

125.

2024:PHHC:007429

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

CR-301-2024

Date of decision: 19.01.2024

Gurmej Singh

... Petitioner

Versus

Harbhej Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Balbir Singh Jaswal, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 08.11.2023 passed by learned Additional Civil Judge (Senior Division), Baba Bakala Sahib, Amritsar, vide which, the application filed by the petitioner under Section 65 of the Evidence Act for leading secondary evidence to prove the family partition dated 30.10.2006, has been dismissed.

2. The facts as pleaded in the plaint are that earlier Inder Singh and Jagir Singh sons of Kartar Singh were the owners and in possession of equal share of land measuring 85K-17M. Both orally partitioned their joint land and subsequently a family partition was also reduced into writing on 30.01.2006. Both brothers died. Plaintiff and defendants No.5 to 11 are the legal heirs of Inder Singh whereas defendants No.1 to 4 are the legal heirs of Jagir Singh.

2.1 The case of the plaintiff is that on the basis of family settlement/partition deed, mutation was to be got sanctioned whereas it

was not done. It was contended that defendant No.1 had sold land measuring 4 kanals 7 marlas in favour of defendant No.12. It is submitted that said sale deed may be considered from the land of defendants No.1 to 4 fallen to their share as per said family settlement. Since it was apprehended that they may sell the land beyond their share, so, the plaintiff also filed an application under Order 39 Rules 1 and 2 CPC, which application was allowed vide order dated 06.05.2023 and the defendants No.1 to 4 and 12 were restrained from alienating, transferring, mortgaging the suit land till the disposal of the suit.

2.2 On the other hand, the case of the defendants No.1 to 4 is that no family settlement ever took place and the suit land is joint, as also shown in the revenue record. They filed an application for partition of land. It is submitted that the suit has been filed just to stall the partition proceedings. The alleged writing dated 30.01.2006 is forged and fabricated.

2.3 Issues in the suit were framed on 06.05.2023. Since the plaintiff was not having the original family partition with him, so he filed an application under Section 65 of Indian Evidence Act for leading secondary evidence to prove the family partition dated 30.01.2006. It was submitted that original family partition was handed over to the Halqa Patwari, but on enquiry, he submitted that it is not traceable. Said application was dismissed vide order dated 08.11.2023 by observing that no notice was given to the Halqa Patwari to prove the original. It is the

said order which has been challenged by way of present revision petition before this Court.

3. Learned counsel for the petitioner submits that he wants to lead secondary evidence to prove the family partition entered into between the predecessor-in-interest of the plaintiff and the defendants. He further submits that petitioner would be satisfied if the impugned order is set aside and liberty be given to him to summon the concerned Patwari or to give notice to him to produce original family settlement.

4. I have heard learned counsel for the petitioner and have gone through the file.

5. The petitioner was first required to summon the concerned official to produce the document or to give notice to produce the document and keeping in view that procedure is handmaid to the administration of justice and is meant for advancement of justice, the impugned order dated 08.11.2023 is set aside with liberty to the petitioner to avail remedy as per law by summoning the concerned Patwari or by serving a notice to the concerned Patwari to produce the original family settlement and thereafter, move an application, if necessary, to prove said family partition by way of secondary evidence.

6. Present petition stands disposed of accordingly.

January 19, 2024

Parveen kumar/sanjeev

**(GURBIR SINGH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No