IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CIVIL WRIT PETITION NO.30473 OF 2019
DATE OF DECISION: NOVEMBER 15, 2019

Karnail Singh

.....Petitioner

VERSUS

Financial Commissioner, Revenue, Punjab, Chandigarh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ivan Singh Khosa &
Ms. Surabhi Kaushik, Advocates,
for the petitioner.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 30.03.2016 (Annexure P-4) passed by the Assistant Collector Ist Grade, Nangal-respondent No.2, whereby the application dated 09.03.2016, which was filed by Mukhtiar Singh alongwith the petitioner, who were the applicants in the partition suit for withdrawal of the partition application, was accepted alongwith which an application preferred by Mohan Singh, respondent No.3 herein, who was respondent No.7 in the said application, was accepted for transposing him as an applicant and to continue with the said partition, *sanad takseem* dated 01.06.2016 (Annexure P-5) issued in the partition proceedings, warrant of possession dated 06.06.2016 (Annexure P-6) and the order dated 17.01.2018 (Annexure P-7) passed by the Financial Commissioner, Revenue, Punjab-respondent No.1, whereby the revision petition preferred by the petitioner stands dismissed.

2. It is the contention of learned counsel for the petitioner that the petitioner had filed an application for partition of land measuring 0 kanal 15

marlas situated in Village Jindwari, Hadbast No.355, Tehsil Nangal, District Ropar. In the said application, the other co-sharers, who were respondents, were served. Only Mohan Singh son of Bishan Singh, (respondent No.3), appeared. Rest of the respondents were proceeded against exparte. Naksha `*urra'* was prepared and there being no objection thereto, the same was accepted. The mode of partition was also finalized on 12.10.2015 as none of the parties objected to the same. Nakshas `*arra'* and `*irri'* were directed to be prepared. On 06.01.2016, the said Nakshas were prepared by the Field Staff, which were received in the Court, against which the counsel for the petitioner raised objections. The said objections were rejected on 19.02.2016.

3. It is at this stage that an application was submitted by the petitioner where Muhktiar Singh, brother of the petitioner, the co-applicant appeared in the Court and stated that they wanted to withdraw the partition case. An opportunity was provided to respondent-Mohan Singh to file reply to the said application. Accordingly, objections were raised by Mohan Singh by asserting that all the proceedings have been completed and at this belated stage, the other respondents, including respondent No.7, would suffer loss. His further request was that he be allowed to be transposed as an applicant and to continue with the application under the relevant provisions of the Punjab Land Revenue Act, 1887 (for short, "the 1887 Act").

4. The Assistant Collector Ist Grade proceeded to accept the prayer of the applicant-petitioner but alongwith the same he allowed the partition application to continue by transposing Mohan Singh as an applicant and impleading the applicant-petitioner and his brother, Mukhtiar Singh as respondents vide order dated 30.03.2016, Annexure P-4.

5. This, the counsel states, is not permissible in law as according to Order 23 Rule 1A CPC, the transposition is only permitted by way of substitution with the consent of the original plaintiff and even if the plaintiff has to be impleaded as a defendant-respondent, he is required to be issued notice on a proper application having been made. It is only after hearing the original plaintiff, such an order can be passed for impleading the original plaintiff as a respondent. In support of this contention, he has placed reliance upon the Division bench judgment of the Kerala High Court in Donald Michael Richard Vs. Magline Paul, 2016 (4) Ker.L.J. 780 as also the Single Bench judgment of the same High Court in Ponnuchami Vs. Chellamuthu, 2019 (2) Ker.L.J. 845. He, thus, contends that the impugned order dated 30.03.2016 (Annexure P-4), whereby no separate application for impleading the petitioner and his brother as respondent had been preferred nor have they been issued any notice while allowing the said application, cannot sustain and would not be binding upon the petitioner. Consequently, he prays for setting-aside the *sanad takseem* dated 01.06.2016 (Annexure P-5) as well as the warrant of possession dated 06.06.2016 (Annexure P-6) issued in pursuance thereof. On the same grounds, order dated 17.01.2018 (Annexure P-7) passed by the Financial Commissioner, Revenue, Punjab, has also been impugned.

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

7. The facts, as have been recorded above, are not being referred to herein again as the issue involved in the present case is primarily limited to the extent of applicability of the Code of Civil Procedure to the

proceedings under the 1887 Act.

8. Perusal of the 1887 Act would make it apparent that the same is self contained and lays down the procedure to be followed by the Revenue Officers in disposing of the cases under the said Act. The State Government, while exercising the powers under Section 17 of the 1887 Act, has framed the rules of procedure in detail. The procedure, therefore, as laid down and prescribed under the 1887 Act alone has to be followed. However, the cases with regard to the title of property have to be decided not only under Section 117 of the 1887 Act but the provisions of the Code of Civil Procedure can also be invoked. It can, therefore, be said that the Code of Civil Procedure as such is not applicable to the proceedings under the 1887 Act. Thus, except for where specifically provided for, the general principles of the Code of Civil Procedure, where the Act and the rules are silent, may be used by giving equal opportunities to the parties.

9. This Court had an occasion to consider the above aspect in Puran Singh @ Sampuran Singh Vs. Financial Commissioner (Development), Punjab, Chandigarh and others, 2009 (2) R.C.R. (Civil) 712, where this Court has held that the provisions of the Code of Civil Procedure as such would not apply to the proceedings but still the principles contained in the Code of Civil Procedure would apply, especially on an aspect when the provisions of the 1887 Act are silent. Therefore, the plea of the petitioner that the Code of Civil Procedure would be the governing factor for the proceedings before the revenue authorities under the 1887 Act would not be correct.

10. The strict provisions being, thus, not applicable, only the principles required to be applied in situations where, it is apparent that

prejudice is likely to be caused to a party in any manner while passing an order by the revenue authority. This is for the reason that the purpose of the procedural law is not to scuttle the process of justice but to facilitate the same. Even the conduct of the parties will have to be seen and taken note of.

11. In the instant case, an application has been filed by the petitioner alongwith his brother under the 1887 Act. As already stated, the said Act read with the rules framed by the competent authority in itself is a complete Code and needs to be followed. The stage at which the applicant has sought to withdraw his application is when the mode of partition has been finalized. Admittedly, the said mode of partition was finalized as per the statement made by counsel for the petitioner before the Assistant Collector Ist Grade, Nangal, which has not been objected to by the respondents. Once the mode of partition has been finalized and there being no objection on the part of any of the parties, the next step was with regard to preparation of nakshas `*arra'* and `*irri'*, which has been so done by the authorities. At this stage, objections have been raised by the petitioner and the same have been duly considered by the competent authority and rejected on 19.02.2016.

12. The petitioner did not prefer any further proceedings, challenging the said order and instead moved an application on 23.02.2016 for withdrawal of the partition proceedings initiated on his application. In the given facts and circumstances of the case, especially when there was an objection raised by Mohan Singh, respondent No.6 herein, to the prayer for withdrawal of the application at this belated stage, when the proceedings were almost complete, with a further request for transposing him as an applicant, which copy was also provided to counsel for the petitioner but no

objection thereto has been raised by him as is apparent from the order dated 30.03.2016 nor has it been pleaded in the present writ petition or before the Financial Commissioner, Revenue, in the revision petition filed, allowing the said application at that stage cannot be said to be without the knowledge/notice of the petitioner. They having not objected to the said prayer and having accepted the same cannot now be allowed to turn around and take such a plea as has been sought to raise that no notice has been issued to them when the order was passed in the presence of his counsel. What has been asserted by the petitioner before the Financial Commissioner in the revision petition preferred and before this Court is that he had gone abroad but nothing has been mentioned with regard to his brother, Mukhtiar Singh, who had come present before the Assistant Collector Ist Grade, Nangal and moved an application for withdrawal of the partition proceedings. At the time when the order dated 13.03.2016 (Annexure P-4) has been passed, counsel for the petitioner was very much present there and, therefore, it cannot be said that the petitioner was not aware of passing of such an order.

13. It appears that the petitioner wanted to have the cake and eat it too as when he found that nakshas `*arra'* and `*irri'* were not to his liking, a new plea as recorded above has been taken, which is not permissible in law as due opportunity was available to the petitioner to have objected to the prayer made by Mohan Singh in the reply, which has been preferred by him in response to the application moved by Mukhtiar Singh, brother of the petitioner.

14. The judgments on which reliance has been placed by counsel for the petitioner i.e. Donald Michael Richard's case (supra) and

Chellamuthu's case (supra), would not be applicable to the case in hand as the facts with which the Court was dealing with in those cases are not the same as in the present case as also in the light of what has been held by this Court with regard to applicability of Code of Civil Procedure to the revenue proceedings under the 1887 Act.

15. Another aspect, which needs to be taken into consideration in the present case is whether an application for withdrawal of the partition proceedings can be made at any stage of the said proceedings and on what grounds?

16. This issue stands duly considered by a Coordinate Bench in Jaswant Singh Vs. The Financial Commissioner, Appeals II Punjab at Chandigarh, 2003 (3) R.C.R. (Civil) 145, wherein it has been held as under:-

> "*18. To answer the question involved in the instant writ petition, it is necessary to first go through the scheme of the Act. Sections 110 to 126 contained in Chapter IX of the Act deal with partition. Section 110 provides with regard to the effect of partitions of estates and tenancies on joint liability for revenue and rent for purposes of the Land Revenue Act. Section 111 is with regard to rights of a joint owner of a land or a joint tenant or a tenancy in which the right of occupancy subsists, to apply to a revenue officer for partition of his share in the land or tenancy, as the case may be. Section 112 is with regard to restriction and limitation on partition. It contains provisions which empower the revenue officers to refuse partition pertaining to any embankment, water-course, well or*

tank, grazing ground or any land which is occupied as the site of a town or village and is assessed to land revenue. Section 113 contains provisions with regard to issuance of notices to interested parties and the right of such parties to raise an objection to partition proceedings. Section 114 provides for addition of parties to the partition application. Section 115 gives power to the revenue officer to disallow partition, if in his opinion there is good and sufficient cause to do so. Section 116 deals with procedure on admission of partition application and empowers the revenue officers to ascertain the question as to title in the property as well as the question as to the property to be divided or the mode of making partition. Section 17 deals with the disposal of question as to title of property to be divided. This section empowers the revenue officer either to determine the question of title himself or to ask the parties to get those questions determined by the competent civil court. Section 118 deals with disposal of other questions i.e. the question pertaining to the property to be divided or the mode of making partition. Against the decision on the aforesaid question, a right of appeal has been provided to the aggrieved party and even if an applicant of partition is dissatisfied with the original or the appellate order made under this section, he has been provided an alternative to seek permission from the revenue officer to withdraw from the partition proceedings in so far as they relate to the partition of his share. Such applicant can be permitted to withdraw from the partition *proceedings on such terms and conditions as the revenue officer thinks fit. Since this section contains a clue to the answer of the question under consideration in the instant petition, it will be appropriate to re- produce the same hereunder :*

"118. Disposal of other questions :- (1) Where 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 fifteen 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 application for partition is dissatisfied with an original or appellate order under this society, and applies for permission to withdraw from the proceedings in so far they relate to the partition of his share, 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.

19.xx xx xx xx xx

20. According to the aforesaid scheme, there is only one provision i.e. sub-section (3) of Section 118 of the Act, which give right to an application for partition to apply for permission to withdraw from the partition proceedings so far as they relate to partition of his share, if he is dissatisfied with the order passed by the Revenue Officer pertaining to the question as to the property to be divided or the mode of making partition. Such right can be exercised by the applicant for partition if he is dissatisfied with the determination of aforesaid two questions, but such right is not absolute. The Revenue Officer can permit him to withdraw from the proceedings on such terms and conditions as he think fit. Thus, it is in the discretion of the Revenue Officer to permit the applicant for partition to withdraw from the partition proceedings or not. Though in Section 118(3) of the Act the word 'shall' has been used but if this sub-section is read as a whole, it reveals that it is the discretion of the Revenue Officer to permit such applicant to withdraw from the partition proceedings or not. The use of words 'he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit' clearly indicate that the discretion lies with the Revenue Officer to grant such permission or not. From the aforesaid sub-section, it is clear that an applicant for partition can withdraw from the partition proceedings at the stage when *in such proceedings the question as to the property to be divided or the mode of partition is to be determined by the Revenue Officer. Against the decision of the Revenue Officer, a right of appeal has also been provided. Only at the stage when such applicant is dissatisfied with the original as well as the appellate order, he can apply for permission to withdraw from the partition proceedings and not subsequent to that stage. In my opinion, an applicant to the partition can not be permitted to withdraw from the partition proceedings from a stage subsequent to the decision of the questions to be decided under Section 118 of the Act. Once these questions are decided by the Revenue Officers and such decisions become final in appeal and the applicant for partition does not opt for the permission to withdraw from the partition proceedings, he cannot be permitted subsequently to withdraw from the partition proceedings.*

21 and 22. xx xx xx xx xx

23. For the purpose of determination of the question involved in the instant writ petition, it is not necessary to decide as to at which stage the partition proceedings is deemed to be complete. Therefore, it is irrelevant to determine as to when the partition proceedings come to an end i.e. either with the approval of 'Naksha Be' or with the issuance of instrument of partition. <u>The only question involved in the instant writ petition is at what stage and on what ground an applicant for partition can be permitted to withdraw from the partition proceedings.</u>

The language of Section 118 of the Act is very clear. It clearly provides that such an applicant can be permitted to withdraw from the partition proceedings when he is not satisfied with the order passed by the Revenue Officer pertaining to the determination of the questions referred in sub-section (1) or with the order of appeal passed under sub-section (2) against the order passed under sub-section (1). Only at that stage an applicant for partition can be permitted to withdraw from the partition proceedings and not subsequent thereto. Therefore, it is irrelevant to decide when the partition proceedings completes. In view of the clear language of Section 118 of the Act, the contention of learned counsel for respondents No. 19 to 23 that the applicant for partition can be permitted to withdraw from the partition proceedings at any stage of the proceedings till the partition is not complete i.e. till the time of issuance of instrument of partition and delivery of possession, cannot be accepted. "

17. In view of the above, the application for partition, as submitted by the petitioner at belated stage, when the mode of partition has been finalized and even nakshas `*arra'* and `*irri'*, have been framed, cannot be permitted, especially when the petitioner has chosen not to challenge the proceedings with reference to above by filing an appeal.

18. The Division Bench in the case of Jeet Singh and others Vs. Financial Commissioner, Appeals-II, Punjab and others, 2010 (2) R.C.R. (Civil) 325, has also dealt with this issue and held that an application for partition having been moved by a co-sharer cannot be permitted to be

withdrawn after the finalization of mode of partition and rather the said application would not be maintainable, when no appeal has been preferred. The Division Bench has held that once the mode of partition has been confirmed and the applicant, who had initiated the application for partition, did not raise any objection at the time of confirmation of mode of partition, such applicant cannot be permitted to withdraw from the partition.

19. This Court, on an another occasion, while dealing with the provisions of Section 118 (4) of the 1887 Act in Jagir Kaur and another Vs. Financial Commissioner, Appeals I, Punjab and others, 2012 (2) RCR (Civil) 385 dealt with the issue as to whether partition proceedings can continue at the behest of other co-sharers after the original applicant filed an application for withdrawal of partition proceedings. It was held that on such an application for withdrawal of partition proceedings having been filed and permitted, the other co-sharers, if they so desire that partition proceedings shall continue, the Revenue Officer, in such circumstances, may permit continuation of the partition proceedings. It has further been held that when the mode of partition naksha naksha `*irri'* and naksha `*bay'* stood drawn, the application for partition cannot be permitted to be withdrawn at this belated stage as it would adversely effect the rights of the other co-sharers.

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

November 15, 2019 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**

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