IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.13369 of 2014
Date of decision : 10.03.2017

Surinder Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

2. CWP No.13370 of 2014
Date of decision : 10.03.2017

Surinder Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate for the petitioner.

Mr. T.N. Sarup, Addl. A.G. Punjab.

Mr. Surinder Garg, Advocate for respondent Nos.6 to 17.

Mr. Jaspreet Singh, Advocate for Nagar Council.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two writ petitions.

The petitioner is aggrieved of the impugned order rendered by the Financial Commissioner, whereby application for partition at the instance of the private respondents of khewat No.7 at page No.42 of the paper book regarding half share of 53 kanals 18 marlas, has been allowed.

Mr. Arun Jain, learned Senior Advocate assisted by Mr.

Kushagra Mahajan, learned counsel appearing on behalf of the petitioner submits that after consolidation, petitioner had become the owner of the land measuring 13 kanals 4 marlas of same very khewat by virtue of sale deed dated 27.04.1959, whereas private respondents vide sale deed dated 29.05.2001 had purchased half share of 53 kanals 18 marlas of khewat. Since, there was threat of interference of dispossession, civil suit was filed which was decreed on 05.08.2005 (Annexure P-4). There was categoric pleading with regard to raising of construction which was not emphatically denied. In khasra girdawri, the nature of the land had been shown as *gair mumkin*, thus, remedy, if any for the private respondents to seek partition was with the Civil Court and not Revenue Court. Even Civil Court while granting the injunction decree had kept the question of partition open. The Assistant Collector vide order dated 31.03.2005 (Annexure P-6) dismissed the application whereas Financial Commissioner has accepted the application and remanded the case back to the Tehsildar.

He further submits that jurisdiction of the Assistant Collector is barred in view of ratio decidendi culled out by Division Bench of this Court in *Surjit Singh Vs. Financial Commissioner, Appeals-II, Punjab and others, decision dated 07.01.2011 passed in LPA No.707 of 2009*.

Mr. Surinder Garg, learned counsel appearing on behalf of respondent Nos.6 to 17 submits that in khasra girdawri, nature and character of the land has been shown as nehri and, therefore, it would not be falling within the expression of *gair mumkin* and thus, jurisdiction of the Civil Court was ex facie barred. Orders under challenge are perfectly legal and justified and cannot be interfered under Article 226 until and unless there is gross illegality. Similar is the arguments of counsel for the State.

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

On going through the record and paper book, particularly the suit, whereas pleadings of the parties have been reflected, there is specific pleading with regard to the construction of three shops and possession thereof on behalf of petitioner-plaintiff, therein, which has not been denied. Khasra girdawri also reveals the nature and character of land as *gair mumkin*. The Certificate given by the Canal Authorities shows that irrigation had been stopped year back, in essence, it is abadi area. For abadi area, remedy to grant the partition is of Civil Court, in view of ratio decidendi culled out by judgment cited above. Relevant para of the same reads thus:-

> *"It is true that the agricultural land, which is part of an estate, which has been defined under the Land Revenue Act, cannot be partitioned by the Civil Court in view of Section 158(2) of the said Act. But, when the agricultural land before partition loses its nature as such by the acts of the parties, particularly, who is seeking partition, then such land cannot be partitioned by the revenue Court. During the partition before the Revenue Officer, a co-sharer can raise an objection that the land, which has been shown in the revenue record as agricultural and assessed to land revenue, should not be partitioned as the same due to the acts of the other co-sharer, who is seeking partition, loses its nature as an agricultural land. Exactly this thing has happened in the present case and by taking into consideration the subsequent development and the acts of the appellant himself, the revenue Court refused to*

partition the land with liberty to the appellant to seek the remedy of partition before the Civil Court. In Auja Singh's case (supra), cited by the learned counsel for the appellant, some observations have been made by the Division Bench of this Court which do not support the case of the appellant, rather those observations support the case of the respondent.

These observations read as under:-

> *"No doubt, if a particular property is a abadi land and does not fall under the definition of land, the revenue authorities have no jurisdiction to partition the same but in this case, there is no evidence to prove that at the time the land in dispute was ordered to be partitioned by the Revenue Officer, it was abadi land and was not agricultural land. The order of partition was passed by the Revenue Officer on 22.9.1970, Exhibit D11. The suit land at that time was entered in the revenue papers and it was assessed to land revenue. So, apparently the Revenue Officer, who partitioned the land, had the jurisdiction to partition the same and as such, the order of partition is valid. Before this order could be held to be invalid, the plaintiff, we think, was required to produce evidence which could show that* ***at the time the order of partition was passed, the suit land was not being used for agricultural purposes, but was being used as abadi land****. There is, however, no evidence in this behalf nor any such evidence was referred to by the learned counsel for the appellant. Learned counsel for the appellant-plaintiff has simply tried to press into service the written statement filed by defendant No.1. No doubt, defendant No.1 in his written statement alleged that the installations and structures on the suit land raised by defendant No.1 were existing for the last 20*

> *years, but this averment made by defendant No.1 was not binding on defendant No.2 who had raised the plea that the suit land had already been partitioned. So, qua defendant No.2, the plaintiff cannot take advantage of any averment made in the written statement filed by defendant No.1. The plaintiff was required to produce some evidence* ***which could show that at the time the suit land was ordered to be partitioned, it was no more an agricultural land, but was being used as abadi land****." (Emphasis Added)"*

For the reasons aforementioned, orders under challenge are not sustainable i.e. of Collector, Financial Commissioner and Commissioner, whereas, Order of Assistant Collector is upheld.

With the aforementioned observations, present writ petitions are allowed.

However, this order of mine shall not prevent the respondents to seek the partition by filing a civil suit.

Order dated 15.04.2014 (Annexure P-11) passed by Financial Commissioner-respondent No.2 in CWP No.13370 of 2014 is hereby quashed.

10.03.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**