IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.19335 of 2013
Date of decision : 17.02.2017

Rattan Singh and others ...Petitioners

Versus

Financial Commissioner and others

...Respondents

2. CWP No.19358 of 2013
Date of decision : 17.02.2017

Joginder Singh and others ...Petitioners

Versus

Financial Commissioner and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Vijay S. Kajla, Advocate for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. H.R. Bhardwaj, Advocate for respondent Nos.5, 7 and 8.

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AMIT RAWAL, J. (Oral)

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

The petitioners being successors-in-interest of Amar Singh son of Jagir Singh are aggrieved of the impugned orders dated 08.05.2002 (Annexure P-10) by Assistant Collector, 06.11.2003 (Annexure P-12) by the Collector, 30.01.2007 (Annexure P-14) by the Commissioner, 05.11.2012 (Annexure P-17) by the Financial Commissioner, whereby application of the respondent Nos.5 to 8 successors in interest of Swaran Singh son of Jagir Singh for partition of the land, has been accepted.

Mr. Ashish Aggarwal, learned Sr. Counsel assisted by Mr. Vijay S. Kajla, learned counsel appearing on behalf of petitioners submits that Jagir Singh had three sons namely Amar Singh, Swaran Singh and Chain Singh. On 24.11.1983, Chain Singh son of Jagir Singh i.e. one of the brother moved an application under Section 111 of the Punjab Land Revenue Act seeking partition of the property. Accordingly, application was allowed and mode of partition was suggested. Resultantly, Naksha 'Be' on 22.01.1986 (Annexure P-4) was passed and thereafter, Naksha Jeem (Annexure P-5) was also prepared. On 14.08.1986, Sanad Takseem was passed. On 04.11.1986 (Annexure P-7), application for execution of the aforementioned decree was moved by Swaran Singh, but nothing happened.

He submits that all the three brothers vide Annexure P-1, P-2 and P-3, at the time of initial partition proceedings suffered a statement regarding the respective possession for the purpose of partition be kept intact. Since parties are continuing in possession, therefore, partition is deemed to have been effected. In fact, there was no occasion for moving application under Section 122 of the Act for seeking partition of immovable property owing to the statements Annexures P-1 to P-3, thus, provision of Section 122 would not strictly apply in the facts and circumstances of the case. Since parties remained in possession after passing of the order. It was only entry in the revenue record which was required to be reflected, therefore, application on 27.12.2001 at the instance of respondent Nos.5 to 8 ought not to have been entertained resulting into passing of the impugned orders. In support of his contention, he has relied upon judgment rendered by the Coordinate Bench of this Court in *Swaran Singh Vs. Punjab State and ors., 2014(5) RCR (Civil) 3.*

He submits that remedy, if any, for the private respondents is to file civil suit and thus urges this Court for setting aside the orders under challenge.

Mr. H.R. Bhardwaj, learned counsel appearing on behalf of respondent Nos.5, 7 and 8 submits that as per the provision of Section 122 of the Act, period of three years had elapsed and on having left no other option, the application (Annexure P-7) was filed. No prejudice and harm has been caused to the parties as the partition had been effected in the same terms as it was passed in the previous proceedings but does not dispute the ratio decidendi culled out in judgment cited (Supra) and submits that even if the respondents availed the remedy of civil suit, suit would be barred by law of limitation, in essence, petitioners would take objection of limitation. Similar is the arguments of Mr. Sandeep Singh Mann, Sr. DAG, Haryana and thus urges this Court for dismissal of the present writ petition.

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

Para Nos.12, 13, 16, 17 of the judgment cited (Supra), reads as under:-

> *"12. There is no dispute that the land in dispute has already been partitioned between the predecessors-in-interest of the parties on 06.12.1983. Sanad Taqsim was prepared on a stamp paper of L 15/-. The land so partitioned has not been reflected in the revenue record*

and no such application was given to the revenue authorities in terms of Section 122 of the Act.

13. The question thus arise is as to "whether fresh application for partition is maintainable at the instance of successors-in-interest for the land which has earlier been got partitioned by their predecessors-in-interest who have not made any application in terms of Section 122 of the Act to the revenue authorities for possession though as per the earlier partition they continued to be in their respective possession".

16. As per the scheme of the Act, after the application for partition is filed, any of the co-sharers who have been joined as respondent can file objection regarding question of title which may be decided by the Revenue Officer himself or direct the parties to get it decided from the Civil Court and keep the partition proceedings in abeyance until such question of title is decided but if the Revenue Officer comes to the conclusion that no question of title is involved, he will ask the Patwari to prepare a Naksha of the land to be partitioned and the share of the persons asking partition called Naksha Alif. It would contain details of the possession of the co-sharers asking for partition, excess or less area cultivated by that co-sharer. Naksha Alif can be objected to by the parties concerned and after disposing of those objections, mode of partition is framed which can be challenged by any parties to the partition proceedings by way of appeal under Section 118(2) of the Act. If the mode of partition is not challenged, it becomes final and Revenue Officer would get the share separated of the joint holding according to the mode of partition and a Naksha is prepared called Naksha- Be, which can still further be challenged by way of appeal on the ground that it is not in accordance with the mode of partition. However, when

Naksha-Be becomes final, it is deemed to be sanctioned and the order of sanction is known as Naksha `Zeem' which is communicated to the Patwari, Kanoongo and the parties and after the expiry of the period of limitation, instrument of partition is drawn on the stamp paper by the Revenue Officer. The Revenue Officer puts the parties into possession according to the instrument of partition within 3 years from the date of its preparation. In terms of Section 122 of the Act, which clearly says that if an owner is allotted land in partition proceedings, he is entitled to possession and can make an application in this regard to the revenue officer within 3 years for this purpose which shall be extended from the date of the instrument of partition and given effect to that instrument so far it concerns the said applicant as it will be a decree for immovable property. Meaning thereby the Sanad Taqsim (instrument of partition) can be executed by the revenue authorities as a decree for the purpose of delivery of possession, resorting to the provisions of the Code of Civil Procedure, 1908, which relates to a decree for possession, but in the present case, the situation is altogether different because it has been recorded by the Assistant Collector 1st Grade and the Collector and has not been disputed by the respondents that the predecessors-in-interest of the parties to this case were already in possession of their respective shares when instrument of partition was prepared, therefore, there was no occasion for them to file any application to the revenue authorities for the purpose of delivery of possession of the property allotted on partition. Had the property not been allotted according to the partition carried out by the Assistant Collector 1st Grade on 06.12.1983 and the application was not filed within the prescribed period of 3 years counted from the date of *preparation of mode of partition, the respondents could have challenged the jurisdiction of the revenue authorities for executing the instrument of partition as a decree for the purpose of delivery of possession of the allotted land in partition. No such case is made out in the present case because the predecessors-in-interest of the parties to the lis were already in their respective cultivating possession, therefore, the question which has been posed here-in-above is answered in favour of the petitioner that Section 122 of the Act is not attracted in a case where the partition proceedings have been carried out in which one of the mode of partition was that the possession of the parties has to be kept intact and once the parties are in their respective possession, they need not to file an application for delivery of possession of the land so allotted in partition proceedings.*

17. However, in the present case, the private respondents filed fresh application for partition in which they had prayed for partition of the land on the basis of its value which can not be taken up after the partition has already been concluded on 06.12.1983 as it may be reopening of the said partition proceedings which had become final between the parties. If the effect of the partition is not being reflected in the Jamabandi, the parties to this case can still move an application to the concerned revenue authorities for the purpose of recording this fact in the revenue record on the basis of the Sanad Taqsim which would indicate their separate Khewats and their specific Khasra Numbers in the joint holding."

On perusal of the aforementioned paras and the facts and circumstances noticed above, identically apply to the present case, in essence, application moved under Section 122 of the Punjab Land Revenue

Act remain undecided. It was not a case of disturbance of the possession, whereas application was required to be moved for taking the possession. Once parties to the lis in the previous round of partition proceedings had suffered the statement for keeping possession intact, even after partition proceedings, no separate application was/is required to be moved under Section 122 of the Act. The only remedy is to seek correction or at the best to file civil suit in view of ratio decidendi culled out in the judgment by Coordinate Bench of this Court in *Karamjit Singh Vs. Financial Commissioner, Revenue, Punjab and others, decision dated 05.10.2015 rendered in CWP No.21235 of 2015.* The apprehension of Mr. Bhardwaj, Advocate with regard to the limitation, in my view, is misplaced as there is no limitation for seeking the relief on the basis of the title, in essence, private respondents are at liberty to move civil Court for seeking the execution of the previous partition proceedings, in essence, getting a declaration qua their respective shares.

With the aforementioned observation, impugned orders, in my view, are not sustainable and have not been passed in lieu of the observations made hereinabove as well as law laid down in Swaran Singh's case (Supra). Resultantly, same are hereby set aside with liberty aforementioned.

Both the writ petition stands allowed.

17.02.2017 **(AMIT RAWAL)**
pawan **JUDGE**

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

Whether reportable:- **Yes/No**