

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3304 of 2014 (O&M)

Date of Decision: April 04, 2018

Amar Singh & another

...Appellants

Versus

Smt.Amarjit Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Ranjit Saini, Advocate,
for the appellants.

Mr.Bhag Singh, Advocate,
for respondent Nos.1 to 4 & 8 to 10.

AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings, whereby the suit preferred by the respondent-plaintiffs claiming themselves to be co-sharers of land measuring 42 kanals 01 marla by virtue of the order dated 13.9.2001 passed by the Assistant Collector IIInd Grade, Bilaspur, order dated 30.9.2004 rendered by the Collector, Jagadhri and order dated 31.5.2006 passed by the Commissioner, Ambala being illegal, null & void and not binding upon the rights of the plaintiffs, has been decreed.

The case set out by the plaintiffs in the plaint was that the land fully detailed and described in the plaint is joint property of the parties and respective shares as their predecessors-in-interest are mentioned in the jamabandi for the year 1986-87. Amar Singh appellant-defendant No.1 filed an application No.41 NTB dated 19.7.1989 for partition of the suit land. The

mode of partition was passed by the Assistant Collector IInd Grade, Bilaspur vide order dated 7.9.1992. The aforementioned order was assailed before the Collector, Jagadhri, who vide order dated 17.8.1994, remanded the matter to the Assistant Collector IInd Grade, Bilaspur with the directions that the proceedings of the partition be started afresh from the stage of mode of partition onwards, but the Assistant Collector did not comply with the directions of the Court contained in the remand order and passed a separate order dated 6.6.1996 of mode of partition and thereafter on 16.4.1999 (Ex.P10/Ex.D10) prepared mode of partition with kuras. Naksha-Be was prepared on 13.9.2001. Appeal preferred by the respondent-plaintiffs was also dismissed vide Ex.P-6 and revision on 31.5.2006. It is in that background of the matter, the suit aforementioned was filed. The pith and substance of the suit was that the revenue court did not have the jurisdiction to review the order as the Assistant Collector did not comply with the remand order of the Collector, for, in the mode of partition or the final partition, no separate kurra was mentioned.

The aforementioned suit was contested by the appellant-defendants by taking up all the possible preliminary objections. On merits, it was stated that the suit land was ordered to be partitioned by the revenue court and the partition order had become final between the parties vide order dated 13.9.2001 passed by the Assistant Collector IInd Grade, Bilaspur. It was denied that the partition order dated 7.9.1992 was set-aside. In fact, it was remanded back with a direction to take up the proceedings again from the stage of mode of partition. The Assistant Collector recorded the statements of the parties and accepted Naksha-Be on 13.9.2001, against which appeal preferred by the plaintiffs was dismissed on 30.9.2004. Sanad

Takseem was prepared on 21.5.2002. Warrants of possession were also issued on 26.7.2002.

The trial Court, on the basis of the pleadings of the parties, framed the following issues:-

- “1) Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP*
- 2) Whether the present suit is not maintainable? OPD*
- 3) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*
- 4) Whether this court has got no jurisdiction to entertain and try the present suit? OPD*
- 5) Whether plaintiffs have concealed true and material facts from this court and have not come to the court with clean hands? OPD*
- 6) Relief.”*

Both the parties brought on record their respective evidence, i.e., the orders passed from time to time.

The trial Court, on the basis of the documentary evidence and the submissions decreed the suit holding that the Assistant Collector had prepared mode of partition. He did not have any jurisdiction to review the mode of partition, for, was only required to comply with the directions of the Collector contained in the order dated 17.8.1994. Appeal preferred by the appellant-defendants had also been dismissed.

Mr.Ranjit Saini, learned counsel appearing on behalf of the appellant-defendants submitted that vide order dated 17.8.1994, the Collector remanded the matter to the Assistant Collector with the directions to start partition proceeding, afresh, i.e. from the stage of mode of partition. The Lower Appellate Court found that the mode of partition earlier passed on 26.6.1992 did not contain carving out of the separate kurra. It is in that

process, Assistant Collector wrote a letter to the Deputy Commissioner for sanctioning of the same, but the Collector did not respond to the same. The Courts below could not have decreed the suit, for, it had not noted the fact that vide order Ex.P8 dated 6.6.1996, the Assistant Collector recorded the statements of the parties and endorsed the previous mode of partition which was misinterpreted and misread by the Courts below, to be a fresh mode of partition. It is a separate mode of partition which was only passed on 16.4.1999 (Ex.P9) with kurra in compliance of the order of the Deputy Commissioner.

He further submitted that Naksha-Be and Sanad Takseem had already been passed on 13.9.2001 and 21.5.2002. Even warrants of possession were issued. Since the respondent-plaintiffs were having a strong attitude against the defendants as they did not accept the ground reality, they preferred to drag them in prolonged litigation by filing the suit. All these factors, if read in cumulative, the judgments and decrees are result of illegality and perversity.

Per contra, Mr.Bhag Singh, learned counsel appearing on behalf of the contesting respondent-plaintiffs submitted that the Punjab Land Revenue Act, 1887 does not empower the Assistant Collector to review the order dated 13.9.2001 and consequential orders passed by the competent authority were nonest and illegal in the eyes of law as there was no direction given to the Assistant Collector for passing the fresh mode of partition as the proceedings were to start after the mode of partition dated 17.8.1994. The concurrent findings cannot be interfered with unless and until there is gross illegality or perversity. No hardship and prejudice would be caused to the appellant-defendants as the execution proceedings can

always be initiated afresh and, thus, urged this Court for affirming the concurrent findings.

I have heard the learned counsel for the parties and appraised the paper book.

The facts are not in dispute. The only question to be considered by this Court is whether on remand by the Collector vide order dated 17.8.1994, the Assistant Collector had exceeded jurisdiction by reviewing the order by passing the mode of partition or not.

It would be in the fitness of things to refer to the document dated 6.6.1996 (Ex.P8), wherein with the consent of the parties, the Assistant Collector amended the previous mode of partition, for, the previous mode of partition dated 26.6.1992 (Ex.P7) and the final order dated 7.9.1992 did not contain carving out of separate kurra for the parties, which was essential requirement of law for the purpose of partition proceedings, therefore, the letter and spirit of the order of the Collector dated 17.8.1994 restored as the parties had consented to the Assistant Collector for carving out of the separate kurra.

The order dated 16.4.1999 Ex.P10/Ex.D10 has not been examined by both the Courts below while holding it to be a fresh mode of partition. There was an inherent defect in the previous proceedings. It is in that background of the matter, the parties had given the consent to the Assistant Collector for carving out separate kurra. The final order has already been passed by way of Naksha-Be on 13.9.2001. The mode of partition was prepared and warrants of possession were also issued, but the respondent-plaintiffs, took the advantage of alleged technical defect, just to contest the same and dragged the case as late as in 2001 before the trial

Court up to this Court. All these factors have not been looked into by the Courts below and, therefore, there is a glaring abdication, much less fallacy and perversity.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial question of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of

India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons stated above, the judgments and decrees of the Courts below are not sustainable and hereby set-aside. The orders rendered by the authorities are affirmed. Suit of the respondent-plaintiffs stands dismissed. Resultantly, the appeal is allowed.

April 04, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No