

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 18989 of 2020 (O&M)

Date of Decision: 10.11.2020

Balwant and Another

... Petitioner(s)

Versus

Financial Commissioner (Revenue), Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Raj Kapoor Malik, Advocate
for the petitioners.

Anil Kshetarpal, J.

Through this writ petition, filed under Article 226/227 of the Constitution of India, an order dated 17.09.2020 passed by the Financial Commissioner, Haryana while dismissing the revision petition filed by the petitioner has been challenged.

Some facts are required to be noticed. The private parties were joint owners of land measuring 209 kanals 5 marlas situated in khewat No. 163/148. All the private parties are heirs of Ramji Lal. In other words, all the private parties are descendants of a common ancestor. An application for seeking partition of the land was filed which was allowed. The land was partitioned. The *Sanad Takseem* i.e. instrument of partition was prepared on 16.04.2018. The petitioners, thereafter, filed a revision petition before the Financial Commissioner, which, as noticed above, has been dismissed. It would be noted here that although it has been pleaded by the petitioners that against *Naksha Kha* the petitioners filed an appeal before the Collector, which was dismissed, however, the aforesaid order has not been attached.

The scope of jurisdiction of the Financial Commissioner in revision petition filed after the instrument of partition is limited. Anyhow the Financial Commissioner has passed a detailed order examining all the contentions/objections of by learned counsel for the petitioners.

This Court has also heard learned counsel for the petitioners and with his able assistance, perused the paper book.

The learned counsel for the petitioners has submitted that a specific part of the land was mortgaged and the petitioners have been allotted the same mortgaged piece of land in partition. There is a loan of ₹ 15,00,000 on the aforesaid piece of land and therefore, the authorities have erred. Further, a lot of land has been wasted in providing water channels and passage. The mode of partition has also been violated.

At the outset, it is important to note that the mortgage deed executed in 13.12.2013 in favour of the Hisar District Central Co-operative Bank Limited has been produced as Annexure P9. It is apparent from reading thereof that the land mortgaged by Ram Niwas was undivided share. It was not specific portion/parcel/area of the land. The piece of land, subject matter of mortgage, has been described as under:

“Agriculture land measuring 2K – 18 M (being 58/4215 share of total land measuring 210 k – 15M out of land measuring 71 K – 09 M i.e. 1/6 share comprised of khewat No. 118, Khatuni No. 174, Khasra No. 28//15/7 (0-6), 31//15 to 16 (16-0), 62//30(1-3) as per Fard Jamabandi for the year 2004-05 and as per mutation No. 1330 of Village Dhanderi, Tehsil Hansi, District Hisar.

Agriculture land measuring 27 K – 14M (being 554/4215 share of total land measuring 210 K-15M) out of land measuring 55K-09 M i.e. ½ share, comprised of khewat No. 118, Khatuni No. 176, Khasra No. 30//16(7-12), 17 to 20 (32-0), 31//1 (7-17), 17 (8-0) as per fard jamabandi for the year 2004-05 and as per mutation No. 1330 of village Dhandheri, Tehsil Hansi, District Hisar.

Total land measuring 30K – 12M”.

Thus, there is no substance in the first submission.

In any case, as per the mode of partition, it was provided that the loan against mortgage of the property would stand shifted on the piece of land which comes to the share of Ram Niwas (loanee) after partition of the land. The Financial Commissioner has also observed that the amount of loan and consequent mortgage stand shifted to the land which has come to the share of Ram Niwas. Still Further, by now it is well settled that the sale/mortgage/gift or any mode of partition of a specific area/parcel/plot/khasra number in a joint/undivided land would be considered as alienation of the undivided share in a joint parcel/khata. Reference in this regard can be made to Five Judges Bench judgment in ***Ram Chander v. Bhim Singh (2008) 3 PLR 747.***

This Court has also examined the amended map pursuant to partition of the land. As per the mode of partition, the land was to be divided into seven independent parcels of the land. Each parcel/portion of the land was to be provided with a passage as well as channel of water to irrigate the land. A perusal of Annexure P8, the site plan, it becomes apparent that the

revenue authorities, after using their expertise, have prepared the layout plan in such a manner that each owner get a consolidated area without fragmentation and everyone is provided with a passage as well as channel of water. For providing water channel and passage, certain amount of land is required to be utilized. On perusal of the layout plan, it becomes clear that the revenue authorities cannot be said to have wasted a lot of land. It is apparent that the width of the land from a public passage is only 2 acres, whereas its depth is approximately 10 acres. After 2 x 7 acres plot, the breadth of the land increases. In this situation, a passage has been carved right in the middle of the land so that it caters to maximum number of owners. Similarly, various channels of water have been provided in an appropriate manner. In these circumstances, there is no substance in the second argument.

Last argument of learned counsel for the petitioners is with reference to the mode of partition, copy whereof has been attached as Annexure P3. On perusal thereof, it is apparent that as per clause 7 of the mode of partition, a provision was made that the undivided share of land mortgaged by Ram Niwas would stand shifted to the piece of land allotted to him on partition of the joint land. Learned counsel for the petitioners has failed to draw attention of the Court to any specific violation of the mode of partition. Still further, as noticed above once the instrument of partition has been prepared, the scope of interference becomes narrow. Learned counsel for the petitioners failed to draw attention of the Court to any substantive error in the orders passed.

It is not the case of the petitioners that the petitioners have been

allotted the land lesser than their entitlement. Although learned counsel for the petitioners submitted that the petitioners have been allotted 1 marla less land, however, that was itself provided in the mode of partition. It would be noticed here that as per the instrument of partition, the petitioners and their family members have been allotted the land measuring 33 kanals 13 marlas, whereas Jagdish, Ramji Lal, Harmesh etc. have been allotted the land measuring 33 kanals 12 marlas.

Keeping in view the aforesaid facts, no ground is made out to interfere in exercise of jurisdiction under Article 226/227 of the Constitution of India. Hence, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

November 10, 2020
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No