

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

CWP-6797-2010 (O&M)

Reserved on : 01.03.2024

Pronounced : 22.03.2024

Karam Singh and others

..... Petitioners

Versus

State of Punjab and others

.....Respondents

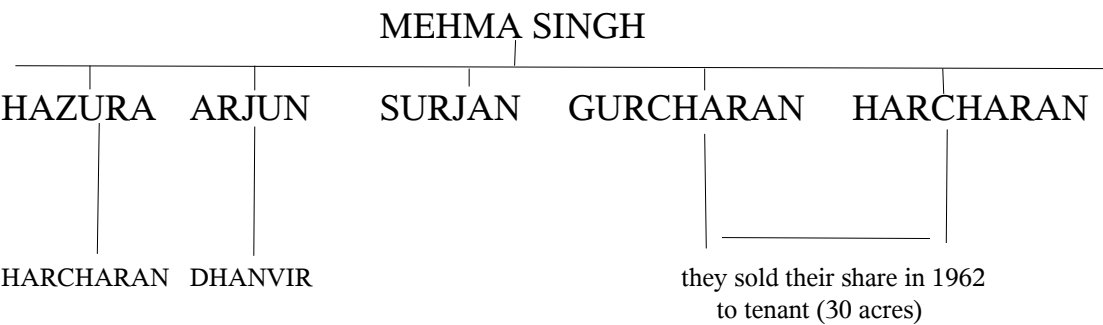
CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Som Nath Saini, Advocate, for the petitioners.
Mr. Navneet Singh, Senior Deputy Advocate General, Punjab.
Mr. Vivek Salathia, Advocate, for respondents No.5 to 7.
Mr. Anil Saini, Advocate and
Mr. Munish Gupta, Advocate, for respondents No.8 and 9.
Mr. Akshay Bhan, Sr. Advocate with
Ms. Amarjit Kaur Khurana, Advocate and
Mr. Santosh Sharma, Advocate, for respondent No.14.
Mr. Rajiv Joshi, Advocate, for
respondents No.25 and 26.
Mr. Shailender Kashyap, Advocate
for newly added respondents/subsequent vendees.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the impugned order dated 11.03.2010 (Annexure P-5) passed by respondent No.1 by entertaining the Review Application filed on behalf of the private respondents against the order dated 14.06.2005 (Annexure P-3) passed by the then Financial Commissioner (Appeals-I), Punjab vide which the Revision Petition of the petitioners was dismissed. Further prayer has been made to restrain the private respondents from interfering in the possession of the petitioners under the garb of partition proceedings to get actual possession instead of symbolic possession to be incorporated in the revenue record.

2. This case has a chequered history. The facts as culled out from the submissions made by counsel for the parties are that Mehma Singh was the landowner, whose pedigree table submitted before this Court is as follows:-



3. Total land put under partition was 1018 Bighas and 5 Biswas. Out of this, land measuring 324 Bighas and 15 Biswas was under tenancy, whereas, remaining land measuring 715 bighas land was with the owner/co-sharers. An application for partition among the family members was filed with reference to land measuring 1018 Bighas and 5 Biswas. This application for partition was filed by Arjun Singh in the year 1964. The order dated 08.11.2004 and 22.11.2004 were passed by the Assistant Collector, whereas, order dated 28.02.2005 was passed by the Collector and thereafter, order dated 02.05.2005 was passed by the Divisional Commissioner, Patiala. These orders with reference to the partition proceedings were challenged by way of two RORs before learned Financial Commissioner, Punjab i.e. ROR No.512 of 2005, which was disposed of on 17.06.2005, whereas, ROR No.461 of 2005, which was disposed of on 14.06.2005. The petitioners who contended themselves to be the tenants were protected and it was directed that they could be evicted only through the due process of law. Aggrieved by the same, private respondents filed a review petition before the Financial Commissioner and the same was allowed vide impugned order dated 11.03.2010, wherein, learned Financial

Commissioner modified the order under review by striking down the direction given for evicting the petitioners through due process of law. Thus, aggrieved by the same, the petitioners who claimed themselves to be the tenants have approached this Court by way of filing the present petition impugning the order dated 11.03.2010 passed by respondent No.1.

4. Learned counsel for the petitioners Shri Som Nath Saini, has vehemently contended that the impugned order is unsustainable in the eyes of law as the same has been passed not only without jurisdiction but also in violation of the settled law. He has submitted that the petitioners challenged the orders dated 02.05.2005, 28.02.2005, 08.11.2004 and 22.11.2004 passed by the Commissioner, Patiala Division, Patiala; Collector, Sub Division Dera Bassi and Assistant Collector Ist Grade, Dera Bassi, respectively. He submits that the revision petition was dismissed with the observations that tenants are not to be dispossessed except in due course of law vide order dated 17.06.2005. It is submitted that another revision petition filed by one Kiran Dev, challenging the same orders was decided on 14.06.2005. He has submitted that after passing the order dated 14.06.2005, the petitioners were being forcibly dispossessed and thus, the counsel met the Financial Commissioner (Appeals-I), who passed the above-said orders. He has contended that thereafter, an application under Section 15 of the Punjab Land Revenue Act, 1887 was filed by the private respondents on 15.07.2005 and the petitioners filed their objections regarding the maintainability of the review petition. He submits that learned Financial Commissioner allowed the review application by setting aside the order dated 14.06.2005 vide his impugned order dated 11.03.2010. It is submitted that learned Financial Commissioner passed the impugned order without

applying judicial mind by relying upon the order dated 06.09.1991 passed by this Court in RSA No.1613 of 1981. It is submitted that after passing the order, warrants of possession dated 06.04.2010 were issued for delivering the possession of the land in dispute. It has been submitted that learned Financial Commissioner has observed that after purchasing the share of Gurcharan Singh and Harcharan Singh sons of Mehma Singh during the year 1962-63, the petitioners became the co-owners and had been treating themselves as such. He submits that learned Financial Commissioner while dealing with the revision petitions bearing ROR Nos.512 of 2005 and 461 of 2005 filed by the petitioners and Kiran Dev Singh arising out of the partition proceedings was not competent to decide as to whether after purchasing the share of Harcharan Singh and Gurcharan Singh sons of Mehma Singh, they forfeit their tenancy rights and became co-sharers. It is submitted that these observations are totally without jurisdiction and contrary to the law settled by Hon'ble Supreme Court in Parmod Kumar Jaiswal and others vs. Bibi Husn Bano and others, 2005(2) RCR (Civil) 629. It is submitted that as evident from the facts of the case, the petitioners are tenants since 1929, as has been admitted by the respondents in the sale deed Annexure P-10. He has submitted that the predecessor-in-interest of the petitioners were brought by Mehma Singh to make the land cultivable by inducting them as tenants. He submits that this is evident from the writing executed at that time and there was no dispute whatsoever denying their tenancy over the land measuring 324 Bighas 15 Biswas which was also included in the partition proceedings keeping in view the order dated 09.03.1968 passed by learned Financial Commissioner. He has submitted that even now rent recoveries initiated by the co-sharers are pending against

the petitioners before the Revenue authorities. It is submitted that in the sale deed dated 04.01.1963, the petitioners were recorded as tenants since the year 1929 in the land measuring 324 Bighas 15 Biswas as per *Jamabandi* for the year 1960-61, but learned Financial Commissioner allowed the review application ignoring all these factual aspects and thus, illegally set aside the order dated 14.06.2005. He submits that as per Section 111 of the Punjab Land Revenue Act, any joint owner of land, or any joint tenant of a tenancy in which right of occupancy subsists, may apply to a revenue officer for partition of a share in the land or tenancy as the case may be. He submits that learned Financial Commissioner has mis-interpreted the judgment dated 06.09.1991 passed by this Court in RSA No.1613 of 1981 as the claim of the petitioners therein was to the effect that they had got proprietary rights because of the promulgation of ordinance No.XXIII of 2006 conferring upon occupancy rights under their tenancy qua the land measuring 324 Bighas 15 Biswas and thus, they had become owners of 3/4th share of entire land and the share of landlord remain only 1/4th. He submits that initially application for partition was filed for land measuring 715 Bighas, whereas, land measuring 324 Bighas 15 Biswas under tenancy of the present petitioners or their predecessor-in-interest was not included in the partition. However, learned Financial Commissioner remanded the case to the Revenue authorities vide order dated 09.03.1968 with direction to include the tenancy land as well in the partition proceedings and hence, the partition proceedings after remand proceeded qua the land measuring 1071 Bighas 15 Biswas but the present petitioners are claiming rights in the land measuring 324 Bighas and 15 Bighas, which was admittedly under their tenancy. He submits that as per scope of Section 111 of the Punjab Land

Revenue Act, it lays down the methods by which a lease of immovable property is determined, it is only when a lease is determined by any of methods that the lessor gets back the right to possession of the property. It is submitted that it is clear from the scope of this Section that on the happening of any of the specified events, it does not *ipso facto* put an end to the lease but only exposes the lessee to the risk of forfeiting his lease and gives a right to the lessor, if he so elects, to determine the lease. He has submitted that the lessor might elect to determine the lease if the condition was breached and there was a specific provision in the lease deed itself for forfeiting the lease on the happening of such breach and he may not avail any of the conditions and may give a notice under Section 106 of the Transfer of Property Act and determine the lease in the manner laid down therein. He has submitted that from the plain and grammatical interpretation of Section 111(d) of the Transfer of Property Act, it is clear that unless the interest of the lessee and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, determination of the lease cannot take place. He submits that as per the law settled in the catena of judgments, it is settled that where the leasehold provides the forfeiture and in case of assignment by the lessee, there could be no forfeiture and automatic resumption by the lessor without notice to the lessee determining the lease. The breach of condition of the lease only makes the lease voidable and therefore, forfeiture is not complete unless and until the lessor gives a notice to the lessee that he wishes to exercise his opinion to determine the lease. He has further submitted that in the case in hand, no such procedure was adopted by the respondents and thus, they have wrongly presumed that forfeiture/determination of lease to be

automatic which is not the correct legal position. He has submitted that in M/s Gian Chand-Sham Chand vs. M/s Rattan Lal-Krishan Kumar and others, 1964 AIR (Punjab and Haryana) 210, it has been held that provisions of Section 111 of Transfer of Property Act has no application to the State of Punjab. He has submitted that it has been held that no tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the grounds mentioned therein. He has submitted that as per the law laid down in Parmod Kumar Jaiswal's (supra), doctrine of merger is applicable and thus, on purchasing the ownership right of some of co-owners by the tenants, their tenancy does not come to an end and thus, tenant remains a tenant. It is submitted that as per law settled, tenancy in terms of Section 111 (d) of Transfer of Property Act would extinguish by merger, if tenant purchased the entire rights of the landowners in whole premises. He submits that even if the rights of the petitioners as occupancy tenants comes to an end, they still remain the tenants in view of the law settled. He has submitted that thus, learned Financial Commissioner has miserably failed to appreciate the law settled while accepting the review application filed by the respondents and thus, the impugned order passed being unsustainable in the eyes of law, deserves to be set aside. In support of his contentions, learned counsel for the petitioners has relied upon the judgments passed in Hans Raj vs. Hardev Singh, 1984 AIR (Punjab and Haryana) 229; Jai Narain Dass and another vs. Smt. Zubeda Khatoon, 1972 AIR (Allahabad) 494; Meenakshi vs. State of Madhya Pradesh, 1998(1) RCR (Rent) 475; Niranjan Pal and another vs. Chaitanyalal Ghosh and another, 1964 AIR (Patna) 401.

5. Mr. Akshay Bhan, Senior Counsel assisted by Ms.Amarjit Kaur

Khurana, Advocate for respondent No.14, has vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that the petitioners had raised plea of tenancy for the first time before learned Financial Commissioner without there being any plea raised before the lower revenue authorities. He has submitted that as evident from the voluminous record available that in the partition proceedings before the Assistant Collector Ist Grade, the petitioners admitted their status over the land in dispute as that of co-sharers. He has submitted that in the civil suits filed before the Civil Courts, the petitioners have specifically pleaded themselves to be co-sharers and had setup a plea of adverse possession claiming title by prescription. He has submitted that the claim of the petitioners was rejected by the Civil Courts right upto the Hon'ble Supreme Court. He has submitted that it is evident from the judgment passed by the Civil Court that their claim regarding occupancy tenant was declined by the Civil Court and the same had attained finality and thus, they are estopped from raising that plea at this stage. He submits that the case of the petitioners falls within the provisions of Section 111 (g) of the Transfer of Property Act and on bare perusal of the same, it leaves no scope of any doubt that once the petitioners have claimed ownership, then it does not lie in their mouth to claim the plea of tenancy in view of the law laid down by this Court as well as Hon'ble Supreme Court in various judgment. He submits that the petitioners are sailing in two boats by claiming themselves to be tenants as well as the co-owners whichever suits to their interest. It is submitted that learned Financial Commissioner had rightly exercised his jurisdiction under Section 15 of the Punjab Land Revenue Act to rectify the error apparent on the face of the record and hence, review application was

rightly accepted by him, which suffers from no infirmity whatsoever. He has drawn the attention of this Court to the copy of civil suit filed by some of the petitioners, wherein the petitioners had specifically pleaded in para No.9 as follows:-

“9. That plaintiffs or Chitroo defendants never paid any share of produce or rent to the defendants number 1 to 10 or to their predecessors after the proclamation of the said ordinance No.XXIII of 2006 BK. Plaintiffs & Chitroo defendants have been in possession of the suit land as owners since then. **Possession of the plaintiffs and Chhitroo after that Ordinance has always been open notorious to the knowledge of everyone, hostile and as of right as owner. Plaintiffs and Chitroo have completed more than twelve years of their possession in this manner. Since then, plaintiffs and Chitroo have, therefore, become owners of the suit land by adverse possession also.**”

6. Learned Senior Counsel has further submitted that respondent No.14 while filing application for review had specifically pleaded that none of the petitioners had challenged the earlier orders of the Assistant Collector, Collector and Commissioner and therefore, revision petition under Section 16 of the Punjab Land Revenue Act was totally incompetent. It is further submitted that the petitioners had never claimed themselves to be the tenants and therefore, the plea regarding protection of their tenancy as *gair marusi* for the first time before the Financial Commissioner could not have been raised. The petitioners claimed themselves to be co-sharers and owners on account of either pepsu ordinance or adverse possession and purchases made by them from Gurcharan Singh and Harcharan Singh and thus, their claim was barred by Section 11 CPC. Learned Senior Counsel has further submitted that in the Civil Suit No.505 of 19.09.1974, dismissed

by Sub Judge First Class, Rajpura, vide order dated 15.03.1980, issue No.2A was framed by the Civil Court was to the effect that:-

“2A. Whether the plaintiffs have become the owners of the suit land by adverse possession? OPP”

7. Learned Senior Counsel has further submitted that while dealing with issue No.2A, learned Civil Court gave findings in para No.16 and 17 as follows:-

“16. In order to prove this issue, the Plaintiffs have examined Mani Singh PW1, Dia Singh PW2, Assa Singh PW3, Chatin Singh PW4, Arjan Singh PW5, Jagan Singh PW5-A and Ramji Dass, Plaintiff made his own statement as PW7. All of them have unanimously deposed that the possession of the Plaintiffs is very long. They have also deposed that they are in possession of the Suit land as owners. But the Jamabandis Ex.P53 of the years 1967-68 and Jamabandi Ex.P54 for the year 1977-78 show that the Plaintiffs have 2/5th share in the Suit land and they are in possession of the same as co-owners alongwith the other Defendants No.1 to 10. It is well settled principle of law that the possession of one co-sharer cannot be adverse to the claim of the other co-sharers. The Jamabandis of different years placed on record only shows that the Plaintiffs are having 2/5th share in the Suit land. This fact is also admitted by the Defendants that the Plaintiffs are owners of 2/5th share in the Suit land which they had purchased from GurcharanSingh and Harcharan Singh sons of Mehma Singh.

17.In this view of the matter, I hold that the Plaintiffs have not become the owners of the Suit land by adverse possession. This issue is, therefore, decided against the Plaintiffs and in favour of the Defendants No.1 to 10.”

8. Learned Senior Counsel has submitted that it is evident that the petitioners left no stone unturned in claiming themselves to be the owners of the land under partition by every means available to them. However, learned

Civil Court rejected the same. He has submitted that RSA No.1613 of 1981 filed was also dismissed by this Court on 06.09.1991 and thereafter, SLP No.1238 of 1992 filed against the same was also dismissed *in limine* by learned Apex Court vide order dated 06.02.1992. Thus, he has submitted that the contentions raised by learned counsel for the petitioners regarding the claim of the petitioners with regard to tenancy has been appreciated upto the Hon'ble Supreme Court and the same has been rejected. Thus, claim of the petitioners alleging themselves to be the tenants has no value in the eye of law. Learned Senior Counsel has summed up by submitting that the petitioners have maintained and pleaded to be co-sharers and have also setup plea of adverse possession by claiming title by prescription, however, their claim has been rejected by the Civil Courts upto the Hon'ble Supreme Court. He submits that therefore, their claim falls within the provisions of Section 111(g) of the Transfer of Property Act and once the petitioners claimed themselves to be the owners, plea of tenancy does not survive. He submits that even otherwise, proceedings involved in the present case pertains to the partition proceedings which are always among the owners, however, learned Financial Commissioner vide order dated 14.06.2005 has travelled beyond his jurisdiction, which was rightly rectified by learned Financial Commissioner in accepting the review application filed by the petitioners by passing the impugned order. He has submitted that there being no infirmity in the impugned order whatsoever, the present petition deserves to be dismissed with costs. He has relied upon the judgment of Hon'ble Supreme Court in Raja Mohammad Amir Ahmad Khan vs. Municipal Board of Sitapur and another, 1965 AIR (Supreme Court) 1923; and of this Court in Sada Ram vs. Gajjan son of Shiama, 1970 RCR (Rent)

127.

9. Learned counsel for respondents No.25 and 26 has supported the arguments raised by learned Senior Counsel for respondent No.14. He has added that Arjun Singh and other sons of Mehma Singh filed a suit for recovery of rent and the said suit was decreed on 29.03.1956 and this order was challenged in Civil Writ Petition Nos.219 and 220 of 1985, however, the same were dismissed by this Court vide order dated 03.05.1960. He has submitted that the petitioners had always denied their status as tenants by taking the plea that they have become full owners in view of the Pepsu Abolition of Biswedari Ordinance XXIII, 2006 BK. He submits that this plea was repelled. He further submits that from the last about 70 years since 1952, the petitioners have never paid any rent to the owners. It is submitted that the petitioners improved their status to that of co-sharers in the year 1962-63 by purchasing the shares of Gurcharan Singh and Harcharan Singh sons of Mehma Singh out of 324 Bighas of land. He submits that in the year 1964 an application for partition of agricultural land under Section 111 of the Punjab Land Revenue Act was filed by Dr. Arjun Singh (father of Dhanvir Singh respondent No.14). He further submits that in the year 1974, the petitioners filed a suit for declaration in the Court of Sub-Judge Ist Class, Rajpura to the effect that the defendants have no right or title or interest or share in the land measuring 324 Bighas 15 Biswas, however, this suit was decided against the petitioners vide order dated 15.03.1980. He submits that appeal against this order dated 15.03.1980 was filed in the Court of Additional District Judge, Patiala, however, the same was dismissed on 09.05.1982. He submits that RSA No.1613 of 1981 was filed against order dated 09.05.1982, which was also dismissed by this Court vide

order dated 06.09.1991 and thereafter, petitioners filed SLP No.1238 of 1992 before Hon'ble Supreme Court, which was also dismissed vide order dated 06.02.1992. Thus, it is evident that the plea taken by the petitioners had been rejected upto the Hon'ble Supreme Court. He submits that *Naksha Urra*/mode of partition was prepared vide order dated 27.09.1995 by the Assistant Collector Ist Grade and the same was upheld by the Collector vide order 28.08.1996 and Commissioner vide his order dated 23.05.1998 and thereafter, these orders were further upheld by the learned Financial Commissioner vide his order dated 23.09.2002. He has submitted that thereafter, the case was remanded to the Assistant Collector Ist Grade for preparation of *Naksha Arra*. The petitioners filed their objections before the Assistant Collector Ist Grade on 05.11.2004. *Naksha Arra* was approved on 08.11.2004 and *Naksha Irri* was approved on 22.11.2004 and thereafter, *Sanad Takseem* was issued. It is submitted that there had been five rounds of litigation upto the Financial Commissioner and multiple rounds before Civil Courts. He has submitted that it is evident from the record that the petitioners had never admitted themselves as tenants in any Court of law, rather they have always claimed themselves to be the owners. Their claim to be the owners on the plea of adverse possession had also been rejected. Thus, in view of Section 111(g) of the Transfer of Property Act, the petitioners are restrained from taking any plea regarding tenancy. He has submitted that almost 46 out of the 51 petitioners have relinquished their position after compromising the issue. He has further submitted that from perusal of the impugned order, it is evident that learned Financial Commissioner had given directions telephonically to the lower authorities not to dispossess the tenants which was beyond his jurisdiction and hence,

the impugned order has been passed totally in accordance with the law which suffers from no illegality whatsoever. Thus, he submits that the present petition being devoid of any merit, deserves to be dismissed.

10. Learned counsel for the newly added respondents/subsequent vendees has opposed the contentions raised by learned counsel for the petitioners and has argued on the same line as has been argued by Mr. Rajiv Joshi, Advocate for respondents No.25 and 26. He has prayed for dismissal of the present petition.

11. Learned State counsel has opposed the submissions made by learned counsel for the petitioners. He has submitted that learned Financial Commissioner vide order dated 11.03.2010 has rectified the mistake crept in the order dated 14.06.2005 passed by the Financial Commissioner (Appeals-I) and has rightly strike down the directions given earlier regarding the eviction of the petitioners through due process of law. He has further submitted that the petitioners have lost upto the Hon'ble Supreme Court and as such the present petition is liable to dismissed.

12. Learned counsel for respondents No.5 to 7 and 8 & 9, have also submitted that the petitioners and their predecessor were claiming themselves to be in adverse possession of the said land, which plea was dismissed by the Sub Judge First Class vide judgment dated 15.03.1980. They have submitted that another Civil Suit i.e. CS No.279-T/95/ 10.06.1992 filed by the predecessors of the petitioners, was also dismissed on 26.03.1996 and suit filed for declaration was also dismissed on 05.10.2005. They submit that the petitioners were taking consistent stand that they are owners and claiming ownership by way of adverse possession which plea has already been negated by the Civil Courts and now the

petitioners cannot take the plea of tenancy. They have further submitted that the objections of the petitioners were dismissed by the Assistant Collector and the appeal filed before the Collector was also dismissed. They have submitted that the petitioners never claimed themselves to be the tenants rather they were claiming themselves to be the owners by way of adverse possession and they cannot be permitted to change their plea as per their suitability. They further submit that the impugned order does not suffers from any infirmity and as such the same is liable to be upheld and the petition filed by the petitioners is liable to be dismissed with exemplary costs.

13. Heard learned counsel for the parties, and I have perused the record with their able assistance.

14. After hearing learned counsel for the parties, it is apparent that partition proceedings in the present case were initiated by Dr. Arjun Singh i.e. father of respondent No.14 in the year 1964. Total land sought to be partitioned was 1018 Bighas and 5 Biswas, out of which land measuring 324 Bighas and 15 Biswas was under tenancy, whereas, remaining land measuring 715 Bighas was with the owners. Though initially partition proceedings were initiated qua land measuring 715 Bighas, however, on direction of learned Financial Commissioner, the case was remanded in the year 1968 to include the remaining land measuring 324 bighas and 15 biswas under tenancy as well in partition. Thus, total land was put under partition.

15. As is clear from the record that the petitioners and their predecessor-in-interest were the tenants but subsequently the petitioners improved their status as co-sharers in the year 1962-63 by purchasing the

share of Gurcharan Singh and Harcharan Singh sons of Mehma Singh. Section 111 of the Punjab Land Revenue Act (unamended Act) are as under:-

“111. Application for partition: -Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists, may apply to a Revenue-officer for partition of his share in the land or tenancy, as the case may be with the proposed plan of partition indicating the quality and location of the land in question alongwith the reasons for partition and copy of the latest jamabandi, if--

- (a) on the date of the application the share is recorded under Chapter IV as belonging to him; or
- (b) his right to the share has been established by a decree which is still subsisting at the date; or
- (c) a written acknowledgement of that right has been executed by all persons interested in the admission or denial thereof.

16. From perusal of above-said provisions, it is clear that any joint owner of the land or any joint tenant of tenancy in which a right of occupancy subsists can apply for the partition, thus, the petitioners were entitled under Section 111 of the Punjab Land Revenue Act to be part of the partition proceedings. At the time when the partition proceedings were initiated, there was no dispute regarding the tenancy of the petitioners. Section 117 of the Punjab Land Revenue Act (unamended Act), reads as follows:-

“117. Disposal of questions as to title in property to be divided:-

- (1) When there is a question as to title in any of the property of which partition is sought, the Revenue-officer may decline to grant the application of partition until the question has been determined by a competent Court, or he may himself proceed to

determine the question as through he were such a Court.

(2) When the Revenue-officer himself proceeds to determine the question, the following rules shall apply, namely;--

(a) If the question is one over which a Revenue Court has jurisdiction, the Revenue-officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887.

(b) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue-officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

(c) An appeal shall lie from the decree of the Revenue-officer under clause (b) as though that decree were a decree of a [Subordinate Judge] in an original suit.

(d) Upon such an appeal being made, the [District Court], or [High Court], as the case may be, may issue an injunction to the Revenue-officer requiring him to stay proceeding pending the disposal of the appeal.

(e) From the appellate decree of a [District Court] upon such an appeal, a further appeal shall lie to the [High Court] if such a further appeal is allowed by the law for the time being in force.”

17. There is no force in the contentions raised by learned counsel for the petitioners that in view of the provisions of Section 117 of the Punjab Land Revenue Act there is no dispute regarding tenancy of the petitioners at the time of filing the partition proceedings and their status as tenants has not been extinguished, in view of the fact that they themselves were claiming ownership of the land by way of adverse possession.

18. However, it is evident from the record that out of total land, land measuring 324 Bighas and 15 Biswas is under tenancy and the petitioners have claimed themselves to be the tenants on this property. The

petitioners filed a suit for declaration to the effect that the defendants i.e. the respondents in the present petition had no right or title or interest or share in this land. In para No.9 of the plaint as already reproduced, the petitioners have claimed their possession after ordinance as notorious to the knowledge of everyone and hostile to the owners and thus, they themselves claimed to be the owners by way of adverse possession. Learned trial Court framed issue No.2-A as already reproduced above that whether the petitioners become the owners of the property by way of adverse possession. This issue was dealt with by the Civil Court and their claim of being owners by way of adverse possession was rejected and the suit filed by the petitioners was dismissed. Thereafter, an appeal filed before learned Additional District Judge, Patiala was also dismissed vide order dated 09.05.1982, which was further assailed before this Court by way of filing RSA-1613-1981, which was also dismissed vide order dated 06.09.1991. Finally SLP-1238-1982 was filed and the same was also dismissed. Thus, it is evident that the claim of the petitioners regarding their plea of tenancy has already been rejected upto Hon'ble Supreme Court. Further in the suit for settlement of accounts filed by respondent No.14 and others titled as Dhanvir Singh and others vs. Lachhman and others, the petitioners filed their written statement, wherein para Nos.1 and 2 on merits, they stated as under:-

- “1. Para No.1 of the plaint is wrong and denied. The suit on behalf of plaintiff No.2 has already got dismissed. The defendants are owners in possession of the suit land.
2. Reply to para No.2 of the plaint is that the defendants have cultivated and are cultivating the suit land as owners and as such the plaintiffs have no right to ask for share of produce or theka in respect of the same.”

19.

Thus, it is evident from the above-said written statement that

the petitioners admittedly maintained their status as owners of the property under partition and not as tenants. As submitted by learned Senior Counsel for respondents No.14, provisions of Section 111 (g) of the Transfer of Property Act, 1882 are attracted in the facts and circumstances of the case, which is as follows:-

“111. **Determination of lease.**- A lease of immovable property determines-

(a) to (f) x x x x x x

(g) by forfeiture; that is to say,

(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or

(2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or

(3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and (in any of these cases) the lessor or his transferee (gives notice in writing to the lessee of) his intention to determine the lease;”

20. A perusal of these statutory provisions would show that lease is forfeited in case lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. From the record available, there is not an *iota* of doubt left that the petitioners have maintained their status as co-sharers and not as tenants. Thus, in view of the provisions of Section 111 (g) of the Transfer of Property Act, once the petitioners claimed themselves to be the owner, the lease came to an end. Even otherwise as already noted, dispute regarding tenancy has already been settled upto Hon’ble Supreme Court. From the record of the partition proceedings, it is further evident that the petitioners did not take any plea claiming

themselves to be tenants before the Revenue authorities. However, for the first time the plea regarding tenancy had been taken before the Financial Commissioner that too at the back of the respondents. Learned Financial Commissioner passed the order dated 14.06.2005 without serving notice to the respondents.

21. There is no gainsaying that the case in hand pertains to the partition proceedings of the land measuring 1018 Bighas and 15 Biswas. The partition proceedings are always among the co-sharers. Revenue authorities have to decide the case as per entitlement of all the co-sharers in accordance with law. If the petitioners have purchased the share of some of the co-owners, then they definitely stepped into the shoes of that co-sharers from whom they had purchased the land. Thus, by becoming co-sharers the petitioners would join the partition proceedings as the co-sharers. The rights of any of the co-sharers under any different law, are to be decided under the proceedings invoked under those respective laws. However, the same cannot be adjudicated upon in the partition proceedings. As is evident from perusal of the order dated 14.05.2005, the observation made by learned Financial Commissioner by providing protection to the petitioners for their dispossession, was totally beyond his jurisdiction. Thus, the respondents had rightly invoked their remedy for the review of this order by way of filing an application under Section 15 of the Punjab Land Revenue Act, as there was an error apparent on the face of it.

22. Needless to say that the petitioners had taken this plea of tenancy at the first time before learned Financial Commissioner and the respondents were never given any opportunity to respond to the stand taken by the petitioners, which was never before the Revenue authorities at the

time of the initiation of the partition proceedings. It is also evident from the perusal of the impugned order that learned Financial Commissioner after having passed order dated 14.06.2005, had given telephonic message to the Revenue authorities not to take possession from the petitioners when he himself had become *functus officio* and travelled beyond his jurisdiction.

23. As has been discussed above the petitioners claimed themselves to be the owners of the suit land by way of adverse possession which plea of them was negated upto the Hon'ble Supreme Court and as such the petitioners cannot be permitted to come out with a new plea of tenancy when they themselves were claiming ownership on the basis of adverse possession. The arguments raised by learned counsel for the petitioners is misconceived. As evident from the record, the petitioners are changing their status to their convenience at every stage. Once the issue regarding the tenancy is settled upto Hon'ble Supreme Court, the Revenue authorities could not have decided the partition proceedings in contravention to the same. However, the petitioners have made a futile attempt to wriggle out of the same on the basis of the untenable contentions.

24. There is no dispute regarding the judgments relied upon by learned counsel for the petitioners, however, in all its humility, in the facts and circumstances of the present case, the same are distinguishable, rather the judgments relied upon by learned Senior Counsel for respondent No.14 are applicable to the facts of the present case.

25. Thus, in the considered opinion of this Court, the order dated 11.03.2010 passed by respondent No.1 in the review application vide which order dated 14.06.2005 passed by the then Financial Commissioner was reviewed and the protection earlier granted to the petitioners regarding their

eviction through due process of law was strike down, suffers from no illegality or perversity and as such the same is upheld. Resultantly, the present petition which is devoid of any merit is dismissed.

22.03.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE