

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.19292 of 2017 (O&M)

Date of Decision: 15th September, 2017

Narinder Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . .Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Sanjeev Pandit, Advocate,
for the petitioner.

Mr.Parmidner Singh Kanwar, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the orders passed by the Collector, Commissioner and Financial Commissioner respectively, by which his objection to the revised mode of partition has been declined.

In brief, the facts given in the Court are that the petitioner has filed five applications for seeking partition of the land measuring 176 kanals 7 marlas. The first mode of partition was prepared by the Assistant Collector, 1st Grade, Garhshankar on 8.10.2009. The salient features of which are that there would be less fragmentation, trees would be kept joint, area would be divided in equal shares and the kurrah of the petitioner and his father would be kept joint. The petitioner was not satisfied with the mode of partition thus, he filed objections and vide order dated 18.10.2010, the AC, 1st Grade, Garhshankar revised the mode of partition in which it is provided that the possession would be disturbed if need be, tubewell installed before the filing of the case shall kept joint, the kurrah of the petitioner and his father would be prepared separately and the final decision of the civil Court would be accepted regarding

trees. Still not satisfied, the petitioner filed appeal against the order dated 18.10.2010 before the Collector, Hoshiarpur. The said appeal was dismissed on 29.12.2010 observing that in the mode of partition, provision has been made that the possession would be disturbed if need arises which according to the Collector means that the land adjoining abadi would be given to the co-sharers according to their due shares and the tubewells would be kept joint. The petitioner then filed revision before the Commissioner, Jalandhar Division, Jalandhar, which was dismissed on 28.2.2011 and his revision before the Financial Commissioner was dismissed on 06.05.2016. The petitioner did not take rest and filed a review application before the Financial Commissioner but the said application was also dismissed on 16.2.2017. Thus the petitioner has approached this Court in order to challenge all the orders of the revenue authorities.

During the course of hearing, the petitioner was asked to place on record *aks sajra*. Consequently, he filed an application bearing CM No.12597 of 2017 along with the photocopy of the *aks sajra* which is listed today. The application is allowed and the *aks sajra* is taken on record.

Learned counsel for the petitioner has argued that in *aks sajra* the land shown in blue colour has been entirely given to the respondents though it is near the abadi, therefore, he should have also been given his share in it. He has also submitted that the tubewell installed has to be kept joint and that the trees grown on the land in question should not be cut till the decision of the Civil Court as his RSA is still pending.

On the other hand, Mr.Parminder Singh Kanwar, Advocate, who is though not on caveat but has been allowed to appear on behalf of respondent No.5 to assist the Court.

He has submitted that the petitioner has the minimum share in the land in question as he is the owner of 6 kanals of land only whereas his father is the owner of 40 kanals of land. It is further submitted that his father has not filed any petition to challenge the aforesaid orders as he is satisfied with the partition much less the mode of partition. It is also submitted that as per Clause 17 of the mode of partition dated 8.10.2009, the kurrah of the petitioner shall be kept joint with his father, therefore, he has no ground to challenge the mode of partition which was revised on 18.10.2010 on the ground the land near abadi has not been given to him. It is also submitted that the land shown in green colour in the *aks sajra* (Annexure P-14) is not the land of abadi rather it is the land outside the abadi. It is also submitted that that petitioner has already lost in the Civil Court twice in the suit for permanent injunction restraining respondent No.5 from cutting the trees from the land which has fallen to his share, therefore, pendency of the RSA No.5153 of 2012 is meaningless which has not been argued so far by the petitioner.

In reply, learned counsel for the petitioner has submitted that the RSA is in continuation of the civil suit and till it is decided the respondents cannot cut the trees.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that insofar as the objection of the petitioner about his share in the land, which is allegedly not near the abadi is concerned, there is no provision in the mode of partition rather it is provided in the mode of partition that the kurrah would be kept minimum to minimum. Meaning thereby that there would be less fragmentation. If the petitioner is allowed to have share in the land shown in blue colour then there is fragmentation of the land which is only 6 kanals otherwise that would also be contrary to clause 17 of the mode of partition in which it is provided that the

kurrah of the petitioner would be kept joint with his father. Consequently, the petitioner has a very small share in the land in question which has been kept with his father's share which is much more and his father has not raised any objection to the mode of partition either prepared on 8.10.2009 or on 18.10.2010. It is the petitioner who is contesting this litigation so that the partition proceedings may not come to an end. Insofar as the tubewell is concerned, it has already been mentioned in the order dated 18.10.2010 that the tubewell installed before the filing of case, would be kept joint and since there is no challenge to this condition of the mode of partition by the other side, therefore, it would prevail and insofar as the trees are concerned, it has already been mentioned in the order dated 18.10.2010 by the AC, Ist Grade, Garhshankar that the parties would abide by the division of the Civil Court which means that the parties have to wait for the decision of the RSA as well.

With these observations, the present petition is hereby disposed of.

15th SEPTEMBER, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No