to all just exceptions.

<u>CWP-15801-2011</u>

The petitioner is aggrieved of the impugned orders dated 16.05.2011 (Annexure P-8), 20.01.2011 (Annexure P-6) and 13.02.2009 (Annexure P-4) rendered by the Financial Commissioner, Commissioner and Collector, respectively, whereby the partition application dated 28.11.1990 filed under Section 111 of the Punjab Land Revenue Act by respondent No.5/Mam Chand and his sons, has been decided against the interest of the petitioner.

Mr. Vijay S. Kajla, learned counsel appearing on behalf of the petitioner submits that though the partition had been effected in 1956, however, on 05.02.1979, an exchange had effected between both the brothers and this fact is axiomatic from the mutation bearing No.2035, yet despite the exchange, aforementioned partition application was filed, which was rejected by the Assistant Collector, after framing the issues and taking the note of the evidence, brought on record. The factum of exchange done by Mam Chand with Raj Kumar/respondent No.8 and mutation No.2049 has also been denied qua specific pleadings in paragraph 3 of the writ petition. The orders of the Collector, Commissioner, much less, the Financial Commissioner are bereft of the reference to the record, whereas the Assistant Collector had discussed the matter *in extenso* and trying to grant the partition. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in ***<u>"Ajmer Singh V/s Dharam Singh" 2006 (1) PLJ 442</u>***, to contend that where the parties have actually exchanged the property, it tantamounts to partition and in the absence of reflection of the same in the revenue record, the Court can always look into the aforementioned document, much less, khasra girdawaris and should not have been accepted the application.

Mr. Vikram Singh Dhakla, learned counsel appearing on behalf of the respondent No.7 submits that khewat numbers and rectangle/killa numbers are entirely different, in essence, there was no similarity with respect to the exchange land and rightly so, the Commissioner brushed aside the arguments of the petitioner. There is no illegality and perversity in the orders and cannot be tinkered with by exercising the 'Judicial Review'. The petitioner failed to place on record any material with regard to the exchange, much less, identity of the property viz-a-viz the exchange. The revenue record reflects the status of the parties as co-sharer and therefore, rightly so, the partition application has been entertained, thus, urges this Court dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the factum of two mutations bearing Nos.2035 viz-a-viz the exchange of 1979 and 2049 with Raj Kumar/respondent No.8 has not been denied. The aforementioned aspect could have been a foundation or a basis for establishing the fact that exchange was actually been implemented as there was a *bahi* entry.

I have gone through the orders of the Commissioner and the Appellate Authority and of the view that though, there is a reflection of mutations, while hearing the arguments of the parties, but the findings are bereft of the reference of the same. This is not the scope of the revisional court or the Appellate Authority to deal with the matter. During the course of the arguments, a copy of the application has been handed over and it reflects that the khasra numbers, which are reflected in the mutations, are the one, for which the partition has been sought. In view of such situation, I am of the view that the matter requires to be revisited and readdressed at the helm of the Commissioner.

Keeping in view the aforementioned facts, the impugned orders dated 16.05.2011 (Annexure P-8), 20.01.2011 (Annexure P-6) and 13.02.2009 (Annexure P-4) rendered by the Financial Commissioner, Commissioner and Collector, respectively, are hereby set aside and the matter is remitted back to the Commissioner, who shall decide the controversy in view of the observations made hereinabove, much less, evidence brought on record or both the parties intent/contemplate to place on record, uninfluenced to the findings given in the previous order.

This Court is sanguine of the fact that the Commissioner shall decide the matter in a most pragmatic and objective manner, much less, in accordance with law, as expeditiously as possible preferably within a period of three months from the date of the receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the Commissioner on 06.06.2017.

This order of mine shall not construe an expression of opinion on merits and demerits of the matter.

Disposed of, accordingly.

(AMIT RAWAL)
JUDGE

19.05.2017
Yogesh Sharma

Whether speaking/reasoned **Yes/ No** ✓

Whether Reportable **Yes/ No** ✓