

232

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16736-2015

Date of decision : 08.05.2017

Arvinder Kaur and another

... Petitioner(s)

Versus

Financial Commissioner, Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sherry K. Singla, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

None for respondent No.5.

AMIT RAWAL, J. (ORAL)

The petitioners have challenged the partition proceedings initiated by the private respondent(s) before the revenue Court under Section 111 of the Punjab Land Revenue Act, 1887 on the ground that as per the jamabandi (Annexure P-8), the entire land is *gair mumkin* plot and it falls within the municipal limits and therefore, even if the part of the land is agriculture and other one is constructed, the revenue court would not have jurisdiction in view of the *ratio decidendi* culled out by the this Court in **“Surjiit Singh V/s Financial Commissioner (Appeals-II, Punjab and others” 2012 (5) RCR (Civil) 683, “Ujjagar Singh and others V/s Malkiat Singh and others” 2014 (4) RCR (Civil) 308, and “Lal Chand V/s Sunil Kumar and others” 2014 (2) LAR 606.**

He further submits that the remedy, if any, for the private respondent(s) is to file a Civil Suit.

The respondent No.5 is being represented by Mr. A.S. Narang, learned counsel, who had put in appearance long-time back, but there is no representation on his behalf, accordingly, I proceed to decide the matter on merits.

I have heard the learned counsel for the petitioners and appraised the paper book while in agreement with the *ratio decidendi* culled out by the Division Bench of this Court in “**Surjit Singh's**” case (supra), the relevant part of the same reads as under:-

"10. In view of the aforesaid observations made by the Division Bench, in our opinion, in the instant case the revenue authorities were fully justified while coming to the conclusion that with the subsequent wide constructions raised, the land in dispute cannot be partitioned by the revenue Court. By the impugned order, the revenue Court has specifically given liberty to the appellant to seek his remedy for partition of the land before the Civil Court. Therefore, the appellant is not remediless. If he feels that the co-sharers have unequal possession of the joint land or some portion of the land property has not been given the passage, he is not remediless. He can approach the Civil Court for seeking partition. Since the revenue Court itself has held that the appellant can approach the Civil Court, the bar created by Section 158(2) of the Land Revenue Act will not come in the way of the appellant.

11. In view of the above, we do not find any merit in the appeal and the same is hereby dismissed."

The proceedings before the revenue courts seeking partition of the land which is partly *abadi* and falling within municipal limits, are

without jurisdiction. Accordingly, the impugned orders dated 13.05.2015 (Annexure P-7), 06.02.2014 (Annexure P-6), 11.02.2009 (Annexure P-5) and 14.08.2008 (Annexure P-4) are hereby set aside.

The parties shall be at liberty to seek the partition of the land by filing a civil suit as the land is falling within the municipal limits of Patiala.

Accordingly, the present writ petition stands allowed.

08.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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