

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

CWP No.13278 of 2016

Date of decision : 23.01.2017

Dharminder Singh

...Petitioner

Versus

Financial Commissioner (Appeals-I), Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. A.P. Kaushal, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned orders (Annexure P-11 and P-12), whereby his grievance qua providing of path resulting into demolition of the *kotha* has not been adhered to.

Mr. A.P. Kaushal, learned counsel appearing on behalf of petitioner submits that dispute is amongst the brothers. Qua mode of partition, objection for partition of trees, path and *Kotha* had been taken but the same was not dealt with. First objection is dated 08.02.2008. However, second one is dated 08.12.2008 yet while conducting demarcation of the *Kotha*, no provision of path has been provided. Authorities below have erroneously arrived at findings that *kotha*/small room where tubewell bore is there, had been raised during the pendency of the partition proceedings. He has drawn the attention of this Court to the site plan annexed at page No.38-A of the paper book to demonstrate the aforementioned facts, thus, impugned orders (Annexures P-10 to P-13) are not sustainable in the eyes of law.

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

Though, Collector in its order dated 17.11.2009 (Annexure P-11) while dismissing the appeal has directed the Assistant Collector, Grade-I, Mansa with regard to the provision of partition of the trees as suggested in the mode of partition but declined to interfere qua plea of *kotha*/room. It was incumbent upon the petitioner to establish through documentary evidence/revenue regarding the existence of *kotha*. No khasra girdawari or any other evidence, has been placed on record qua existence of *kotha*, resulting into demolition of the same while providing path from his land. Site plan also do not reflects the existence of *kotha*. In the absence of evidence, authorities below have rightly formed the opinion that *kotha* has been intentionally raised qua obstruction/hindrances in the implementation of the mode of partition being suggested particularly of other parties who are none else but the brothers.

For the reasons aforementioned, I do not find any illegality and perversity in the orders under challenge.

No ground for interference is made out.

Accordingly, present writ petition is dismissed.

Petitioner shall be at liberty to substantiate his claim qua partition of the trees in view of the order of Collector.

23.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No