

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(109)

CWP-4079-2023 (O&M)

Date of decision: - 13.04.2023

Sarla

...Petitioner

Versus

Financial Commissioner, Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. D.S. Matya, Advocate, for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana
for respondents No.1 to 5.

VIKAS BAHL, J. (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of an appropriate writ in the nature of certiorari for quashing the impugned order dated 31.03.2022 (Annexure P-15) passed by respondent No.1 vide which the revision petition filed by the petitioner against the order dated 25.06.2014 (Annexure P-13) passed by respondent No.2 was dismissed. Challenge is also to the order dated 27.12.2013 (Annexure P-11) passed by respondent No.3 as well as to the order dated 30.05.2013 (Annexure P-9), order dated 13.06.2013 (Annexure P-10) and order dated 25.06.2014 (Annexure P-13).

2. Brief facts of the case are that an application for partition of land measuring 81 K – 16 M comprised in Khewat No.959, Khata No.1385, situated at village Muana Tehsil Safidon, District Jind as per jamabandi for the year 2005-2006 was filed by Mamu (respondent No.6),

Ombir (respondent No.7), Rameshwar (respondent No.8) and Deepak Kumar (respondent No.9). A copy of the said application for partition has been annexed as Annexure P-1. The present petitioner was impleaded as respondent No.6 in the said application. In the said application, it was averred that it was necessary to partition the land after taking into consideration the passages etc. and also the nature/kind of land i.e., land abutting the road and the land situated away from the road and the same be partitioned equally between the parties and share of the applicants/respondents No.6 to 9 herein be separated by making one chunk. The present petitioner was initially proceeded against ex-parte, but on an application of the petitioner for setting aside the said exparte order, the same was set aside. After hearing the parties, the Assistant Collector IInd Grade, Safidon, vide order dated 16.05.2013 (Annexure P-7) passed the mode of partition. Objections were filed by the original applicants/respondents No.6 to 9 (herein) against the said mode of partition and after considering their objections and hearing the parties, vide order dated 30.05.2013, (Annexure P-9) a fresh mode of partition was prepared. (The correct copy of the said mode of partition dated 30.05.2013 (Anenxure P-9) has been placed on record by counsel for the petitioner by filing an application bearing CRM-6176-2023, as the original order dated 30.05.2013 (Annexure P-9) filed alongwith the writ petition was not correctly translated). Paragraph 5 of the said mode of partition (Annexure P-9) is reproduced herein below: -

“5. The partition of the above said land will be done keeping in view the value, road front. If the possession of the land is disturbed by giving equal road front then it should be done.”

A perusal of the above-said clause would show that it was specifically ordered that the partition of the said land will be done keeping in view the value of the land as well as the road front and in case the possession of the land is disturbed for giving equal road front, then, the same should be done. No appeal against the said order was filed within a period of 15 days as is mandated under Section 118(2) of the Haryana Land Revenue Act, 1887. No objections were filed against the said mode of partition by the petitioner. The matter was proceeded further and vide order dated 13.06.2013 (Annexure P-10), it was ordered that the Naksha Bay be prepared. The zimni orders thereafter have not been placed on record. After the passing of order dated 13.06.2013, an appeal was filed by the present petitioner in which challenge was also made to the order dated 30.05.2013. The said appeal was dismissed vide order dated 27.12.2013 (It would be relevant to note that the date of institution of the said appeal has been mentioned as 10.01.2013 in the translated copy annexed as Annexure P-11, but the said date is apparently incorrect as the appeal had been filed against the order dated 13.06.2013 as well as order dated 30.05.2013 and even the vernacular which has been annexed alongwith the writ petition at page 76 is illegible and the date of institution cannot be made out). At any rate, it has been fairly submitted by the learned counsel for the petitioner that the said appeal was filed after the order dated 13.06.2013 and thus, was not within a period of 15 days from the passing of the order dated 30.05.2013. The Collector, Sub Division, Safidon while dismissing the appeal had noted the argument of the counsel for the respondents to the effect that no objection was raised

by the petitioner against the amended mode of partition dated 30.05.2013 and the land in front of the road was of a higher value and all the co-sharers should be given their share in the said land as per their share in the total land. The revision petition filed by the petitioner was dismissed by the Commissioner vide order dated 25.06.2014 (Annexure P-13). It was observed by the Commissioner that the land must be partitioned as per the valuation of the land and merely because one co-sharer has been able to cheat the other co-sharers by selling land on the road front, the purchaser could not be permitted to claim exclusive right of the said land. The revision petition filed by the petitioner before the Financial Commissioner was also dismissed vide order dated 31.03.2022 (Annexure P-15). The argument of the petitioner before the Financial Commissioner was to the effect that she had purchased land in specific Khasra numbers and had taken the possession of the same and thus should be given the said land, was rejected by the Financial Commissioner by relying upon various judgments of this Court. It was also observed that in the amended mode of partition i.e. 30.05.2013, it was specifically observed that the land adjoining the road should be allotted to the owner as per his/her share and that it is settled law that even if specific khasra numbers have been purchased in a joint land holding, the area sold would be deemed to be a sale of a share of the land and not of a specific khasra number. It was further observed that the land adjoining the road should be allotted to the co-sharers in proportion to their share in the land holding which would result in a fair and equitable partition. Aggrieved against the said orders, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner has submitted that in the present case, land abutting the road has a front of 198 feet and the share of the petitioner is 17 kanals and 18 marlas and thus, the petitioner would get a share of approximately 43 feet on the said road and the same would not be sufficient for her to cultivate the land and has, thus, submitted that the land situated on the road should be allotted to the petitioner in its entirety. It is further submitted that the petitioner had purchased specific khasra numbers as per the sale deed and the said land should be allotted to her in the partition.

4. This Court has heard the learned counsel for the petitioner and has perused the paper book.

5. Respondents No.6 to 9 had filed an application for partition of land with respect to land measuring 81 K – 16 M comprised in Khewat No.959, Khata No.1385, situated at village Muana Tehsil Safidon, District Jind as per jamabandi for the year 2005-2006. The present petitioner was impleaded as respondent No.6 in the said application. Specific averment was made in the said application to the effect that the partition be done keeping in view the nature/kind of land and that the parties be given share on the land abutting the road, according to their share in the total land holding. Although, reply to the said application was filed by the petitioner, but the same has not been placed on record. The mode of partition was initially prepared on 16.05.2013 (Annexure P-7), but after considering the objections raised by the respondents No.6 to 9 and hearing the parties, the same was amended and the correctly translated copy of the said amended mode of partition has been annexed

as Annexure P-9, alongwith CM-6179-2023. (The mode of partition dated 30.05.2013 (Annexure P-9) at page 27 alongwith the writ petition is not correctly translated). Clause 5 of the said mode of partition dated 30.05.2013 has been reproduced herein-above in paragraph 2 of the present order and a perusal of the same would show that the partition was to be carried out after taking into consideration the road front as well as the value of the land and it was specifically ordered that if the possession of the land was to be disturbed while giving the road front in accordance with the share of the co-sharer, then, the same be disturbed. No objection was filed against the said mode of partition dated 30.05.2013. No appeal against the said order was filed within a period of 15 days as envisaged in Section 118(2) of Haryana Land Revenue Act, 1887. Section 118 of the Haryana Land Revenue Act, 1887 is reproduced as under:-

“118. Disposal of other questions.- (1) When 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 the reasons for the decision.

(2) An appeal may be preferred against an order under subsection (1) within fifteen days from the date thereof and when such an appeal is preferred and the institution thereof has been certified to the Revenue-officer by the authority to whom the appeal has been preferred, the Revenue-officer shall stay proceedings pending the disposal of the appeal. The appellate authority shall pass final order in the matter and shall not remand the case in any manner. There shall be no second appeal of revision.”

Since, neither any appeal was filed nor any objections were raised against the said mode of partition dated 30.05.2013, thus, the matter proceeded further and a subsequent order dated 13.06.2013 was

passed in the partition proceedings. The zimni orders subsequent to 13.06.2013 have not been placed on record, but it is not disputed that the appeal (Annexure P-11) before the Collector was filed by the petitioner after the order dated 13.06.2013 as, in the said appeal (Annexure P-11) challenge was made to the order dated 13.06.2013 as well as the order dated 30.05.2013. (It would be relevant to note that the date of institution of the said appeal has been mentioned as 10.01.2013 at page 29 (Annexure P-11) but the said date is apparently incorrect as the appeal had been filed against the order dated 13.06.2013 as well as order dated 30.05.2013 and even the vernacular which has been annexed alongwith the writ petition at page 76 is illegible and the date of institution cannot be made out). Moreover, it has been fairly submitted by the learned counsel for the petitioner that the said appeal was filed after the order dated 13.06.2013 and thus, was not within a period of 15 days from the passing of the order dated 30.05.2013.

6. The Collector, Sub Division, Safidon had dismissed the appeal of the petitioner and the revision filed by the petitioner before the Commissioner as well as before the Financial Commissioner were also dismissed. It was concurrently held that the amended mode of partition dated 30.05.2013 stipulated that the land on the road is to be equally divided amongst the various co-sharers as per their share. It was also observed that as per settled law, a sale of a specific khasra number by a co-sharer from a joint khewat would be deemed to be a sale of the share of land from the joint khewat and the vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial

divisions of the joint land and cannot claim exclusive right to any specific khasra/kila number. It is not the case of the petitioner that the partition proceedings are being carried out in violation of the amended mode of partition dated 30.05.2013. It is a matter of settled law that land on the road should be divided amongst all the co-sharers in proportion to their share in the total land holding and thus, the amended mode of partition dated 30.05.2013 as well as the orders passed by the authorities are in accordance with law and do not call for any interference.

7. The argument raised by the learned counsel for the petitioner to the effect that the petitioner has purchased specific kila numbers from the joint land and thus, the petitioner should be allotted the said kila numbers is misconceived for the following reasons:-

(i) Hon'ble Full bench of this Court in case titled as “**Ram Chander Vs. Bhim Singh and others**”, reported as 2008(3) R.C.R. (Civil) 685, has held as under: -

“xxx xxx xxx xxx xxx xxx xxx xxx

16. A joint owner/co-owner, just as an individual owner, has an inherent right to alienate the joint property, limited to the extent and the nature of his share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as a joint owner, namely, his specified share or a part thereof in the community of joint owners with commonality of possession. A vendee from such a joint owner or a co-sharer would, therefore, receive the property so transferred, with all the rights and liabilities that vested in his vendor, namely, a right to assert a community of interest (ownership) and a commonality of possession in the entire joint estate and along with the entire body of joint/co-owners. Our above conclusion draws sustenance from Section 44 of the Transfer of Property Act and a reproduction thereof would place our conclusions

in perspective, as under :-

“44. Transfer by one co-owner.- Where one or two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.”

xxx xxx xxx xxx xxx xxx xxx xxx

18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns .i.e .a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.”

A perusal of the above judgment would show that when a co-sharer alienates his share in a joint holding then he sells what he owns i.e., a joint undivided interest in the joint property thus, a sale mentioning specific khasra numbers/killa numbers forming part of a specific rectangle number but being a part of the joint khewat would be deemed to be a sale of a share from the joint khewat and the purchaser would be deemed to be a co-sharer in the entire joint khewat. From the above judgment, it would necessarily follow that the purchaser cannot claim exclusive rights over the khasra numbers mentioned in his/her sale deed to the exclusion of the

other co-sharers.

The Commissioner, Hisar Division, in his order dated 25.06.2014 (Annexure P-13) has correctly observed that in case a co-sharer is permitted to sell land close to the road by mentioning specific khasra numbers in the sale deed and the Courts were to give rights on the basis of the recitals of the said sale deed, to which the other co-sharers are not a party, then, the same would amount to injustice to the other co-sharers who also have every right to get a share of land close to the road in proportion to their share in the total land holding.

(ii) The amended mode of partition 30.05.2013 specifically stipulated that the partition of the land be done keeping in view the road front which was to be allotted as per the shares of the various co-sharers in proportion to their share in the total land.

(iii) A perusal of the sale deed dated 19.05.2011 (Annexure P-18) in favour of the petitioner would show that it has been specifically mentioned in the same that the sellers are co-sharers to the extent of 87/409 in the total land measuring 81 kanals 16 marlas and it is the said share/rights which have been sold to the petitioner. In the sale deed (Annexure P-18), there is no reference to any specific khasra numbers which has been sold or of which, the possession has been given. In the affidavit (page 53) dated 19.05.2011, although specific khasra numbers have been mentioned, but even in the same, the sellers have, in paragraph 1, stated that they had sold the land which belonged to their share i.e., 87/409 from the total land holding measuring 81 kanals 61 marlas and thus, the sale is apparently a sale of a share from the entire joint holding.

Moreover, the affidavit (at page 53) cannot override the contents of the sale deed which is a registered document. At any rate, the averments in the affidavit and also in the sale deed cannot be held to be binding upon co-sharers who are not even party to the same.

8. The second argument of the learned counsel for the petitioner to the effect that on account of the impugned orders, the petitioner will get 43 feet approximately on the land abutting the road and would not be able to carry out agricultural activity is also misconceived for the following reasons:-

(i) On a pointed query raised by this Court, learned counsel for the petitioner has not been able to refer to any document which is a part of the record before the authorities below to show that the width of the total land is 198 feet.

(ii) Learned counsel for the petitioner has not been able to show that the said argument was raised before the authorities. Moreover, even in case the width of the abutting the road is taken to be 198 feet, it cannot be suggested that the entire front portion should be given to the petitioner, more so, in view of Clause 5 of the mode of partition dated 30.05.2013 and in view of the law laid in the above reproduced judgment.

(iv) Further, there is no material to suggest that in case a person is given 43 feet of the land abutting the road, then, he/she would not be able to cultivate his/her land.

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the present writ petition is sans merits and misconceived and is accordingly, dismissed.

10. Pending application, if any, stands disposed in view of the above.

April 13, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes