

CWP-27990-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27990-2018 (O&M)

Date of Decision: 18th January, 2019

Gajjan Singh & others

...Petitioners

Versus

Financial Commissioner Revenue, Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.D. Sharma, Advocate,
for the petitioners.

AUGUSTINE GEORGE MAS IH, J. (ORAL)

CM-470-CWP-2019

Copy of jamabandi for the year 2015-16 of village Sachander, Tehsil and District Amritsar, is taken on record as Annexure P-11, subject to all just exceptions.

Application stands disposed of.

CWP-27990-2018

Challenge in this writ petition is to the order dated 28.03.2018 (Annexure P-9) passed by the Financial Commissioner Revenue, Punjab, order dated 20.05.2015 (Annexure P-7) passed by the Commissioner, Jalandhar Division, Jalandhar, order dated 22.06.2011 (Annexure P-5) passed by the Sub Divisional Magistrate-cum-Collector, Amritsar-II and order dated 21.01.2011 (Annexure P-3) passed by the Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, whereby, partition application

preferred by respondent No.5 has been accepted.

2. It is the contention of the learned counsel for the petitioners that service upon the petitioners has not been effected as per the provisions of the Punjab Land Revenue Act, 1887 and therefore, the order as passed by the Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, dated 21.01.2011 (Annexure P-3), cannot sustain and similarly, subsequent orders passed by the upper revenue authorities. He contends that the family partition, on which, reliance has been placed upon is based upon a photocopy of the same, which is of the year 1992 and therefore, could not have been taken into consideration. He further contends that even if service had been duly effected but still the partition could not have been carried out as the land in question is substantially *gair mumkin* being built up area. Counsel, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the petitioners and with his assistance have gone through the impugned orders.

4. Perusal of the order dated 21.01.2011 (Annexure P-3) passed by the Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, would show that upon notice having been issued to the predecessors-in-interest of the petitioners, summons were received back with the report that Gurmeet Kaur etc. had shifted to U.P. after selling the property and Harinder Singh is residing somewhere in the city and no respondent is living in the village. In the light of this, *munadi* was got conducted for appearance before the

authority on 19.01.2011 through the Civil Nazir. Despite that, none had put in appearance on their behalf and therefore, Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, had proceeded against the predecessors-in-interest of the petitioners *ex parte*.

5. During the proceedings before the Assistant Collector Ist Grade, Amritsar-II, a photocopy of family partition dated 18.06.1992 was produced, which was taken as a plea for partition. The said document although a photocopy but was duly proved on the basis of the statements given by Makhan Singh, Nambardar of village Bal Sachander, Karan Singh son of Fauja Singh Ex-Member of Panchayat, Dalip Singh Member of Panchayat and Ram Singh, who got recorded their statements that Mohan Singh and Joginder Singh had partitioned their land and the partition was effected in the year 1992 in their presence. It is, on the basis of the said agreement, that the Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, proceeded to formalize the partition on the basis of the agreement. This aspect has been upheld upto the Financial Commissioner Revenue, Punjab, which orders have been impugned by the petitioners.

6. So far as the assertion of the counsel for the petitioners that the land in question is a *gair mumkin* land and therefore, Revenue Court does not have the jurisdiction, cannot be accepted as it is a mixed land, may be some portion thereof is a constructed area but that does not bar the jurisdiction of the Revenue Court under the Punjab Land Revenue Act, 1887. In any case, Tehsildar-cum-Assistant Collector Ist Grade, Amritsar-II, had proceeded to formalize the partition as has been accepted as a family

partition on the basis of the evidence produced on record. The authority has further held that since both the parties had sold their land, therefore, the vendees of both the parties are held to be in possession of their purchased land. This takes care of the vendees as well.

7. This Court does not find any ground to interfere in the orders impugned by the petitioners in exercise of its writ jurisdiction. The writ petition, therefore, stands dismissed.

18th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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