

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.322 of 2016 (O&M)
Decided on : 19.03.2019

Om Parkash & ors.

..... Appellants

Versus

State of Haryana and anr.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Jagdish Manchanda, Advocate
for the appellants.

Ms. Mamta Singla Talwar, DAG, Haryana.

None for respondents No.4 to 10.

Manjari Nehru Kaul, J.

Challenge in this Letters Patent Appeal is to the order dated 20.10.2015 passed by the learned Single Judge whereby CWP No.23078 of 2013 filed by the respondent No.10 was allowed.

2. The case in brief is that appellants filed an application dated 30.06.2004 (Annexure P-1) under Section 111 of Punjab Land Revenue Act, 1887 (hereinafter referred as 'the Act') for partition of land comprised in khewat No.51, Khatoni No.103, 108 and khewat No.52, khatoni No.109 and 111 consisting of various killa numbers as per jamabandi for the year 1997-98 before Assistant Collector, Ist Grade, Ballah, Karnal. After the completion of all procedural formalities, the mode of partition in respect of land measuring 514 kanal 3 marla was approved. "Naksha Bey" was also approved by the Assistant Collector, II Grade, Ballah vide order dated

08.12.2010 (Annexure P-6) after the objections filed by the respective parties had been tested. The appellants, thereafter, impugned the order dated 08.12.2010 (Annexure P-6) before the Collector Assandh, Karnal. The said order was set aside by the Collector, Assandh vide order dated 27.03.2012 (Annexure P-7) and the case remanded back to the Assistant Collector for fresh adjudication. Against the said order, respondents No.4 to 10 filed an appeal under Section 13 of the Act before the Commissioner, Rohtak Division, Rohtak, Camp at Karnal. During the pendency of the appeal before the Commissioner, appellant No.3 – Ajayab Singh @ Ajaib Singh moved an application before Assistant Collector, Ist Grade for withdrawing the application for partition with liberty to file a fresh one as a consequence of which, partition proceedings were stopped by the Assistant Collector, Ist Grade, Ballah vide order dated 01.02.2013 (Annexure P-10). In this factual background, respondent No.10 – Kanwarpal approached this Court by way of CWP No.23078 of 2013 for quashing of order dated 01.02.2013 (Annexure P-10). Learned Single Judge vide order dated 20.10.2015 set aside the impugned order holding the same to be unsustainable in the eyes of law. Feeling aggrieved, the appellants have filed the present appeal.

3. Learned counsel for the appellants submitted that the learned Single Judge gravely erred in not appreciating that the provisions of the Punjab Land Revenue Act, 1887 had been violated and the order passed by the learned Assistant Collector, Ist Grade, Ballah was appealable under the provisions of Section 118(2) of the Act. He further contended that despite respondent No.10 -Kanwarpal not moving any application before the

learned Assistant Collector or before the Collector or Commissioner for wanting to continue with the partition proceedings and qua the same nothing having been pleaded in the writ petition, the learned Single Judge was in error in ordering that respondent No.10 – Kanwarpal could continue with the proceedings under the provisions of Section 118 of the Act. Learned counsel for the appellants contended that the order dated 01.12.2013 (Annexure P-10) passed by learned Assistant Collector, Ist Grade, Ballah had, thus, been set aside without availing the remedy under the provisions of Section 118(2) of the Act.

4. We have heard learned counsel for the parties and perused the material available on record with their assistance.

5. Learned Single Judge vide order dated 20.10.2015 while setting aside the order dated 01.02.2013 directed the Assistant Collector, Ist Grade, Ballah to proceed with the partition application. It had been directed that the proceedings would commence from the stage from where they had been stopped in the application. The relevant findings recorded by learned Single Judge are reproduced as under:

“In the present case, the petitioner is one of the respondents in the application for partition. He has approached this Court on the ground that he was always interested to continue with the partition proceedings as major part of partition proceedings i.e. Naksha Bey has already been approved after deciding objections by the competent authority. His grievance is that no opportunity of hearing was given to the present petition, who is a respondent in the application for partition, to continue with the proceedings, rather same have been

stopped vide impugned order dated 01.02.2013 (Annexure P-10) which is contrary to Section 118(4) of the Land Revenue Act. Admittedly, once the application for partition is admitted, every applicant and respondent virtually become applicants because proceedings before the Revenue Officer/Assistant Collector-Ist Grade/II Grade are neither in the nature of civil suit, nor the application is a type of plaint, but it only refers that there is a joint land which is sought to be partitioned in accordance with the settled principles of partition of agricultural land.

In view of the above discussion, specifically Section 118(4) of the Land Revenue Act, the impugned order dated 01.02.2013 is not sustainable and accordingly, the same is set aside. The Assistant Collector, Ist Grade, Ballah is directed to proceed with the partition application and continue with the proceedings since the petitioner wants to proceed with the application. The proceedings shall commence from the stage from where the same were stopped in the application. Parties through their counsel are directed to appear before the Assistant Collector, Ist Grade, Ballah on 19.11.2015.”

6. It would be apposite to reproduce Section 118 of the Punjab Land Revenue Act, 1887 (as applicable to Haryana only), at the relevant time, which reads as under:

“118. Disposal of other questions-

- (1) When there is a question as to property to be divided, or the mode of making a partition, the Revenue Officer shall, after such inquiry as he deems necessary, record an order stating his

decision on the question and his reasons for the decision.

- (2) An appeal may be preferred [-] from an order under sub section (1) within 15 days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the [authority to whom the appeal has been preferred] the Revenue Officer shall stay proceedings pending the disposal of the appeal.
- (3) If an applicant for partition is dissatisfied with an original or appellate order under this Section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit.
- (4) When an applicant withdraws under the last foregoing sub section the Revenue Officer may where the other applicants if any, desire the continuance of the proceedings, continue them in so far they relate to the partition of the shares of those other applicants.

7. However, it may incidentally be noticed that the Section 118 in modified form was substituted by Haryana Act No.12 of 2017, which was made applicable vide notification published on 10.04.2017.

8. Coming to sub-section (4) of Section 118 of the Act, the question which would require consideration is whether the proceedings qua the partition of the shares of other applicants could continue once one of the applicants i.e. Ajayab Singh @ Ajaib Singh had sought permission to

withdraw and proceedings had been ordered to be stopped by Assistant Collector, Ist Grade, Ballah.

9. One fact, which cannot be disputed is that only appellant No.3 -Ajayab Singh @ Ajaib singh had moved an application for withdrawing and there had been no application on behalf of the other appellants for withdrawing from the proceedings insofar as the partition of their shares was concerned. At the same time, there was no application moved to seek continuance with the proceedings insofar as partition of their shares was concerned.

10. Sub-section (3) of Section 118 of the Act deals only with permission to withdraw from the proceedings insofar as it relates to the partition of the shares of the applicants whereas sub-section (4) talks about the continuance of the proceedings qua the other applicants, who may have been left behind in the proceedings. Both sub-sections (3) and (4) cannot be read in isolation. Rather sub-section (4) has to be read in conjunction with sub-section (3) of Section 118 of the Act. A perusal of both these sub-sections when read together indicate that insofar as withdrawal from the proceedings is concerned, the same would be permitted only after an application has been moved. The intention of the Legislature is writ large in the statute and is clearly discernible on conjoint reading of sub-sections (3) and (4) of Section 118 of the Act. While sub-section (3) permits an applicant to withdraw from the proceedings only by moving an application for withdrawal, sub-section (4) nowhere stipulates that the intention to continue with the proceedings, has to be gathered only from an application to that effect. Sub-section (4) leaves enough elbow room with the Revenue

Officer, to discern the intention of continuing with the partition proceedings from the attendant circumstances. In fact, the absence of a positive assertion to withdraw from the proceedings, would in terms of sub-section (4) of Section 118 of the Act, lead to an inference that the party left behind in the proceedings, wished to continue with the partition proceedings.

11. In the case in hand, admittedly, no application was moved by the appellants except appellant No.3 either for continuance or for withdrawal from the partition proceedings. Once they chose to maintain a silence and not move an application for withdrawing from the partition proceedings the only and natural inference that would be and could be drawn is that in fact they wanted the continuance of partition proceedings. Hence, in the absence of expression of intent to the contrary, it will be safe to assume that the party/parties left behind in the proceedings wanted the process to continue. However, the plea of alternative remedy under Section 118(2) of the Act was never raised before the learned Single Judge.

12. As a sequel to the above discussion, we do not find any infirmity or perversity in the order dated 20.10.2015 passed by learned Single Judge and affirm the same.

13. Accordingly, the appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

19.03.2019
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No