

CWP No.26681 of 2023
CWP No.28107 of 2023

-1-

2023:PHHC:164380

118

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

CWP No.26681 of 2023
Date of Decision: 19.12.2023

Devi Singh

..... Petitioner

Versus

**Financial Commissioner (Appeals),
Punjab and others**

..... Respondents

123

CWP No.28107 of 2023

Vinod Kumari

..... Petitioner

Versus

**Financial Commissioner (Appeals),
Punjab and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Naveen Batra, Advocate
for the petitioner in both the petitions.

Mr. Sherry K. Singla, Advocate
for the caveator-Balwinder Singh.

RAJESH BHARDWAJ, J.

This order shall dispose of above mentioned two writ
petitions arising out of the same partition proceedings.

Present writ petitions have been filed for setting aside the
order dated 25.07.2022 passed by the learned Financial Commissioner
(Annexure P-9) and for setting aside the order dated 30.08.2018 passed

by the learned AC, 1st Grade (Annexure P-6) vide which, the partition application has been allowed and further for setting aside the order dated 22.08.2019 (Annexure P-7) passed by the learned Sub Divisional Magistrate-cum-Collector and for setting aside the order dated 26.02.2021 passed by the learned Commissioner (Annexure P-8) along with all other consequential proceedings arising out of the partition application made by respondent No.1 whereby the land has been partitioned against the law without following the settled principles of law against the statute and without following due process of law. Further prayer has been made for staying the dispossession of the petitioner from the land in dispute and for staying the operation and execution of impugned order of partition and Sanad Takseem, if any issued, whereby land has been partitioned.

It has been contended by learned counsel for the petitioner that respondent No.2 i.e. Balwinder Singh filed two applications for partition of the land situated in village Sabour, Tehsil Sri Anandpur Sahib, District Rupnagar. He has submitted that joint statement was made by the petitioner along with his daughter-in-law to the effect that the land has already been partitioned and writing was also executed to that effect. He has submitted that after the family partition, the petitioner had invested the huge amount in order to develop the land and also installed the sprinkler system. He has submitted that the learned Assistant Collector, 1st Grade carried out the partition by disturbing the possession and thus, the partition was carried out in violation of the mode of

partition. He submits that the same was challenged by the petitioner and the Appellate Authority remanded the same with a direction to look into the objections filed by the petitioner. He submits that on remand, the Assistant Collector, 1st Grade arbitrarily finalized the partition proceedings. He submits that the appeal and the revision had also been illegally dismissed. He further submits that respondent No.2, namely, Balwinder Singh had filed the applications for partition of the land by not including the whole land and thus, some of the Khasra numbers were left out. Besides this, the petition for the partition was filed against the dead person. However, the authorities below failed to appreciate the same and thus, the partition proceedings were carried out in violation of the settled law. He submits that as per the mode of partition, the partition proceedings were to be carried out by not disturbing the possession. Besides this, the partition of the land of the parties would be done according to bad out of bad land and good out of good land but the same had been violated. He submits that the objections raised by the petitioner were overlooked by the authorities. He has submitted that the petitioner had specifically submitted that the partition be done by keeping the possession intact and motors be kept in kurrahs of the parties, who had installed the same. He submits that the land was partitioned by way of family partition dated 20.04.1982 but the authorities failed to appreciate the same and thus, the impugned orders were passed in violation of the mode of partition and the law settled.

Learned counsel for the caveator however has opposed the submissions made by learned counsel for the petitioner. He has submitted that no violation whatsoever of the mode of partition or settled principles of law had been committed in this case. He has submitted that the petitioner joined the partition proceedings since beginning and was provided complete opportunity of submitting his objections. He submits that the objections of the petitioner were duly appreciated and the petitioner was provided every opportunity of hearing. He submits that on hearing the objections of the petitioner, the partition proceedings were carried out in accordance with the mode of partition and thus, the same was carried out by adhering to the settled principles of law. He submits that the issue regarding the sharing of the motor has already been decided by the Civil Court wherein it was directed to keep the motor in common share and thus, the motor is being used by all the co-sharers in view of the order passed by the Civil Court. He has submitted that the RSA filed against the order of Civil Court is pending adjudication before this Court. He submits that the petitions have been filed only in order to prolong the partition proceedings and thus, the same being devoid of any merit deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the partition proceedings were initiated by filing two partition applications by respondent No.2, namely Balwinder Singh. On filing the partition petition, the service was effected on all the

co-sharers including the petitioner. On hearing the objections, the necessary amendment was got done through the Circle Kanungo in the Naksha Aara/Eiri after appreciating the objections raised by petitioner-Devi Singh. The partition proceedings have been carried out as per the Rules of Partition and equal share from each dug was given to all the co-sharers. The appeal filed by the petitioner was heard by the Collector and the record was re-appreciated and thus, finding no merit in the same, dismissed the same on 22.08.2019. Against this order, two revision petitions were filed by the petitioner Devi Singh and Vinod Kumari. Both the petitions were heard together by the Commissioner and decided by a common impugned order dated 26.02.2021. It has been found that the possession was disturbed only to the extent where it was required as per the law, otherwise in over all facts and circumstances, the terms and conditions of the mode of partition were duly followed. Finding no merit in the same, both the revision petitions were dismissed by the Divisional Commissioner vide order dated 26.02.2021. The petitioner aggrieved by the same filed the revision petition before the learned Financial Commissioner. The parties were heard again and the evidence on record was re-appreciated. No illegality was found by the authorities in partitioning the land. It was further found that the Civil Court vide its order dated 26.02.2019 had finalized the issue of motor by directing that the motor would be kept joint and the same is being used by all the co-sharers. Thus, no infirmity was found in the same.

From the over all facts and circumstances of the case, it is evident that all the authorities below have given the concurrent finding against the petitioner. No violation of any principles of partition is found to have been committed. Thus, this Court finds no infirmity in the impugned orders passed and resultantly, both the above-mentioned petitions being devoid of any merit, are hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

19.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No