

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.212

CWP-11157-2017 (O&M)

Date of decision : 9.1.2020

Hoshiar

..... Petitioner

VERSUS

State of Hayana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sumit Sangwan, Advocate, for the petitioner.

Mr. Manish Dadhwal, AAG, Haryana.

Mr. Sandeep Thakur, Advocate, for respondent No.3.

SUDHIR MITTAL, J. (Oral)

The petitioner and respondent No.3 are brothers being sons of Budh Ram son of Sardara. An application for partition was filed by the petitioner on 21.7.2015, whereupon notice was issued to the co-sharers. Respondent No.3 put in appearance on 28.10.2015 and the service on the remaining respondents was completed on 20.1.2016. Despite two opportunities having been granted, none of the respondents filed a written reply. On 31.5.2016, learned counsel for respondent No.3 got his statement recorded that he has no objection to the partition application. Accordingly, the mode of partition was prepared on 23.8.2016. No objections were filed thereto as well, resulting in Naksha-k being called for 21.9.2016. On 26.9.2016, Naksha-kha was accepted. At this stage also, no objections were filed by any of the respondents. The sanad taksim was issued on 14.12.2016 and on the same day, respondent No.3 filed an appeal before the Collector. The Collector passed an order of stay on 14.12.2016 itself and allowed the appeal vide order dated 22.2.2017, by observing that the record of the case indicated that the Assistant Collector (First Grade) had not signed certain

Learned counsel for the petitioner contends that after issuance of sanad taksim, no appeal is maintainable. The only remedy available to an aggrieved party at that stage is to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. He places reliance upon a Division Bench judgment of this Court in 'Raja Ram @ Rajender Vs. Tehsildar-cum-Assistant Collector, Hissar, 2001(2) RCR (Civil) 739.' Reliance is also placed upon 'Balbir Chand Vs. Financial Commissioner (Appeals-II), Punjab and others 2010(2) RCR (Civil) 263.' It is further argued that respondent No.3 did not file any objection at any stage and thus, he cannot claim any prejudice to have been caused to him. If no prejudice has been caused, challenge to partition is not maintainable. In this regard, reliance has been placed upon 'Jagraj Singh and Others Vs. The Financial Commissioner, Revenue, Punjab and Others, 2008(1) LAR 340.'

Learned counsel for respondent No.3 submits that a perusal of the appellate order shows that the Assistant Collector (First Grade) had not signed the proceedings on a number of dates. Thus, the proceedings were illegal and rightly set aside by the Collector. He, however, does not dispute that no objections were filed on his behalf at any stage.

Thus, it is apparent that respondent No.3 did not file any objections at any stage of the partition proceedings. The filing of the appeal after the issuance of sanad taksim is probably malicious and mischievous. It appears that the appeal was filed with an aim to delay partition proceedings, although, no prejudice had been caused to him by the partition of the joint land. Section 121 of the Punjab Land Revenue Act, 1887 (for short 'the Act') provides for preparation of an instrument of partition on completion of

possession. No statutory appeal is provided against the issuance of the instrument of partition. In Raja Ram @ Rajender's case (supra), it has been held that no appeal lies against the preparation of sanad taksim and it has been so held based upon the statutory provisions. A similar view has been taken in Balbir Chand's case (supra). Thus, the appeal resulting in order dated 22.2.2017 (impugned order in this writ petition) has to be held to be not maintainable. The impugned order is thus, patently without jurisdiction.

In view of above, the writ petition is allowed and order dated 22.2.2017 (Annexure P-1), is quashed.

(SUDHIR MITTAL)
JUDGE

9.1.2020

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No