

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

**Civil Revision No. 4643 of 2023(O&M)
Date of Decision: 28.11.2023**

Nanak Chand

...Petitioner

Versus

Vinod Thakur & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Sumeet Jain, Advocate
for the petitioner.**

**Mr. Amit Jain, Sr. Advocate with
Mr. Amit S. Jain, Advocate and
Mr. Aryaman Thakur, Advocate
For respondents No.9 & 22.**

KARAMJIT SINGH, J.

1. The present civil revision petition has been filed by petitioner/ plaintiff No.1 against the order dated 25.07.2023 (Annexure P-2) passed by Civil Judge (Jr.Divn.), Gurugram whereby the application filed by the petitioner under Order 39 Rules 1 and 2 CPC was dismissed and order dated 10.08.2023 (Annexure P-1) whereby the appeal filed by the petitioner against the order Annexure P-2 has been dismissed with prayer to stay the respondents from raising construction over the suit land and restraining them from alienating specific portion of the same and to stay the operation of *sanad taqseem* dated 08.02.2023 (Annexure P-10)

2. The brief facts of the case of the petitioner are that the plaintiffs along with defendants No.1 to 8 and defendants No.10 to 28 are co-owners in joint possession of the suit land measuring 09 *kanals* 10 *marlas* and 30 *kanals* 03 *marlas*, which is fully detailed in paras No.1 and 2 of plaint. The

suit property is *gair mumkin*. The revenue authorities passed order of

partition and also prepared *sanad taqseem* (Annexure P-10) with regard to entire joint property (*gair mumkin*). The revenue officials were having no jurisdiction to deal with the suit property as the land in question is not being used for agricultural purposes and residential houses are existing at the spot. The respondents are having no right to raise construction therein and they have also got no right to alienate the suit property beyond their shares. The challenge has been laid to the partition proceedings conducted by the revenue authorities even on the ground that the said proceedings were conducted by the revenue officials in violation of the principles of natural justice as no notice of the said proceedings was ever issued to the plaintiffs. That even otherwise, the alleged partition is bad being partial partition. Along with the suit, the plaintiffs also filed an injunction application under Order 39 Rules 1 and 2 CPC.

3. The suit as well as the injunction application is contested by the respondents, who filed written statement and written reply. The respondents, while supporting the partition proceedings conducted by the revenue authorities, pleaded that there is no illegality or infirmity in the same and that the said proceedings were carried out by the revenue authorities in accordance with law.

4. After hearing the counsel for the parties, the learned trial Court dismissed the injunction application vide impugned order (Annexure P-2) while holding that revision petition against the partition proceedings is pending before the Court of Collector Badshahpur. The appeal filed against the said order was also dismissed by the Appellate Court vide impugned order (Annexure P-1). Being aggrieved, the petitioner has filed the present revision petition.

5. I have heard counsel for the parties.

6. The counsel for the petitioner while assailing the impugned orders, *inter alia*, contends that while preparing *sanad taqseem* (Annexure P-10), the revenue authorities did not give any opportunity of hearing to petitioner to defend himself and thus, the order of partition was passed in breach of the principles of natural justice. It is further submitted that there is a residential house of the petitioner in the suit property and it being *gair mumkin*, the revenue authorities were having no jurisdiction to pass any order with regard to partition of the same. That even otherwise, the said partition is bad in law being partial in nature and is not permissible as per the provisions of Section 111-A of Haryana Land Revenue Act as amended on 07.12.2021. The counsel for the petitioner further contends that the respondents are having no right to raise any construction over the suit property beyond their shares. So, prayer is made that the impugned orders be set aside and respondents be restrained from raising construction in the suit property beyond their shares and further the operation of *sanad taqseem* (Annexure P-10) be stayed. In support of his arguments, the counsel for petitioner has placed reliance upon decision of this Court in **Giani Ram & Ors. Vs. Ompati & Ors. 2008(1) RCR (Civil) 619**, wherein it was held that if the partition proceedings are challenged on the ground that the same were not conducted in accordance with the procedure prescribed and in compliance with the principles of natural justice and being without jurisdiction, the Civil Court jurisdiction is not barred. Reference is also made to **Lal Chand Vs. Sunil Kumar & Ors. 2014(54) RCR(Civil) 257**, wherein it was held that in case the land is non-agricultural, only a civil suit for partition lies and the revenue authorities cannot be approached to get it partitioned.

7. On the other hand, the counsel for the contesting respondents while supporting the partition proceedings submits that there is no illegality in the same. It is further contended that admittedly the residential house of the petitioner is already existing in a portion of the suit property and thus, he is having no right to restrain the other co-sharers from raising construction in the remaining portion of the suit property to the extent of their shares. The counsel for the contesting respondents further submits that the present revision petition deserves to be dismissed being devoid of merits. In support of his contentions, the counsel for the respondents has placed reliance upon **Ram Singh & Ors. Vs. State of Haryana & Ors. 2022(3) PLR 280** and decision of Division Bench of this Court in **Bachan Singh Vs. Swaran Singh, 2000(3) RCR(Civil) 70**.

8. I have considered the submissions made by counsel for the parties.

9. It is a matter of evidence as to whether the order of partition was passed by the revenue authorities in violation of the principles of natural justice. So, at this stage, nothing can be said with regard to validity of *sanad taqseem* (Annexure P-10). Further it is settled position of law that sale of any specific portion out of joint land is to be considered as sale of share out of the same

10. The counsel for the contesting respondents stated at bar that no construction is being raised by the contesting respondents beyond their shares. In the given circumstances, as the residential house of the petitioner is already existing in certain portion of the suit property and further the counsel for contesting respondents has duly made statement at bar that no construction is being raised by the respondents beyond their shares, the present petition could be disposed of with directions to the respondents not

to raise any construction beyond their share in joint property during the pendency of the suit.

11. In the light of the above, without commenting on the merits of the case the present petition is hereby disposed of with aforesaid direction restraining the respondents from raising any construction beyond their share in the joint property till the disposal of the suit or till the partition of the suit property by metes and bounds in a legal manner whichever is earlier.

12. The revision petition stands disposed of in above terms.

28.11.2023

Jiten

**(KARAMJIT SINGH)
JUDGE**

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