
(2008) 10 P&H CK 0019
In the Punjab And Haryana At Chandigarh

Harbhajan Singh and Others

APPELLANT

Vs

Financial Commissioner, Co-Operation and Others

RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 11

Citation : (2009) 156 PLR 462 : (2009) 3 RCR(Civil) 563

Hon'ble Judges : Nirmaljit Kaur, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—Petitioners filed an application u/s 11 of the Punjab Land Revenue Act, 1887 (hereinafter to be referred as "the Act") for partition of the land measuring 455 kanals 10 marlas, situated in the revenue estate of village Jiwan Nangal, Hadbast No. 138 in the court of Assistant Collector, Ist Grade, Nakodar on 06.11.2001. The proposed mode of partition was prepared on 08.07.2003, which included the following Clause 2:

The partition will be effected keeping in view the possession intact as far as the same is possible. But the land falling on Nakodar-Jalandhar road will be partitioned proportionately between all the co sharers." The Assistant Collector Ist Grade, Nakodar, approved the aforesaid mode of partition vide order dated 28.07.2003. Thereafter, on an appeal filed before the Collector by respondents No. 5 and 6, the matter was remanded back to the Assistant Collector, Ist Grade, Nakodar. The Assistant Collector Ist Grade, once again, approved the mode of partition after visiting the spot and hearing the parties vide order dated 09.03.2005 (Annexure P-6). The revision preferred by the petitioners against the aforesaid order was also dismissed by the Commissioner, Jalandhar Division, Jalandhar, vide order dated 04.05.2006 (Annexure P-8). The Financial Commissioner Cooperation, Punjab also dismissed the revision petition preferred by the petitioners, in limine.

2. Learned Counsel for the petitioners has mainly pleaded that the Assistant Collector, Ist Grade, Nakodar, has amended the clause 2 of the previous mode of partition to the extent that the partition will be effected after keeping the possession intact, and the remaining part of the Clause 2, i.e. "this land is most Valuable and should be partitioned according to the shares of the parties" was deleted and out of the total land, 7 1/2 acres of land falls on the main metallic road, is most valuable land. Secondly, it is vehemently contended by the learned Counsel for the petitioners that the finding of the Assistant Collector Ist Grade as also of the Appellate Authority that there was a family partition between the parties, is totally against the law and record of the case. The family partition so arrived at between the parties, becomes valid only if the same is brought to the notice of the revenue authorities and sanction is obtained in terms of Section 123 of the Punjab Land Revenue Act, 1887.

3. In order to support his arguments, learned Counsel for the petitioners has relied upon the judgements rendered in the cases of "Banta Singh and Ors. v. Hardeep Singh and Ors. (1987)92 P.L.R. 329 and Chander Bhan v. Hari Ram and Ors. 1996 P.L.J. 69. The aforesaid judgements do not help the petitioners in the facts and circumstances of the present case.

4. Learned Counsel for respondents No. 5 and 6 has disputed the same and denied that the land in question is in joint possession between the parties, rather each of the shareholders is in possession of the respective shares, as demarcated and settled by Gurbax Singh, original owner, way back in the year 1985 between each of his sons. This partition has been accepted and given effect to. This contention of the learned Counsel for respondents No. 5 and 6 finds support from the rapt No. 581 dated 16.10.1985 (Annexure R-5/1). Vide rapat No. 232 dated 17.03.1993, petitioner-Harbhajan Singh gave statement to the effect that earlier khasra girdawari in respect of killa No. 7/21, be got recorded in favour of Kulwinder Pal Singh son of Surjit Singh, who is on the spot cultivating this khasra number. This statement was made before Jaspal Singh, Numberdar of Village Nangal Jiwan and Surinderpal Singh, Chowkidar. The aforesaid statement of Harbhajan Singh is annexed as Annexure R-5/2. Other petitioner, Paramjit Singh, moved an application dated 02.12.1993 (Annexure R5/3) before the Sub Divisional Officer (C), Nakodar, praying for change of electric motor connection bearing No. SD-124 in favour of Harbhajan Singh son of Gurbax Singh. Paramjit Singh was given electric connection bearing No. SDI/124, whereas Harbhajan Singh was given electric connection bearing No. SDI/125, which were installed in No. 286 and 287 of their respective holdings. Thus, the petitioner cannot deny the family partition having been arrived at between the parties.

5. Learned Counsel for the parties have been heard. Section 123 of the Act reads as under:

123. Affirmation of partition privately affected.- (1) in any case in which a partition has been made without the intervention of a Revenue Officer, any party thereto may apply to a Revenue Officer for an order affirming the partition.

(2) On receiving the application , the Revenue Officer shall inquire into the case, and if he finds that the partition has in fact been made, he may make an order affirming it and proceed under Sections 119, 120, 121 and 122, or any of those sections, as circumstances may require, in the same manner as if the partition had been made on an application to himself under this Chapter.

6. Section 123 of the Act has already been interpreted by the learned Single Judge of this Court in Regular First Appeal titled as Ajmer Singh Vs. Dharam Singh, in the following terms:

15. A perusal of the said provision would show that Section 123 of the Act is a provision for affirmation of partition privately affected. Chapter IX of the Act deals with both situation, i.e., where intervention is sought of the revenue authority for partition of the land and for a situation where the parties effect partition privately. A further reading of Section 123 of the Act shows that liberty is given to any party who "may" apply to a revenue officer for an order confirming partition. Sub-section (2) contemplates an enquiry to find out whether the partition, in fact, has been made. If partition has been made, the revenue officer has to distribute the revenue and the rent after partition and draw the instrument of partition.

17. In view of the above binding precedents, it is apparent that the revenue record by itself neither create or extinguish title. Since co-owners by mutual consent have entered into separate portions of land and are in the enjoyment of their respect portions, merely the said private partition has not been formally affirmed will not relegate the parties to pre-partition status. The role of the revenue officer in Section 123 of the Act is that of "affirmation" of partition. The said affirmation is subject to verification of the factum of partition only. The inquiry in terms of Sub-section (2) of Section 123 of the Act is restricted to the effect to point out that, in fact, partition has been made. Therefore, non affirmation of partition by the revenue officer will not render a private partition redundant but such affirmation will only determine the rights of an owner in respect of their obligations to pay land revenue to the State in terms of . the provisions of the Act.

While holding the same, learned Single Judge has relied upon judgements rendered by Hon''ble Supreme Court in the cases of Sankalchan Jaychandbhai Patel and Others Vs. Vithalbhai Jaychandbhai Patel and Others, and Baleshwar Tewari (Dead) by LRs. and others Vs. Sheo Jatan Tiwary and others, .

7. Thus, in the present case also documents R5/1 to R5/4 shows that the family partition had been given effect to from the time when the original owner, Gurbax Singh, was alive. Further, on an appeal filed by respondents No. 5 and 6 against the order dated 28.07.2003, the Collector, Nakodar, vide order dated 27.02.2004 (Annexure P-2), remanded the matter back to the Assistant Collector, Ist Grade with a direction to assess the value of the land after visiting the spot and to prepare a mode of partition again after hearing the parties. Pursuant thereto, the

Assistant Collector, Ist grade had prepared a fresh mode of partition after visiting the spot, as well as, hearing the parties on 20.01.2005 (Annexure P-3). At that time, only Daljit Singh-petitioner No. 3 had filed objections. Even otherwise, the mode of partition is correctly approved, as per the possession at the spot and keeping in mind that all the co-sharers are already in possession of the land of their respective shares. The parties have installed their separate tubewells for irrigation of the land; have also separate residence and are separately in possession in equal share. As such, the present mode of partition is only an affirmation of the partition privately effected between the parties. The revenue authorities will now give sanction, in terms of Section 123 of the Act, referred to above.

8. In this view of the matter, we find no ground to interfere with the impugned orders passed by the revenue authorities and the mode of partition so approved by the Assistant Collector, Ist Grade, Nakodar, which has been affirmed up to the Financial Commissioner.

Dismissed.