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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18869-2014

Date of decision : 19.04.2017

Dev Raj and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Chander, Advocate for
Mr. Vikas Mehsempuri, Advocate
for the petitioners.

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

Mr. Sanjeev Sharma, Advocate
for respondent No.5.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned order dated 11.12.2013 (Annexure P-21) passed by respondent No.1/Financial Commissioner, whereby the three RORs filed by the petitioners against the three orders of the Commissioner i.e. 06.06.2007 (Annexure P-11), 04.12.2007 (Annexure P-12) and 10.03.2009 (Annexure P-13) have been dismissed.

The grievance of the petitioners in the present writ petition is that somewhere way back in the year 1969, a compromise was effected between the co-sharers i.e. on 15.08.1969 which culminated into final partition on 19.09.1969. Respondent No.5, in the year 1993, moved an

application under Section 111 of the Punjab Land Revenue Act, 1887 (for short 'the 1887 Act') seeking partition of the property, which was objected to on the basis of the previous partition, but the same has been accepted. The respondent(s) assailed the order before the Collector, who after going through the revenue record, allegedly found that the revenue record had shown the joint khata/jointness, in essence, the alleged family settlement was not recorded in the revenue record and set aside the order of the Assistant Collector 1st Grade, Patiala, by remanding the matter back. Three appeals were filed before the Commissioner against the interim orders, resulted into dismissal, vide orders dated 06.06.2007 (Annexure P-11), 04.12.2007 (Annexure P-12) and 10.03.2009 (Annexure P-13). The revisions preferred before the Financial Commissioner also met with the same fate.

He submits that once the compromise has been effected and the previous partition has been proved, the application of respondent No.5 under Section 111 of the 1887 Act, in the year 1993, was not maintainable. In support of his contentions, he relies upon the *ratio decidendi* culled out in the judgments of this Court in “Ajmer Singh V/s Dharam Singh” 2006 (2) RCR (Civil) 541, “Sahib Singh dead (By his legal heirs) V/s The Financial Commissioner, Haryana” 2001 RCR (Civil) 846 and “Harbhajan Singh and others V/s Financial Commissioner, Co-operation, Punjab, Chandigarh and others” 2009 (3) RCR (Civil) 563 to contend that where the parties have been able to prove the oral partition, though, not reflected in the revenue record, that partition has to give an effect to, in essence, mode of partition has to be drawn in the terms of

family arrangement. All these factors were weighed in the mind of the Assistant Collector 1st Grade while dismissing the application, thus, the orders of the Collector, Commissioner and Financial Commissioners are not sustainable in the eyes of law and urges this Court for setting aside the impugned order, under challenge.

Per contra, Mr. Sanjeev Sharma, learned counsel appearing on behalf of respondent No.5 submits that on moving of the application on 03.06.1993, Naksha 'Urur' was approved on 15.01.1994 and mode of partition was approved on 10.04.1995. After approval of Naksha 'Urur', Sanad Taksim (Annexure R-5/1) on 25.01.1999 has been prepared, which has attained finality, therefore, the present application is not maintainable as the remedy, if any, to challenge the sanad taksim under Section 16 (1) of 1887 Act, much less, in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **"Amar Khan and others V/s State of Punjab and others" 2009(1) RCR (Civil) 741**, is to file a revision before the Financial Commissioner. On 04.09.2002, the Assistant Collector 1st Grade ordered that there can be no interference qua implementation of the sanad taksim. The so called compromise was neither acted upon nor ever reflected in the revenue record and as per jamabandi, khata was shown to be joint.

He further submits that the petitioners have been challenging all the possible orders by filing the objections and delayed the partition proceedings, in essence, they are hellbent to tire out the private respondent(s) to arrive at some compromise. The filing of the writ petition is nothing, but an act of greed/aggrandizement.

Learned counsel for respondent No.5 also referred to the order

dated 10.01.2008 (Annexure R-5/2) of the Financial Commissioner, whereby the revision bearing ROR No.1050 against the preparation of Naksha 'Urur' was preferred and the same has been accepted by holding that it should have been prepared in accordance with the mode of partition.

He further submits that even the previous order dated 02.03.2017 of imposition of cost of ₹ 5000/- has not been complied with. This is a reflection of the conduct of the petitioner, which should not be escaped the notice of this Court, thus, urges this Court for dismissal of the present writ petition with exemplary cost.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Naresh Chander, for, the facts as noticed above are no longer in dispute. In order to prevent the repetition of the same, on noticing the facts, it reveals that the petitioners are perpetual litigants in availing the remedies by filing the objections against all possible orders of the authorities i.e. against Naksha 'Urur', mode of partition etc., and having not succeeded, chosen to approach this Court.

It is strange that an application of partition filed in the year 1993 has not culminated into final order. Such type of greedy persons should not have been escaped the notice of the revenue Court and of this Court, much less, the conduct of the petitioner of not complying with the previous order. This Court would have dismissed the writ petition under Section 35 (d) of the Code of Civil Procedure for non-payment of the cost, but the fact remains that the same would have been challenged and there is likelihood of remanding back the matter to this Court and on this premise

this Court called upon the learned counsel for the petitioners to address the arguments on merits.

The *ratio decidendi* culled out by the judgments cited supra would not come into rescue and aid of the petitioners, for, no evidence has been placed on record to establish that the mode of partition or the final partition of 1969 had been effected, in fact, the parties had, in fact, intended or actually put into their respective possession in view of the same. The best possible evidence would have been khasra girdawari. Once the sanad taksim has been prepared, rightly so, the revenue court do not reflect the separate shares, much less, khata continued to be joint. All these factors weighed in the mind of the Collector, while remanding back the matter. It is a classic case where the petitioners have been successful in their ulterior motive to tire out the applicants before the revenue courts seeking partition of the property.

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

In case the cost of ₹ 15,000/- (₹ 10,000/- + ₹ 5,000/- imposed vide order dated 02.03.2017) is not paid, learned counsel for respondent No.5 shall be at liberty to move an appropriate application, which this Court may not constrain to take measures in recovering the cost.

I am sanguine of the fact that the partition application is still pending since 1993, I deem it appropriate to issue a direction to the Assistant Collector 1st Grade to decide the application, after affording 3-3

effective opportunities to the parties as expeditiously as possible preferably within a period of six months from the date of the receipt of the certified copy of this order.

With the aforesaid observations, the present writ petition stands dismissed.

19.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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