

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-34134-2024 (O/M)

Date of decision : 17.12.2024

Gurdev Singh

..... Petitioner(s)

Versus

Financial Commissioner (Appeals) Punjab and others

..... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Jain, Mr. Sachin Jain, Advocates
for the petitioner(s).

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Gurdev Singh) 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 24.02.2016 (Annexure P-1), passed by learned Assistant Collector 1st Grade, Banga and order dated 01.12.2023 (Annexure P-5), passed by learned Financial Commissioner (Appeals), Punjab.

2. Briefly, respondent No. 3-Gurmail Singh filed an application, seeking partition of joint land measuring 5 kanal – 8 marla, comprised in Khewat No. 59/57, Khasra No. 16//15/2 (5-8), as per Jamabandi 2010-11, situated at village Paddi Matwali, Tehsil Banga, District Shaheed Bhagat Singh Nagar (Nawanshahr).

2.1 It appears that the petitioner was proceed against ex-parte in the aforesaid partition proceedings and the final order of partition came to be passed on 24.02.2016, vide Annexure P-1.

2.2 It transpires that the petitioner challenged the aforesaid partition order dated 24.02.2016 (Annexure P-1) by filing an appeal before learned Collector, Banga, however, the same was dismissed, vide order dated 08.03.2018 (Annexure P-4) primarily on the ground that after the issuance of sanad takseem, the appeal was not maintainable.

2.3 Thereafter, the petitioner preferred a revision petition (ROR-427-2018) before the learned Financial Commissioner (Appeals), Punjab, which was also dismissed, vide order dated 01.12.2023 (Annexure P-5).

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

4. Learned counsel for petitioner submits that the learned Assistant Collector 1st Grade, Banga, has not followed the proper procedure to summon the petitioner as the petitioner was residing abroad in California (USA) and was wrongly proceeded against ex-parte. It is further submitted that even otherwise, the partition proceedings are contrary to the mode of partition as the partition was to be carried out by keeping the possession intact, whereas the possession of the petitioner has been disturbed. It is next submitted that the land measuring 3 kanal – 18 marla out of the land under partition was sold by the father of respondent No. 3 i.e. Shri Ajit Singh to the father of the petitioner i.e. Lashkar Singh, vide sale deed dated 22.06.1999, wherein the western portion of Khasra No. 16//15/2 was sold, whereas in the final partition the land which was

sold to the father of the petitioner, has been wrongly allocated to respondents No. 3 and 4. Accordingly, it is submitted that the partition proceedings/sanad takseem as well as impugned orders be set aside and the matter be remanded to the learned Assistant Collector 1st Grade, Banga, for carrying out the partition proceedings afresh.

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

6. As regards the first contention raised on behalf of the petitioner that the petitioner was not properly served, it is observed that the said contention was duly considered by the learned Financial Commissioner (Appeals), Punjab in his order dated 01.12.2023 (Annexure P-5), the relevant extracts whereof read as under :-

“6. I have heard and considered the arguments advanced by Counsel for the parties and perused the documents available on record. On perusal of the file, I find that respondent No. 2 filed an application under Section 111 of Punjab Land Revenue Act, 1887 before the Assistant Collector 1st Grade-cum-Tehsildar, Banga for partition of land measuring 5 kanal 8 marlas comprised in khewat No. 59/57, Khatoni No. 71, khasra No. 16//15/2 (5-8) situated in the revenue estate of village Paddi Math Wali, Tehsil Banga, District S.B.S. Nagar as per the jamabandi for the year 2010-11 in which he was co-sharer with the petitioner. The A.C.1st Grade, Banga conducted the partition proceedings on the file No. 46/T dated: 20.11.2014 and ordered to summons the respondent i.e. the present petitioner. A registered letter was also sent to the petitioner at his address which was received with the report that the petitioner does not live in the village. Thereafter, in compliance with the provisions of Section 20 (3), the service

was effected by way of 'mushtri munadi'. Further, a publication was also published in the newspaper. Therefore, it is evident from record that after resorting all formalities as prescribed under Section 20 of the Punjab Land Revenue Act, 1887, the A.C.1st Grade proceeded with the partition application and there is no other way in which the petitioner could be served. Further, in this case the petitioner is alleging that A.C.1st Grade has concluded the partition in his absence. But he failed to point out any prejudice caused to his interest. Therefore, there is nothing on record which could warrant the interference of revisional jurisdiction of this Court.

7. Resultantly, the present revision petition is dismissed and the order dated 24.02.2016, passed by the A.C.1st Grade, Banga is upheld. Copy of this order be communicated to the Courts below. Filed be consigned to the record room.

Announced in open Court.”

6.1 A perusal of the above extracted observations/findings returned by the learned Financial Commissioner (Appeals), Punjab would indicate that initially, summons were issued to the petitioner and thereafter even registered notices were sent at his address, which were received back with the report that the petitioner did not reside in the village. It appears that thereafter mushtri munadi (proclamation) was issued and ultimately even publication was made in the newspaper and only thereafter the petitioner was proceeded against ex-parte. Apparently, all modes of service were resorted to and thereafter the petitioner was proceeded against ex-parte, therefore, it cannot be held that the proper procedure was not followed as regards service upon petitioner is concerned.

6.2 As regards the other contention raised on behalf of the petitioner that the final partition is contrary to the sanctioned mode of partition as his (petitioner's) possession has been disturbed, it is observed that the land under partition is comprised only in Khasra No. 16//15/2, measuring 5 kanal – 8 marla. The petitioner has failed to refer to any material/document to indicate as to in which portion he was having his possession. In the absence of any material to indicate possession of the petitioner on the specific portion of land under partition, the aforesaid plea is liable to be rejected.

6.3 I also do not find any force in the contention raised on behalf of the petitioner that the area, which was sold by the father of respondent No. 3 to the father of the petitioner i.e. western portion of Khasra No. 16//15/2, has been wrongly allocated to respondents No. 3 and 4, as the copy of the sale deed is not attached with the writ petition.

6.4 That apart, a perusal of the site plan (Annexure P-7), which depicts the position of the area allocated to the respective co-owners in the partition would reveal that respondents No. 3 and 4 own a very small chunk of land and the major portion of land is owned by the petitioner only. The land allocated to respondent No. 3 is shown in pink colour, whereas the land allocated to respondent No. 4 is shown in green colour. On the other hand, the land allocated to the petitioner is shown in blue colour. From a perusal of the site plan (Annexure P-7), the partition proceedings appear to be fair, just and equitable.

6.5 Learned counsel for petitioner also could not point out that as to what prejudice has been caused to the petitioner in the manner in which the final partition has been carried out.

7. In view of the above, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

17.12.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No