

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

201

CWP No.4496 of 1999
Date of Decision: 01.02.2023

Jetha Ram and others

..... Petitioners

Versus

Financial Commissioner and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Vardaan Seth, Advocate
for the petitioners.

Mr. Rohit Ahuja, DAG, Punjab.

Ms. Ramneek Kaur Sandhu, Advocate, for
Mr. Sandeep Khunger, Advocate
for respondents No.2 to 11.

VIKAS BAHL, J (ORAL)

This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned orders dated 16.12.1993 12.05.1994, 06.09.1994 and 16.02.1999 (Annexures P-2 to P-5).

Learned senior counsel appearing for the petitioners has submitted that in the present case, respondents No.2 and 3 had filed an application for partition of land measuring 118 kanals 6 marlas situated in village Chak Chhapriwala, Tehsil Fazilka, District Ferozepur before the Assistant Collector Ist Grade, Fazilka and the said application was contested by the petitioners who had filed objections stating therein that the question of title was involved in the partition proceedings as the petitioners had

exchanged their land with respondents No.2 and 3 about 30 years back and respondents No.2 and 3 had given their share of land i.e. 13 kanals 10 marlas in village Chak Chhapriwala to the petitioners and no land was then left with them in the said village and the said question of title was required to be determined as in case the said question of title was decided in favour of the petitioners, then no cause would survive with respondents No.2 and 3 to file an application for partition and the said application for partition was required to be dismissed. It is further argued that vide order dated 16.09.1985, the Assistant Collector Ist Grade, Fazilka without assigning any reason and without passing a speaking order rejected the said objections and the petitioners pursued their remedy and ultimately the matter was taken up before the learned Financial Commissioner. On a revision petition filed by the petitioners along with other co-sharers under Section 16 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner, the learned Financial Commissioner, vide order dated 15.07.1993 (Annexure P-1) had taken into consideration the fact that the petitioners had filed the civil suit and had won the matter in appeal before the Additional Sessions Judge, Ferozepur and a judgment and decree dated 04.08.1989 had been passed in favour of the petitioners and the suit of the petitioners with respect to the exchange of land had been decreed. The learned Financial Commissioner had also taken note of the mutation No.790 dated 20.09.1989 which gave effect to the decree in the revenue record and accordingly, accepted the revision petition and remanded the case back to the Assistant Collector Ist Grade, Fazilka with a direction to the Assistant Collector Ist Grade, Fazilka to satisfy itself as to whether an appeal has been filed against the decree dated 04.08.1989 and in case the said decree had attained finality, then Assistant

Collector Ist Grade, Fazilka was directed to dismiss the application for partition.

Learned senior counsel appearing for the petitioners has further submitted that thereafter RSA-2565-1989 was filed against the said judgment and decree dated 04.08.1989 and though no stay was granted but the Assistant Collector Ist Grade, Fazilka, vide order dated 16.12.1993 neither dismissed the application for partition, nor adjourned it sine die and rather ordered for the proceedings to continue. The petition challenging the order dated 16.12.1993 filed by the petitioners was dismissed by the Collector, vide order dated 12.05.1994 and the Collector had also noted that since RSA No.2565-1989 was pending, thus, the partition proceedings were required to continue. The revision petition filed by the petitioners before the Commissioner and further the revision petition filed before the Financial Commissioner was also dismissed, vide orders dated 06.09.1994 and 16.02.1999, respectively. It is argued that the primary ground for continuation of the proceedings was the pendency of the RSA before the High Court. Learned senior counsel appearing for the petitioners has further submitted that the orders dated 16.12.1993, 12.05.1994, 06.09.1994 and 16.02.1999 (Annexures P-2 to P-5) have been challenged in the present writ petition and on 08.04.1999, when this case came up for hearing, this Court had issued notice of motion and had also stayed the operation of the impugned order. On 10.08.2000, after noting the fact that the RSA No.2565-1989 was pending, the matter was admitted. He has further submitted that vide order dated 24.01.2017, the said RSA-2565-1989 has been dismissed for non-prosecution and the same has not been restored. It is submitted that since the judgment and decree dated 04.08.1989 passed by the lower

Appellate Court in favour of the petitioners, decreeing the suit of the petitioners and upholding the exchange between the petitioners and respondents No.2 and 3, has attained finality, thus, keeping in view the observations made by the Financial Commissioner, (Appeals) Punjab, the impugned orders deserve to be set aside and the application for partition filed by respondents No.2 and 3 deserves to be dismissed.

Learned counsel appearing for respondents No.2 and 3 has not been able to controvert the arguments raised by learned counsel for the petitioners.

This Court has heard learned counsel for the parties at length and perused the paper book.

It is not in dispute that respondents No.2 and 3 had filed an application for partition of land measuring 118 kanals 6 marlas in village Chak Chhapriwala, Tehsil Fazilka, District Ferozepur before the Assistant Collector Ist Grade, Fazilka. The share holding of respondents No.2 and 3 in the said land was 13 kanals 10 marlas. It is the case of the petitioners that the share of respondents No.2 and 3 i.e. 13 kanals 10 marlas was given to the petitioners by respondents No.2 and 3 in exchange of the land owned by the petitioners in another village Ghattianwali Bodla. It is not in dispute that the petitioners had instituted a suit for declaration with respect to the said exchange which was dismissed, vide judgment and decree dated 26.05.1987 and the appeal filed by the petitioners was allowed by the lower Appellate Court, vide judgment and decree dated 04.08.1989 and thus, the suit of the petitioners was decreed and the exchange was upheld and respondents No.2 and 3, who had filed an application for partition, had no land holding left in village Chak Chhapriwala, Tehsil Fazilka, District Ferozepur and thus, they

had no locus to pursue the said partition application. The objection regarding the question of title was raised by the petitioners, which was rejected by the Assistant Collector Ist Grade, Fazilka, vide order dated 16.09.1985. The petitioners pursued their remedy and ultimately, the matter was taken up by the learned Financial Commissioner (Appeals), Punjab and vide judgment dated 15.07.1993, learned Financial Commissioner after taking into consideration the passing of the judgment and decree dated 04.08.1989, had accepted the revision petition and remanded the matter back to the Assistant Collector Ist Grade, Fazilka with a direction to dismiss the application for partition after confirming the fact as to whether or not an appeal had been filed against the judgment and decree dated 04.08.1989. The relevant portion of the order of the learned Financial Commissioner reads as under:-

“When the case came up for hearing today in the presence of the counsel for the parties, Shri Rai Singh Chauhan counsel for the petitioners has produced a copy of the judgment and decree dated 04.08.1989 of the District Judge vide which the appeal against the decree dated 26.05.1987 has been accepted and the civil suit of the petitioners decreed. He has also produced a copy of the mutation No.790 dated 20.09.1989 giving effect to this decree in the revenue record. It is urged, therefore, that the objection regarding title has been upheld. In the circumstances of the case, the revision petition is accepted and the case is remanded to the AC Ist Grade, Tehsil, Fazilka with the direction that he should satisfy himself as to whether an appeal has been filed against the decree dated 04.08.1989. In case the decree has become final, the AC Ist Grade shall dismiss the application for partition. Otherwise he shall continue with the partition proceedings as per the provision of the Punjab Land Revenue Act. The parties will appear before him 6.9.1993.”

The said order was neither challenged by respondents No.2 and 3 nor by any other co-sharer and thus, all the co-sharers were satisfied with the culmination of the partition proceedings in case the judgment and decree dated 04.08.1989 had attained finality.

After remand of the matter, the Assistant Collector Ist Grade, Fazilka, after noting that RSA-2565-1989 against the said judgment and decree had been filed in the High Court, ordered the continuation of the partition proceedings, vide order dated 16.12.1993. Thereafter, the appeal filed before the Collector, the revision filed before the Commissioner and further the revision filed before the Financial Commissioner by the petitioners was dismissed primarily on the ground that the said RSA against the judgment and decree dated 04.08.1989 was pending before the High Court.

Learned senior counsel appearing for the petitioners has referred to the order dated 24.01.2017, vide which RSA-2565-1989 has been dismissed for want of prosecution. The relevant portion of the said order is re-produced as under:-

“On the last date of hearing, there was no appearance on behalf of appellants and a notice had been issued to the counsel for the appellants, which was received back duly served. Even today there is no appearance on behalf of the appellants.

Dismissed for want of prosecution.”

It is not in dispute that the said RSA has not been restored till date.

In view of the fact that it is not in dispute that by virtue of the judgment and decree dated 04.08.1989, against which no appeal is pending, the respondents No.2 and 3 have no share left in the land in village Chak

Chhapriwala, Tehsil Fazilka and thus, have no locus to pursue the partition application and also in view of the order dated 15.07.1993 passed by the Financial Commissioner, this Court is of the view that the impugned orders dated 16.12.1993, 12.05.1994, 06.09.1994 and 16.02.1999 (Annexures P-2 to P-5) deserve to be set aside and the application for partition filed by respondents No.2 and 3 deserves to be rejected.

Accordingly, the orders dated 16.12.1993, 12.05.1994, 06.09.1994 and 16.02.1999 (Annexures P-2 to P-5) are hereby set aside and the present writ petition is allowed and the application of respondents No.2 and 3 for partition is dismissed.

It is pertinent to mention here that respondents No.2 and 3 are at liberty to move a fresh application for partition in case RSA-2565-1989 is decided in their favour.

The present order would not come in the way of any other co-sharer of the land for seeking partition in accordance with law.

01.02.2023
D.Bansal

(VIKAS BAHL)
JUDGE

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