

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 19/11/2018****Judgment delivered on 07/12/2018****Writ Appeal No. 443 of 2018**

Rajkumar Satnami S/o Resham Lal Satnami, aged about 46 years, R/o village Barpali, Tehsil Kasdol, Police Station Bilaigarh, District Baloda Bazar-Bhatapara, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh through Secretary Revenue Department, Mahanadi Bhawan, New Raipur, Raipur, Chhattisgarh.
2. Tahsildar, Tah. Kasdol, District Baloda Bazar-Bhatapara, Chhattisgarh.
3. Panna Lal Satnami S/o Resham Lal Satnami, aged about 50 years, R/o village Barpali, Tehsil Kasdol, Police Station Bilaigarh, District Baloda Bazar-Bhatapara, Chhattisgarh.

---- Respondents

For Appellant	:	Shri H.V. Sharma, Advocate.
For Respondent/State	:	Shri UNS Deo, Government Advocate.
For Respondent No.3	:	Shri Sumit Shrivastava, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT**Per Parth Prateem Sahu, Judge**

1. The appellant aggrieved by the impugned order dated 15.03.2018 passed by the learned Single Judge in Writ Petition (C) No.692 of 2018 whereby the writ petition filed by him has been disposed off with a direction to avail alternative remedy as provided under Section 50 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959') refusing to consider the writ petition on its merit.
2. Brief facts of the case for disposal of this appeal are that respondent No.3 filed a civil suit for declaration of title, partition, separate possession and injunction, in which the appellant is one of the defendants.

The suit was decreed by the learned trial Court vide judgment dated 30.04.2016 declaring the will executed in favour of the appellant as forged and fabricated, order dated 24.12.2012 passed by the Naib Tahsildar, Kasdol to be void, declared that plaintiff/respondent No.3 is having title to the extent of half share in the property mentioned in Schedule A, declared that plaintiff is entitled to possession of the share of the half of the portion of scheduled property and further restrained the appellant/defendant No. 1 therein from interfering in the share of respondent No.3/plaintiff.

3. Appellant preferred first appeal which was dismissed and the second appeal preferred by him is pending before this Court in Second Appeal No.499 of 2016.

4. Respondent No.3 filed an application before Tahsildar, Kasdol, District Baloda Bazar-Bhatapara for separation of the holdings in pursuance of the judgment and decree dated 30.04.2016 passed in Civil Suit No.04-A of 2013 and the said revenue authority has passed an order directing Patwari to prepare '*Fard Batwara*' on the basis of share declared by the learned trial Court in Civil Suit No.04-A of 2013. The proceedings of the *Fard Batwara* took place on 11.01.2017 by the Patwari of Halka No.24, Revenue Circle Gidhori, Tahsil Kasdol, District Baloda Bazar (C.G.) and sent the proceedings to the Court of Tahsildar.

5. The appellant filed a writ petition on 27.02.2018 challenging the order dated 20.03.2017 passed by the Tahsildar, Kasdol approving the *Fard Batwara* prepared by Patwari on the ground that the application filed before the Tahsildar was not maintainable, notices were not issued with respect to the revenue proceedings registered for partition of holdings and no proper proceedings have been drawn by the Tahsildar for effecting the partition.

6. The learned Single Judge considering that the order passed by the Tahsildar is revisable under the provisions of Section 50 of the Code,

1959, disposed off the writ petition directing the petitioner/appellant to take recourse of alternative remedy available under the law.

7. Learned counsel appearing for the appellant submitted that as the proceedings before the Tahsildar have been initiated on the basis of the judgment and decree passed by a competent civil Court, therefore, in absence of any direction as provided under Order XX Rule 18 of CPC, the revenue authority could not have entertained the application directly for executing the judgment and decree passed by learned civil Court. He further submitted that the Tahsildar has not issued any notice on the application submitted before him for compliance of the judgment and decree dated 30.04.2016 passed in Civil Suit No.04-A of 2013 therefore, he was not having any opportunity to raise any objection immediately and further that the order passed by the Tahsildar was in violation of principles of natural justice.

8. Per contra, learned counsel appearing for the respondent No.3 submitted that the civil Court passed a decree for partition along with other reliefs and the partition is to be effected by the revenue authorities, therefore, the Tahsildar has rightly entertained the application and passed order for partition of the holdings.

9. We have heard learned counsel appearing for the parties and also perused the documents annexed with the writ petition.

10. To appreciate the rival submissions made by learned counsel appearing for the respective parties, it will be appropriate to glance the relevant provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). Order XX Rule 18 of CPC provides for the decree in a suit for partition of the property or separate possession of a share therein. Order XX Rule 18 of CPC reads as under :-

“18. Decree in suit for partition of property or separate possession of a share therein.- Where the Court passes a decree for the partition of property or for

the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.”

11. Sub-rule (1) of Rule 18 of CPC especially provides and cast duty upon the Court that after declaration of title and apportionment of share, it will further direct the Collector or any gazetted subordinate revenue officer for separation or partition of the property in accordance with the provision of Section 54 of CPC. Section 54 of CPC reads as under:-

“54. Partition of estate or separation of share.-

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.”

12. Reverting to the facts of the case in hand, learned civil Court after declaring the title and share of the respective parties in the scheduled property has not issued further direction for complying with the decree.

13. So far as the law in this regard is concerned, where there was a decree of partition and possession of holdings assessed to land revenue then in that case, the procedure is to send the records to the Collector under Order XX Rule 18 of CPC to Collector for compliance under Section 54 of CPC. The powers of the learned civil Court who passed the judgment and decree in a suit for partition of the property/estate assessed to the payment of revenue to the Government after passing of the judgment and decree is only ministerial in nature.

14. In view of the aforementioned provisions of CPC, so far as grounds raised by the appellant in his writ petition and present writ appeal with respect to the compliance of the decree in absence of any direction as per Order XX Rule 18 of CPC is concerned, the said provisions only clothed the civil Court with a function of forwarding the record to Collector to act according to the provisions of Section 54 of CPC which is only a procedural and ministerial work. After passing of the decree with respect to declaration of title and share of the respective parties and sending the records under Section 54 of CPC, the matter passes entirely out of its hands and it has no jurisdiction even to supervise the execution of its decree.

15. The Madras High Court in the matter of **Sree Rajah Mantripragada Venkataraghava Rao Bahadur Zamindar Garu and others v. Sree Rajah Mantripragada Venkata Hanumantha Rao Bahadur Zamindar Garu (deceased) and others**¹ held as under:-

“2. In *Chinna Seetayya v. Krishnavenamma*, I.L.R. (1896) Mad. 435, a Division Bench of this Court held that the Court had power to hear and decide, objections to the division of the estate made by the Collector under Section 265 of the Code of 1882, to which Section 54 of the present Code corresponds, and in arriving at this decision the learned Judges relied on the decision of the Bombay High Court in *Mahadaji Karandikar v. Hari*

¹ AIR 1945 Madras 336

D. Chikne : I.L.R.(1883) 7 Bom. 332, which was concerned with Section 320 of the Code of 1882, to which Section 68 of the present Code corresponds. There are several decisions of the Bombay High Court relating directly either to Section 265 of the old Code or Section 54 of the new Code. We shall refer to them in detail presently, but in passing we may say that in some of the cases the Bombay High Court has expressed the view that the Court has no power to interfere and in others that it has a limited power. Admittedly there is no provision in the CPC giving the right to a party aggrieved by the partition effected by the Collector under Section 54 to appeal to the Civil Court which passed the decree or to apply for revision of the Collector's order. When we read Section 54 in the light of Order 20, Rule 18 and Order 26, rules 13 and 14, it is in our judgment quite clear that the legislature did not intend the Court to have power to interfere with a partition made by the Collector under Section 54.

7. We consider that the decision of this Court in Chinna Seetayya v. Krishnavenamma I.L.R. (1896) Mad.435 is contrary to law. We do not share the opinion expressed by the Bombay High Court in Purushotham Bhaskar v. Balakrishna Pandurang I.L.R. (1903) 28 Bom. 338 that the Court has power to direct the Collector to make a fresh partition and we do not regard him as an agent of the Court when acting u/s 54. He has a statutory duty to perform and in performing it he is not under the control of the Court. He is not even required to report to the Court what he has done. When he has made the partition no order of the Court is necessary. Once the Court has sent the decree to the Collector for action u/s 54, the matter passes entirely out of its hands.”

16. The Madhya Pradesh High Court in the matter of **Bhagwan Singh v. Babu Shiv Prasad and another**² while discussing the several judgments rendered by different Courts, has held as under :-

“.....The civil Court after passing of the preliminary

decree for partition of an undivided estate assessed to the payment of land revenue becomes functus officio and it would have no jurisdiction to act in any manner thereafter so as to pass a final decree or deliver possession to a party in accordance with the said decree.

We are supported in our view by a series of decisions of this Court as well as of other High Courts also. In *Munawarali v. Taiyabali*, AIR 1920 Nag 204, it has been held that under Section 54 of the Code the Collector has not only to make allotment of shares but to complete the partition by delivery of possession. In *Mohamad Abdul Rahim v. Pa-rashram*, AIR 1927 Nag 300 it has been held that the Collector when partitioning the estate in accordance with Section 54 of the Code has power to give the shares to the respective allottees. *Parbhudas Lakhmidas v. Shankarbhai*, (1887) ILR 11 Bom 662, has been relied upon. In *Lachhiram Jasram v. Nanba Dhanaii*, AIR 1946 Nag 353 it was held as under:

".....Sec. 54, read with Order 20, Rule 18, authorises the civil Court only to declare the rights of the several parties interested in the property and places the execution of the decree entirely in the hands of the Collector. How the partition is to be made lies wholly within the authority of the Collector. The Civil Court is functus officio after it declares the shares of the parties and beyond that it is not concerned with the property. In fact the suit terminates so far as the civil Court is concerned on the passing of the preliminary decree affecting any estate assessed to the payment of revenue to the Crown as has been held in numerous cases, such as *Shri-nivas Hanmant v. Gurunath Shrinivas*. ILR (1891) 15 Bom 527; *Bhimanguada Konapgauda Patil v. Hanmant Rangappa Patil*, AIR 1918 Bom 206, *D.M. Jacinto v. J.D.V. Fernandes*, AIR 1939 Bom 454; *Ramabai Govind v. Anant Daji*, AIR 1945 Bom 338 and *Sher Bahadur Singh v. Ram Narain Singh*, AIR 1945 Oudh

"Partition of land revenue paying estate has to be made by a Collector under Section 54, Civil P. C., or by a revenue officer under Chap. 11, C. P. Land Revenue Act, 1917. A Civil Court has no jurisdiction or power to effect a partition of land revenue paying estate or to reopen a partition already made by a Collector or revenue officer. The duty of a Civil Court is to give effect to the partition made by a Collector or a revenue officer in exercise of the powers vested in him. The power to deliver possession in accordance with the partition made is quite distinct from the power to effect a partition. A Collector or a revenue officer effecting a partition has the power to deliver possession in pursuance of the partition. The existence of the power is necessary to complete the partition.

"These provisions have been the subject of numerous decisions. A reference may be made to some of the decided cases. In *Bhimanguada Konapgauda Patil v. Hanmant Rangappa Patil*, it was held that a civil Court has no jurisdiction to re-open a partition made by the Collector and has no power to examine his work or to direct him to make a fresh partition. In *D.M. Jacinto v. J.D.V. Fernandes*, it was held that when an order is made for partition of lands assessed to Government revenue, the Court makes an order decreeing partition and directing the parties to be put in possession and referring it to the Collector to carry out the partition. It was further held that when an order in that form is made, the Court's duties are finished, and it is for the Collector to partition the property and put the parties into possession. To the same effect are the decisions in *Chandumal v. Hafiz*, AIR 1943 Sin. 7, AIR 1945 Oudh 1 : (1944 OWN 416) and AIR 1946 Nag 353 : (224

I.C. 353). In AIR 1943 Sind 7 : (ILR (1942) Kar 162), it was held that the Court is bound by the terms of the Civil P. C., and has no power so to fetter the discretion of the Collector as to overrule the powers that are conferred upon him under Section 54 and Order 20, Rule 18 of the Code. In AIR 1945 Oudh 1 = (1944 OWN 416), it was held that where a civil Court passes a decree for partition, it should be presumed that the procedure prescribed in Order 20, Rule 18, has been adopted and that in the case of immovable property assessed to land revenue, the civil Court has no further jurisdiction in the matter. In Lachhiram Jasram v. Nanba Dhanaji, AIR 1946 Nag 353 : (224 I.C. 353) it was held that Section 54, read with Order 20, Rule 18, authorises the civil Court only to declare the rights of the several parties interested in the property and places the execution of the decree entirely in the hands of the Collector; how the partition is to be made lies wholly within the authority of the Collector; and the civil Court is functus officio after it declares the shares of the parties and beyond that it is not concerned with the property. In a recent case, Sree Rajah Mantripragada Venkataraghava Rao Bahadur Zamindar Garu and others v. Sree Rajah Mantripragada Venkata Hanumantha Rao Bahadur Zamindar Garu (deceased) and others, it was held that a Court which has passed a decree for partition to which Section 54, Civil P. C., applies and has sent it to the Collector for the purposes of effecting the partition has no power to hear objections to the partition made by the Collector or his subordinate or to modify the partition; the Collector when acting under Section 54 has a statutory duty to perform and, in performing it, he is not under the control of the Court; he is not even required to report to the Court what he has done; when he has made the partition no order of the Court is necessary; and once the Court has sent the decree to the Collector for action under Section 54, the matter passes entirely out of its hands."

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In State Vs. Mangalal Chunilal Bogawat, AIR 1956 Bom 354, relying upon Ramabai Govind Vs. Anant Daji, AIR 1945 Bom 338, it has been held that after a decree for partition of lands assessed to revenue has been passed, the Court has nothing further to do with the decree. The decree is to be executed and the partition is to be effected by the Collector. There cannot, therefore, be any execution proceedings before the Court in the case of such a decree. The present applications, which are said to have been made under Section 47, Civil Procedure Code, were, therefore, not maintainable. In Muppanna Vs. Channappa AIR 1964 Mys 169, it has been held that the powers and functions of the Collector under Section 54 are analogous to the powers and functions of the civil Court in the final decree proceedings for partition of properties other than an estate. Thus, it is clear that in the present case the Civil Court had no jurisdiction to pass a final decree after the partition was effected by the Collector and to execute the decree so far as the revenue paying lands are concerned."

17. From perusal of the aforementioned law laid down by different High Courts including the Full Bench and Division Bench, it is clear that it is the duty of the Court, as provided under Order XX Rule 18 of CPC, to direct the Collector for initiating proceedings in pursuance of decree passed by him under Section 54 of CPC. Even if when the competent civil Court has not issued any direction as provided under Order XX Rule 18 of CPC then also the decree holder can very well move an application before the competent civil Court who passed the decree for declaration of title, share and partition for referring/transferring the record of the case to the Collector as provided under Section 54 of CPC. It is so because the decree passed by the civil Court with respect to declaration of title, share and partition of the holdings is only a preliminary decree and it requires

further action for its compliance.

18. The judgment and decree passed by the civil Court by declaring the shares and rights of the agricultural properties between the parties was to be complied with only by the revenue authorities. Even the provisions of Section 54 of CPC provides that “separation of share” shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf. With respect to the partition of the agricultural properties, the Code, 1959 empowers the Tahsildar to effect partition of the holdings of co-tenures. The decree holder though has an option to move an application under Section 54 of CPC before the civil Court or can also file an application for partition of the holdings and possession before the revenue authorities as per contents of any decree passed by the competent civil Court when the property is assessed to land revenue.

19. The Code, 1959 also provides for partition of the holdings which has been assessed for the purpose of agriculture under Section 59 of the Code, 1959. The relevant provision is provided under Section 178 of the Code, 1959 which is reproduced herein below:-

“178. Partition of holding.-(1) If in any holding, which has been assessed for purpose of agriculture under section 59, there are more than one Bhumiswami any such Bhumiswami may apply to a Tahsildar for a partition of his share in the holding:

[Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.]

(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the civil court, the Tahsildar shall stay his proceedings pending the decision of the civil court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entireties in

the record of rights.]

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

[(3) x x x]

[(4) x x x]

[(5) x x x]

Explanation I.-For purposes of this section any co-shearer of the holding of a Bhumiswami who has obtained a declaration of his title in such holding from a competent Civil Court shall be deemed to be a co-tenure holder of such holding.

[Explanation II.- x x x]"

20. The explanation provided to Section 178 of the Code, 1959 makes it clear that if any person's name is not recorded in the revenue records, he can obtain a decree for the declaration of his title and on the basis of the said judgment and decree passed by the competent civil Court, the decree holder obtaining the decree of declaration of title shall be deemed to be a co-tenure (co-shearer) of such holdings. In the case in hand, respondent No. 3 filed a civil suit and the competent civil Court had framed following decree in his favour :-

"It is ordered and decreed that-

1. दिनांक 09.09.10 को वसीयत कर्ता गुरवारी बाई एवं वसीयत ग्रहीता राजकुमार के मध्य निष्पादित वसीयतनामा फर्जी एवं कूटरचित है।
2. न्यायालय नायब तहसील कसडोल द्वारा राजस्व प्रकरण क्रं. 29 अ 6 वर्ष 2011 में पारित आदेश दिनांक 24.12.12 को शून्य घोषित किया जाता है।
3. वादी वाद पत्र के साथ संलग्न सूची "अ" में वर्णित वादभूमि का 1/2 अंश का स्वत्वाधिकारी है।
4. वादी उक्त वाद भूमि के 1/2 अंश का विभाजन उपरांत कब्जा प्राप्त करने का अधिकारी है।
5. प्रतिवादी को वादी के उक्त अंश की भूमि पर व्यवधान उत्पन्न किये जाने से स्थायी रूप से निषेधित किया जाता है।
6. उभय पक्ष अपना अपना वाद व्यय वहन करेंगे।
7. अधिवक्ता शुल्क प्रमाण पत्र प्रस्तुत होने पर विधि अनुसार देय हो।"

21. The competent civil Court passed the decree with respect to the declaration of title and the entitlement of the plaintiff to have possession of half of the share of the holdings.

22. The competent civil Court declared the title and the entitlement of the decree holder with respect to his share and therefore, the respondent No. 3 has rightly approached the revenue authority as prescribed under the Code, 1959 for effecting the partition i.e. the Tahsildar as there was no direction issued by civil Court for sending the records to Collector under Section 54 of CPC.

23. In the case in hand, the decree holder moved an application before the Tahsildar who registered the application as revenue case and thereafter proceeded to partition the holdings as per the decree passed by learned civil Court which do not appear to be erroneous proceedings initiated before the revenue authorities who is competent to partition the agriculture holdings under the provisions of Code, 1959. It is not the case of appellant that the Tahsildar who initiated proceeding of partition was not having jurisdiction or compliance of decree passed by civil Court is to be made by some other authorities. Even as per language of Section 54 of CPC, it provides that the partition is to be effected by the revenue authorities i.e. Collector or any gazetted subordinate of the Collector deputed by him. The appellant herein has not questioned the jurisdiction of the Tahsildar of effecting partition of the lands assessed to land revenue. The provisions of Order XX Rule 18 of CPC provides for forwarding the records only and ultimately partition is to be effected by the revenue officer and under the Code, 1959, the Tahsildar is authorized and competent revenue officer for effecting the partition.

24. More so, when the competent civil Court who passes the judgment and decree with respect to the property assessed to land revenue has no control over the revenue authorities who performs the statutory duty and

even the civil Court has no jurisdiction to supervise with respect to the compliance of the decree passed by it as held in cases of **Sree Rajah Mantripragada Venkataraghava Rao Bahadur Zamindar Garu** and **Bhagwan Singh** (supra).

25. In view of the above, looking to the facts of the case we conclude that the decree holder can file an application before the competent revenue authority for partition of holdings assessed to payment of revenue to Government on the basis of a decree of declaration of title and entitlement of his share in absence of any direction by the Civil Court in its decree.

26. So far as the other ground of violation of principle of natural justice raised by the appellant is concerned, perusal of Annexure P/1, which is proceedings initiated by the Tahsildar goes to show that the Tahsildar proceeded after registering the application as a revenue case and therefore, the grievance, if any, should have been raised before the appellate or revisional authority as provided under the Code, 1959 itself. The High Court of Madras in case of **Sree Rajah Mantripragada Venkataraghava Rao Bahadur Zamindar Garu** (supra) has held as under :-

“8. This does not, however, mean that a person aggrieved by the partition effected by the Collector is without a remedy. The Collector is subject to the control of the Board of Revenue. Section 5 of the Madras Board of Revenue Regulation, 1803, (Madras Regulation I of 1803) declares that the Board of Revenue has authority to superintend and control all persons employed in the executive administration of the public revenue. Section 5 of the Madras Collectors Regulation, 1803, (Madras Regulation II of 1803) says that Collectors shall be under the immediate control of the Board of Revenue and shall obey all orders communicated to them by the authority of that Board. Therefore, a person

aggrieved by an order of the Collector u/s 54 of the CPC has the right of asking the Board to revise the Collector's order. In the recent case of Ryots of Gorabandho v. Zamindar of Parlakimidi (1943) 2 M.L.J. 254 : L.R. 70 IndAP 129 : I.L.R. (1944) Mad. 457 the Privy Council recognise a right of appeal to His Majesty in Council from an order of the Board of Revenue when leave is given.”

27. In view of the above, learned Single Judge has not committed any error of law in directing appellant to avail statutory remedy of appeal or revision available under the Code, 1959. Therefore, the impugned order dated 15.03.2018 passed by the learned Single Judge does not call for any interference.

28. The appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge