

223

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

CWP-13988-2017

Date of decision : 06.02.2024

Banarsi**.....Petitioner**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. S.K. Tripathi, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. AG, Haryana.

Mr. Kamal Chaudhary, Advocate
for respondents No.4 to 6.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned orders dated 19.06.2017 (Annexure P-7) passed by respondent No.2 and impugned order dated 27.11.2015 (Annexure P-4) passed by respondent No.3 vide which the land in dispute has been partitioned without obtaining the objections from the petitioner and the banjar land has been given to the petitioner whereas he has purchased class one land from one Punni Devi in the year 1996. Further prayer has been made for setting aside the impugned orders dated 19.06.2017 (Annexure P-7) and 27.11.2015 (Annexure P-4) and directing respondent No.3 to conduct fresh partition proceedings of the land in dispute according to law. Further prayer has been made for staying the orders dated 27.11.2015, 19.06.2017 (Annexures P-4 and P-7) passed by respondents No.2 and 3

and also order dated 12.06.2017 passed by respondent No.3 not to take physical possession of the land in dispute from the petitioner.

Learned counsel for the petitioner has submitted that as per *jamabandi* for the year 1994-95, one Matu, Bhullu are the owners in possession to the extent of $\frac{1}{2}$ share and Jia Ram, and the perform respondents No.7 to 13 are the owners of $\frac{1}{2}$ share in the suit land bearing Khewat/Khatoni No.74/107, Khasra No.20//12/2 (6-4), 13/2 (1-8), 29//2/3 (3-18), 33//22/2 (4-6), Kitte 4 measuring 15 kanals 16 marlas. He submits that the co-sharers orally got the partitioned their suit land. The co-sharer namely, Bhulu Ram died and his share was inherited by his widow Punni Devi who sold 01 kanal land to the petitioner out of the said land measuring 15 kanals 16 marlas vide sale deed dated 22.11.1996. The mutation bearing No.540 was also sanctioned in the name of the petitioner and actual physical possession to the petitioner was also delivered in Khasra No.20//12/2 Min in South and West side at the time of sale deed dated 22.11.1996. He submits that since then petitioner is in actual possession of the land in dispute. He submits that since the purchase of 1 kanal land by petitioner from Punni Devi, the land has not been partitioned till date. He submits that some of the co-sharer sold specific share in some Khasra numbers out of the joint land measuring 15 kanals 16 marlas instead of share in whole khewat and due to the same, the land has been bifurcated in three khewats bearing Khewat Nos.115, 116 and 117 without any partition. It is submitted that respondents No.4 to 6 filed partition application before learned Assistant Collector 2nd Grade, Raipur Rani on 01.08.2012. He submits that the petitioner was proceeded *ex parte* vide order dated 26.04.2013. It is submitted that the

Assistant Collector 2nd Grade has allowed the application for partition of land of respondents No.4 to 6 vide order dated 27.11.2015 and passed *sanad taksim* against the petitioner which is totally illegally and arbitrary. He submits that the petitioner assailed the said order by way of filing the appeal before the learned Assistant Collector Ist Grade, Panchkula. However, learned Collector dismissed the same stating that once the *sanad taksim* has been passed, the order impugned cannot be reviewed. He submits that as the order has been passed *ex parte*, the impugned order is unsustainable in the eyes of law.

Per contra, learned counsel for respondents No.4 to 6 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that petitioner has not approached this Court with clean hands and has concealed the material facts. It is submitted that after getting the *status quo* order from this Court, the petitioner is intentionally prolonging the litigation only in order to harass respondent No.4 who is a helpless widow. He submits that respondent No.4 along with her children i.e. respondents No.5 and 6 filed five applications for partition of the land comprised in different khewat/khatonis. However, the petitioner has challenged only one of the application No.24/NT, in which Khasra No.33//22/2/1 (0-11) were asked for partition. He submits that the possession has been delivered to the parties as per the order passed in the partition proceedings vide Rapat dated 28.06.2017. He submits that the petitioner is a subsequent purchaser from one of the co-sharer who had share only in two khewats whereas the petitioner is praying for share in the khewat where his vendor had only the share of 9 marlas. He submits that petitioner has filed the present petition only in order to harass

respondents No.4 to 6. It is submitted that the partition proceedings are already complete and the petitioner has not intentionally appeared and was rightly proceeded *ex parte* by the revenue authorities. He has submitted that before filing this writ petition, the Civil Suit No.528/2016 filed by the petitioner was pending before learned Civil Judge(Senior Division), Panchkula. However, the petitioner did not appear in the civil suit intentionally and thus, the same was dismissed in default vide order dated 17.10.2017. He submits that the petitioner has intentionally concealed the same at the time of filing this writ petition. He submits that the petition, being devoid of any merits deserves to be dismissed with costs.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is a subsequent purchaser who purchased the share of one of the co-sharers. The vendor of the petitioner had share only to the extent of 9 marla. Respondents had filed 5 applications for partition however, the petitioner had challenged only application No.24/NT. The *sanad taksim* has already been issued and the possession is also delivered. Thus, on issuance of *sanad taksim*, the Assistant Collector Ist Grade had no jurisdiction to entertain the appeal as filed by the petitioner. Hence, this Court does not find any infirmity in the impugned orders passed by the authorities below. Resultantly, the present petition being devoid of any merits is hereby dismissed.

06.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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