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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-875-2016 (O&M)

Date of decision : 18.12.2023

Ram Pal and others**.....Petitioners**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Sandeep Chhabra, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Bhisham Singh, Advocate
for respondents No.4 and 5.

*********RAJESH BHARDWAJ, J.**

The present writ petition has arisen out of the impugned orders dated 20.12.2012, 06.08.2013 and the order dated 28.10.2015 wherein the partition proceedings have been carried out *ex parte* qua the petitioners.

Learned counsel for the petitioners has submitted that their father Late Horem son of Bazi had died on 01.04.1999. The share of their father along with his two brothers namely, Bhule and Rattan Singh comes to 12 kanals 11 marlas out of total land of measuring 69 kanals 05 marlas. After the death of their father, they became the owner in possession of 1/3rd share amounting to 12 kanals and 11 marlas. Sarjeet son of Atar Singh (respondent No.4) and Smt. Shanti Devi wife of Gyasi Ram (respondent No.5) filed a petition for partition titled as Sarjeet Vs.

Subhash Chand etc in the Court of Assistant Collector Second Grade, Faridabad on 25.08.2011 wherein deceased father of the petitioners, Horam, uncle Bhule and Ratan Singh all sons of Bazi were impleaded as respondents No.19, 20 and 21 respectively. He has submitted that the service of summons were effected on respondents No.1 to 66 (in the partition proceedings) through registered AD and by way of beat of drums. On 20.12.2012, as none of the respondents appeared, thus, all the respondents were proceeded ex parte. When no objections were received from the respondents, the proposed way of partition was suggested and after recording statement of petitioners, the same was accepted. He submits that during the pendency of the petition, LRs of one of the respondent in the partition proceedings namely, Smt. Shankri Devi had filed an application for setting aside ex parte order and on the no objection given by the petitioners, the same was accepted. The order of partition of her share was also passed in favour of Shankri Devi. The sanad takseem was issued on 06.08.2013. When the petitioners came to know about passing of the order of partition, they filed an appeal dated 08.11.2013 before the Collector. He submits that it was contended by the appellants that the partition proceedings were initiated against the dead person and the petitioners being the LRs were not even impleaded and hence, the partition proceedings were against the principle of natural justice. He has submitted that the appeal filed by the petitioners was dismissed by respondent No.2 vide impugned order dated 28.10.2015 on the ground that the revenue authorities have no jurisdiction to entertain the appeal after issuance of final instrument of partition i.e. sanad takseem.

Learned counsel for the petitioner has vehemently contended that this is an admitted fact that their father Horam died on 01.04.1999 and the partition proceedings were initiated on 25.08.2011. He submits that the respondents having knowledge of the same, intentionally did not implead the petitioners who are the LR's of deceased Horam son of Bazi. He submits that the sanad takseem was issued, complete partition proceedings were carried out in the absence of the petitioners. It is evident that the partition proceedings were carried out against a dead person which is nullity in the eyes of law. He has submitted that learned Collector without appreciating the settled principles of law, dismissed the appeal filed on the ground that after issuance of sanad takseem, no appeal lies against the same.

Learned State counsel has submitted that the partition proceedings were carried out as in accordance with law. He submits that the father of the petitioners was impleaded as a party and the services were effected on the respondent-co-sharers. She submits that once the notices were issued as in accordance with law to all the respondents it was incumbent upon the petitioners to file an appropriate application for their impleadment as LR's. She has invited the attention of this Court to the affidavit of Bijender Singh Rana, Assistant Collector 2nd Grade, Faridabad filed on behalf of respondents No.1 to 3 wherein it has been mentioned that the partition proceedings were initiated on 25.08.2011 and the same was adjourned on various dates thereafter upto 18.12.2012. Finally the case was decided on 20.12.2012 and 06.08.2013. It is submitted that the petitioners were duly aware about the pendency of the partition proceedings but despite that they never joined the proceedings

intentionally. It is submitted that two years thereafter, the petitioners except petitioner No.9 filed an appeal before the Collector, Faridabad and the same was dismissed by respondent No.2. It is submitted that no illegality has been committed by the respondents-authorities in carrying out the partition proceedings and thus, the petition being devoid of any merits deserves to be dismissed.

Learned counsel for respondent No.5 has vehemently contended that petitioners were very much aware about the pending partition proceedings. He submits that as per the revenue record, the name of father of the petitioners was recorded and thus, the partition proceedings could have been initiated by impleading their father only. He submits that the father of petitioner died on 01.04.1999 whereas the partition proceedings were filed by the respondents in 2011 and during all these years, no correction of the revenue record has been carried out by the petitioners and thus, it does not lie in their mouth to submit that they have not been impleaded as the LRs of their father. He submits that petition being devoid of any merits deserves to be dismissed.

After hearing counsel for the parties and perusing the record, it is evident that the partition proceedings were initiated. It is an admitted fact that father of the petitioners died on 01.04.1999. The partition proceedings were thereafter initiated by respondents No.4 and 5 on 25.08.2011. It is evident that the partition proceedings have been initiated after about 12 years of the death of father of the petitioners. Thus, it is improbable to assume that respondents No.4 and 5 were not aware about the death of father of the petitioners. It was incumbent upon respondents No.4 and 5 to implead the petitioners as LRs of Horam in the partition

proceedings initiated by them. From the record of the case, it is evident that there is no dispute regarding the partition proceedings having been carried out behind the back of the petitioners and thus, the proceedings are totally in violation of the established principles of partition proceedings and the gross violation of the principles of natural justice.

In the considered opinion of this Court, the revenue authorities have totally fallen in error in carrying out the partition proceedings and thus, passing the impugned orders. Resultantly, the impugned orders being patently illegal deserve to be set aside. Ordered accordingly. The case is remanded to the Assistant Collector for initiating the partition proceedings afresh by impleading the petitioners as LR's of Horam as a necessary and essential party. All the parties would be served with the summons and partition proceedings would be carried out expeditiously by hearing all the parties as in accordance with law. Keeping in view the facts and circumstances of the case, the Assistant Collector would conclude the partition proceedings afresh after hearing both the sides within three months from the date of receipt of certified copy of this order.

Petition is allowed in the above-mentioned terms.

(**RAJESH BHARDWAJ**)
JUDGE

18.12.2023
m. sharma

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