

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.1111 of 2013

Date of Decision: March 23, 2017

Pargat Singh & others

...Petitioners

Versus

Financial Commissioner, Punjab & others

...Respondents

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

Present: Mr.Munish Gupta, Advocate,
for the petitioners.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.A.S.Gill, Advocate,
for respondent Nos.6, 7 and 13.

AMIT RAWAL, J. (Oral)

The petitioners are the applicants, who had sought the partition of the land measuring 38K-7M. Concededly, the petitioners, four in number, have 1/4th, 1/4th, 1/6th and 1/6th share, in all total comes to 1/3rd share of the total holding 38K-7M, whereas the respondents are in possession of the rest of the area.

Mr.Munish Gupta, learned counsel representing the petitioners submits that the mode of partition was suggested in the manner that the possession shall be kept intact. However, in case necessity arose, the same shall be disturbed and with regard to land/area close to the road, the partition shall be made in equal proportion. Against the aforementioned mode of partition, the respondents filed objections, which were dismissed

by the Assistant Collector. However, the appeal preferred before the Collector was also dismissed, but the Commissioner without taking into consideration all the aspects have remanded the matter back, which was assailed before the Financial Commissioner resulting into dismissal of the revision and hence the present writ petition.

He further submits that the mode of partition is liable to be set-aside, for, the respondents are in possession of excess share and, therefore, the possession has to be disturbed. Possession cannot remain intact. Essentially, the dispute is with regard to the possession.

Per contra, Mr.A.S.Gill, learned counsel representing respondent Nos.6, 7 and 13 submits that his clients are in possession of the area for the last more than fifty years. It is in this backdrop of the matter, clauses 3 and 4 of the mode of partition as indicated from the vernacular were required to be modified, but the objections were erroneously dismissed by the Assistant Collector, affirmed by the Collector, but the revision was accepted by the Commissioner and, thus, urges this Court for upholding the order as the matter had been remanded back.

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

The simple logic and the calculation to be seen is in respect of 38K-7M of land. The petitioners are having 1/3rd share and the old possession of fifty years at the hands of private respondents cannot be looked into. It has to be disturbed in view of the suggestion given by the mode of partition. It is in this background, the Assistant Collector dismissed the objections and the order was affirmed by the Collector, but the Commissioner has not taken into consideration the aspect in respect of the

possession, therefore, the plea of Mr.Gill of remaining in possession for the last more than fifty years falls flat to the natural logic. The respondents are having possession of more area than their share. The same has to be disturbed. Remanding the matter back would, in my view, be a farcical exercise.

Resultantly, the impugned orders of the Commissioner and the Financial Commissioner dismissing the revisions at the instance of the petitioners are set-aside. Order of the Assistant Collector preparing the mode of partition is upheld.

Writ petition stands disposed of.

March 23, 2017
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No