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

CWP-10379-2017

Date of decision : 15.05.2017

Shivdev Pal Kaur

... Petitioner(s)

Versus

Financial Commissioner (Appeals), Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner(s).

Mr. Sherry K. Singla, Advocate
for the respondent(s)/Caveator(s).

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned orders dated 02.07.2015 (Annexure P-9) passed by respondent No.4, 21.12.2016 (Annexure P-10) of respondent No.2, whereby the question of title raised by the petitioner, according to him, has not been decided and as well as the order dated 20.03.2017 (Annexure P-16).

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the petitioner submits that Amritpreet Singh, during his life-time, had moved an application seeking partition of the property in respect of land left by his father Harchand Singh. The contested respondent(s) was Harpreet Singh, the other brother. In that application, a specific objection was filed regarding the holding of the partition proceedings on the premise that there was a question of title. The aforementioned objection was dismissed. The

revision preferred before the learned Collector was accepted vide order dated 18.12.2009. Harpreet Singh instead of pursuing the partition application, filed another application for partition regarding land measuring 66 bighas 18 biswas. In the partition application filed by the petitioner before the Assistant Collector, an objection was filed that since the civil suit was pending, therefore, the matter be stayed. Vide order dated 02.07.2015 (Annexure P-9), the District Revenue Officer-cum-Nodal Officer ordered for continuation of the partition proceedings. It is, in this aspect of the matter, the petitioner preferred an appeal before the learned Collector, but the same vide order dated 29.02.2016 has erroneously been dismissed. The petitioner filed a revision before the Commissioner, who without giving any opportunity of hearing and issuing notice, vide order dated 21.12.2016 (Annexure P-10) dismissed the revision *in limine*. In the revision petition preferred before the Financial Commissioner, Punjab, the Financial Commissioner, vide order dated 16.01.2017 stayed the further partition proceedings, but later on, vide impugned order dated 20.03.2017 (Annexure P-16), was vacated and the matter has been remanded back to the District Revenue Officer for continuation of the partition proceedings. The Financial Commissioner has not assigned any reasons, but simply dismissed the application for stay by holding that the partition proceedings have to be initiated owing to the fact that there was no order of adjourning the proceedings *sine die*.

He further submits that the litigation *inter se* at the instance of the LR of Amritpreet Singh is also pending for adjudication and it is, in this aspect of the matter, the partition proceedings are required to be stayed, much less, second partition application at the instance of Harpreet Singh is

not maintainable, thus, urges this Court for setting aside the impugned orders, under challenge.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the respondent(s)-Caveator(s) has brought to the notice of this Court that in the partition proceedings filed by the petitioner, memorandum of partition was prepared and against that, an objection was filed, but the same was rejected vide order dated 18.11.2015. Even against the preparation of *Naksha be*, a revision filed i.e. RR No.107 of 2016 before the Commissioner, Patiala Division, Patiala, has been dismissed vide order dated 29.11.2016. The aforementioned facts have not been disclosed before this Court, therefore, the writ petition is liable to be dismissed.

He further submits that the Civil Suit filed by the petitioner qua title has been dismissed in default on 17.11.2015, but the application for restoration of the suit is still pending for adjudication.

He further submits that the filing of the writ petition is nothing, but an attempt to delay the adjudication of the partition application by adopting all possible means owing to the dispute amongst the LRs of Amritpreet Singh, which the petitioner has nothing to do with, as her share has to be divided with regard to the estate of her father, which is fallen to Amritpreet Singh and Harpreet Singh, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sanjiv Gupta, for, the factum of availing the remedy against the dismissal of the objections qua mode of partition and preparation of *Naksha be* has not been disclosed. It is an attempt to tire out the

respondent(s) from proceeding with the application for partition, though the suit had been dismissed in default, though the application for restoration is pending. All these factors proved the intentional and deliberate attempt on behalf of the petitioner to delay the adjudication of the partition proceedings. This Court while sitting on this roster has witnessed to such type of litigants, indulging into delaying tactics. The order of the Financial Commissioner vacating the stay, in my view, would not affect the right of the petitioner as the petitioner had already availed the remedy of filing objections qua mode of partition and *Naksha be*. The filing of a suit at the instance of LRs of Amritpreet Singh is nothing to do with the shares of the private respondent(s) as Amritpreet Singh and Harpreet Singh are two share-holders, whose share-holding has to be divided. Whatever the share would fall to Amritpreet Singh would be equally distributed among the LRs. The chronology of the facts as disclosed by Mr. Gupta, leaves no manner of doubt that the petitioner had been indulging into all possible impediment in the memorandum of partition.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned orders, under challenge, much less, no ground is made out for interference and accordingly, the present writ petition is dismissed with the cost of ₹ 10,000/-.

15.05.2017

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No