IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.239

CWP-2132-2018 (O&M)

Reserved on : 17.08.2022

Pronounced on: 31.08.2022

Bhagwant Singh and others ..... Petitioners

VERSUS

Financial Commissioner (Appeals) Punjab, Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.K. Singla, Advocate, for the petitioners.

Mr. Arun K. Kaundal, DAG, Punjab

Mr. Sanjiv Gupta, Advocate, for respondents No.6 and 7.

*****

SUDHIR MITTAL, J.

A large parcel of land measuring 4128 kanals and 08 marlas was shown in the revenue record as owned by the Nagar Panchayat. Mutation Nos.627 and 629 were sanctioned, whereby, a large chunk of this land was mutated in favour of the proprietors of the village. Subsequent mutations also seem to have been entered resulting in the entire chunk of 4128 kanals and 08 marlas being mutated in favour of the proprietors. The reason for entering these mutations is not forthcoming from the record. Thereafter, some of the co-sharers sold their shares to third parties including the petitioners herein. On 22.11.1995, respondents No.3 to 5 filed an application for partition of the land measuring 4128 kanals and 08 marlas. The petitioners were not impleaded as parties. On completion of proceedings, *sanad* was issued on 28.08.1996. Vide two separate sale deeds dated 28.05.2008 respondents No.3 and 5 sold a total of 264 kanals in favour of respondent No.6 and 7. These respondents sought implementation of the *sanad* resulting in issuance of warrants of possession dated 05.06.2008. Allegedly, it was then that the petitioners realized that joint land had been partitioned and that proceedings had been conducted behind their back. Thus, they filed CWP-12737-2008 for quashing of the *sanad.* The writ petition was disposed of with a direction to the petitioners therein to avail alternative remedy of revision provided by Section 16 of the Punjab Land Revenue Act, 1887. Accordingly, the revision was filed on 19.05.2009. Grounds of revision are on record as Annexure P-8. This revision petition was, however, dismissed vide order dated 06.11.2017 resulting in filing of the present writ petition.

Written statement has been filed only on behalf of respondents No.6 and 7. They have objected to the maintainability of the writ petition on the ground of dismissal of a civil suit allegedly filed for the same purpose. On merits, the filing of the partition application has been admitted. Non-impleadment of the petitioners has been blamed upon the revenue record, wherein allegedly, their names did not figure. The vendors have been stated to be parties and thus, allegedly, no prejudice was caused to the petitioners. Other averments made in the writ petition have been denied.

Learned counsel for the petitioners has argued that the revenue record in the shape of jamabandies for the year 1989-90 and

1994-95 clearly establishes that the petitioners were vendees of part of the land sought to be partitioned. In the jamabandi for the year 1989-90, their names were mentioned in the remarks column, whereas, in the jamabandi for the year 1994-95, their names find mention in the column of cultivation. Thus, they should have been impleaded in the partition application. The partition proceedings are vitiated as all co-sharers were not made party. There are reports on record, according to which, the shares mentioned in the *sanad* do not match the shares mentioned in the revenue record. Thus, transfer of physical possession is not possible. On this ground also, the writ petition deserves to succeed. The Financial Commissioner has failed to take these aspects into consideration and accordingly, his order as well as the *sanad* deserve to be quashed and the matter deserves to be remanded to the Assistant Collector, 1st Grade for a fresh decision after hearing all the parties.

Learned counsel for respondents No.6 and 7 has submitted that *sanad* was challenged by way of an appeal in the year 1998. Vide order dated 28.05.1998, the Collector had set aside the same. This order was set aside by the Commissioner vide his order dated 25.07.2006 and this order was never challenged any further. Thus, the petitioners are not entitled to maintain the present writ petition. It has been next argued that a civil suit filed by the petitioners was dismissed vide judgment and decree dated 01.02.2017 and the dismissal thereof also bars the filing of the present writ petition. The vendors of the petitioners were parties in the partition application and thus, no prejudice has been caused to them.

The *sanad* does not contain any defects and does not call for any interference.

In rebuttal, learned counsel for the petitioners has submitted that the petitioners were not parties in either the appeal or the revision filed earlier. They were not aware of the said proceedings and their rights cannot be prejudicially affected by them. The civil Court's decree dated 01.02.2017 was passed in a suit for declaration regarding possession of specific khasra numbers by the plaintiffs therein. *Sanad* was not under challenge and the judgment and decree passed therein does not affect the rights of the petitioners to maintain the present writ petition.

During the course of arguments, a copy of memo of parties in the revision petition decided vide order dated 25.07.2006 has been handed over across the bar without objection from learned counsel for respondents No.6 and 7. The same is marked as Annexure-X and is taken on record. A perusal thereof shows that none of the petitioners were parties to the said proceedings. Orders passed therein do not bind the petitioners in any manner. Even, the fact that the order passed therein attained finality, does not affect their rights to either file a revision petition before the Financial Commissioner or the present writ petition.

The judgment and decree of the civil suit referred to by learned counsel for respondents No.6 and 7 is on record as Annexure R-6/1. The suit was filed for grant of a decree of declaration and permanent injunction. The relief prayed for was that the plaintiffs therein be declared owners in possession of specific khasra numbers purchased by them by way of registered sale deeds and the defendants be restrained from interfering in their physical possession. In view of the settled legal position that sale of specific khasra numbers out of joint land is sale of a share only, the relief was declined. No challenge was laid to *sanad* dated 28.08.2006 and thus, the dismissal of the suit also does not bar filing of the present writ petition.

For the foregoing reasons, the arguments regarding non-maintainability of the writ petition are rejected.

The next question to be examined is, whether, non-impleadment of the petitioners as parties in the partition application has resulted in vitiation of the proceedings? If so, was the defect curable by impleadment of the vendors of the petitioners? Respondents No.6 and 7 admit that the petitioners were not made parties. Explanation for the same is that the revenue record did not reflect their names as co-sharers. Jamabandi for the year 1989-90 is on record as Annexure P-3. The names of the petitioners are clearly recorded in the remarks column thereof as vendees. In the jamabandi for the year 1994-95, copy of which is on record as Annexure P-2, their names find mention as vendees in the column of cultivation. Thus, the explanation given is false.

It is settled law that every co-sharer is owner of every inch of joint land. The petitioners had become co-sharers by virtue of the sales in their favour and were entitled to participate in proceedings for partition of the joint land and claim their right for allotment of specific khasra numbers based upon value and quality of land. Having been denied this opportunity, the partition proceedings stand vitiated as a whole. Partition proceedings are vitiated, even if, a single co-sharer is not made a party or is not served in accordance with law. Thus, the first question, whether, the partition proceedings stand vitiated, is answered in the affirmative.

Impleadment of the vendors would not cure the defect nor would it validate the proceedings. A vendor having sold his share in joint land would lose interest therein and would not make adequate efforts to claim his lawful rights. This would adversely affect the interests of the vendee.

No other argument is being considered as it is unnecessary.

For the foregoing reasons, the writ petition is allowed. Impugned order dated 06.11.2017 passed by the Financial Commissioner as well as *sanad* dated 28.08.1996 are quashed. The matter is remitted to the Assistant Collector, First Grade for a fresh decision of the partition proceedings in accordance with law.

(SUDHIR MITTAL)
JUDGE

31.08.2022
Ramandeep Singh

Whether speaking / reasoned Yes

Whether Reportable Yes