

CWP-7754-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7754-2019

Date of Decision: 20th March, 2019

Bhajan Singh

...Petitioner

Versus

The Financial Commissioner Revenue, Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Charanpal Singh Bagri, Advocate with
Ms. Gurjit Kaur Bagri, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 06.09.2018 (Annexure P-1) passed by the Financial Commissioner (Revenue), Punjab – respondent No.1, order dated 12.02.2013 (Annexure P-2) passed by the Divisional Commissioner, Patiala – respondent No.2, upholding the orders passed by the Assistant Collector 1st Grade, Payal, dated 03.05.2010 and 11.08.2010 (Annexures P-4 and P-5 respectively), whereby, mode of partition by disturbing the possession of parties was proposed and subsequently, finalized. A *mandamus* is also sought for directing the official respondents to carry out the partition proceedings in view of the final order of mode of partition dated 16.01.1996 (Annexure P-6), which has been upheld upto the Financial Commissioner, Punjab, whereby, possession of the parties was ordered to be kept intact.

2. It is the contention of the learned counsel for the petitioner that initially, an application for partition was preferred by Gurdeep Singh, father of Balwinder Singh – respondent No.5, before the Assistant Collector 1st Grade in the year 1993. The mode of partition was prepared by the Assistant Collector 1st Grade, Payal, vide order dated 16.01.1996 (Annexure P-6), according to which, possession of the parties was to be kept intact. The said order has attained finality. The Assistant Collector 1st Grade, while deciding the grievance as highlighted by Gurdeep Singh, father of respondent No.5 – Balwinder Singh, the then applicant, passed an order dated 26.04.1999 (Annexure P-7) by disturbing the possession, against which, an appeal was preferred by Surjeet Singh – respondent No.8 (proforma respondent herein), which was dismissed by the Collector vide order dated 27.04.2000 (Annexure P-8) leading to the filing of revision petition before the Additional Commissioner, Patiala Division, Patiala, who remanded the case back to the Collector, Payal, for fresh decision on the matter vide order dated 12.07.2001 (Annexure P-9). In compliance with the said order, Collector Payal, decided the appeal of Surjeet Singh afresh by allowing the same vide order dated 07.05.2002 (Annexure P-10) by holding that the Assistant Collector 1st Grade was required to finalize the partition proceedings as per the approved mode of partition and the subsequent order passed by the Assistant Collector 1st Grade, disturbing the possession. Gurdeep Singh, father of respondent No.5 – Balwinder Singh filed an appeal against the order dated

07.05.2002 (Annexure P-10) before the Divisional Commissioner, Patiala, who accepted the appeal vide order dated 25.03.2003 (Annexure P-11) leading to the filing of revision petition by Surjeet Singh before the Financial Commissioner (Appeals-II), Punjab, who accepted the revision petition vide order dated 20.09.2005 (Annexure P-12) setting aside the order of the Divisional Commissioner, Patiala, dated 25.03.2003 (Annexure P-11) and upholding the order of Collector, Payal, dated 07.05.2002 (Annexure P-10).

3. He submits that at this stage, Gurdeep Singh, father of respondent No.5 – Balwinder Singh moved an application before the Assistant Collector 1st Grade, Payal, withdrawing his application for partition, which prayer was accepted and the Assistant Collector 1st Grade, Payal, vide order dated 23.01.2007 (Annexure P-13) permitted withdrawal of the application without any notice to the opposite parties including the petitioner. When the petitioner came to know about the withdrawal of the application for partition, he moved an application under Section 118 of the Punjab Land Revenue Act, 1887, to continue the partition proceedings, in which, mode of partition had been finalized earlier upto the Financial Commissioner, Punjab, vide order dated 20.09.2005 (Annexure P-12). The said application was not entertained by the Assistant Collector 1st Grade.

4. Thereafter, a fresh application for partition of the same land was moved by the petitioner with a prayer for keeping the possession of

the parties intact in view of the earlier partition proceedings, which were finalized by the Assistant Collector 1st Grade, vide order dated 16.01.1996 (Annexure P-6). Notice was issued to the other parties and objections were called. On 03.05.2010, Assistant Collector 1st Grade, Payal, passed an order (Annexure P-4) proposing the mode of partition. Petitioner objected to the same as in this mode of partition, contrary to the earlier mode of partition dated 16.01.1996, possession of the parties was sought to be effected and disturbed. The objections of the petitioner have been decided by rejecting the same vide order dated 11.08.2010 (Annexure P-5). This order dated 11.08.2010 was challenged by the petitioner before the Collector in an appeal, which was accepted vide order dated 30.03.2011 (Annexure P-3) and the order of the Assistant Collector 1st Grade was set aside and the said authority was directed to decide the objections afresh regarding mode of partition after providing an opportunity of hearing to them. Against the order dated 30.03.2011 (Annexure P-3), an appeal was preferred by Balwinder Singh, Surinder Singh and Jagdev Singh (respondents No.5 to 7), which has been allowed by the Divisional Commissioner, Patiala, vide order dated 12.02.2013 (Annexure P-2) setting aside the order of the Collector dated 30.03.2011 (Annexure P-3) remanding the case to the Assistant Collector 1st Grade, for further proceedings. This order was challenged by proforma respondent No.8 – Surjeet Singh and the petitioner by filing revision petitions before the Financial Commissioner (Revenue), Punjab, who has, vide order

dated 06.09.2018 (Annexure P-1), dismissed the revision petitions being devoid of merit by holding that the order dated 11.08.2010 (Anenxure P-5) was justified keeping in view the change in circumstances as also the fact that the separate applications have been preferred now and the partition must conclude.

5. It is the contention of the learned counsel for the petitioner that the earlier mode of partition, which had attained finality, was 16.01.1996, according to which, possession was to be kept intact. Now by way of the fresh mode of partition as approved vide order dated 11.08.2010, the proposed mode of partition dated 03.05.2010 by breaking/disturbing the possession of the parties keeping in view the nature of the land and value thereof, cannot sustain as it is contrary to the earlier finalized mode of partition. He, therefore, contends that the impugned orders cannot sustain and deserve to be set aside.

6. I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the impugned orders but do not find myself in agreement with him.

7. In this case, partition proceedings were initiated way back in the year 1993 but could not be concluded. It is true that earlier mode of partition was finalized on 16.01.1996 but the application, on the basis of which the same was finalized, stood withdrawn by the then applicant. Thereafter, a fresh application for partition was preferred by the petitioner in the year 2010 and therefore, it is, in these circumstances, this

application has been considered and fresh mode of partition ordered. It has been more than 20 years now and even the earlier mode of partition, which has been finalized, was 14 years prior to the earlier mode of partition on an application filed by Gurdeep Singh, father of respondent No.5 – Balwinder Singh, with the change in the valuation of the land and the circumstances especially in the light of the fact that the petitioner as well as proforma respondent No.8 – Surjeet Singh have alienated some of the share of their land to the Cooperative Society and that too, on the metalled road and therefore, the earlier mode of partition cannot be pressed into service. In the impugned orders, the revenue authorities have rightly come to a conclusion that the partition of the land is to take place keeping in view the value of the land and each co-sharer is entitled to get the land proportionate to his share abutting the main road.

8. Possession of a party requires to be respected but it cannot be permitted to be so done at the cost of share of the other co-sharer, who would be deprived of their valuable right of equal share in the property especially in the light of the principle that each co-sharer is owner as well as in possession of each inch of land. During partition, care and caution has to be taken by the concerned revenue authority for the nature, value and the possession of the respective parties. The 3rd aspect i.e. possession is by nature equitable, which has to be balanced, as none of the co-sharers should suffer because of one party being in possession of more valuable land especially on the road. More valuable/less valuable land should be

disturbed in proportionate manner between the share holders. These principles have been kept in mind by the Assistant Collector 1st Grade while passing the order dated 11.08.2010 (Anenxure P-5) while approving the mode of partition as proposed on 03.05.2010 (Annexure P-4), which orders have been approved by the appellate and revisional authorities.

9. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

20th March, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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