

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

Civil Writ Petition No.12008 of 2015
Date of Decision: March 17, 2017

Chaman Lal

...Petitioner

Versus

Financial Commissioner, Punjab & others

...Respondents

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

Present: Mr.Deepak Verma, Advocate,
for the petitioner.

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

Mr.Arvind Kashyap, Advocate,
for respondent No.4.

AMIT RAWAL, J. (Oral)

Petitioner, being an applicant in the partition proceedings, having purchased the share from Jasso, a co-sharer, is aggrieved of the order of the Financial Commissioner, whereby the matter has been remitted back.

Mr.Deepak Verma, learned counsel for the petitioner submits that the total area of land is 20K-4M, whereas the share of the petitioner comes to 3K-7M vis-a-vis share of respondent No.4, namely, Bua Singh 6K-17M, being in excess possession of 9K-12M and, therefore, the possession has to be disturbed. This is precisely what was done by the Assistant Collector Ist Grade and the Commissioner. However, the Financial Commissioner has not appreciated the aforementioned fact and,

therefore, the order of remand is totally fallacious. He has drawn the attention of this Court to the judgment and decree dated 4.4.1992 rendered in Civil Suit No.236 of 30.9.1988, whereby the suit instituted at the instance of Bua Singh and others was decreed to the effect that they are owners in possession to the extent of 2/3 share in the land. However, the Lower Appellate Court has modified the aforementioned judgment and decree vide judgment and decree dated 7.12.1993 in the following manner:-

“This appeal coming on for hearing on the 7th day of Day of December, 1993, before me (A.C.Aggarwal, Addl.District Judge), Gurdaspur, in the presence of Shri V.C.Nanda, Advocate/counsel for the appellants and Shri Baldev Singh Thakar, Advocate/counsel for the respondent.

It is ordered that the appeal is partly accepted. The impugned judgment and decree are set aside and suit of the plaintiffs is decreed for declaration to the effect that the plaintiffs are owners in possession of suit land to the extent of 2/3rd share. Further plaintiff Jhujhar Singh is granted decree for permanent injunction restraining the defendant from interfering in his possession over land bearing khasra No.12/6/1 (6-6), 7/1 (0-7) against the defendant. Further Bua Singh plaintiff is granted decree for permanent injunction restraining the defendant from interfering in his possession of land bearing khasra No.6/13 (8-0), 14/1/1 (0-17) and 12/5/2 (0-15) forcibly and without due course of law. The parties are left to bear their own costs.

The costs of this appeal as detailed below amounting to Rs.x are to be paid by (parties) are left to bear their own costs.

The costs of the original suit are to be paid by as ordered earlier.

Given under my hand and the seal of the Court this 7th day of December, 1993.”

Mr.Arvind Kashyap, learned counsel for respondent No.4 submits that no doubt private respondent No.4 is also a co-sharer, but as a tenant of Jasso of the excess share and, therefore, his status would be of a tenant. The remedy, if any, for the petitioner is to seek the eviction in accordance with law, though he is in agreement that it would be a farcical exercise in remanding the matter back to the authorities for the purpose of assessing the possession of the parties. The factum of co-owner has not been denied and, much less reflected in the judgment and decree indicated above.

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

The factum of a co-owner being a tenant of another co-owner cannot be in dispute. The jamabandi placed on record as Annexure R-4/4 shows the status of the petitioner as a gair marusi on land measuring 3K-07M, i.e., in excess of what his share, i.e., 6K-17M. The remedy, in my view, for the petitioner is to seek eviction as per the grounds referred to in Section 9 of the Punjab Security of Land Tenures Act, 1953 (Act No.10 of 1953).

In my view, the Financial Commissioner should not have remanded the matter back as the remand would not serve the purpose, for, the possession of the respondent, being tenant of a co-sharer, namely, Jasso would be of a tenant even despite the partition proceedings having culminated into final partition order. Resultantly, the order of the Financial Commissioner is modified. Since the possession of respondent No.4 has been kept intact by virtue of the judgment and decree, the same can be taken by resorting to due process of law. The petitioner shall be at liberty to take the remedy in accordance with law as indicated above.

With the aforementioned modification, while upholding the order of partition, writ petition stands disposed of.

March 17, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No