123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28989-2024 (O/M)
Date of decision : 24.10.2024

Ramphal ...... Petitioner(s)

Versus

State of Haryana and others ...... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Raman Chawla, Advocate
for the petitioner(s).

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Ramphal) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 02.09.2024 (Annexure P-6), passed by the learned Financial Commissioner, Haryana, whereby two revision petitions (ROR-261/2019-20 and ROR-13/2019-20) have been allowed by setting aside the partition proceedings/sanad takseem with a further direction that partition proceedings be carried out de novo on the basis of jamabandi 2015-16 or later, after incorporating subsequent mutations, if any.

2. Briefly, in July, 2012, the petitioner alongwith others filed an application seeking partition of joint land, measuring 55 bighas – 10 biswas, comprised in Khewat No. 26 (as per jamabandi 1955-56), situated in village Jhojhu Khurd, Tehsil and District Charkhi Dadri.

2.1 In the said partition proceedings, mode of partition (Annexure P-2) was prepared on 01.07.2014 and Naksha 'Kha' was sanctioned, vide order dated 15.06.2015 (Annexure P-3).

2.2 Respondent No. 8-Rajinder challenged the aforesaid order dated 15.06.2015 (Annexure P-3) by preferring an appeal before the learned Collector, Charkhi Dadri, however, the same was dismissed, vide order dated 10.10.2017 (Annexure P-4).

2.3 A further revision preferred by respondents No. 6 to 8 before the learned Commissioner, Rohtak Division, Rohtak, was also dismissed, vide order dated 14.05.2019 (Annexure P-5).

2.4 It transpires that sanad takseem (instrument of partition) came to be issued on 19.09.2019.

2.5 Thereafter, respondents No. 6 to 8 preferred a revision petition (ROR-13/2019-20) before the learned Financial Commissioner, Haryana, inter alia, challenging the sanad takseem dated 19.09.2019. Similarly, another revision petition (ROR-261/2019-20) came to be filed by one Shri Manjit Kumar challenging the sanad takseem dated 19.09.2019.

2.6 Both the aforesaid revision petitions came to be allowed by the learned Financial Commissioner, Haryana, vide a common order dated 02.09.2024 (Annexure P-6), whereby the partition proceedings/sanad takseem has been set aside with a further direction that partition proceedings be carried out de novo on the basis of jamabandi 2015-16 or later, after incorporating subsequent mutations, if any.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. I have heard learned counsel for the petitioner and have also perused the paperbook with his able assistance.

5. In the present case, the learned Financial Commissioner has set aside the partition proceedings/sanad takseem by holding as under :-

> *"2. It is submitted by the Ld. Counsel for Petitioners in ROR No. 13 that the partition proceedings were carried out based on the 1955-56 Jamabandi and that all the co-owners were not impleaded in the proceedings. The Ld. Counsel further submits that a question of title is involved since RSA No. 337 of 2008 and RSA No. 3600 of 2011 are pending in the High Court of Punjab and Haryana.*
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> *3. The Ld. Counsel for the Petitioner in ROR No. 261 submits that though the Petitioner and the Proforma Respondent no. 55 had become co-owners to the extent of 7 Biswas of undivided share in the joint land vide a registered sale deed no. 3499 dated 13.11.2006 and Mutation No. 744 sanctioned on 12.03.2007, but they were not made party in the partition proceedings and no area was allotted to them in the impugned Sanad Takseem.*
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> *4. The Ld. Counsels point to a Jamabandi for the year 2015-16 of Village Jhojhu Khurd (Hadbast No. 70), Tehsil and District Charkhi Dadri, but the partition has been carried out based on the 1955-56 Jamabandi. The partition proceedings finalized on 19.09.2019 based on the 1955-56 Jamabandi is unsustainable and the impugned Sanad Takseem is hence set aside. The partition proceedings shall be carried out de novo based on the 2015-16 Jamabandi, or later, after incorporating subsequent mutations, if any. The partition proceedings cannot be held in abeyance due to the pendency of regular second appeals in the High Court. The*

shares of parties can be modified suitably if the decision of the district court is modified by the High Court in the pending Regular Second Appeals."

5.1 A perusal of the above extracted findings of the learned Financial Commissioner would show that the partition proceedings/sanad takseem have been set aside primarily taking into consideration that the partition proceedings were carried out on the basis of jamabandi for the year 1955-56 and all the co-owners were not impleaded in the partition proceedings.

5.2 During the course of hearing of this petition, it is not disputed by the learned counsel appearing for the petitioner that the partition application was filed on 12.07.2012 on the basis of jamabandi for the year 1955-56. It is also not disputed that all the co-owners in the land under partition were not impleaded. Rather the submission made on behalf of the petitioner is that if anyone's share has been left then he can get the same from the earlier owner, who was the party to the partition proceedings. It is also contended that there is no sanctioned mutation on record and in the absence of updation of revenue records (jamabandis) on account of failure of the consolidation department to carry out consolidation proceedings till 2015, the petitioner cannot be faulted with.

6. I have considered the aforesaid contentions raised on behalf of the petitioner, however, I do not find any merit in the same. Learned Financial Commissioner has specifically referred to mutation No. 744, which was sanctioned on 12.03.2007 on the basis of registered sale deed No. 3499 dated 13.11.2006 in favour of Manjit Kumar and Dinesh Kumar sons of Shri Raj Pal son of Shri Bhagwan Singh. The said persons, namely, Manjit Kumar and Dinesh Kumar were not made party in the

partition proceedings and no area was allotted to them. In this view of the matter, when a person has purchased a share in the joint land which stands recorded by way of a mutation and that too prior to the date of filing of application for partition, in my considered view, the said purchaser of land would be a necessary party in the partition proceedings and was required to be impleaded. The petitioner cannot maintain the plea that such purchaser can get the share allocated to his vendor, more specifically when it is not shown that such vendor was duly served in the partition proceedings and had contested the same.

6.1 That apart, a reference to Sections 111, 113 and 114 of Haryana Land Revenue Act, 1887 (as applicable in July 2012, when partition application was filed in this case) is necessitated, which read as under :-

> *"S. 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, if -*
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> > *(a) at 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 that date; or*
> >
> > *(c) a written acknowledgement of that right has been executed by all persons interested in the admission or denial thereof."*
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> *"S. 113 Notice of application for partition.- The Revenue-officer, on receiving the application under Section 111, shall, if it is in order and not open to objection on the face of it, fix a day for the hearing thereof, and-*

(a) cause notice of the application and of the day so fixed to be served on such of the recorded co-sharers as have not joined in the application, and, if the share of which partition is applied for is share in a tenancy, on the landlord also; and

(b) if he thinks fit, cause the notice to be served on or proclaimed for the information of any other persons whom he may deem to be directly or indirectly interested in the application."

"S. 114 Addition of parties to application.- On the day fixed for hearing, or on any day to which the hearing may be adjourned, the Revenue-officer, shall ascertain whether any of the co-sharers desire the partition of their shares also, and, if any of them so desire, he shall add them as applicants for partition."

6.2 Evidently, non-impleadment of recorded co-sharers in terms of the above extracted provisions is a lapse on the part of the party seeking partition. In my considered view, even the revenue officer is required to ensure that all the recorded co-sharers of land under partition are impleaded to the partition application.

7. In normal circumstances, the partition application has to be filed on the basis of the revenue record (jamabandi) existing on the date of filing of partition application, wherein all recorded co-sharers (after taking note of all mutations concerning rights, title or interest in the land under partition, which may have been acquired by any person/entity upto the date of filing of partition application) are required to be impleaded as parties.

7.1 In the instant case, apparently the partition application was filed on the basis of the jamabandi for the year 1955-56, wherein all recorded co-sharers were not impleaded and concededly, a new jamabandi for the year 2015-16 was prepared during the pendency of the partition proceedings and necessarily the revenue records stand updated. In the peculiar facts and circumstances of this case, it would be in the fitness of things that the de novo partition proceedings are carried out on the basis of jamabandi for the year 2015-16.

8. In view of the above discussion, the instant civil writ petition is dismissed with the aforesaid observations.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

24.10.2024
sjks

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