

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 579 of 2021 (O&M)
Date of decision 12.08.2021

Karnail Singh

.Appellant

Vs.

Financial Commissioner, Punjab and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. I.S. Khosa, Advocate
for the appellant.

Ms. Anu Pal, D.A.G. Punjab

Ritu Bahri, J.

The present letter patent appeal under clause 10 of the Letter Patent Act has been filed seeking setting aside of the judgment dated 15.11.2019 passed by learned Single Judge in C.W.P No. 30473-2019 titled as ***Karnail Singh vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others.***

On 20.05.2015, respondent No. 4 along with the appellant filed a partition application (P-1) for partition of land measuring 0 kanal 15 marlas as per Khewat No. 1430/1381, Khatoni No. 1670, Khasra No. 44R/21/7 (0-15) situated in village Jindwari, Hadbast No. 355, Jamabandi for the year 2007-08, Tehsil Nangal, District Ropar and for establishing separate Kurras and revenue record. On 12.10.2015, the proposed mode of partition (P-2) was submitted and was accepted by the parties. The authority sent the copy of duly sanctioned mode partition to the field staff and they were directed to prepare Naksha "Arra" and "Irri". On 28.01.2016,

respondent No. 4 along with appellant filed objections against Kurras and Naksha “Irri” (P-3). Thereafter, the appellant and respondent No. 4 withdrew their partition application by filing an application for withdrawal on 23.02.2016. Respondent No. 2 gave notice to the other defendants regarding the withdrawal application. Out of those, respondent No. 3 Mohan Singh against whom essentially the objections were filed by the applicants, prayer to respondent No. 2 to transpose him as the applicant in the present case, which was accepted and the appellant was automatically transposed as defendant without giving any notice to the appellant. Subsequently, Naksha Arra/Irri received from Circle Girdawar was accepted and partition was effected by disturbing the possession of the appellant and respondent No. 4, vide order dated 30.03.2016 (P-4).

Subsequently, Sanad Takseem was prepared on 01.06.2016 and warrants of possession were issued on 06.06.2016 (P-5 and P-6). Thereafter, the appellant went abroad and when he came to know about the issuance of warrants of possession, he filed revision petition numbered R.O.R 942-2016 dated 30.11.2016 before respondent No. 1, which was dismissed on 17.01.2018 (P-7).

The appellant then filed CWP No. 30473-2019 titled as ***Karnail Singh vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others***, challenging the above said orders, which was also dismissed on 15.11.2019. Hence the present appeal.

Learned counsel for the appellant has argued that the learned Single Judge has erred in law in relying on the case of ***Jaswant Singh vs. The Financial Commissioner, Appeals II Punjab at Chandigarh, 2003 (3) R.C.R. (Civil) 145*** for holding that Section 118 only allows an applicant to

withdraw his partition application after being dissatisfied by the original order finalized mode of partition or appellate order against mode of partition. This judgment is no longer applicable, as there has been subsequent amendment to Section 118 of the Punjab Land Revenue Act, 1887 (for short 'Act 1887'), substituted vide Punjab Act No. 15-2011. After the amendment, the said provisions regarding appeal and the stage of withdrawal have been repealed and hence cannot be relied upon.

The amended Section 118 of Act 1887 reads as under:-

“118. Disposal of other questions:- (1) Where there is a question as to the 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) No appeal shall lie against the decision referred to in sub-Section (1).

Learned counsel for the appellant states that after 2011, the procedure regarding transposition is no longer provided in Act 1887 and hence the principle as contained under Order 23 of CPC will be applicable in the present case as the Revenue Act is silent on it.

Hence for all intents and purposes, as per notification of the year 2017, the provisions of Section 118 of Act of 1887 have again been substituted as it existed. Hence the judgment i.e ***Jeet Singh and others vs. Financial Commissioner, Appeals II, Punjab and others, 2010 (2) R.C.R. (Civil) 325 and Jagir Kaur and another vs. Financial Commissioner, Appeals I, Punjab and others, 2012 (2) RCR (Civil) 385***, referred in the judgment of learned Single, are directly applicable to the facts of the present

case.

In *Jagir's case (supra)*, the issue was 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 '*irri*' and naksha '*bay*' stood drawn, the application for partition cannot be permitted to be withdrawn at this belated stage as it would adversely affect the rights of the other co-sharers.

In *Jagir's Kaur (supra)*, *the Division Bench* 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.

After hearing learned counsel for the parties and going through the judgment of the learned Single Judge, the present appeal deserves to be dismissed.

This Court is of the view that the argument of learned counsel for the appellant that provisions of Section 118 of the Act 1887 cannot be applied in this case, as the same has already been amended/substituted, vide Punjab Act No. 15-2011, is liable to be rejected, as the learned Single Judge, vide impugned judgment has rightly observed that in cases where the Act and Rules are silent, in that eventuality, the general principles of Code

of Civil Procedure would apply by giving equal opportunities to the parties.

In the present case, the appellant made an application for withdrawal at a very belated stage, when the mode of partition was finalized and even naksha 'arra' and 'irri' have been framed, which was rightly been not permitted as the petitioner has chosen not to challenge the proceedings by filing an appeal.

In view of the discussion made above, the present appeal is dismissed.

Since the main appeal is decided, all the pending miscellaneous applications stand disposed of.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

12.08.2021
G Arora

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