

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

CWP No.3500 of 2017

Date of Decision.22.02.2017

Shingara Singh

.....Petitioner

Vs

The Financial Commissioner Revenue Punjab and othersRespondents

Present: Mr. Tarunveer Vashist, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner, who was respondent in the partition proceedings, is aggrieved of the order of the Commissioner whereby the matter has been remanded back for ascertaining the value of the land i.e. front portion, which according to the respondents herein, was not given.

Mr. Tarunveer Vashist, learned counsel appearing on behalf of the petitioner submits that the petitioner had purchased the land in the year 1989 i.e. vide sale deed dated 19.07.1989 (Annexure P-9). The application for partition instituted by the respondent was on the basis of consensual order in the following terms:-

“(i) possession should be maintained while partition and possession can be struck off for making the proper share of each party.

(ii) A share given to the first party and separate from the other parties.

(iii) Second party namely Shingara Singh shall be given 17 karma vide front near link road, and his two shares of his land should be combined.

(iv) second party namely Pal Kaur's be given share adjacent to with first party.

(v) the land under partition, trees related to first land owner; and that land given to the second party then at the time of partition, only first party have right to cut the trees.

(vi) The proper and separate path should be given to the every shareholder of land according.

(vii) If any party alienate his land through liba or transfer then his share should be deducted at the time of partition.

(viii) Uneven be made separate.

(ix) Patwari prepare the partition record under the supervision of Halqa Kanungo.”

The aforementioned mode of partition reveals that the possession should be maintained but it can be struck off/changed for making the proper share of each party. The second party-petitioner has been held to be given 17 karam vide front near link road and two shares of his land has been ordered to be combined. The respondents were aggrieved of the aforementioned order on the premise that the land situated on road, phirni or near *abadi* has to be distributed equally amongst all the co-sharers according to their holdings and the other co-sharers i.e. the vendors of the petitioner could not have been given a specific area with boundaries in the absence of partition. 15 karam proposed to be given was against the settled law and against the principles of natural justice whereas the petitioner was only liable to 6/7 karams.

The appeal was dismissed but the Revisional Court remanded the matter back, thus, urges this Court that once the order of mode of partition has been passed with consent, there cannot be any assailment of the same. The order of the Assistant Collector has to be accepted by setting aside the order of Commissioner and Financial Commissioner.

I have heard learned counsel for the petitioner, appraised the

submissions of Mr. Vashist. The sale deed of the year 1989 has not been placed on record but the fact remains that the averment of having sold the specific area with specific boundaries cannot be substantiated in law, in essence, any co-sharer/co-owner can only sell his share but cannot be the vendee of specific portion earmarked by boundaries. The contention of the other side i.e. the private respondents who were applicants before the Assistant Collector seeking partition is that they have not been given right/possession of land situated near the road. It is in this aspect of the matter, the matter has been remanded back.

Even mode of partition suggested as extracted above reveals that possession can be struck off for making the proper share of each party. Therefore, the grievance of the petitioner is totally misplaced. It is only a case of remand for equal distribution of superior and inferior piece of land.

No ground for interference is made out. The writ petition is dismissed. However, the petitioner shall be at liberty to raise all the pleas before the appropriate authority in accordance with law.

(AMIT RAWAL)
JUDGE

February 22, 2017
Pankaj*

Whether speaking/reasoned order Yes

Whether reportable No