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

CWP No.1751 of 2024

Date of Decision: 25.01.2024

Surya Parkash and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vikram Singh, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (ORAL)

Petitioner has approached this Court praying for setting aside the order dated 05.12.2023 passed by respondent No.1 (Annexure P-6) in ROR No.240 of 2018 whereby the well reasoned orders dated 22.12.2017 passed by the learned Commissioner (Annexure P-4); order dated 27.01.2015 passed by the learned Collector, Sonipat (Annexure P-3) and order/Mode of Partition dated 05.02.2014 (Annexure P-2) were set aside and the case was remanded back to the Assistant Collector 1st Grade, Kharkhoda for partition of the land de-novo in an arbitrary and illegal manner.

It has been contended by learned counsel for the petitioners that petitioner No.1 filed an application for partition of the joint land owned and possessed by the parties measuring 46 kanals 08 marlas before the learned Assistant Collector 1st Grade Kharkhoda cum

Tehsildar, District Sonipat i.e. respondent No.4 on 29.09.2012. He has submitted that there were four parties to the partition application including the petitioners and the private respondent No.5. He has submitted that the amended mode of partition was prepared by the Assistant Collector 1st Grade cum Tehsildar, Kharkhoda on 05.02.2014 wherein it was approved that the land in question would be partitioned in four khewats whereby one khewat would be given to each of the parties. He submits that against the mode of partition dated 05.02.2014, respondent No.5 filed an appeal before the learned Sub Divisional Magistrate cum Collector, Kharkhoda i.e. respondent No.3 and the same was dismissed by the Collector vide order dated 27.01.2015. He further submits that the revision petition filed by respondent No.5 was also dismissed by the learned Commissioner, Rohtak Division, Rohtak i.e. respondent No.2 vide his order dated 22.12.2017. He submits that thereafter respondent No.5 filed a revision petition under Section 16 of the Punjab Land Revenue Act which was accepted by the learned Financial Commissioner, Haryana i.e. respondent No.1 vide his order dated 05.12.2023 and thus, the order dated 22.12.2017 passed by the Commissioner; order dated 27.01.2015 passed by the Collector and order dated 05.02.2014 passed by the Assistant Collector were set aside and the Assistant Collector 1st Grade, Kharkhoda was directed to initiate the fresh partition proceedings considering the judgment and decree dated 05.08.2022 passed by the learned Additional District Judge, Sonipat.

Learned counsel for the petitioners has contended that respondent No.1 has remanded the case solely on the ground that the

learned Additional District Judge, Sonipat has decided the entitlement and share of the legal heirs finally which cannot be ignored. He submits that the order passed by the learned Additional District Judge, Sonipat dated 05.08.2022 has already been assailed by the petitioners and the respondents by way of filing their independent Regular Second Appeals numbered as RSA No.442 of 2023 and RSA No.998 of 2023, which are pending adjudication before this Court. He submits that thus, the findings arrived at by learned Additional District Judge have not attained finality and thus, the view taken by the learned Financial Commissioner, Haryana i.e. respondent No.1 in setting aside the well reasoned orders passed by the Subordinate Revenue Authorities is totally illegal and thus, being unsustainable in the eyes of law deserves to be set aside.

Heard.

On hearing learned counsel for the petitioners and perusing the record, it is apparent that the partition proceedings were initiated at the behest of petitioner No.1 by way of filing the partition application dated 29.09.2012. The necessary proceedings were carried out by the revenue authorities for partitioning the land. However during the pendency of the partition proceedings, a civil litigation was also started between the parties. The learned Additional District Judge, Sonipat vide his order dated 05.08.2022 has partly allowed the appeal filed by the respondents. The main argument raised by learned counsel for the petitioners is that at the time of approval of the mode of partition, the judgment passed by the learned Additional District Judge was no where in the picture and thus, there could not have been any illegality in the

partition proceedings being carried out. However, on perusal of the record would reveal that the learned Additional District Judge has accepted the appeal of the respondent, namely, Surya Dev and declared him as co-owner in possession of the land measuring 13 kanals and 10 marlas in suit property i.e. 46 kanals 08 marlas. The Civil Court had decided the entitlement and share of the legal heirs as per Sections 6 and 8 of the Hindu Succession Act. Thus, the share regarding the ownership in the property under the partition has been settled by the Civil Court. However, the mode of partition was found to be contrary to the findings arrived at by the Civil Court. The same has been relied upon by the learned Financial Commissioner. There is no gainsaying that the findings of the Civil Court are binding on the revenue authorities. There is nothing on the record to show that there is any interim stay of the operation of the order passed by the learned Additional District Judge, Sonipat granted by this Court in RSA pending adjudication before this Court. Needless to say, respondent No.1 vide his impugned order has remanded the case for deciding it afresh keeping in view the directions of the Civil Court.

Thus, in the considered opinion of this Court, there is no infirmity in the impugned order passed. Hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

25.01.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No