

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.W.P.No.15853 of 2011 (O&M)

Date of Decision: March 06, 2017

Malak Singh & others

...Petitioners

Versus

The Financial Commissioner (Revenue), Haryana & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.B.S.Bedi, Advocate,  
for the petitioners.

Mr.Sandeep S.Mann, Sr.DAG, Haryana,  
for the State.

Mr.Ajay Kumar Kansal, Advocate,  
for respondent No.5.

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**AMIT RAWAL, J. (Oral)**

Partition proceedings initiated by few of the petitioners resulted into passing of an order of Memorandum of Partition in 2005. However, the matter regarding the consequential effect of the same was pending, but in the meantime, according to the petitioners, a compromise dated 10.2.2008 was arrived at between the parties and the same was submitted to the Assistant Collector 2<sup>nd</sup> Grade, Safidon on 4.3.2008. On the basis of the aforementioned fact, the order dated 10.7.2008 was passed by the Assistant Collector 2<sup>nd</sup> Grade, Safidon suggesting the mode of partition on the terms and conditions of the compromise.

Mr.B.S.Bedi, learned counsel for the petitioners submits that the aforementioned order was assailed by respondent No.5-Jeet Kaur on the

premise that she had never agreed for the compromise, much less it did not bear her thumb impressions. In fact, it was a result of fraud. The appeal was not maintainable and the remedy was to move an application before the Assistant Collector 2<sup>nd</sup> Grade, Safidon for recalling of the order. The Commissioner, after hearing the matter at length, remanded the matter back with a direction to the Assistant Collector 2<sup>nd</sup> Grade, Safidon to do the partition by taking into consideration its length, i.e., in rectangle or in square shape. The aforementioned order was taken in revision before the Financial Commissioner, but the same also resulted into dismissal, therefore, the present writ petition.

On the contrary, Mr.Ajay Kumar Kansal, learned counsel for respondent No.5 submits that it would be too late in a day to relegate respondent No.5 to move an application for recalling of the order. At the best, the appeal can be said to be an application for recalling of the order. He, on instructions from his client, does not press for restoration of the partition of 2005 until and unless there is an adjudication of the application and the factum of compromise having not taken place. Once as per the order sheets, the case was fixed for 26.2.2008 and 18.3.2008, how and in what manner, the compromise has been placed on record on 4.3.2008, thus, the compromise in the midway could not have been presented or submitted. It is only an order of remand and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that it is too late in a day to relegate respondent No.5 as per the provisions of Order 23 Rule 3 and 3-A. At the best, the appeal preferred by her before the Commissioner can be tried an application

for recalling of the order, in essence the orders of the Commissioner and the Financial Commissioner qua passing of the order of partition as per mode of partition of 2005, cannot sustain, for, respondent No.5 has to establish by leading evidence in accordance with law of having arrived at a compromise or otherwise, in essence to bring on record direct and cogent evidence with regard to factum of compromise bearing her thumb impression or not. Till such exercise is done, there cannot be any effect of the actual mode of partition, i.e., of 2008 or 2005. Till then, the partition suggested by the Commissioner and the Financial Commissioner is hereby set-aside.

The Assistant Collector 2<sup>nd</sup> Grade, Safidon is directed to treat the contents of the appeal as an application for recalling of the order of 10.7.2008 by giving effective opportunities to the parties to the lis to lead evidence in support of the pleadings made therein. The petitioner would be at liberty to rebut the same. Let this exercise be done within six months from the date of receipt of certified copy of this order and thereafter pass an order in accordance with law.

The parties, through their counsel, are directed to appear before the Assistant Collector 2<sup>nd</sup> Grade, Safidon on 31.3.2017.

Writ petition stands disposed of.

**March 06, 2017**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**