

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17056 of 2021

Date of Decision: September 02, 2021

Jagdish

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ajay Jain, Advocate
for the petitioner

Sudhir Mittal, J. (Oral)

The petitioner has challenged order dated 04.08.2021 passed by the Financial Commissioner, Haryana rejecting his revision petition.

The facts in brief are that on a partition application having been filed by respondents No. 3 and 4, proceedings for partition of 98 kanal 01 marla of land commenced. Mode of partition was called for and confirmed. Thereafter, Naksha 'Be' was called for. Before the Naksha 'Be' was accepted, the petitioner filed an application for adjournment of the proceedings sine die as a civil suit had been filed. The said application was rejected and Naksha 'Be' was approved followed by Naksha 'Jim'. *Sanad Takseem* was issued on 06.09.2016 and the *sanad* was challenged before the Financial Commissioner Revenue, Haryana and as noticed hereinabove the challenge has failed.

The date of filing of the partition application is 04.08.2013. The suit filed by the petitioner is dated 19.02.2016. Vide the said suit, he has challenged lease deeds dated 17.06.2005, 29.06.2005, 01.03.2007 and that dated 03.06.2011. Thus, the challenge was to lease deeds executed before filing of the partition application.

Learned counsel for the petitioner has argued that partition proceedings should have been kept pending awaiting the result of the civil proceedings. The learned Financial Commissioner has committed an error in recording that the suit had been dismissed and that the order of dismissal had not been challenged further. Infact, the appeal against the judgment and decree passed by the trial Court is pending even today. Further, it has been submitted that the site plan (Annexure P-4) shows that the petitioner has been given less land out of the most valuable land even though he admittedly had 1/3rd share in the property to be partitioned. The mode of partition provides that quality of land had to be kept in mind and the same having not been done, the *sanad* is contrary to the mode of partition. Finally, it has been submitted that the Financial Commissioner has wrongly observed that the petitioner was dispossessed on 28.09.2016 after *sanad* was issued on 06.09.2016. The record shows that no *munadi* was conducted before transfer of possession. Affidavit of Chowkidar is on record as Annexure P-16 and that of a resident allegedly present at the time of handing over of possession is annexed as Annexure P-17. On this ground also the impugned order deserves to be set aside.

Section 117 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act) deals with disposal of questions as to title in property to be divided. According to this provision if there is a question regarding title in any of the property to be partitioned, the Revenue Officer may decline to grant the application of partition until the question stands determined by the competent Court or he may himself proceed to determine the question. Thus, the question of title must exist on the date the partition is sought. That is not the position in the present case. The suit filed by the petitioner is dated 19.02.2016. By then the Naksha 'Be' had also been accepted. Challenge in the suit is to lease deeds

evident that the attempt was to delay the conclusion of the partition proceedings by raising a dispute of title. Under the circumstances, the revenue authorities were justified in dismissing the application of the petitioner for keeping the partition proceedings pending till the decision of the civil dispute. Moreover, a perusal of the plaint (Annexure P-7) shows that the suit never challenged the title of the defendants therein and, thus, even though a civil suit was pending, the same did not relate to a question of title. Wrong observation by the learned Financial Commissioner that no appeal has been filed against the judgment and decree of the trial Court, would make no difference in law.

The issue regarding violation of mode of partition has not been raised before the Financial Commissioner as is evident from the arguments raised before him. Thus, I am not inclined to permit the petitioner to raise this argument in a writ petition.

Since there is no illegality in the partition, whether the petitioner has or has not been dispossessed would make no difference. Even if I accept that no *munadi* was conducted before the possession was physically handed over and that physical possession has still not been handed over, the outcome will not change.

In view of the above, the writ petition has no merit and is dismissed.

September 02, 2021

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No