

(2012) 07 P&H CK 0133
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10061 of 2009

Badri Nath

APPELLANT

Vs

Financial Commissioner (Appeals-II), Punjab, Chandigarh and
others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 20

Citation : (2013) 1 RCR(Civil) 122

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Rai Singh Chauhan, for the Appellant; B.B.S. Teji, Addl. A.G., Punjab, for the State and Mr. R.D. Bawa, Advocate, for Respondent Nos. 3 to 5 and 12 to 15, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The dispute relates to partition of land measuring 201 kanals 1 marla, Hadbast No. 201 situated in Village Masit, Tehsil and District Gurdaspur. On an application filed by the petitioner, seeking partition of this land, notice was issued to the respondents. As per the petitioner, the respondents chose not to appear. Reference is even made to munadireport to show that service was effected by way of substitute service as well. Copy of this is annexed with the petition as Annexure P-1. The Assistant Collector Ist Grade sanctioned the mode of partition on 21.3.2002. Thereafter, he passed the final order of partition on 30.5.2002. The order of partition statedly became final and was also executed. Though, the counsel for private respondents has joined issue in this regard and states that only sanadis issued and the partition is yet to be executed. Respondent Nos. 3 to 5 filed an appeal against the order before the Collector, who dismissed the same. Thereafter the respondents filed a revision before the Commissioner, who also dismissed the revision on 27.1.2004. The respondents then approached the Financial Commissioner, who has interfered and has remanded the case for fresh adjudication.

2. The petitioner would plead that the respondents have given the same address as was given in the initial partition application in their revision petition etc., where the service was effected on them. Despite this, the Financial Commissioner has chosen to interfere in the impugned order of partition by holding that name of the petitioner was not given correctly and accordingly he was proceeded exparte illegally. It is observed that the respondents were not provided due opportunity of being heard. The Financial Commissioner accepted the revision petition and remanded the case back to Assistant Collector Ist Grade for fresh decision after providing due opportunity of hearing to the parties. The petitioner accordingly has filed the present petition to challenge the order passed by the Financial Commissioner.

3. Learned counsel for the petitioner has raised two fold submissions before me. He would first submit that the address given in the revision petition was the one which was given in the partition application and accordingly the finding by the Financial Commissioner that the petitioner had not given the correct address of the respondents is not justified either on facts or in law. Counsel for the petitioner, at this stage, is asked to show whether the respondents were served in terms of the provisions of Section 20 of the Punjab Land Revenue Act, 1887 (for short, "the Act"), which lays down procedure for effecting service on the parties. The petitioner thereafter has made reference to some portion of order passed by the Assistant Collector and other revenue authorities to show that service had been effected on the respondents. The orders as referred to by counsel for the petitioner would not show whether any personal service was effected on the respondents in terms of provisions of Section 20 of the Act. Rather, counsel for the private respondents has referred to the contents of the reply to show that no service was effected on the respondents. In Para 2 of the reply, the respondents have clearly reproduced the zimniorder dated 20.7.2001, which reads as under:-

Applicants present. The summons have not been received back. Fresh summons be issued after waiting for the same. The file be put up on 14.8.2001.

Signed A.C.I.

4. It is, thus, clear that summons have not been received back on 20.7.2001 and directions were issued to issue fresh summons. The case was adjourned for awaiting the same. It is further averred that summons for 14.8.2001 were issued on 1.8.2001 to Jony, Juggal, Alka and Sonia sons and daughters of Shri Sham Lal, who are respondent Nos. 2(a) to 2(d) in the amended application for partition. No summons were issued to the present respondent Nos. 15 to 18, including respondent Nos. 3 to 5, Manohar Lal, Kewal Raj and Kasturi Lal, who were impleaded as respondent Nos. 4 to 6 in the amended application. In this regard, the counsel has also referred to the copy of the summons, which is annexed with the reply as Annexure R3/1. Though the petitioner has filed replication to contradict this averment made in the reply by submitting that the summons were issued to all the respondents, including respondent Nos.3 to 5

but the complete summons have intentionally and deliberately been not produced, but this averment alone is not sufficient on the face of record produced by the respondents. Having said so, it was appropriate for the petitioner to produce the summons, which as per him, were issued to the respondents. On the basis of pleadings, it can not be said that summons were issued to all the respondents and service was effected on the respondents at the time of partition in terms of provisions of Section 20 of the Act. The provisions of Section 20 of the Act are as under:

20. Mode of service of summons: -(1) A summons issued by a Revenue-officer shall, if practicable, be served (a) personally on the person to whom it is addressed or failing him (b) his recognized agent or (c) an adult male member of his family usually residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or if that person does not reside in the district in which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue-officer so directs, be served by delivery of a copy thereof to such of those persons as the Revenue-officer nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue-officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the [Indian Post Office Act, 1866 (XIV of 1866)].

(5) When a summons is so forwarded in a letter, and it is proved that the letter was properly addressed and duly posted and registered, the Revenue-officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

5. Accordingly, the respondents were not properly served at the time of directing partition. Though the Collector and the Commissioner were not justified in interfering in exercising appellate and revisional jurisdiction once the Sanadhad been issued but the fact remains that ultimately, it is the Financial Commissioner who has interfered in this case in a revision, for which he had a jurisdiction in this regard. Mere fact that factum of proper service as per Section 20 of the Act was not pleaded before the Financial Commissioner would not deter this Court from taking a view on the basis of pleadings, which is purely a legal issue. I am, thus, of the view that the respondents were not properly served at the time of partition and, thus, no interference is called for in the order of remand, as

passed by the Financial Commissioner. The writ petition is dismissed. The parties, through their counsel, are directed to appear before the Assistant Collector Ist Grade on 2.8.2012. Since the matter is pending since long, the Assistant Collector Ist Grade is directed to asked the same within a reasonable period preferably within a period of three months from the date of receipt of copy of this order.