

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

**CWP No.19892 of 2018
Date of Decision:10.08.2018**

Dharam Pal

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. C.L. Sharma, Advocate
for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Article 226 of the Constitution of India. The petitioner was respondent in partition proceedings initiated on 06.11.2009 by respondent No.6 qua land measuring 18 kanals 5 marlas. Challenge is to the order dated 29.11.2010 (Annexure P-8) passed by respondent No.4 the SDM-cum-Collector, Hoshiarpur which was upheld by the Commissioner Jalandhar Division, Jalandhar on 30.07.2015 (Annexure P-9) and further has been upheld by the Financial Commissioner, Punjab on 17.05.2018 (Annexure P-10).

In essence, it has been held that the Assistant Collector 1st Grade-cum-Tehsildhar, Hoshiarpur was not justified on 06.07.2010 (Annexure P-7) in closing the proceedings of partition on the ground that the issue of possession was involved. The authorities below have noticed that respondent No.6 was one of the owners of the land in question and therefore, he is entitled to maintain the application for partition proceedings and in such circumstances, further directed that as per the

order of the Apex Court dated 29.01.2010 (Annexure P-4) to the extent that the ejectment order dated 08.03.1972 would have to be kept in mind while finally deciding the issue. Thus, the partition proceedings which are now continuing against the petitioner are being objected to on the ground that question of title as such arise.

The perusal of the record would go on to show that in a suit filed on 03.05.1999 by the father of the petitioner was on the strength of adverse possession on account of ejectment order having been passed on 08.03.1972 and litigation having been initiated firstly on that account after a period of 12 years.

This Court in RSA No.2159 of 2003 titled as **Gonda Ram Vs. Avtar Singh**, decided on 11.09.2009 (Annexure P-3) held that the suit is not maintainable in the said form. Resultantly, the SLP had also been dismissed on 29.01.2010 (Annexure P-4) with the aforesaid liberty as noticed above qua the ejectment order dated 08.03.1972.

After the appeal had been dismissed by this Court, the partition proceedings had been initiated by the private respondents for 18 kanals 5 marlas which was also the subject matter of consideration of the suit for permanent injunction. In the written statement filed now it has been admitted that land measuring 3 kanals 12 marlas was purchased by the petitioner from the private respondent Avtar Singh on 15.06.1983. The relevant part reads as under:

“c. That the applicant/petitioner by way of sale deed dated 15.06.1983 sold a piece of land measuring 3K-12M from the land under his ownership to Dharam Pal-respondent No.1 (son of Gonda Ram).”

In such circumstances, the partition proceedings have been

initiated and therefore, the argument which thus has been raised that there is no title in without any basis. The revenue authorities have rightly directed that the proceedings have to be continued and the Assistant Collector was not thus correct in holding to the contrary dispute the fact that the issue of title has already been settled by this Court.

Resultantly, there being no merit in the present writ petition, the same is dismissed in limine.

10.08.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No