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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15188-2015

Date of decision : 26.04.2017

Satpal

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Indresh Goel, Addl. A.G., Haryana.

Mr. Amarjit Markan, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The petitioner-Satpal son of Shri Ramdia has filed the present writ petition for issuance of a writ in the nature of *certiorari* for setting aside the impugned order dated 06.04.2015 (Annexure P-9) passed by respondent No.1, Sanad Taksim dated 20.06.2013 (Annexure P-7) and as well as *ex parte* proceedings/order dated 16.11.2012 passed by respondent No.2.

Mr. Vikram Singh, learned counsel appearing on behalf of the petitioner submits that respondent No.3 on 14.12.2007 filed an application for partition. The petitioner appeared in the partition proceedings and filed the written statement. Thereafter the said application was dismissed vide order dated 06.04.2010. However, without disclosing the fact of dismissal

of the previous partition application, on 20.12.2011, respondent filed another application and in those proceedings, service upon the petitioner was shown to be completed and without complying with the provisions of law, proceeded the petitioner *ex parte* vide order dated 16.11.2012. On 09.04.2013 mode of partition was prepared and thereafter, on 10.05.2013, *Naksha Be* was sanctioned. However, on 20.05.2013, respondent No.3 made a declaration of the partition of the land and possession thereof. The petitioner came to know about the aforementioned proceedings, resultantly, moved an application for inspection on 21.05.2013 and on realizing the same, came to know that the petitioner was proceeded *ex parte*. Thereafter, he moved an application for setting aside the *ex parte* order, but respondent No.2 refused to entertain the application, resultantly, ROR No.331 of 2012-13 preferred has been dismissed vide impugned order.

He further submits that as per the zimini order (Annexure P-2), no service upon the petitioner has been effected. The Courts below have totally ignored the fact that respondent No.3 had procured the report of the service and also got presence of the petitioner marked by forging the signatures of the petitioner, in essence, by producing the other person in his place. The authorities below have also not noticed the fact that the entire proceedings of the partition are the result of fraud. In the process of mode of partition, respondent No.3 got the land more valuable and prime land adjoining to G.T. Road, as per his own wishes, thus, urges this Court for setting aside the impugned orders. under challenge.

Per contra, Mr. Amarjit Markan, learned counsel appearing on behalf of private respondent No.3 submits that as per *Naksha zeem* (Annexure R-2), there is equal distribution of the land between the co-

sharers. The land shown in the yellow colour was allotted to the petitioner and green colour to the answering respondent(s), therefore, no prejudice has been caused to the petitioner, in essence, though the petitioner had appeared intentionally absented, the petitioner is bereft of any of the grounds showing the prejudice being caused to the mode of partition, *Naksha be*, much less, sanad taksim. In fact, the petitioner on 18.09.2012 and 19.10.2012 had personally appeared, but thereafter, he was proceeded *ex parte* on 16.11.2012. There is no provision in the Act of disclosing of the earlier petition. In fact Rahul adult son of the petitioner had received the summons on 22.01.2012 for appearance on 27.01.2012 before the Assistant Collector, Grade-II, Nilokheri, but the petitioner did not appear on 27.01.2012 and thereafter, separate summons were issued to the petitioner for 18.09.2012, but his major son refused to receive the summons on 11.09.2012 as his father was not available. Consequently, the petitioner appeared on 18.09.2012 before the Assistant Collector Grade-II, Nilokheri, in pursuance to the said summons and the matter was adjourned to 19.10.2012. He also appeared in person on 19.10.2012 and the case was adjourned to 16.11.2012 for filing the written statement, but did not appear, resultantly, *ex parte* proceedings, 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.

On going through the zimini orders, particularly vernacular of the same, where the signature of the petitioner as Satpal has been mentioned and on comparing the signature with the affidavit filed with the writ petition, it is of an identical person. This exercise had been done by taking into considerations the provisions of Section 45 of the Indian Evidence Act

which reads as under:-

"45. Opinions of experts

When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts."

This Court called upon Mr. Vikram Singh to express the grievance/prejudice with regard to the mode of partition and in this regard he has drawn the attention of this Court to the site plan (Annexure P-8) to contend that the land of the petitioner has been given in two taks.

On going through the aforementioned site plan, the red portion has been given to the petitioner/Satpal, green to Mahipal, Orange to Babu and purple is passage. On going through the aforementioned *aks shajra*, placed on record by the petitioner, there is equal distribution of the land as everyone has got the land in equal proportion towards the road. All three different taks have been given, thus, plea of the petitioner having been taken for setting aside the *ex parte* proceedings would be meaningless and it is an attempt to tire out the other respondents, rather to holding on premium so that passage of time, the private respondent(s) may not come into pressure. This fact had been noticed by the Financial Commissioner *in extenso*. No explanation has come forth with regard to the appending of the signatures. If at all a person, who had actually not appended his signatures, would not sit idle, but would take all possible efforts in lodging an FIR, much less, initiating the proceedings under Section 340 of the Criminal

Procedure Code, having failed to do so, presumption drawn is that he had appeared. Such conduct of the petitioner cannot be go un-noticed.

Keeping in view the aforementioned facts, the impugned orders under challenge, do not call for interference being perfectly legal and justified, much less, do not fall within the realm of 'Judicial Review' and accordingly, the same are upheld.

Resultantly, the present writ petition stands dismissed.

26.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No