

115

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

CWP-18893-2023

Date of Decision: August 28, 2023

Neelam and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Manmohan Saroop, Advocate with
Ms.Meenakshi Saroop, Advocate
for the petitioners.

.....

RAJESH BHARDWAJ, J.

Petitioners have approached this Court praying for setting aside the order dated 15.11.2022, passed by learned Commissioner, Ambala Division, Ambala Cantt., Annexure P-9, vide which order dated 03.07.2020 passed by learned Collector, Pehowa, Annexure P-6, and the well reasoned order, dated 23.12.2019, passed by learned Assistant Collector, Ist Grade, Pehowa, District Kurukshetra, Annexure P-5, issuing the instrument of partition for the land pertaining to the petitioners and respondent No.5, have been set aside wrongly and arbitrarily.

As submitted before this Court, the adumbrated facts of the case are that, petitioners filed a suit for partition on 01.03.2019 before the Assistant Collector Ist Grade, Pehowa, and notice of the same was issued to respondent No.5 for 14.03.2019. Mushtari Munadi was carried out on 25.03.2019, however, no one appeared on behalf of respondent No.5 and he was proceeded against ex parte and thereafter the partition proceedings were

carried out and mode of partition was issued on 23.12.2019. Thereafter, the warrant of possession was issued on 15.06.2020. The proceedings being ex parte qua respondents No.5 were challenged by him by filing the revision petition under Section 16 of the Punjab Land Revenue Act before the learned Collector, Pehowa, however, the same was dismissed vide order dated 03.07.2020. On 18.08.2020, respondent No.5 filed revision petition challenging the order dated 03.07.2020 before the learned Commissioner, which was allowed by learned Commissioner by setting aside the partition proceedings in the partition case and he remanded the case to the learned Assistant Collector Ist Grade, Pehowa for decision afresh vide impugned order dated 15.11.2022. Aggrieved by the same, the petitioners have approached this Court by filing the present writ petition praying for setting aside the impugned order.

Counsel for the petitioners has vehemently contended that partition proceedings were initiated at the behest of the petitioners. Proper procedure was followed. Notice was sent to respondent No.5 which was received back with the report of refusal. Thereafter Munadi was also carried out and even then respondent No.5 did not put in appearance. Consequently, he was proceeded ex parte and finally the instrument of partition was issued.

It has been further contended by counsel for the petitioners that learned Commissioner has ignored the fact that learned Assistant Collector invited objections before approving Map-B, and after hearing, instrument of partition was issued on 23.12.2019, which suffers from no illegality. He further submits that there was no dispute regarding the title of the land which was the subject matter of the partition. He has submitted that respondent

No.5 has exchanged his share of land measuring 11K-9M in which land to the extent of 03K-09M is part of the same land, which was the subject matter of partition proceedings. He submits that respondent No.5 was duly served and had taken up the possession and exchanged the land with one Suresh Kumar, which was the subject matter of partition proceedings. The view taken by learned Commissioner in passing the impugned order is totally unsustainable in the eyes of law and thus deserves to be set aside.

After hearing the counsel for the petitioner and perusing the record, it is apparent that partition proceedings were initiated by the petitioners in which notice was issued. However, it is apparent that proceedings qua respondent No.5 were carried out ex parte. The suit for partition of the land in question was instituted on 01.03.2019 in which notice to respondent No.5 was issued for 14.03.2019. On 14.03.2019, summons were received back with the report of refusal and on the very same day, for securing the presence of respondent No.5, Munadi report was also called. On the service report of refusal of the summon, Chowkidar had put his signature whereas there should be signature of Lambardar as a witness, which were not found there. Thus, service effected upon respondent No.5 was in violation of statutory provisions of Section 20 of Punjab Land Revenue Act, 1887. It is apparent from the record that the fact regarding proceedings being ex parte qua respondent No.5 is not disputed.

In the considered opinion of this Court, the remand of the case to the Assistant Collector Ist Grade, Pehowa, for decision afresh, suffers from no illegality as respondent No.5 is the co-sharer and he had every right to be part of the partition proceedings. Thus, finding no merit in the present

petition, the same is hereby, dismissed. However, keeping in view the facts and circumstances of this case, learned Assistant Collector is directed to decide the partition proceedings afresh within three months from the date of first appearance of the parties, after hearing all the co-sharers.

August 28, 2023
meenuss

(RAJESH BHARDWAJ)
JUDGE

- | | | |
|----|-----------------------------|--------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |