

CWP-4411-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4411-2015

Date of Decision: 9th January, 2019

Ajaib Singh & another

...Petitioners

Versus

The Financial Commissioner (Revenue), Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

Mr. Sherry K. Singla, Advocate
for respondents No.5 to 10.

AUGUSTINE GEORGE MAS IH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 20.01.2015 (Annexure P-13) passed by the Financial Commissioner (Revenue), Punjab, whereby, orders dated 17.09.2014 and 29.08.2012 (Annexures P-12 and P-10) passed by the Commissioner, Faridkot Division, Faridkot – respondent No.2 and order dated 29.10.2010 (Annexure P-9) passed by the Collector-cum-Sub Divisional Officer (Civil), Sub Division Talwandi Sabo, District Bathinda – respondent No.3 and order dated 06.08.2010 (Annexure P-8) passed by the Assistant Collector Ist Grade-cum-Tehsildar, Talwandi Sabo, District Bathinda – respondent No.4, were upheld and partition proceedings were allowed to continue, on the ground that the same are illegal, arbitrary, null and void. Directions are also sought

in the nature of mandamus to dismiss the partition proceedings initiated by respondents No.5 to 10.

2. It is the contention of the learned counsel for the petitioners that in the year 1963, rather on 28.07.1963, a family private partition had taken place. On the basis of the said partition, possession of the land was exchanged between the brothers. This, he asserts on the basis of the khasra girdawari(s) of village Chathewla, Tehsil Talwandi Sabo, District Bathinda for the years 1966-67, 1967-68, 1968-69 and 1969-70 (Annexure P-2). Initially, he refers to the jamabandi for the year 1964-65 (Annexure P-1) to contend that the earlier jamabandi indicates that all the joint holders were enjoying the possession of the land as owners. Referring to further jamabandi for the year 1969-70, counsel has further asserted that the family private partition, which had taken place, had actually been acted upon on the ground with the partition of the land and exchange of possession. He has referred to the site plan placed on record by the petitioners depicting the location of the land and assigning reasons as to why the petitioners were given more land as compared to the other brothers in the partition. He states that there was no passage given for khasra No.781, which was given to him in the partition, whereas, khasra Nos.782, 783 and 784 were on the sanctioned passage and therefore, there being no connectivity with this land and since the adjacent land i.e. khasra No.775 was exclusive ownership of the petitioners, he had agreed for the said arrangement. Referring to Annexure P-15 depicting the canals for irrigation, he further asserts that the other reason, as to why the petitioners were given more land, was that the

canal which supplied water to the private respondents, passes through the land of the petitioners, which share was given to them. He, thus, contends that because of the inferior quality of land and for the reason that the canal had to go through the land of the petitioners, which also utilized some land, the petitioners were granted more land as compared to the other brothers. Reference has also been made to the warabandis (Annexure P-4 and P-5) to substantiate this contention. He, thus, contends that the impugned orders passed by the revenue authorities cannot sustain and deserve to be set aside as a family private partition had actually been taken place between the brothers, which has been acted upon on the ground as well.

3. Learned counsel for the petitioners has placed reliance upon the judgment of this Court in Arjan Singh (deceased) through LRs Vs. The Financial Commissioner, Appeal-II, Punjab 2001 (4) R.C.R (Civil) 42, wherein, it has been observed that the party denying the oral family partition should approach the Civil Court for proving it otherwise.

4. Learned counsel for respondents No.5 to 10 has asserted that firstly, there has been no family partition at all, rather in the reply to the application for partition, the stand which has been taken by the petitioners is that there was an oral partition, which was later on recorded in the written form, which document has never seen the light of the day. He further contends that nothing has been produced on record to substantiate the existence of oral family partition or acting thereon by the brothers. That apart, he asserts that as per the revenue records, may be that the land in possession of each of the co-sharers is different but that does not make him

the owner of that particular piece of land as it is a joint ownership and each co-sharer is the owner of each inch of land. The revenue records till date clearly indicate the land to be in joint ownership of the parties. He, therefore, supports the orders as has been passed by the revenue authorities.

5. Learned counsel for respondents No.5 to 10 has referred to the judgment passed by this Court in CWP No.7401 of 2014, titled as 'Gurdip Singh Vs. State of Punjab & others', decided on 20.03.2017, wherein, this Court observed that there was not only an oral partition but also a *rapat roznamcha* which has been entered in the revenue records by the Patwari on the basis of the writing but that was also not accepted in the light of the fact that no mutation has been entered into, in pursuance thereto and therefore, it was held that no partition had taken place.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case.

7. The basic principle of law is that if an assertion is made by a party, the onus to establish the same is of that party only which unfortunately, has not been established by the petitioners with regard to the oral settlement alleged to have been entered into between the parties on 28.07.1963. The possession of the land, which admittedly is a joint khata till date in the revenue records, does not confer the ownership on the person who is in possession of a particular piece of land irrespective of the share which he is entitled to. A party is entitled to the respective share as per their proportion and would be declared owner of a particular piece of land which

may fall in the ultimate partition be proceedings when concluded.

8. Present is a case where merely because the petitioners are in possession of the excess land, they have tried to justify that there was an oral partition and therefore, they came in possession of the excess land because of the inferior quality of the land and there being a water canal passing through the land of the petitioners which irrigated not only the land of co-sharers but also other subsequent beneficiaries. This, in the considered view of this Court, would not be enough to establish the actual factum of any oral partition unless it is incorporated in the revenue records. The judgment on which reliance has been placed by the learned counsel for the petitioners i.e. *Arjan Singh's* case (supra), was a case where a party has already approached the Court and the Civil Court had given a finding that there was indeed an oral partition, whereas, in the present case, none of the parties, till date, has approached the Civil Court for adjudication on this aspect. Petitioners, who are asserting that there was an oral partition, has not been able to establish the factum of there being one, cannot take a plea that the respondents should have approached the Civil Court for establishing an oral partition when an assertion has been made by the petitioners themselves and therefore, onus was on the petitioners to establish the same. The judgment on which reliance has been placed by the learned counsel for the petitioners, therefore, would not be applicable to the facts of the present case.

9. As regards the judgment passed by this Court in *Gurdip Singh's* case (supra), on which, reliance has been placed upon by the learned

counsel for respondents No.5 to 10, relates to a case of partition where not only an oral partition was alleged to have been entered into but there was a *rapat roznamcha* also entered into in this regard by the Patwari but still the Court proceeded to hold that since no separate mutation has been sanctioned, the factum of partition has not been established and therefore, did not confer any right. Present is a case where even the oral partition, as claimed, has not been established what to say of any writing and it may not be out of way to state that the petitioners have not been able to substantiate his contention in the reply which has been filed to the partition proceedings that there was an oral partition which was thereafter put into writing and acted upon.

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

11. It may be added here that any observation made by this Court shall not, in any manner, prejudice the parties with regard to any right which may be available to them in pursuance to the oral partition, if any.

9th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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