

CWP-11420-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11420-2017 (O&M)

Date of Decision: 10th September, 2019

Satbir Singh & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Sharma Vashist, Advocate for
Mr. Gurcharan Dass, Advocate
for the petitioners.

Mr. Ravi Partap Singh, AAG, Haryana
for respondents No.1 to 3.

Mr. Deepak Girhotra, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-4068-CWP-2019

Prayer in this application is for placing on record photocopy of the Civil Suit bearing No.182/1 dated 06.10.2018, titled as 'Ram Narain Singh Vs. Satbir Singh & another', which had been preferred by respondent No.4 against the petitioners for separate possession by way of partition of the land, which is the subject matter of the present writ petition.

Notice of the application to the counsel opposite.

Mr. Vivek Sharma Vashist, Advocate appearing for Mr. Gurcharan Dass, Advocate, accepts notice on behalf of the non-applicant/petitioners and states that he has no objection to the prayer made in the application.

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In view of the above, photocopy of civil suit is taken on record as Annexure R-1, subject to all just exceptions.

Application stands disposed of.

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This writ petition has been filed by the petitioners praying for quashing of the *ex parte* order of partition dated 31.05.2016 (Annexure P-10) passed in case No.38/NT/15.05.2015, titled as 'Ram Narain Vs. Satbir Singh & another', as also the other documents (Annexures P-6, P-7, P-8, P-9 and P-11) being illegal, without jurisdiction as the property falls within the municipal limits of Municipal Corporation, Rohtak. Prayer was also made for staying the execution of the order dated 31.05.2016 (Annexure P-10) as also the warrants of possession issued by the Assistant Collector 1st Grade, Rohtak.

Learned counsel for the parties are *ad idem* that the land, which is the subject matter of partition application, falls within the municipal limits of Municipal Corporation, Rohtak and therefore, could not have been the subject matter of the partition application under the Revenue Act before the revenue authorities.

Learned counsel for respondent No.4, with reference to the civil suit filed by respondent No.4 – Ram Narain, copy of which has been taken on record today as Annexure R-1, states that the said respondent has already filed a civil suit for the relief of separate possession by way of partition. He further states that he would not be in a position to defend the order impugned herein in the light of the settled law in Surjit Singh Vs.

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Financial Commissioner (Appeals), Punjab & others 2012 (5) RCR (Civil) 683, where it has been held that the property which falls within the municipal limits cannot be partitioned by the revenue authorities and the remedy available is before the Civil Court.

In view of the above, impugned order dated 31.05.2016 (Annexure P-10) along with all consequential orders/documents i.e. Annexures P-6 to P-9 and P-11 are hereby set aside.

Since respondent No.4 has already filed a civil suit, which is pending before the trial Court, no further orders are required to be passed except that order will have no bearing on the pending civil suit.

The writ petition stands allowed in above terms/observations.

10th September, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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