

CWP No.16427 of 2014

[1]

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

**CWP No.16427 of 2014
Date of decision:26.07.2017**

Krishan

...Petitioner

Versus

The Assistant Collector IInd Grade, Hansi and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Ms. Tanisha Peshawari, DAG, Haryana.

Mr. Shalender Mohan, Advocate,
for respondent no.5.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for setting aside the orders passed by the revenue authorities on an application filed by respondent no.5 under Section 111 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the "Act") for seeking separation of his khewat.

Counsel for the petitioner submits that the petitioner, who was arrayed as respondent no.3 in the partition application, was not served. In this regard, he has referred to the *zimni* orders having been passed by the Assistant Collector 2nd Grade, Hansi starting from 08.08.2005 till 11.03.2008. It is recorded in the order dated 08.11.2005 that the applicant (respondent no.5 herein) did not deposit the process fee for the purpose of summoning of respondents no.1 to 7 and 9 in the application, including the petitioner. On 22.11.2005, the Assistant Collector 2nd Grade passed the order that again the applicant-respondent no.5 has prayed for time to deposit the process fee and

the case was adjourned to 30.11.2005 for the purpose of summoning of respondents no.1 to 7 and 9 in the application. However, on 30.11.2005, the order was recorded to the effect that “*counsel for the parties are present. Respondents no.1 to 7 and 9 were summoned through registered cover but despite sending the registered cover, they have not come present. The Court time is over. Now file be presented for proclamation on 20.12.2005*”. Thereafter, the proclamation was done and the petitioner was proceeded against *ex-parte*.

When the petitioner filed application for joining the partition proceedings, respondent no.5 suffered a statement on 27.02.2008 that he has no objection if the petitioner is allowed to join the partition proceedings from the said date.

Counsel for the petitioner submits that by that time, the mode of partition was proposed and prepared on 19.10.2006 in his absence and *Naksha-Be* was also called for. It is submitted that as per the mode of partition, no share was given to the petitioner, therefore, he had filed objections to the preparation of *Naksha-Be* but all the authorities rejected the case of the petitioner only on the ground that he wants to prolong the partition proceedings.

Counsel for the petitioner submits that in case of partition, all the co-sharers should have been given proper opportunity to seek partition in accordance with law but the Assistant Collector 2nd Grade had only passed the order for summoning of the petitioner on 22.11.2005, after depositing the process fee by the applicant-respondent no.5, and there is no order on 22.11.2005 for issuance of registered cover for the purpose of service upon the petitioner. However, only after 7 days i.e. on 30.11.2005, the Assistant

Collector 2nd Grade had passed the order that the registered cover has not been served upon the petitioner, though no such order of service through registered cover was passed by him on the last date of hearing on 22.11.2005. It is submitted that the *manadi* was also not conducted by the Chowkidar but by his son.

Be that as it may, the very fact that respondent no.5, applicant in the partition application, had conceded by suffering a statement on 27.02.2008 that he had no objection if the petitioner is allowed to join the partition proceedings from the said date is enough for this Court to hold that the petitioner deserves to be associated in the partition proceedings from the date when the application was filed by respondent no.5 so that he may also file his reply to the application and the mode of partition could be proposed and accepted only after considering his reply/objections.

With these observations, the present writ petition is hereby allowed, the entire partition proceedings initiated on the application filed by respondent no.5 along with the impugned orders are set aside and the matter is remanded back to the Assistant Collector 2nd Grade, Hansi, to allow the petitioner to file his reply to the application filed by respondent no.5 for seeking partition and then proceed in the matter *de-novo*, in accordance with law.

The parties are directed to appear before the Assistant Collector 2nd Grade, Hansi on 08.08.2017.

July 26, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No