

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

**Civil Writ Petition No.18021 of 2014 (O&M)
Decided on : 25.09.2018**

Makhan Singh

... Petitioner

Versus

State of Punjab and others

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Sudeep Mahajan, Advocate for the petitioner.

Mr. P.S. Bajwa, Addl. AG, Punjab.

Mr. B.S. Bedi, Senior Advocate with
Ms. Manpreet Kaur, Advocate for respondents No.5 to 7.

G.S. Sandhawalia, J.

1. The petitioner challenges the order dated 12.12.2013 (Annexure P-7), whereby the Financial Commissioner has dismissed the revision petition and upheld the order passed by the Commissioner dated 13.03.2009 (Annexure P-6).

2. The petitioner had been successful before the Collector on 28.05.2007 (Annexure P-5), which order had been set aside by the Commissioner, since the Collector had held that question of title was involved and, therefore, the same should be decided first from the competent Court. Thus, the Commissioner had gone on to hold that since the question of title was being raised by the present petitioners, they had absented from the proceedings and had to suffer consequences for their own act and conduct.

3. The petitioner who is the son of Surta who had been arrayed initially as respondent No.6 in the partition proceedings, which had been initiated by Gurdial Singh etc. for partition of land measuring 69 kanals 11

marlas situated in village Sarai, Hadbast No.203, Tehsil Gurdaspur. The Assistant Collector 1st Grade noticed that question of title was being raised to hold that there was no documentary evidence in support of the claim and, therefore, proceeded to partition the land after disturbing the possession, vide order that 16.08.2005 (Annexure P-1), which was on remand since the earlier objections had been dismissed on 30.06.2004. The petitioner's predecessor-in-interest Surta took the matter in appeal to the Collector, who keeping in view the exchange deed dated 20.10.1967 and 06.03.1968 held that the question of title was involved and directed that the partition proceedings be dropped and the applicants were directed to get the question of title be decided from the Civil Court. Resultantly, the case was filed, though directions were issued to parties to appear before the Assistant Collector 1st Grade while directing that case be consigned to record room, vide order dated 16.03.2006 (Annexure P-2). The relevant part of the order reads as under:-

“As such I am of the considered opinion that the question of title is involved in this the case. Accordingly, the partition proceedings are dropped and the applicants are directed to first get the question of title decided from the civil court. The parties are directed to appear in the ld. AC Ist Grade, Gurdaspur 31.3.2006 the case filed after its necessary completion be consigned to the record room.”

4. Gurdial Singh and others respondents No.5 to 7 also filed appeal before the Commissioner against the said order on 31.05.2006 challenging the stalling of the partition proceedings.

5. The Assistant Collector under some mis-conception,

however, carried on the proceedings, advantage of which was also taken by Gurdial Singh who had initiated the partition proceedings and he also got proclamation done on the orders of the Assistant Collector. Resultantly, division was ordered vide order dated 28.06.2006 (Annexure P-3) in spite of the order passed by the Collector reproduced above. Thereafter, once the partition had been finalized, the appeal was withdrawn by private respondents No.5 to 7 before the Commissioner on 12.09.2006 (Annexure P-4), in the absence of the petitioner and others. Against the order of partition dated 28.06.2006 (Annexure P-3), the petitioners filed an appeal before the Collector, who set aside the order of partition on the ground that the Assistant Collector 1st Grade had not properly gone through the order and erred in starting proceedings. The relevant portion reads as under:-

“From the perusal of the order dated 16.03.2006 placed on the lower court file, it is clear that in this order it was found that question of title is involved and account of the same, the partition proceedings were dropped directing Shri Surta Singh the appellant party who made appeal before Id. Collector, Gurdaspur, to first get the questions of title decided from the competent civil court. It is not understood when clear directions of dropping the partitioned proceedings and getting the question of title involved firstly decide from the competent civil court, how the Id. AC Ist started the further proceedings. I think the Id. AC Ist Grade has not properly gone through the order dated 16.03.2006 of the Id. Collector, Gurdaspur and erred in starting proceedings and passing the order under appeal, which in view of the discussions held above and arguments advanced

by the ld. Counsel of the appellants to which I quite agree, is hereby set aside. The appeal of the appellants succeeds and is hereby accepted. The summoned record of the ld. AC Ist Grade, along with a copy of this order be sent to the court of ld. AC Ist Grade, Gurdaspur and this court appeal file after its completion be consigned to the record room.”

6. The private respondents chose to file revision before the Commissioner, who came to the conclusion that there was specific directions of the Collector to appear on 31.03.2006 and, therefore, since the petitioner had failed to appear before the Assistant Collector 1st Grade, they could not as such complain for their own act and conduct. As noticed the said order has been upheld by the Financial Commissioner on 12.12.2013 (Annexure P-7).

7. From the above perusal of the record, one thing would be clear that both parties have been playing 'hide and seek' with each other on account of the ambiguity of the orders passed, specially the order of the Assistant Collector 1st Grade, who chose to reopen the proceedings of partition, despite the fact that the Collector had directed the applicants/petitioners as such to get the question of title decided from the Civil Court.

8. The private respondents No.5 to 7 have also not been fair to the extent that they had filed appeal against the said order, but chose to take the benefit of the Assistant Collector's illegal action continuing the proceedings. Having succeeded on that account they, thereafter, withdrew the appeal and, therefore, cannot as such be complimented in any manner on being fair to the Court proceedings or to the opposite side.

9. The conduct of the petitioner on the other hand is also interesting to notice in as much as he filed civil suit on 31.05.2014 (Annexure R-5/1), wherein the private respondents and others were also impleaded and the challenge was raised to the extent of his share of land measuring 57 kanals 12 marlas, which is part of 69 kanals 11 marlas, subject matter of partition. Challenge was also raised to the order dated 13.03.2009 of the Commissioner (Annexure P-6) who had wrongly upheld the order of the Assistant Collector, who had initiated the partition proceedings in spite of the Collector having held that question of title had been raised on 16.03.2006 (Annexure P-1). Similarly, orders of the Financial Commissioner as such were also subject matter of challenge in the civil suit.

10. Thereafter, the present writ petition was filed by the petitioner on 29.08.2014 in which no mention was made qua the litigation initiated on the civil side three months earlier and whereby the issue of title as such also had been raised. The private respondents in their reply dated 19.01.2015, thereafter, objected that the civil suit had been filed (Annexure R-5/1). Resultantly, a statement was made before the Civil Court that the plaintiff does not wish to proceed further with the suit on 12.03.2015 (Annexure P-8), which has now been placed on record with the replication and suit was, thereafter, withdrawn on 01.05.2015 (Annexure P-9).

11. Mr. Mahajan has vehemently submitted that the question of title was to be got decided as such by the applicants, who are the private

respondents as such, since they had filed partition application. Therefore, the civil suit was filed on the basis of wrong legal advise as per him and as per order of the Collector and, therefore, the civil suit had been withdrawn. Accordingly, he attacked the orders of the Commissioner and the Financial Commissioner on the ground that once the Collector had held that partition proceedings were to be dropped, the Commissioner was in error in holding that the petitioners had to appear before the revenue authorities and on account of their non appearance had to suffer unnecessary consequences. Resultantly, even the order of the Financial Commissioner was challenged.

12. Mr. Bedi, Senior Counsel appearing for the respondents has justified the orders and submitted that the private respondents had never raised any issue of title and onus would always lie upon the person who raises the said issue and it was for the petitioner to get the matter settled. The suit itself had been withdrawn and they had chosen not to get the question of title decided and, therefore, now cannot seek indulgence of this Court.

13. The conduct of the parties has already been noticed in the above background misusing the process of Courts and taking the benefits of mis-interpretation of the orders passed, which has led to partition proceedings to come to a standstill and even the interest of the other respondents who are co-sharers are also involved who are silent spectators in the dispute which is going between the contesting parties. Therefore, this Court is of the opinion that costs should be imposed upon

both the parties, but since the conduct as such is not on the part of the petitioners only, but on account of both the parties, this Court restrains itself from imposing costs.

14. However, this Court is of the opinion that the order of the Commissioner dated 13.03.2009 (Annexure P-6) is not sustainable, wherein the Commissioner has gone on to hold that the petitioners had chosen not to appear before the Assistant Collector. The order of the Collector is very clear and operative part of the same has been reproduced above in para No.5. The proceedings had been dropped and the private respondents No.5 to 7 had taken advantage and the case was only to be consigned on 31.03.2006. The Commissioner had misinterpreted the order. The private respondents themselves had chosen to appeal against the same and, therefore, were aware that the order was not in their interest and it was not an order to continue with the proceedings. However, they got the proceedings started afresh before the Assistant Collector in contradiction to the order passed by the Collector. The Financial Commissioner has also not examined the issue in detail as such in a manner and curiously upheld the order of the Commissioner, which is not justified in the facts and circumstances.

15. The argument as such raised by Mr. Mahajan that the applicants/private respondents No.5 to 7 were to get the titled settled is without any basis. The issue of title was being raised by the petitioner and, therefore, it is for him to prove the said fact, as to how he disputes the title. Even otherwise as noticed the petitioner had filed a suit for

declaration of his right in the land in dispute and it is for him to plead and prove the same and take it to a logical stand.

16. Accordingly, the writ petition is allowed with the following directions:-

(i) That the petitioner shall file an application before the competent Court at Gurdaspur and get his suit for declaration i.e. **Civil Suit No.127** dated 03.07.2014 titled as '**Makhan Singh Vs. Gurdial Singh and others**' revived, within a period of two months and notice as such will be issued to the respondents by the said Court for 26.11.2018

(ii) The private respondents shall put in appearance on 26.11.2018 before the said Court to contest the case on merits. Accordingly, Court shall proceed to issue notices to the other persons also who are arrayed as defendants.

(iii) The suit shall, accordingly, be decided by the competent Court on merits. In case the petitioner at any subsequent stage chooses not to proceed with the suit on merits, it will be open to the private respondents No.5 to 7 to revive their partition application before the Assistant Collector 1st Grade

(iv) Similarly, if the petitioner chooses not to get the issue of title decided on merits, the private respondents shall appear before the revenue authority on

an subsequent occasion in case the matter is not adjudicated upon by the Civil Court, to get the partition proceedings revived.

17. The writ petition is, accordingly, partly allowed to that extent and the order dated 13.03.2009 (Annexure P-6) passed by the Commissioner and the order dated 12.12.2013 (Annexure P-7) passed by the Financial Commissioner are set aside.

SEPTEMBER 25, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No