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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-790-2024
Date of decision : 12.01.2024

Gurmeet Singh .....Petitioner

versus

State of Punjab and others .....Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Amandeep Soni, Advocate for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Present civil writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari to quash the impugned order dated 03.03.2023 (Annexure P-4) passed by Ld. Financial Commissioner (Appeals) Punjab Chandigarh, whereby, the revision petition filed by the petitioner was wrongly and illegally dismissed against the order dated 31.05.2016 (Annexure P-3) passed by Ld. Commissioner, Jalandhar Division, Jalandhar who has wrongly and illegally dismissed the revision petition of the petitioner against the order dated 25.09.2012 (Annexure P-2) passed by Ld. SDM-cum-Collector, Batala who has wrongly and illegally allowed the appeal of the respondent against the order dated 30.11.2009 (Annexure P-1A) passed by the Ld. Tehsildar-cum-A.C. Ist Grade, Batala regarding the partition of the joint land situated in village Dhir, Tehsil Batala, District Gurdaspur and further prayer has been made to stay the operation of the impugned order dated 03.03.2023 (Annexure P-4).

It has been contended by learned counsel for the petitioner that Kartar Singh filed an application before the A.C. Ist Grade for partition of the land measuring 224 Kanals 19 Marlas as per the entries in Jamabandi for the year 1997-98. The ld. A.C. Ist Grade after completing the basic process as prescribed by law proposed the mode of partition on 28.02.2005 which was lateron amended on 07.12.2005 and ultimately ordered final partition vide his order dated 27.02.2006. Thereafter, the sanad was issued and possession was delivered. She submits that the relevant entries regarding the same were incorporated in the subsequent jamabandies, and even the mutation was also sanctioned on the basis of the said entries. She submits that once the mutation has been sanctioned, the Revenue Courts have no power to set aside the said partition proceedings as the same is in the jurisdiction of the Civil Court. It is further contended that against the order dated 27.02.2006, appeal was filed before the Ld. Collector, Batala, who vide his order dated 22.09.2008, accepted the same and remanded the case to the ld. A.C. Ist Grade, Batala. It is submitted that on remand, the ld. A.C. Ist Grade upheld his previous order dated 27.02.2006 vide his order dated 30.11.2009, on the ground that he had no power to carry on the partition as the entries had already been incorporated in the Jamabandies. She submits that aggrieved by the same, respondent No.6, filed an appeal before the Ld. SDM-cum-Collector, Batala, who accepted the same and remanded the case to the ld. A.C. Ist Grade by directing both the parties to file their objections and decide the case afresh vide his order dated 25.09.2012. It is submitted that aggrieved by the order of remand dated 25.09.2012, the petitioner along with Kartar Singh filed a revision petition before the Ld. Commissioner, Jalandhar Division, Jalandhar, however, Ld. Commissioner, without appreciating the law applicable, dismissed the revision petition filed by the petitioner and thus, remanded the matter back to Ld. A.C. Ist Grade, Batala vide his order dated 31.05.2016. Being aggrieved, the petitioner assailed order dated 31.05.2016 by filing a ROR No.898 of 2016 before the Ld. Financial Commissioner, however, the Ld. Financial Commissioner again fell in error in upholding the remand order and thus, dismissed the ROR filed by the petitioner vide impugned order dated 03.03.2023. It is submitted by learned counsel for the petitioner that the ld. A.C. Ist Grade had rightly dismissed the application on the ground that he had no power to carry on the partition in view of the remand order as the entries were incorporated in the Jamabandi on the basis of previous partition order dated 02.02.2006. It is submitted that the Revenue Courts have failed to exercise jurisdiction so vested in them and have acted illegally and with material irregularity in the exercise of its jurisdiction while passing the impugned orders. She submits that the impugned orders passed are non-speaking, cryptic and thus being unsustainable in the eyes of law, deserves to be set aside.

Heard.

On hearing learned counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated by respondent- Kartar Singh. Though respondent No.6, namely, Paramjeet Singh, appeared however remaining co-sharers were proceeded ex parte vide order dated 18.12.2013. The proposed mode of partition was issued on 28.02.2005 which was later on amended on 07.12.2005 and ordered for the final partition which was made on 27.02.2006. This order was assailed by way of filing the appeal before the Collector, who accepted the appeal vide order dated 22.09.2008 and remanded the case to the ld. A.C. Ist Grade. However, ld. A.C. Ist Grade, instead of deciding the case afresh uphold his previous order dated 27.02.2006 on the ground that he had no power to carry out the partition as the entries had already been incorporated in the jamabandi. This order was again assailed by way of filing the appeal but Ld. SDM-cum-Collector vide his order dated 25.09.2012 again remanded the case for decision afresh. However, this order was again challenged and the revision was filed before the Commissioner. The ld. Commissioner, on hearing both the sides found no merit in the revision petition and thus, dismissed the same vide his order dated 31.05.2016. This order was further assailed by the petitioner by way of filing the revision petition under Section 16 of the Punjab Revenue Act before the Ld. Financial Commissioner. The Ld. Financial Commissioner on hearing both the sides, again re-appreciated the record. It was found that no opportunity was granted to the remaining co-sharers and they were proceeded ex parte. The same upheld by the SDM-cum-Collector by passing the speaking order dated 25.09.2012. It was found from the record that the possession had not been delivered to all the co-sharers and thus, without delivering the possession to all the co-sharers, the partition proceedings could not be deemed to be completed. The process of issuing the summons to the co-sharers was also found to be violative of the statutory provisions of the Punjab Land Revenue Act. Once the co-sharers have not been served in the partition proceedings, the violation of the principle of natural justice was duly established as they were divested of their material rights. Thus, there was no illegality in the remand order passed by the Appellate Authority which is duly upheld by the Revisional Authorities. The order passed by the ld. A.C. Ist Grade, in upholding his earlier order on the ground that he had no jurisdiction to decide the case afresh in view of the remand order is totally misconceived especially when the remaining co-sharers were not even heard before finalizing the partition proceedings. Section 158 (2) (xvii) of the Punjab Land Revenue Act, 1887 reads as under:-

> *158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-Officers- Except as otherwise provided by this Act--*
>
> *(1) xxxxxx*
>
> *(2) a Civil Court shallnot exercise jurisdiction over any of the following matters, namely:-*
>
> *(i) to (xvi) xxxxxx*
>
> *xvii).....'any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought'.*

Thus, this Court does not find any infirmity in the impugned orders passed and hence, the petition being devoid of any merit, is hereby dismissed.

However, keeping in view the overall facts and circumstances of the case, ld. A.C. Ist Grade is directed to decide the partition proceedings afresh in accordance with law, after hearing all the affected parties within a period of three months from the date of receipt of copy of this order. Office is directed to send a copy of this order to ld. A.C. Ist Grade, concerned forthwith.

12.01.2024 **(RAJESH BHARDWAJ)**
ps-I **JUDGE**

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