

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

CWP No.3726 of 2018

Date of Decision: 17.02.2018

Manjit Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.K. Sihag, Advocate
for Mr. Ajay Pal Singh, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing of impugned orders dated 04.07.2014 (Annexure P-1), 29.12.2014 (Annexures P-2 and P-3), 30.01.2015 (Annexure P-5), 20.03.2015 (Annexure P-6) and 22.11.2017 (Annexure P-15) passed by respondents No.3 and 1, respectively in a case of partition.

The prayer has also been made for issuance of direction to respondent No.3 to reconsider the case of the petitioner as the land, in dispute, is *gair mumkin* and does not fall under the purview of Punjab Land Revenue Act, 1887 and the Revenue Courts were having no jurisdiction to adjudicate upon the application of respondent No.4.

Briefly, the facts of the case, as made out in the present petition, are that respondent No.4 filed an application for partition of the land, in dispute, before the Assistant Collector, Ist Grade (Tehsildar),

Mansa on 12.12.2013. The mode of partition was prepared on 04.07.2014. Thereafter, 'Naksha-A' was accepted on 29.12.2014 and 'Naksha-Bay' was also accepted on that very day. Ultimately, 'Sanad Takseem' was issued on 30.01.2015. The petitioner came to know about the partition proceedings on 14.05.2015 and thereafter, an application was moved before respondent No.3 for impleading him as a necessary party. Petitioner also moved an application before the Sub Divisional Magistrate, Mansa on 19.05.2015. The warrant of possession was issued in the name of 'Halqa Kanungo' for handing over the possession of land in dispute vide order dated 20.03.2015. The report was submitted by the Field Staff as called for by the Sub Divisional Magistrate, Mansa regarding actual and factual position of the suit land. Thereafter, the petitioner filed a revision petition under Section 16 (1) of the Punjab Land Revenue Act, 1887 before Financial Commissioner, Punjab Department of Revenue, Civil Secretariat Punjab, Chandigarh on 24.07.2015 and ultimately, the said revision petition was dismissed on 22.11.2017.

Aggrieved by the order passed by the Financial Commissioner, Punjab Department of Revenue, Civil Secretariat, Punjab, Chandigarh, the present petition has been filed challenging all the orders and for setting aside the same and also to reconsider the case afresh.

The petitioner has filed the present petition only on the ground that he is owner, in possession, of land measuring 11 *kanals* for the last 12-13 years and not only the construction has been raised but water and electricity connections are also there. Learned counsel also submits that Krishan Chand and Bimla Rani were owner in possession of total land measuring 43 *kanals* 11 *marlas*. Said land was sold to different purchasers

after leaving space for streets and that space has now been occupied by the respondents. Learned counsel also submits that the petitioner has purchased that land of 11 *kanals* out of 43 *kanals* 11 *marlas* in the year 1988-89. The petitioner was not impleaded as necessary party in the partition proceedings and as such, the entire proceedings were conducted at the back of the petitioner. At the end, learned counsel for the petitioner submits that the mode of partition was wrongly prepared by ignoring the actual and factual position of the suit property and all the proceedings before the lower authorities are liable to be set aside.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Harpal Singh vs Ashok Kumar and another 2018(1) RCR (Civil) 507*** in support of his arguments.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned orders available on the file.

Admittedly, respondent-Kashmir Singh filed an application for partition of land measuring 8 *kanals* situated in Village Mansa Kalan, Tehsil and District Mansa and mode of partition was sanctioned on 04.07.2014. Thereafter, final partition of land was sanctioned vide order dated 30.01.2015 and subsequently 'sanad takseem' was also issued. All these orders have been challenged by the petitioner before this Court.

The only argument raised by learned counsel for the petitioner is that the petitioner is in possession of the land, in dispute for the last many years and he was not aware about the partition proceedings. The land, in dispute, was left for *rasta*. It has not been stated by learned counsel for the petitioner as to how the petitioner came into possession of land, in dispute.

It has specifically been mentioned by the Financial Commissioner that the

petitioner is not a co-sharer in the land, in dispute, wherein, partition proceedings were initiated and in absence of being co-sharer, it was not necessary to implead him as party in the partition application. Other co-sharers were impleaded in the partition proceedings. It has also been held that where the co-sharers are common in all the khewats only then khewats can be clubbed for partition.

In the present case, the co-sharers are not common and as such, the khewats could not be clubbed. The name of the petitioner has not been reflected in the revenue record of Khewat No.82/3. Only on the basis of possession over the land, in dispute, without showing any right over the property, the petitioner is claiming his right.

The relevant findings recorded by the Financial Commissioner, Revenue, Punjab are reproduced as under :-

“ I have considered the arguments advanced on behalf of both the parties and gone through the documents on record. It is clear from the averments in the petition as well as in the arguments that the petitioner is not a co-sharer in Khasra No.82-3(8-0) and only claims to be in possession in part thereof. Clearly then, he is not entitled to participate in the partition proceedings and this revision petition, therefore, fails. However, before parting with this matter, I am constrained to observe that there appears to have been illegal colonization carried out in the land in dispute. It would be appropriate if the relevant department, namely Department of Housing and Urban Development, were to examine this matter and take further action under the law.”

The judgment relied upon by learned counsel for the petitioner is not applicable in the facts and circumstances of the present case and as

such, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

17.02.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

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