

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

**CWP No.8767 of 2014  
Date of decision:08.03.2017**

Virendra Singh Tomar

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. D.S.Bali, Senior Advocate with  
Ms.Neha Gupta, Advocate  
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Harsh Aggarwal, Advocate  
for respondent No.5.

**AMIT RAWAL J.**

Petitioner – Virendra Singh Tomar son of late Sh. Tara Singh Tomar is in writ petition against his brother, respondent no.5 – Prem Singh Tomar, Lt. Col. (Retd.) in respect of the partition proceedings on the premise that Sh. Tara Singh Tomar, their father had landed property measuring 93 kanals 1 marla in the revenue estate of Dumara, Hadbast No.37, Tehsil Kalayat, District Kaithal and also owned a house No.B-134, Sector 4, Defence Colony at Dehradun. After the demise of their father, petitioner and respondent No.5 came into possession of their respective shares in the agricultural land and house on the basis of the Will dated 03.11.2003 (Annexure P-1).

Mr. D.S.Bali, learned senior counsel assisted by Ms. Ms.Neha Gupta, Advocate appearing on behalf of the petitioner submits that the

aforesaid Will was never challenged in the competent Court of jurisdiction. The petitioner and respondent No.5 enjoyed the possession of their respective shares in agricultural land and as per the Will, the joint status of the parties became separate. However, respondent no.5 moved an application under Section 111 of Punjab Land Revenue Act as applicable to Haryana for seeking the partition of the land situated in village Dumara. The aforementioned partition proceeding was contested on the premise of having taken the possession as per their separate and respective shares in the agricultural land. However, Assistant Collector IInd Grade, Kalayat, vide order dated 22.07.2010 suggested the mode of partition. Clauses 3 and 4 of Mode of Partition contradicted to each other, in essence, once it has been held that the possession may not be disturbed, in the same breadth regarding the superior quality of land, has been ordered to be equally distributed which resulted into disturbance of possession. The objections qua mode of partition were filed. However, respondent no.4, vide order dated 30.12.2010 (Annexure P-3), deleted clause no.4 of the suggestive mode of partition dated 22.07.2010 and ordered for preparation of Naksha Bey (B).

He further submits that respondent No.5 preferred an appeal before the Collector, who vide order dated 01.06.2011 (Annexure P-4) modified the order dated 30.12.2010 passed by Assistant Collector and gave khasra no.30//9, 12/1, situated on the *pacca* metalled road and the petitioner was given khasra no.30//14/2, 17/1/1, 17/1/2 and 24 on the *pacca* metalled road and rest of the land was ordered to be maintained as it was.

He also submits that the petitioner and respondent no.5 filed appeals before the Commissioner, who after perusing the record allowed the

appeal of the petitioner and dismissed that of respondent No.5 and restored the order dated 30.12.2010 (Annexure P-3) of Assistant Collector IInd Grade.

Respondent No.5 preferred a ROR before the Financial Commissioner-II, respondent No.2, who vide impugned order dated 18.02.2014 set aside the well reasoned order dated 09.10.2012 and directed the Assistant Collector IInd Grade to proceed with the partition proceedings by taking into consideration the proposed mode of partition dated 22.7.2010 and while setting aside the order of the Commissioner while taking into consideration the alleged compromise dated 01.07.2007 and other documents which were submitted on 30.11.2013. The matter was argued before the Financial Commissioner on 28.11.2013 as the fact is evident from the impugned order in paragraph 4 but Annexure P-6 placed on record with the miscellaneous application reveals that respondent No.5 had placed on record the following documents on 30.11.2013:-

- i) mutation No.258
- ii) certified copy of the jamabandi for the year 2001-02
- iii) photocopy of the order dated 12.03.2010
- iv) photocopy of the compromise dated 01.07.2007

He, thus, urges that the order, under challenge, is erroneous and perverse. The mode of partition dated 22.07.2010 was merely a suggested mode and not the final. The final mode of partition came into being on 30.12.2010.

Per contra, Mr.Harsh Aggarwal, learned counsel appearing on behalf of respondent No.5 submits that there is concealment of material facts from this Court as Sh. Tara Singh Tomar during his life time had

executed a registered transfer deed on 17.10.2000 (Annexure R-5/1) in favour of the petitioner and answering respondent in respect of agricultural land, therefore, the Will dated 03.11.2003 would be meaningless as he was not the owner of the property on the said date. The mutation bearing No. 258 dated 19.02.2011 had also been sanctioned in favour of the parties, thus, petitioner and respondent No.5 were joint owners and the partition proceedings were initiated with the motive not to keep the jointness of the land. He further submits that Tara Chand Tomar had also executed a registered Will dated 24.11.2005, whereas, he left heavenly abode on 15.12.2005. The aforementioned Will was registered on 07.12.2005 by calling a Sub-Registrar at his house and an agreement dated 01.07.2007 (Annexure P-7) was entered into between the parties, according to which the agricultural land was to be rented out on turn-wise basis but the petitioner failed to honour his part of the agreement and tried to interfere into possession of answering respondent in the residential house at Dehradun by demolishing the garage in the month of December 2009 when the answering respondent had gone away to attend the marriage ceremony of his sister's daughter and accordingly, filed a civil suit for permanent injunction and mandatory injunction at Dehradun regarding the residential property and the partition proceedings before the revenue authorities. No appeal has been filed against the final mode of partition dated 22.07.2010. The alleged objections (Annexure P-2) were amended by the Assistant Collector, vide order dated 03.12.2010 (Annexure P-3). An appeal preferred by respondent no.5 before the Collector, vide order dated 01.06.2011 (Annexure P-4), modified the order to some extent. There is a

specific recital in the registered Will regarding no other Will having been executed. He further submits that all the documents have been taken note of by the Financial Commissioner which were handed over during the course of arguments and it is only the list which was prepared on 30.11.2013.

In rebuttal, Mr.Bali, has drawn the attention of this Court to zimni orders, Annexure P-8 to show that the arguments were addressed on 28.11.2013 and gave the certified vernacular copy of civil suit bearing No.648 of 2009 decided on 17.08.2016, whereby, Will dated 24.11.2005 registered on 7.12.2005 has been held to be surrounded by suspicious circumstances.

This fact has been rebutted by Mr.Harsh Aggarwal of having been taken by surprise. Even this document cannot be taken on record being not a final verdict.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Bali, for, the operative part of the order of the Financial Commissioner while remanding the matter back to the Assistant Collector to proceed as per the mode of partition dated 22.07.2010 reads as under:-

*“7. From these facts and circumstances, it is evident that the orders of the Hon'ble High Court dated 01.03.2006 in RSA No.2972 of 1979 2006(1) PLJ 442 are not applicable in this case because in that case the parties were in separate possession prior to the sale in favour of the defendant. However, this separate possession by means of private partition had not been incorporated in the revenue records*

*under Section 123 of the Punjab Land Revenue Act. On the other hand, in this case, there was no separate possession and the joint possession of the property is evident from even the voluntary agreement (Bahami Faisla) entered into between both brothers as late as on 01.07.2007. Hence, this judgment is of no help to the respondent. Similarly, provisions of Section 118(2) are not applicable to the facts and circumstances of this case. The Ld. Collector vide his orders dated 01.06.2011 rightly corrected the injustice/anomaly done by Assistant Collector 2<sup>nd</sup> Grade but it was set aside by the Ld. Commissioner, Ambala on the ground that his order was against the facts and also out of jurisdiction. It is conceded that the Ld. Collector went out of his way to assign specific khasra numbers to both the parties which was outside his jurisdiction. Rather he should have restrained himself from doing so and should have ordered the partition to be done on the basis of equity as proposed vide mode of partition by Assistant Collector IInd Grade on 22.07.2010. Therefore, keeping in mind the facts and circumstances of the case, the Revision Petition is accepted and orders of the Ld. Commissioner, Ambala dated 09.10.2012 are hereby set aside. The Assistant Collector, IInd Grade is directed to proceed with the partition proceedings keeping in mind the proposed mode of partition dated 22.07.2010 as per which, each co-sharer should be given their shares in land keeping in mind the kind,*

*quality and situation of the land. However, while doing so, he may ensure that the each khasra is not partitioned and the land is partitioned in a consolidated way keeping in mind above principles. Both the parties are directed to appear before the Assistant Collector, Iind Grade at 10.00 a.m on 24.03.2014.*

*Order announced in open Court.”*

No prejudice would be caused to the petitioner of having not taken into consideration the mutation as transfer deed has not been rebutted by way of any additional affidavit, thus, the question of setting up of a Will of 2003 would pale into insignificance as father of petitioner and respondent No.5 was not owner of the agricultural land. It had already been transferred during his life time in favour of both the aforementioned persons, thus, they had become owners to the extent of half share. One of the co-shares did not want the jointness of the property and moved the application. The story of having put into possession on demise/death is nothing rather an act of concealment of the registered transfer deed. Both the parties have to be given a effect of inferior and superior quality and for that purpose, the possession has to be disturbed and therefore, there cannot be inconsistency or contradictory in Clauses 3 and 4 of Mode of Partition dated 22.07.2010 which read as under:-

*“3. That the partition shall be made by keeping possession intact.*

*4. That at the time of partition, valuable land out of valuable as per share given shall be given.”*

Once the Financial Commissioner has referred to those

documents, it was for just passing reference and the finding is not based on the compromise dated 01.07.2007. It is based on the mutation which is a fall out of transfer deed dated 17.10.2000. The challenge to the remand order, in my view, is nothing but an act of aggrandizement to retain the possession of a superior land by denying the other co-owner its fruits and utility.

I cannot take into consideration the finding of the Civil Judge of Dehradun handed over during the course of arguments without copy thereof to Mr. Harsh Aggarwal. Even if the Will aforementioned has been held to be surrounded by suspicious circumstances that would be meaningless in view of the registered transfer deed, *ibid*.

For the reasons aforementioned, the order under challenge is perfectly legal and justified and does not call for any interference.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)  
JUDGE

**March 08, 2017**

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No