

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

**Civil Writ Petition No.19454 of 2018
Decided on : 27.09.2018**

Angrej Singh and others

... Petitioners

Versus

Financial Commissioner Revenue, Punjab and others

... Respondents

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

Present : Mr. C.M. Munjal, Advocate
for the petitioners.

G.S. Sandhawalia, J.

The petitioners who are the legal representatives of Gurmukh Singh challenge the order in partition proceedings initiated by respondent No.2 Jasmail Singh for land measuring 214 kanals 11 marlas situated in village Kishanpura @ Bakshiwala, Tehsil and District Patiala in a writ petition filed under Article 226/227 of the Constitution of India.

Primary challenge is to the order dated 28.05.2018 (Annexure P-17) passed by the Financial Commissioner who has upheld the orders passed by the Commissioner, Patiala Division dated 02.07.2013 (Annexure P-16) and the order dated 20.03.2009 (Annexure P-14) passed by the Assistant Collector 1st Grade, Patiala.

The reasoning which weighed with the respondent No.1 is that the matter was pending before the Civil Court, but no stay was granted against the partition proceedings and, therefore, there was no valid ground for the Collector to stay the same. It was further observed that the Civil Court's jurisdiction has been barred to the extent that where the Revenue

Officer is empowered by the Act to dispose of the matter in exercise of the powers vested in it for him under the Act and, accordingly, parties were permitted to continue before the revenue authorities.

Mr. Munjal has vehemently submitted that the orders are not justified, as once the matter was pending before the Civil Court, the revenue authorities should have stayed their hands as such. Accordingly, he referred to Section 117 of the Punjab Land Revenue Act, 1887 (for short '1887 Act') in this context.

It is pertinent to notice that in the written statement filed (Annexure P-19) by the petitioners' predecessor-in-interest Gurmukh Singh dated 05.05.2008 in response to the partition application dated 04.01.2007 (Annexure P-18) the plea had been taken that he was purchaser of 39 kanals 0 marla of land situated in village Kishanpura @ Bakshiwalda vide sale deed dated 02.05.1960 from the sons of Fagga Singh. The details of land he was in possession was mentioned and it was submitted that he has no objection if the partition of the land is done and wanted to join the partition proceedings and wanted his share on the land in possession with a separate *Tak*.

The Assistant Collector 1st Grade on 20.03.2009 (Annexure P-14) noticed that Joginder Singh and Bachan Singh etc. had sold their title share on 14.03.1960 qua 39 kanals and the petitioner's interest was protected in as much as when the *Naksha Arra* was to be prepared, the Halka Kanungo was to keep in mind that whose sale deed had been entered at the last and from whose share the land had been

purchased in excess, because the purchaser should have been aware of the fact that, he is purchasing which area. Resultantly, *Naksha Urra* was called for. The said order reads as under:-

“File is presented, Counsels for the parties are present, counsels for the parties were heard and Record was perused. The present file has placed on record for perusal after order of Review was passed. Earlier it was not clear that which person had sold the land vide different sale deeds and how much area of the land is sold. After perusal of Record, it has come to light that, Joginder Singh son of Harnam Singh and Bachan Singh etc. through Vasika No.494, Dated 14.03.1960, had sold total share. Vasika No.240 812 Dt. 22.05.1963 vide Mutation No. (39-0) Kh. No. had been sold and prior to this there is no and now after seeing the record, it has become clear that who had sold the land. In sale deed no.812 Old Khasra Nos. had been entered and in the Missal Haqiat also old numbers have been shown with new numbers, this has not been made clear earlier and hence the permission for Review was taken, and now after seeing the old records and old registries/vasika it has become clear that, which land had been sold by whom and how much excessive share had been sold, vide mutation No.483 area (39-0) was in the name of Khem Singh son of Phulla Singh. And when Naksha 'Arra' will be prepared then, Halka Kanungo will keep in mind that whose sale deed has been entered at the last and from whose share the land is excess. Because purchaser should aware of this fact that he is purchasing which area. Therefore, by allowing this partition application, Naksha 'Urre' is called from the Circle Revenue Officer. File be presented with Naksha 'Urre' on 21.04.2009.”

Gurmukh Singh had also challenged the issue before the

Collector by filing the appeal on 22.07.2009, who had allowed the same on 28.01.2010 (Annexure P-15) and adjourned the proceedings sine die till the final order was passed by the Civil Court.

Gurmukh Singh had also filed a civil suit on 29.08.2011 against Parminder Kaur and her husband Bhupinder Singh alongwith Jangir Kaur wife and Kuldeep Singh and Manjit Singh sons of Karaj Singh who were also arrayed as respondents in the partition proceedings. He had challenged the sale deed dated 10.03.2011 which was null and void and which was beyond the revenue record and without any title and more than share of defendant No.3.

In the civil suit, the Civil Court vide order dated 03.07.2014 (Annexure P-11) while allowing the application under Order 39 Rule 1 & 2 CPC to the extent that the defendants were restraining from alienating specific khasra/suit property and also restrained from dispossessing the plaintiff illegally and forcibly. It was further clarified that the operation of the stay would not in any manner effect the partition proceedings and the revenue authorities would be at liberty to carry out the same as per law. The matter was taken in appeal by the petitioners and the Additional District Judge vide order dated 07.08.2014 (Annexure P-12/A) disposed of the same with the directions that in case the appellants are able to make any case before the revenue authorities, they will proceed as per law.

The matter was taken to the Commissioner by respondent No.2 who had initiated the partition proceedings, namely, Jasmail Singh

who examined the record and came to the conclusion on 02.07.2013 (Annexure P-16) that the proceedings have not been restrained by the Civil Court and the persons, namely, Parminder Kaur and Bhupinder Singh who purchased the land in question. It was also noticed that the vendees Parminder Kaur and Bhupinder Singh had purchased some part of the land in question and stepped into the shoes of the vendor and one of them was already impleaded as party in the partition proceedings and further directed that Parminder Kaur be made party in the partition proceedings. He, accordingly, set aside the order staying the proceedings and directed that parties to continue with the partition proceedings. The relevant portion of the said order reads as under:-

“I have heard all the counsels and have also gone through the record of the lower courts. In this case the present appellant had filed application for partition of land measuring 214 Kanal 11 Marlas situated at village Kishanpura @ Bakshiwal, Tehsil and District Patiala. The A.C. Ist Grade had called Naksha 'Urda' vide order dated 20-3-2009. The present respondent No.1 had filed appeal before Collector who accepted the appeal and adjourned the partition proceedings Sine die keeping in view the pending civil litigation vide order dated 28-1-2010. The main issue in this case is that some part of land out of total land under partition has been sold twice and the litigation in this regard is pending before civil court. The perusal of record reveals that the partition proceedings for partition the land in question in due course of law has not been stayed by the civil court and as such only keeping in view the pending civil litigation the partition proceedings cannot be stopped. The vendees i.e. Parminder Kaur and

*Bhupinder Singh who have also purchased some part of land in question will step into the shoe of vendor and Bhupinder Singh has already been impleaded as party in partition proceedings and Parminder Kaur vendee be also made party in partition proceedings. Keeping in view the above, the appeal filed in this case is hereby **accepted**, the impugned order dated 28-1-2010 passed by the Collector Sub Division, Patiala is set aside and the **case is sent back to A.C Ist Grade, Patiala** to continue with the partition proceedings.”*

The Financial Commissioner vide order dated 28.05.2018 (Annexure P-17) in view of the above background dismissed the revision petition. The argument which has now been raised by placing reliance upon Section 117 of the 1887 Act is of no benefit as such to the petitioners. Section 117 reads as under:-

“117. Disposal of questions as to title in property to be divided: -

(1) When there is a question as to title in any of the property of which partition is sought, the Revenue-officer may decline to grant the application of partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as through he were such a Court.

(2) When the Revenue-officer himself proceeds to determine the question, the following rules shall apply, namely:-

(a) If the question is one over which a Revenue Court has jurisdiction, the Revenue-officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887 (XVI of 1887).

(b) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue-

officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

As noticed above in the written statement filed by the petitioners they had no such objection to the partition proceedings at that stage when they had filed their reply in the year 2008. Merely, on an subsequent occasion some co-sharers had sold additional land to the alleged detriment of the petitioner, but they cannot claim as such that the matter should be put to a standstill in the partition proceedings. The interest of the petitioners has been duly protected by the orders dated 20.03.2009 (Annexure P-14) and 02.07.2013 (Annexure P-16) that the subsequent purchaser as such would step into the shoes of the other co-sharers and the person who had purchased the land which was in excess as per share of the vendees should have confirmed the fact before purchasing the area.

It is in such circumstances, the petitioners can have no grouse as such. The petitioners have never resorted to the filing of an application under Section 117 of the 1887 Act and the argument that the revenue authorities should determine the question is without any substance and they have themselves chosen to approach the Civil Court qua the sale deed dated 10.03.2011 which has been executed by petitioner No.3 and the challenge is on the ground that her share was not mentioned in the Khewat/Jamabandi for the year 2006-2007.

Resultantly, the authorities are well justified in directing that the partition proceedings should continue as the Civil Court had not directed that the matter should come to a standstill. The order of the Commissioner as such is well justified, which has been reproduced above. The purchaser has stepped into the shoes of the vendor's and if the land has been sold, the fact as such will only be seen by the revenue authorities, which fact also finds due incorporation in the order dated 28.03.2009.

In such circumstances, the matter does not require any further inquiry in the extra-ordinary writ jurisdiction under Article 226/227 of the Constitution of India by this Court. Accordingly, the present writ petition is dismissed in limine.

SEPTEMBER 27, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No