

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

Sr. No.208

DATE OF DECISION: March 13, 2020

CWP No.22123 of 2014 (O&M)

GIAN SINGH

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CWP No.10679 of 2016 (O&M)

GIAN SINGH

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikram Singh, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Parminder Singh, Advocate, for respondent No.5.

SUDHIR MITTAL, J. (ORAL)

The dispute is regarding possession of land inherited by the three sons of Roop Chand namely Gian Singh, Bhim Sain and Harnam Dass. The total land measures 299K-2M and each brother is entitled to 1/3rd share measuring 99K-14M. Petitioner-Gian Singh filed an application for partition on which mode of partition was approved on 22.07.2009. According to this document, possession of the parties was to be respected

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and any shortfall was to be made up from adjoining land. Thereafter, naksha bey dated 31.12.2010 was received against which the petitioner filed objections dated 16.02.2011. His objection was that land comprised in Khasra Nos.20/1/2 and 21/2 total measuring 1K-6M had been wrongly allotted to respondent No.5-Bhim Sain as the said land had been in possession of the petitioner prior to partition. Thus, it would amount to a violation of the mode of partition and could not be accepted. The objections were dismissed vide order dated 12.08.2011. The petitioner filed an appeal thereagainst which was allowed vide order dated 04.11.2011. Against this order, respondent No.5 preferred a revision petition which was accepted vide order dated 07.06.2012 and further revision by the petitioner was rejected by the Financial Commissioner vide order dated 19.05.2014. Thus, the order dated 12.08.2011 of dismissal of the objections of the petitioner was maintained. Against the order of the Financial Commissioner, a writ petition viz. CWP No.22123 of 2014 was filed and the same is pending. Meanwhile, sanad taksim was issued vide order dated 31.12.2014, which was challenged by the petitioner by way of a revision petition filed before the Financial Commissioner but the said revision petition was dismissed vide order dated 17.05.2016. Thus, the second writ petition viz. CWP No.10679 of 2016 was filed. Both these writ petitions are being decided by the present judgment.

2. With reference to site plans collectively annexed as Annexure P-11, learned counsel for the petitioner has argued that land comprised in Khasra Nos.20/1/2 and 21/2 total measuring 1K-6M was in the possession of the petitioner before partition. Allotment of the said land to respondent

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No.5 in the naksha bey and the sanad taksim is contrary to the mode of partition. Thus, the objections dated 16.02.2011 filed by the petitioner should have been allowed. The order dated 12.08.2011 passed by the learned Assistant Collector, Ist Grade is consequently erroneous. The orders of the learned Commissioner dated 07.06.2012 and that of the Financial Commissioner dated 19.05.2014 also deserve to be set aside as the said authorities have committed the same mistake as has been committed by the Assistant Collector, Ist Grade. The illegality has been perpetuated vide sanad taksim dated 31.12.2014. Consequently, order dated 17.05.2016 passed by the Financial Commissioner dismissing the revision of the petitioner also deserves to be set aside.

3. Learned counsel for respondent No.5 submits the land comprised in Khasra No.20/1/2 and 21/2 total land measuring 1K-6M had been allotted to respondent No.5, in a family partition. Possession thereof was also transferred to him. Thus, the terms of the mode of partition have not been violated as only that land which was in possession of his client has been given to him.

4. The terms of the mode of partition are not in dispute. Both parties agree that possession had to be respected. Thus, the only question is whether pursuant to the family partition pleaded by respondent No.5, he was put in possession of land measuring 1K-6M comprised in Khasra Nos.20/1/2 and 21/2.

5. Learned counsel for the parties have argued at length and have taken me to through the record of this Court. However, I do not find anything to indicate that possession of the aforementioned 1K-6M was ever

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transferred to respondent No.5 pursuant to the family partition pleaded by him. Reliance by counsel for respondent No.5 upon the reply to the partition application filed by his client in this regard does not help his case as pleadings cannot take the place of proof. In the written statement filed in this Court in CWP No.10679 of 2016 again respondent No.5 has pleaded the afore-stated family partition but there is no pleading that possession was transferred pursuant to the family partition.

6. In view of the above, both the writ petitions deserve to be allowed. Ordered accordingly. Order dated 17.05.2016 passed by the Financial Commissioner, sanad taksim dated 31.12.2014 prepared by the Assistant Collector Ist Grade, order dated 19.05.2014 passed by the Financial Commissioner, order dated 07.06.2012 passed by the Commissioner and order dated 12.08.2011 passed by the Assistant Collector Ist Grade, are set aside. Order dated 04.11.2011 passed by the Collector is upheld. The Assistant Collector Ist Grade is directed to modify the sanad taksim dated 31.12.2014 and give possession of Khasra Nos.20/1/2 and 21/2 total measuring 1K-6M to the petitioner. Shortfall, if any, in the land of respondent No.5 and respondents No.6 to 9 be made up from land adjoining their respective taks.

March 13, 2020
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No