

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3981 of 1998 (O&M)

Date of decision: 21.03.2018

Raj Kumar and another

..... Appellants

Versus

Om Parkash and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ranjit Saini, Advocate
for the appellants.

Mr. Pritam Singh Saini, Advocate and
Ms. Monika Arora, Advocate
for respondents No.3 to 7.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court, reversing the judgment passed by the learned trial Court.

In the considered opinion of this Court, following substantial question of law arise for consideration:-

“Whether the jurisdiction of the Civil Court is completely barred under Section 158 of the Punjab Land Revenue Act, 1887 to examine the validity of the order of partition of the agriculture land passed by the revenue Courts, even when it is proved that the proceedings were carried out in violation of the the procedure prescribed under the Act and the principles of natural justice?”

FACTS

Plaintiffs filed a suit for possession on 07.02.1985 claiming superior right of pre-emption on the ground that they are co-sharers in the land comprised in the Khewat in question. On the other hand, the defendants filed an application on 16.03.1985 before Assistant Collector, IInd Grade, Radaur seeking partition of the land comprised in the Khewat. In the proceedings for partition of the land, on the basis of report of refusal, ex parte proceedings were taken and the order of partition of the agriculture land was passed.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs and the partition proceedings as well as order of partition of the land were declared to be illegal, null and void. However, in the first appeal, the judgment passed by the learned trial Court has been reversed.

Now the stage is set for considering the question of law.

“Whether the jurisdiction of the Civil Court is completely barred under Section 158 of the Punjab Land Revenue Act, 1887 to examine the validity of the order of partition of the agriculture land passed by the revenue Courts, even when it is proved that the proceedings were carried out in violation of the the procedure prescribed under the Act and the principles of natural justice?”

In the State of Haryana, partition of the agriculture land is governed by the procedure laid down under the Punjab Land Revenue Act, 1887 (for short 'Act of 1887'). The proceedings are filed and decided by the revenue Courts presided over by the Executives (bureaucrats). Chapter IX of the aforesaid Act of 1887 deals with the partition of the property. Section 158 of the Act of 1887 which bars the jurisdiction of the Civil Court, is

extracted as under:-

“158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers: -

Except as otherwise provided by this Act-

(1) a Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the State Government or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular-

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -

(i) any question as the limits of any land which has been defined by a Revenue-officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such;

(iii) any claim to the office of kanungo, or village-officer, or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

(iv) any notification directing the making or revision of a record-of-rights;

(v) the framing of a record-of-rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record ;

(vi) the correction of any entry in a record-of-rights, annual record or register of mutations ;

(vii) any notification of the undertaking of the general re-assessment of a district or tahsil having been sanctioned by the State Government;

(viii) the claim of any person to be liable for an assessment of land-revenue or of any other revenue assessed under this Act;

(ix) the amount of land revenue to be assessed on any estate or to be paid in respect of any holding under this Act;

(x) the amount of, or the liability of any person to pay, any other

revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceedings taken in consequence of the refusal of any person to be liable for an assessment under this Act;

(xii) the formation of an estate out of waste land;

(xiii) any claim to hold free of revenue any land, mills, fisheries or natural products of land or water;

(xiv) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or other charges imposed under this Act ;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought ;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land –revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy ;

(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101- C and 101-D, respectively, of Chapter VIII] ;

(xix) any claim to set aside or disturb a division or appraisalment of produce confirmed or verified by a Revenue-officer under this Act ;

(xx) any question relating to the preparation of a list of village cesses or the imposition by the State Government of conditions on the collection of such cesses ;

(xxi) any proceeding under this Act for the communication of the dues of a superior land-owner ;

(xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land-revenue ; or

(xxiii) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or re-assessing such revenue , or arising out of the liability of an assignee to pay out of assigned land-revenue, or of a person who would be liable for land-revenue if it had not been released, compounded for or redeemed to pay on the land-revenue for which he would but for such release, composition or redemption be liable, such a percentage for the remuneration of a village officer as may be prescribed by rules for the time being in force under this Act.”

The partition proceedings were initiated with presentation of the application. The zimni orders (order passed on each date of hearing) passed by the authorities under the Act of 1887 are extracted as under:-

“16.03.1985

Today file of the case was presented by the counsel for the applicant. After checking, notice be issued to the respondents for 02.04.1985.

AC IIG, Radaur

“02.04.1985

File was put up. Counsel for the applicant is present. A report of refusal has been received on the summons, therefore, the case is adjourned while respondents be summoned through munadi for 12.04.1985. Counsel for the applicant has been directed that he should deposit the proclamation charges today itself. Awaiting for the report of munadi.

AC IIG, Radaur

“12.04.1985

File put up. Counsel for the applicant is present but although the case has been called several times, the respondents are not present. The report of munadi after compliance has been received back. Court time is over, therefore, the respondents are proceeded against ex parte. Case is adjourned for the statement of applicants on 23.04.1985.

AC IIG, Radaur

“23.04.1985

File put up. Counsel for the applicant is present. Statement of applicant has been recorded. Hence, the case is adjourned for calling Naksha Alif and for preparation of mode of partition.

AC IIG, Radaur

Note:-Munadi is a local proclamation carried out by beat of drums.”

In this manner, the partition proceedings were finalized within the span of five months and 7 days i.e. on 23.08.1985. The plaintiff-appellant filed an application for setting aside the ex parte order of partition before the Assistant Collector, IInd Grade.

The Assistant Collector IInd Grade after issuing notice to the parties and after examining the record recorded a finding that the process server did not take steps in accordance with law while submitting report on the summons for 02.04.1985 at the time of proclamation. The Assistant Collector, IInd Grade further found that on both the summons, the witnesses are same who were related to the applicants in the partition proceedings (respondents herein). The Assistant Collector also noticed that a pre-emption suit is pending and it is not believable that the respondents in the partition proceedings would avoid service. Thus, the Assistant Collector, IInd Grade recorded a finding that the ex parte partition proceedings are

against the principles of natural justice and against the procedure laid down in the Act of 1887. However, rather than setting aside the ex parte proceedings, Assistant Collector forwarded the case to Collector seeking permission to review. It appears that permission was not granted although the orders passed by the Collector and the Commissioner are not part of the record.

Learned trial Court after examining the evidence recorded a finding which is extracted as under:-

“As regards to the procedure adopted by the process server he has specifically deposed before the court that he had affixed the summons although there was no such order for affixation. In such like cases the matter had gone before learned Financial Commissioner in case Gulzara Singh Vs. Sakta Singh, 1971 PLJ 533 wherein law was laid down that in case of refusal to accept the service and process server affixing summons on residential house the service is not in accordance with law because process server on his own authority cannot paste a copy of the summons on the residential house even when there is refusal to accept the service of summons. Collector to decide such sort of substituted service to be adopted. Procedure of revenue officer in matters under Punjab Security of Land Tenures Act resulted as far as may be prescribed procedure in Punjab Tenancy Act and the rules made thereunder. Similar law was laid down by learned Financial Commissioner in case Bachittar Singh Vs. Harnam Singh 1971 PLJ 632.

The relevant section 126 is being re-produced as below:-

“Section 126 – Jurisdiction as to partition – Powers of Assistant Collector, First Grade.

Held: Under S.126 of the Act, partition proceedings may be taken only by Revenue Officer nor below that of Assistant Collector of the First Grade. An Assistant Collector Ist Grade may, however, sent a partition case to an Assistant Collector IInd Grade for investigation and report.”

Such a law was also laid down in case Ramji Dass Vs. Arjan Dass 1968 LLT 214. Such an order being illegal cannot be looked into and there is no necessity to set aside. Such a law was laid down in case Chandan Mal Newar and others Vs. State of Haryana and others, 1977 PLR 92.

The other illegality conducted in this case at the time of partition proceedings is violation of rule 18 column no.14 of the Land Records Manual which prescribes the procedure of partition. As per said rule in partition proceedings the kanungo should take out the measurement of the spot in dispute prepare the site plan and khataunies etc. at the spot comparing the same with the original so that there is no discrepancies therein. Even the said khataunies are to be prepared in duplicate and copy is to be given to the parties concerned and the signatures of the parties are to be obtained on another copy in token of this receipt and that signed copy is to be sent to the court alongwith report, but in the present case as admitted by DW-2 field kanungo who was concerned Patwari at that time, has admitted that in the present file both the copies of the khataunies are present and that none of the copy was given to either of the party at the spot. It is again violation of the rule and procedure provided for partition, so violation of the mandatory provision of law makes the partition proceedings to be null and void.

As discussed above the orders passed by Asstt. Collector IIInd Grade, Radaur whereby ex parte proceedings were initiated against the present plaintiffs are null and void and the subsequent orders passed by Collector Kurukshetra and Commissioner Ambala are also illegal, null and void being based upon this order and arising out of this order, and as such this issue is decided in favour of the plaintiffs.”

With these findings, learned trial Court decreed the suit and held that once it is proved on file that the proceedings before the revenue Court constituted under a special statute has failed to follow the procedure prescribed, the Civil Court has got the jurisdiction to entertain the suit.

Learned First Appellate Court reversed the aforesaid finding on the ground that once the permission to review has been declined, the partition proceedings have become final. The learned First Appellate Court further found that the procedure prescribed under Rule 18 of column No.14 of the Punjab Land Records Manual is not mandatory and as such non-compliance thereof does not render the partition proceedings void.

In the present case, the entire file of the partition proceedings has been produced. The plaintiff has examined Mam Raj who has stated that he never carried out any munadi (local proclamation through beat of drums). He has also admitted that munadi could only be carried out by Sadhu Ram, Chowkidar. He has also admitted that at that time, he was employed with Jagpal, one of the witness who had also attested the report of refusal. As per the report of proclamation, the proclamation was carried out by Mam Raj who denies having carried out any munadi. Report of refusal to receive summons shows that on the back page of the summons, it is attested by two witnesses namely Jagdish and Jagmal. Both Jagdish and Jagmal have not been examined by the defendants. The defendants have examined Sham Sunder, Clerk who has stated that the applicant in the partition proceedings had taken him to the residence of Chowkidar of the village but Chowkidar was not found. Then he was taken to Mam Raj who is stated to be carrying out proclamation. He submitted that Mam Raj was called by Jagdish. He further admitted that although there was no order of pasting of the summons but the summons were pasted. He has also admitted that on both the occasions, applicant in partition proceedings, was accompanying him.

In view of the aforesaid evidence produced, it is clear that it

was the respondents (applicants in the application for partition) who had manipulated the reports of refusal to receive the summons. Still further, Assistant Collector, IInd Grade itself found that the procedure followed by the process server and the person who conducted munadi was not in accordance with the procedure prescribed under the Act of 1887 and the rules framed thereunder. Such being the position, learned First Appellate Court clearly committed an error in reversing the finding of the learned trial Court on the ground that since the permission to review has been refused by the higher authorities, therefore, the Civil Court does not have jurisdiction. Once the Assistant Collector, IInd Grade found that the order of partition is without granting proper opportunity to the respondents in the application for partition, the Assistant Collector, IInd Grade ought to have set aside the ex parte partition order.

Learned First Appellate Court has also committed an error in observing that violation of the procedure prescribed under Rule 18.14 of the Punjab Land Records Manual is not mandatory but it is only a procedural irregularity which can be cured by the Appellate Authority. For carrying out the partition of the agriculture land, various steps have been prescribed. Each step has its own significance. Learned First Appellate Court while examining the legality of the order partitioning the land, particularly in view of the facts of the present case, committed an error in overlooking the violation of the 18.14 of the Punjab Land Records Manual.

Sub-section (1) of Section 158 provides that Civil Court shall not have jurisdiction in any matter which the State Government or the Revenue Officer is empowered by this Code, meaning thereby that if the Punjab Land Revenue Act, 1887 enables the Revenue Officer or the State

Government to dispose of or take cognizance of the matter, the Civil Court shall not have jurisdiction. In the present case, sub-section (1) of Section 158 would not be attracted. The Civil Court has not ordered partition of the agriculture land.

Other relevant provisions are Clause (xvii) and (xviii) of sub-section (2) of Section 158. Clause (xvii) and (xviii) also do not bar the jurisdiction of the Civil Court to examine the legality of partition proceedings if these have been carried out, without following the procedure prescribed in the Act.

Civil Court jurisdiction is barred under Section 158(2) (xvii) with respect to matters except question of title. However, the Civil Court shall have jurisdiction to examine the validity of the orders passed by the authority constituted under the Statute, if the Civil Court arrives at a conclusion that either the procedure prescribed under the Statute, under which the authority is supposed to function, has not been followed or where principles of natural justice, which are fundamental, have been violated.

Clause (xviii) bars the jurisdiction of the Civil Court debarring it from examining the validity of the allotment of land, holding tenancy, distribution of the land or re-distribution of the land.

Still further, once this Court has found that the procedure as prescribed under the Act has not been followed and the proceedings were manipulated by the respondents, coupled with the findings of the Assistant Collector, IIInd Grade that the procedure was not followed while securing the report of refusal of service and munadi, the Civil Court cannot overlook the same by taking shelter of the bar to the jurisdiction of the Civil Court.

Reference in this regard can be made to the judgment passed by the Full

Bench of this Court in the case of *State of Haryana Vs. Vinod Kumar and others, 1986, PLJ, 161*.

In view of the aforesaid discussion, the question as framed is answered in favour of the appellants.

Hence, the judgment passed by the learned First Appellate Court is set aside and the judgment passed by the learned trial Court is restored.

Regular Second Appeal is allowed.

21.03.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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