(2019) 04 P&H CK 0185

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 732 Of 2019 (O&M)

Ajaib Singh And another — APPELLANT

Vs

Financial Commissioner (Revenue), Punjab And Others — RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:
Punjab Land Revenue Act, 1887 — Section 16

Citation : (2019) 04 P&H CK 0185

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Harsh Aggarwal

Final Decision : Dismissed

Judgement

Arun Palli, J

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 09.01.2019, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants, wherein they had assailed the orders passed by the revenue authorities rejecting their objections to the partition proceedings, has since been dismissed.

The facts that are required to be noticed are limited. Respondent No.5 initiated partition proceedings regarding a land measuring 99 kanal, situated at village Chathewla, Tehsil Talwandi Sabo, District Bathinda. The appellants filed objections thereto, as by virtue of a private partition the land in question already stood partitioned between the parties, and they were in possession of the areas that had fallen to their respective shares. However, Assistant Collector 1st Grade, vide order dated 6.8.2010, rejected their objections as the alleged family partition was not reflected in the revenue record. Being aggrieved, the appellants assailed the said order by way of an appeal, but, vide order dated 29.10.2010, even the Collector, upon perusing the records, concluded that unless a family partition is entered in the revenue records, it carries no significance. Likewise, even the revision petition filed by the appellants was dismissed by the Commissioner, vide order dated 29.8.2012, and the findings recorded by the authorities below were affirmed. Records show that the order passed by the Commissioner was assailed by the appellants vide a writ petition (CWP No.23342 of 2012) before this Court, which too was dismissed on 27.11.2012, but with an observation that if the alleged private partition was, indeed, reflected in the jamabandis (Annexures P-2 and P-3), appended with the said petition, the appellants could always seek review of the said order. Accordingly, the appellants again moved the Commissioner, but while reiterating the findings that the records did not reflect any private partition ever took place between the parties, vide order dated 17.09.2014 the review application was dismissed. Still aggrieved, the appellants assailed these orders vide a revision petition under Section 16 of the Punjab Land Revenue Act, 1887, but that too was dismissed by the Financial Commissioner (Revenue), Punjab, vide order dated 20.01.2015. And, that is how, the appellants approached this Court, vide a writ petition, referred to above, which too has been dismissed. Thus, this appeal.

We have heard the learned counsel for the appellants and perused the records.

Before we proceed further, it, indeed, would be expedient to refer to the conclusion arrived at by the learned Single Judge, on an analysis of the matter and the material on record;

"7. The basic principle of law is that if an assertion is made by a party, the onus to establish the same is of that party only which unfortunately, has not been established by the petitioners with regard to the oral settlement alleged to have been entered into between the parties on 28.07.1963. The possession of the land, which admittedly is a joint khata till date in the revenue records, does not confer the ownership on the person who is in possession of a particular piece of land irrespective of the share which he is entitled to. A party is entitled to the respective share as per their proportion and would be declared owner of a particular piece of land which may fall in the ultimate partition be proceedings when concluded.

8. Present is a case where merely because the petitioners are in possession of the excess land, they have tried to justify that there was an oral partition and therefore, they came in possession of the excess land because of the inferior quality of the land and there being a water canal passing through the land of the petitioners which irrigated not only the land of co-sharers but also other subsequent beneficiaries. This, in the considered view of this Court, would not be enough to establish the actual factum of any oral partition unless it is incorporated in the revenue records. The judgment on which reliance has been placed by the learned counsel for the petitioners i.e. Arjan Singh's case (supra), was a case where a party has already approached the Court and the Civil Court had given a finding that there was indeed an oral partition, whereas, in the present case, none of the parties, till date, has approached the Civil Court for adjudication on this aspect. Petitioners, who are asserting that there was an oral

partition, has not been able to establish the factum of there being one, cannot take a plea that the respondents should have approached the Civil Court for establishing an oral partition when an assertion has been made by the petitioners themselves and therefore, onus was on the petitioners to establish the same. The judgment on which reliance has been placed by the learned counsel for the petitioners, therefore, would not be applicable to the facts of the present case.

9. As regards the judgment passed by this Court in Gurdip Singh's case (supra), on which, reliance has been placed upon by the learned counsel for respondents No.5 to 10, relates to a case of partition where not only an oral partition was alleged to have been entered into but there was a rapat roznamcha also entered into in this regard by the Patwari but still the Court proceeded to hold that since no separate mutation has been sanctioned, the factum of partition has not been established and therefore, did not confer any right. Present is a case where even the oral partition, as claimed, has not been established what to say of any writing and it may not be out of way to state that the petitioners have not been able to substantiate his contention in the reply which has been filed to the partition proceedings that there was an oral partition which was thereafter put into writing and acted upon.

10. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

Ex facie, the onus to prove that by virtue of a private partition the land jointly owned by the parties stood partitioned, was upon the appellants. In the reply filed by the appellants to the application seeking partition, their stand was that by virtue of an oral partition, which was later on even reduced into writing, the joint khata had since been partitioned. However, neither anything was brought on record to show if any oral partition actually took place nor a writing that was alleged to have been executed on 28.07.1963 in this regard ever saw the light of the day. Even if it is assumed that any such partition actually took place, no exception to the findings recorded by the revenue authorities could be taken: that the alleged private partition was neither entered into rapat roznamcha, nor incorporated or given effect into records of rights, in the absence of any evidence to the contrary. We are reminded to point out, at this juncture, that while the appellants approached this Court on an earlier occasion vide CWP No. 23342 of 2012, they were given liberty to move a review application if the jamabandis, appended as Annexures P-2 and P-3 with the writ petition, reflected the alleged private partition or it was incorporated in the records of rights. However, as observed even by the Financial Commissioner, an analysis of those jamabandis only showed the appellants to be in possession of some area out of the joint holding, and in the column of ownership/khana malkiat all the co-sharers were still recorded to be the joint owners of their respective shares. Further, and as recorded even by the authorities below, it appears that all through the only endeavour of the appellants was to delay the partition proceedings initiated as back as in the year 2009.

In the wake of the above, we are dissuaded to interfere with the orders passed by the revenue authorities as also the impugned order and judgment rendered by the learned Single Judge. Thus, the appeal being devoid of merit is accordingly dismissed.