

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.102 of 2017 (O&M)

Date of Decision: January 24, 2019

Hardeep Singh

...Petitioner

Versus

Gurjant Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rajan Bansal, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order dated 30.11.2016 (Annexure P-4), whereby the application of the petitioner- defendant No.1 for rejection of the plaint on the ground that the trial Court did not have the jurisdiction to entertain the suit filed by the plaintiffs challenging the partition proceedings, Naksha Zeem, Naksha Bey and Sanad Takseem, has been dismissed.

Mr. Rajan Bansal, learned counsel appearing on behalf of the petitioner- defendant No.1 submitted that as per the provisions of Section 158 of the Punjab Land Revenue Act, 1887 (for short, the Act), the remedy was available before the quasi judicial authorities, to file the writ and not independent suit to re-agitate the case which had already attained finality. In support of the aforementioned contention, relied upon the judgments rendered in Harjinder Singh Versus Kesar Singh and others, 2013(33)

R.C.R. (Civil) 273, Balbir Singh and others Versus Ram Kumar and others, 2014 (54) R.C.R. (Civil) 230 and Sucha Singh and another

Versus Naranjan Singh and others, 2015(4) R.C.R. (Civil) 978.

He further contended that as per the provisions of Section 117 of the Act, it was prerogative of the revenue authorities to decide the question of title in partition proceedings of agricultural land in case there was a dispute with regard to question of title which is not in this case, therefore, the order rejecting the application is wholly preposterous and illegal.

As per office report dated 17.01.2019, respondent Nos.1 and 2 had already been served, whereas respondent No.3 has died. There is no representation on behalf of the contesting respondents. Accordingly, I proceed to decide the case on merits.

I have heard the learned counsel for the petitioner- defendant No.1, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel, for, plaintiffs have sought the following relief in the plaint:-

“Suit for declaration to the effect that the alleged partition proceedings in application bearing File No.44/Reader dated 10.7.2012 titled as Hardeep Singh Versus Gurjant Singh and others of village Bhokhra, Tehsil and District Bathinda including Mode of partition passed on 11.7.2013, Naksha Bey sanctioned on 17.9.2013, Naksha Zeem and Sanad Takseem dated 18.12.2014 passed by the learned A.C.1st Grade (Naib Tehsildar), Goniana, Tehsil and District Bathinda and order dated 9.7.2014 vide which the appeal filed by the plaintiffs against the sanctioning Naksha Bey was dismissed by Sh.Damanjit Singh Mann, PCS, Hon'ble Collector Sub Division, Bathinda, are totally wrong, illegal, null and void, arbitrary, against principles of natural justice and against the settled proposition of law laid and are liable to be set aside and notwithstanding the impugned partition proceedings, the

plaintiffs and defendants are continuing to be the co-sharers in the land measuring 275 kanals 3 marlas comprising in Khewat No.259, khatauni No.590, bearing Khasra Nos.49//22 (3-0), 23 (8-0), 24(8-0), 25(8-0), 50/21/2(3-16), 75/1(8-0), 133/15/2(2-4), 16(8-0), 134/1/1(2-5), ½(3-10), 2(7-11), 3/1(0-15), 6(8-0), 7 (8-0), 134/8(8-0), 9/1(4-0), 9/2(2-12), 10(7-17), 11(8-0), 12(7-17), 13/1(2-12), 13/2(4-0), 14(8-0), 15(8-0), 16/1(3-7), 17/1(4-0), 17/2(2-12), 18(7-17), 19(8-0), 20(8-0), 23/1(3-16), 23/2(3-11), 24(7-5), 25/1(2-12), 137/1/1(2-12), 133/3 (8-0), 4(8-0), 5 (7-17), 165/9(3-5), 189/10 (0-13), 306 (1-12), 108/23(3-0), 24 (8-0), 25(7-8), 127/5/1(2-13), 14min (6-12), 17(2-4), 127/4(8-0), 7(8-0), 14 min(1-8), situated at Village Bhokhra, Tehsil and District Bathinda.

AND

Suit for permanent injunction for restraining the defendant No.1 from getting the alleged partition proceedings implemented in the revenue record and also for restraining them from getting the warrants of possession executed under the garb of the alleged partition proceedings.”

The provisions of Section 158(2)(xviii) of the Act and Section 117 read thus:-

“158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers: -Except as otherwise provided by this Act-

(1) a Civil Court shall not have jurisdiction in any matter which the 1[State Government] or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the 1[State Government] or any revenue-officer exercises any powers vested in it or him by or under this Act; and in particular--

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -

XXX

XXX

XXX

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land – revenue on the partition of an estate or holding or on a periodical redistribution of land, or as to the distribution of land, or as to the distribution of rent on the partition of a tenancy ;

1[(xviii-a) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 101-A, 101-B, 101-C and 101-D, respectively, of Chapter VIII]”

“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;--

XVI of 1887: -

(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.

(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.

(c) An appeal shall lie from the decree of the Revenue-officer under clause (b) as though that decree were a decree of a 1[Subordinate Judge] in an original suit.

(d) Upon such an appeal being made, he 2[District Court], or 2[High Court], as the case may be, may issue an injunction to the Revenue-officer requiring him to stay proceeding pending the disposal of the appeal.

(e) From the appellate decree of a 2[District Court] upon such an appeal, a further appeal shall lie to the 3[High Court] if such a further appeal is allowed by the law for the time being in force.”

The aforementioned provision bars a civil Court from hearing the question regarding partition proceedings and allotment of the share once the original jurisdiction of the Civil Court in respect of the agricultural land outside the municipal limits vests with the revenue authorities. It would be apt to reproduce Para 5 of the judgment in

Harjinder Singh's case (supra). The same reads thus:-

“Admittedly, right to partition is governed by Section 111 of the Punjab Land Revenue Act and under Section 158(2) (xviii) of the Punjab Land Revenue Act the jurisdiction of the civil court is ousted. Section 158 (xviii) bars a civil court from hearing any question as to allotment of land made in the partition proceedings of agricultural land. Thus when in partition proceedings before revenue officer there is no dispute as to the title to the land to be partitioned, civil court has no jurisdiction to entertain any

question arising out of such proceedings. The fact that procedure of the revenue officer was defective would not give a civil court jurisdiction in view of clear ouster set forth in the Act. Learned counsel for the petitioner has failed to show any illegality or perversity in the orders of the revenue authorities. Only ground is that principles of natural justice have not been followed. This contention cannot be accepted. Petitioner was party to the proceedings. He had been appearing in the proceedings and had the opportunity to challenge the orders of revenue authorities which according to him were not in accordance with law. The remedy of appeal/revision and ultimately writ was available to him.”

The trial Court, in my view, abdicated in not noticing the aforementioned provisions. Continuation of suit would be a farcical exercise.

For the reasons mentioned above, the impugned order is set-aside. The suit is ordered to be rejected. Consequently, the revision petition is allowed.

January 24, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No