

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-699-2017 (O&M)

Date of decision: - 28.08.2018.

Virendra Singh Tomar

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. D.S. Bali, Senior Advocate
with Ms. Anshika Sharma, Advocate
for the appellant.

MAHABIR SINGH SINDHU, J.

CM-3427-LPA-2018

Application is allowed, as prayed for. Translated copy of
order dated 30.12.2010, is taken on record.

Main Case

Present intra-court appeal has been preferred under Clause 10
of the Letters Patent against the impugned judgment dated 08.03.2017,
passed by learned Single Judge of this Court whereby writ petition filed
by the appellant has been dismissed and order of the Financial
Commissioner, Haryana-respondent No.2 dated 18.02.2014 has been held
to be valid.

Appellant as well as respondent No.5 happen to be real
brothers, are fighting for partition of land measuring 93 kanals, 1 marla,

situated in revenue estate of village Dumara, Hadbast No.37, Tehsil Kalayat, District Kaithal, Haryana (hereinafter referred as 'land in dispute').

2. Brief facts are that an application under Section 111 of the Punjab Land Revenue Act, 1887 (as applicable to the State of Haryana) (for short 'Act') was filed by respondent No.5 on 03.11.2009 for partition of the land in dispute before Assistant Collector, IInd Grade, Kalayat-respondent No.4 (for short 'AC-II'). After hearing both sides, application was decided and mode of partition was prepared vide order dated 22.07.2010 and relevant part of the same is extracted here as under:-

“MODE OF PARTITION

1. That partition of total land 93 K-1M bearing Khewat No.11, Khatoni No.38, 39, Jamabandi for the year 2006-07 situated in village Dumara, Tehsil Kalayat shall be made.
2. That out of above land two plots are to be made, in which first plot is of applicant and second plot will be of respondent.
3. That the partition shall be made by keeping possession intact.
4. That at the time of partition, valuable land out of valuable as per share shall be given.”

It transpire that against above order, objections were filed by appellant before AC-II and which were allowed on 30.12.2010 (P-3) primarily on the basis of Will dated 03.11.2003, allegedly executed by their father, namely, Late Sh. Tara Singh Tomar and consequently amended mode of partition was prepared resulting into deletion of “clause 4” from the original mode of partition. Aggrieved against the order dated

30.12.2010, respondent No.5 filed an appeal, which was partly accepted by Collector, Kaithal, vide order dated 01.06.2011.

Still dissatisfied with the order of Collector, respondent No.5 as well as appellant filed revision and appeal, respectively, before Commissioner, Ambala Division, Ambala (for short 'Commissioner') and which were heard together and Commissioner accepted the appeal filed by present appellant; whereas revision of respondent No.5 was dismissed by a common order dated 09.10.2012 and as a result thereof, order dated 30.12.2010 passed by AC-II was restored.

Again feeling aggrieved against the order passed by Commissioner, respondent No.5 filed two revisions i.e. RORs No.109 and 110 of 2010-2011 before Financial Commissioner, Haryana-respondent No.2, which were allowed vide order dated 18.02.2014 observing as under: -

“Therefore, keeping in mind the facts and circumstances of the case, the Revision Petition is accepted and orders of the Ld. Commissioner, Ambala dated 09.10.2012 are hereby set aside. The Assistant Collector, IInd Grade is directed to proceed with the partition proceedings keeping in mind the proposed mode of partition dated 22.07.2010 as per which, each co-sharer should be given their shares in land keeping in mind the kind, quality situation of the land. However, while doing so, he may ensure that each khasra is not partitioned and the land is partitioned in a consolidated way keeping in mind above principles.”

The order passed by Financial Commissioner was assailed before this Court in a writ petition by present appellant, but the same was dismissed by learned Single Judge vide order dated 08.03.2017 and

operative part of the same reads as under: -

“No prejudice would be caused to the petitioner of having not taken into consideration the mutation as transfer deed has not been rebutted by way of any additional affidavit, thus, the question of setting up of a Will of 2003 would pale into insignificance as father of petitioner and respondent No.5 was not owner of the agricultural land. It had already been transferred during his life time in favour of both the aforementioned persons, thus, they had become owners to the extent of half share. One of the co-shares did not want the jointness of the property and moved the application. The story of having put into possession on demise/death is nothing rather an act of concealment of the registered transfer deed. Both the parties have to be given a effect of inferior and superior quality and for that purpose, the possession has to be disturbed and therefore, there cannot be inconsistency or contradictory in Clauses 3 and 4 of Mode of Partition dated 22.07.2010 which read as under:-

“3. That the partition shall be made by keeping possession intact.

4. That at the time of partition, valuable land out of valuable as per share given shall be given.”

Once the Financial Commissioner has referred to those documents, it was for just passing reference and the finding is not based on the compromise dated 01.07.2007. It is based on the mutation which is a fall out of transfer deed dated 17.10.2000. The challenge to the remand order, in my view, is nothing but an act of aggrandizement to retain the possession of a superior land by denying the other co-owner its fruits and utility.

I cannot take into consideration the finding of the Civil Judge of Dehradun handed over during the course of arguments without copy thereof to Mr. Harsh Aggarwal. Even if the Will aforementioned has been held to be surrounded by suspicious circumstances that would be meaningless in view of the registered transfer deed, *ibid.*”

3. It is contended by learned Senior counsel for the appellant that impugned judgment passed by learned Single Judge is not legally

sustainable in view of the facts that both the parties were in possession of their respective shares on the basis of Will dated 03.11.2003, executed by their father, who died on 15.12.2005 and the application for partition was filed in the year 2010, without there being any cause of action. Further contended that order dated 22.07.2010, passed by AC-II was merely an order for proposed mode of partition and not a final mode of partition, thus, the objections were rightly entertained while passing the order dated 30.12.2010. Again argued that the alleged registered Will dated 07.12.2005 was declared to be surrounded by suspicions circumstances by learned Additional District Judge (5th), Dehradun vide judgment dated 17.08.2016 and which was duly brought to the notice of learned Single Judge, but failed to consider the same in its true perspective.

4. Heard learned counsel for the appellant and perused the paper-book.

5. Before proceeding with the matter, it is necessary to extract Sections 13(a) and 111(a) of the Act, which are as under: -

“13. Appeals: -Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue-officer as follows, namely: -

(a) to the Collector when the order is made by an Assistant Collector of either grade;

.....

111. Application for partition: -Any joint owner of land may apply to a Revenue-officer for partition of his share in the land.....with the proposed plan of partition indicating the quality and location of the land in question alongwith the reasons for partition and copy of the latest Jamabandi, if, -

- (a) on the date of application, the share is recorded under Chapter IV as belonging to him; or.....
- (b)
- (c)”

Section 111(a) of the Act reproduced here-in-above makes it apparently clear that any joint owner of land may apply to a revenue officer for partition of his share with the proposed plan of partition indicating the quality and location of the land in question along with reasons and copy of the latest jamabandi showing his share as per revenue record. There is no dispute that in terms of Section 111(a) an application was made by respondent No.5 to the AC-II and on the basis thereof order dated 22.07.2010 was passed for the partition of land in dispute.

6. Perusal of mode of partition extracted in paragraph 2 of this order clearly delineates that the land in dispute is to be partitioned in two plots and out of which first will go to respondent No.5 and second to the present appellant and the same shall be made keeping in view the possession intact, but at the same time, it was made clear under clause 4 thereof that valuable land shall be given as per share of the parties. Therefore, the AC-II has maintained the proper balance between the parties while making the equitable distribution of valuable land in consonance with the spirit of Section 111 of the Act. Thus, there was no occasion or justification for AC-II to entertain the objections at the instance of the appellant and to prepare an amended mode of partition while deleting “clause 4” despite the availability of remedy under Section 13(a) of the Act.

7. Learned Single Judge has rightly passed the impugned judgment while taking note of the fact that there is a registered transfer deed dated 17.10.2000 (R-5/1) executed by father of the parties during his life time and which has neither been refuted by the appellant; nor challenged till date despite having the actual knowledge of the same. Still further, learned Single Judge rightly negated the plea of the appellant regarding the Will dated 03.11.2003 in view of the fact that both the parties became owner of their respective share i.e. $\frac{1}{2}$ on the basis of registered transfer deed dated 17.10.2000 and consequently the alleged Will would be of no help as their father was not the owner of the land in dispute at the time of execution of the alleged Will.

Similarly, the registered Will dated 07.12.2005 is also irrelevant for the purposes of partition on the same analogy as that of Will dated 03.11.2003 in view of the transfer deed dated 17.10.2000.

Moreover, the copy of the judgment and decree dated 17.08.2016 passed by learned Civil Court, Dehradun has not been attached with the paper-book by the appellant for the reasons best known to him, therefore, no reliance can be placed thereupon.

8. The title of both the parties were crystalized on the basis of registered deed dated 17.10.2000 (R-5/1) and consequently respondent No.5 became the joint owner with the appellant up to the extent of $\frac{1}{2}$ share, thus he was well within his rights to file the application for partition of the land in dispute in accordance with the provisions of Section 111 of the Act.

9. Undisputedly, the application for correction of *khasra-*

girdawari was filed by the present appellant on 29.12.2009, but the same was dismissed by AC-II and that has become final. There is no revenue record on the case file to substantiate that possession of both the parties is separately recorded on the basis of the Will dated 03.11.2003; rather the same has never seen the light of the day. There is no material on record to prove that the will dated 03.11.2003 was ever acted upon for the purpose of separate possession of the parties. The order passed by Financial Commissioner was absolutely justified as he simply remanded the matter back to AC-II to proceed further on the basis of mode of partition dated 22.07.2010 keeping in view the kind, quality and situation of the land.

10. Therefore, this Court is fully in agreement with the reasoning adopted by learned Single Judge to the effect that in view of the written instrument dated 17.10.2000 (R-5/1), both the parties had become owner in possession of the land in dispute up to the extent of $\frac{1}{2}$ share and their father had ceased to be the owner of the same and as such the Will dated 03.11.2003 is of no consequences for the purpose of partition. Clauses 3 and 4 of the mode of partition dated 22.07.2010 are in accordance with the provision contained under Section 111 of the Act and in case the Clause 4 is deleted, then the same shall cause a great prejudice to the interest of respondent No.5 as according to which both the parties will get share from the valuable land in equitable manner, therefore, the same has rightly been restored by the Financial Commissioner and validly upheld by learned Single Judge.

11. Although learned Senior counsel raised a plea that order dated 22.07.2010 passed by AC-II was only a proposed mode of partition

and not final and thus, objections were rightly entertained, but with naked eyes it is evident from the substance thereof that this was the final mode of partition and not the proposed one as everything is stipulated therein as to how parties are to be put to in possession of their shares of the land in dispute. There is neither any recourse provided under Section 111 to file any objections against the mode of partition once finalized by AC-II; nor anything can be inferred from the order dated 22.07.2010 that any such objections were invited from the parties. Therefore, this Court hold that order dated 22.07.2010 passed by AC-II was the final mode of partition and the objections were entertained by the AC-II without any legal basis being infraction of Section 111 of the Act. Consequently, Financial Commissioner rightly interfered against the order passed by the Commissioner and the same has validly affirmed by learned Single Judge which does not warrant any interference by this Court while entertaining the present appeal.

12. In view of above, there is no merit in the LPA and the same is hereby dismissed.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

August 28, 2018
naresh.k

Whether reportable?	Yes
Whether reasoned/speaking?	Yes