

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5624-2022 (O/M)

Date of decision : 12.08.2024

Kehar Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Vinay Puri, Advocate
for respondent No. 5.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Petitioner (Kehar Singh) has filed the instant civil writ petition under Article 226 of Constitution of India, seeking a writ in the nature of certiorari for setting aside of order dated 19.03.2021 (Annexure P-1), passed by learned Assistant Collector 1st Grade, Garhshankar, whereby the objections submitted by the petitioner to the proposed mode of partition were rejected.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 26.10.2021 (Annexure P-2), passed by learned Sub Divisional Magistrate-cum-Collector, Garhshankar, District Hoshiarpur, whereby the appeal filed by the petitioner against the order dated 19.03.2021 (Annexure P-1) was also dismissed.

2. Learned counsel for petitioner, while referring to the site plan (Annexure P-15), submits that the land under partition falls in two blocks and

in both the blocks, some portion of the land abuts the road on the western side. It is submitted that the revenue officer below has prepared the mode of partition by ignoring the location of land and without considering the fact that the area falling on the road would be having more value. It is further submitted that although in Clause 2 of Mode of Partition, it is stated that partition will be done by keeping the possession intact, however, it has not been clearly mentioned as to whether in order to make good the short fall of the land of other co-sharers, the possession can be disturbed or not. It is next submitted that since land under partition is joint between the parties, accordingly, the partition is required to be carried out by keeping in view the nature, value as well as location of the land under partition.

3. Per contra, learned counsel for respondent No. 5 submits that the father of the petitioner had sold certain land to respondents No. 4 and 5 herein and, therefore, they would be entitled to the land, which has been sold to them and the land which is in their possession. It is further submitted that Pritam Singh (father of petitioner) and Naranjan Singh (father of respondents No. 4 and 5) had mutually partitioned the land vide agreement dated 05.08.1987 and respondents No. 4 and 5 are in possession of their blocks of land as per the said mutual agreement.

4. I have heard learned counsel for parties and have also perused the paper book with their able assistance.

5. A perusal of the Sale Deed dated 06.01.1976 (Annexure P-12) would show that Pritam Singh (father of the petitioner) had sold 8 Kanal 6 Marla of land to respondents No. 4 and 5 herein, however, it is clearly stated in the sale deed that the sale is of 6/36 share in the joint land, therefore, the contention of learned counsel for respondent No. 5 that they would be entitled

to the land under their possession as the same was sold by the father of the petitioner to them; is not well founded, in view of the fact that only share in the joint land was sold.

6. As regards the plea of mutual partition amongst the predecessors-in-interest of petitioner and respondents No. 4 and 5 is concerned, it is observed that a private partition is recognized if the same is amongst all the co-sharers in joint land and the same is reflected/implemented in the revenue records. Concededly, the so called private partition has not been reflected/implemented in the revenue records, therefore, no reliance can be placed on the mutual agreement dated 05.08.1987.

7. As far as the mode of partition is concerned, a perusal thereof would show that there is no clause as regards the mode and manner, in which the partition is to be carried out. It is well established that the partition of joint land is required to be carried out by keeping in view the nature, value and location of the joint land and the land is to be partitioned equitably amongst all the co-sharers.

8. Keeping in view the above discussion, the instant civil writ petition is partly allowed. The impugned order dated 26.10.2021 (Annexure P-2), passed by the Sub Divisional Magistrate-cum-Collector, Garshankar, District Hoshiarpur, is set aside and the approved Mode of Partition (as approved on 19.03.2021) shall stand modified to the extent that a clause shall be added thereto that "the partition of the joint land shall be carried out by keeping in view the nature, value and location of the land under partition". There shall also be a modification in Clause 2 of Mode of Partition to the effect that the partition shall be carried out by keeping the possession of

the parties intact, however, if need arises, the possession can be disturbed for carrying out equitable partition of the land in question.

- 9. No other argument was raised.
- 10. The instant writ petition stands disposed of in aforesaid terms.
- 11. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

12.08.2024
sjks

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