

**111 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-26956-2022

Date of Decision : 24.01.2023

MOHAN LAL AND ORS.

.....Petitioners

Versus

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Vivek Goyal, Advocate and
Mr. Shubham Singh, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J. (Oral)

Factual Background

1. The petitioners herein instituted an application for partition before the Revenue Officer concerned. The said petition is appended to the writ petition as Annexure P-2. A reading of the order drawn, on 22nd October, 2018, and, which occurs at page No. 46, of the instant writ petition, discloses that the Revenue Officer concerned, had concurred with the argument addressed before him, by the litigant concerned, that since there, is an order made by the learned Civil Court concerned, hence staying the drawing of further proceedings in the partition application, besides, since a question of title is involved in the partition application. Therefore, he formed an opinion that there is no justification in continuing the partition proceedings. Consequently, the learned Revenue Officer concerned, adjourned the partition application

sine die, till a decision on the civil suit concerned, is recorded by the Civil Court concerned.

2. The above order became challenged by the petitioners herein before the learned Revisional Court. The learned Revisional Court through an order, made upon the revision petition concerned, made a direction that the above said order, as made by the learned Collector concerned, is ridden with a gross fallacy. Therefore, it proceeded to direct the Revenue Officer concerned, to conclude proceedings in the partition application but after affording an adequate opportunity of hearing to all the co-owners concerned. The petitioners who are the applicants in the partition application, are yet aggrieved from the order passed by the learned Revisional Court, and, as becomes embodied in Annexure P-1. Thus, they have accessed this Court.

Submissions of the learned counsel for the petitioners

3. The learned counsel appearing for the petitioners, contends with much vigor, before this Court, that since a suit qua the joint estates involved in the partition application, is subjudice before the learned Civil Court concerned, therefore but when naturally a question of entitlement, does get sparked, qua the respective entitlements of the co-sharers concerned, to seek partition by metes and bounds of the joint lands, which are enclosed in the partition application. Therefore, it is contended that until the apposite question of title becomes settled by the learned Civil Court concerned, rather thereupto, the Revenue Officer concerned, as, seized of the partition application, be restrained from holding further progresses, in the partition application. In consequence, it is contended that the order challenged before this Court requires an interference being made by this Court.

Reason for not staying the taking of further proceedings in the partition application.

4. For the reasons to be assigned hereinafter, the above made submission is completely rudderless, and, is rejected. The learned counsel for the petitioners has focussed, upon the fact that since a reading of Annexure P-7, underscores the fact that since the Revenue Court concerned, has been aptly restrained from taking further proceedings in the partition application. Therefore, the instant writ petition is amenable for being allowed by this Court, and or, he submits that the order occurring at page No. 46 of the paper book, is merit worthy. However, the above made submission becomes completely unhinged of its vigor, as a reading of the order, as carried in Annexure P-7, recorded on 14.12.2017, though discloses that the parties were directed to maintain status quo in respect of their respective co-ownership(s), and, co-possession(s), of the joint suit khasra numbers, but yet therein also occurs a candid speaking, that the said order of status-quo, shall not at all affect the subjudice partition proceedings before the Revenue authorities concerned. The effect of the above, is that, the Revenue Officer concerned, did not make a correct interpretation, of the order, as became drawn by the learned Additional District Judge concerned, and, as becomes comprised in Annexure P-7, nor he could then adopt the view, that the partition application, be adjourned *sine die*, upto a decision is recorded on the civil suit concerned by the Civil Court concerned. In consequence, the learned Revisional Court rather has assigned the appropriate legal value to the orders enclosed in Annexure P-7. Therefore, the instant petition before this Court, which throws a challenge of Annexure P-7, cannot be

construed to be having any merit.

Further arguments raised by the learned counsel by the petitioners.

5. Be that as it may, the learned counsel for the petitioners submits that since in the civil suit, as is subjudice inter-se the litigants concerned, who also arrayed as parties in the partition application, the factum of an oral partition or an oral settlement occurring amongst the owners concerned rather is under contest, therefore until the said question of title becomes settled, rather thereupto the furthering of proceedings in the partition application would be inapt. The above argument is rejected on the above premise as well as for the hereinafter assigned reasons.

6. Though normally, the evidentiary vigor, if any, which may be assigned to scribed memorandum of partition or to any scribed family arrangement, may not be completely assignable to any oral partition, which occurs amongst the co-sharers concerned, in respect of lands which are subject matter of the partition application. Nonetheless, the above said oral settlement or an oral partition, if occurs amongst the co-owners concerned, but prior to the institution of the partition application, wherethrough one or the other co-owner, strives to establish that he has a right superior to the others, to seek the assignment to him, through metes and bounds of such areas of the joint estate concerned, as becomes covered within the oral partition, rather can become yet canvassed before the Revenue Officer concerned, and also it is permissible to Revenue Officer concerned, to receive evidence in respect of the occurrence(s) of oral partition or oral settlement amongst the owners, who are arrayed as parties in the partition application. If so, may be the Civil Suit, was not the properly resorted

remedy, but the above said observation may not affect, the learned Civil Judge concerned, to make a lawful decision in accordance with law, upon, the civil suit concerned, as is subjudice before him. The fact that the order enclosed in Annexure P-7, has not been, at this stage, established to be either become challenged before this Court in a revision petition. Therefore, the said order acquires conclusive and binding effect. Necessarily, also when as above stated, there is no restraint upon the Revenue Officer concerned, to make further proceedings in respect of the partition application. Therefore, this Court does not deem it fit to interfere with the order, as made by the Revisional Court.

7. Before parting, it is deemed necessary to refer to those questions of title, as, involved in a civil suit, rather also covering the partition application, and which may become the relevant lawful parameter, hence for lawfully restraining the Revenue Court concerned, from drawing further proceedings in the partition application, uptil, the said question of title becomes finally settled by the Civil Court. First and foremost is the challenge in the civil suit qua the validity of entries, as carried in the revenue records concerned. Secondly, is the factum of emergence of evidence qua the acquisition of title by the legatees through a testamentary disposition, and, such acquisition(s) not resulting in an order of mutation becoming recorded in consequence thereto. Thirdly, upon emergences of evidence qua despite acquisition of valid titles, by the vendees from the co-owners concerned, qua the property involved in the partition application, yet no consequent therewith order attesting mutation in their favour becoming recorded by the revenue officer concerned. Fourthly, in case there is a validly drawn

relinquishment deed by one co-owner(s) in favour of the other co-owner(s) concerned, yet it also not resulting in an order of mutation becoming attested by the Competent Revenue Officer.

Final Order of this Court.

8. In consequence, there is no merit in the petition, and therefore, this Court is constrained to dismiss it. Accordingly, the instant writ petition is dismissed. The impugned order is maintained and affirmed. However, it is clarified that the Revenue Officer concerned, who is seized with the partition application, shall permit the litigants concerned to plead, as well as, adduce evidence in respect, of the occurrence of the said oral partition or oral settlement, in respect of the joint lands which are the subject matter of the partition application. Moreover, he is also directed to after bearing in mind, all the principles of parity, hence proceed to through metes and bounds, distribute through the drawings of valid orders, rather the lands involved in the partition application, to the co-owners concerned. The above exercise be ensured to be completed by the Revenue Officer positively within six months from today after giving an opportunity of hearing to all affected concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

24.01.2023
kavneet singh

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