
(2010) 12 P&H CK 0361

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10088 of 2007

Jagir Kaur and another

APPELLANT

Vs

Financial Commissioner/Appeals-1, Punjab, Chandigarh and
others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 118(4)

Citation : (2012) 2 RCR(Civil) 385

Hon'ble Judges : Rajive Bhalla, J

Advocate : Ms. Naiya Gill, Advocate. For the Respondents No. 1 to 4, Mr. C.S. Brar, DAG, Punjab, Mr. Jatinder Singla, Advocate., Advocates for appearing Parties

Judgement

Rajive Bhalla, J.(Oral)

1. The petitioners pray for issuance of a writ in the nature of certiorari for quashing the order dated 29.03.2007, passed by the Financial Commissioner/Appeals1, Punjab, Chandigarh.
2. The question that requires adjudication is whether partition proceedings can continue at the behest of other cosharers after the original applicant files an application for withdrawal of partition proceedings.
3. Counsel for the petitioners submits that as the petitioners filed an application for withdrawal of partition proceedings, the Financial Commissioner had no jurisdiction to direct, at the behest of respondent No. 5, that partition proceedings shall continue. It is argued that a plaintiff/applicant is the master of his lis and may, at any time before a final order is pronounced withdraw the petition. The Financial Commissioner has therefore, committed an error of jurisdiction in allowing respondent No. 5 to continue partition proceedings.
4. Counsel for the respondent No. 5, on the other hand submits that as all relevant documents of partition were prepared, the Financial Commissioner rightly set aside the order passed by the subordinate revenue officers, allowing

withdrawal of the application for partition filed by the petitioners. It is further argued that as Section 118 (4) of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act), empowers a revenue officer to order that partition proceedings shall continue if other cosharers so desire, the writ petition is devoid of any merit and should be dismissed.

5. I have heard counsel for the parties and perused the impugned orders. The answer to the question posed in the present petition lies in Section 118(4) of the Act, which reads as follows:

"118. Disposal of other questions.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) When an applicant withdraws under the last foregoing subsection the revenue officer may where the other applicants if any desire the continuance of the proceedings, continue them in so far they relate to the partition of the shares of those other applicants."

6. An applicant is free to withdraw his application for partition but where other cosharers desire that partition proceedings shall continue, a revenue officer may, circumstances so permitting order that partition proceedings, shall continue. It would be necessary to point out that during pendency of partition proceedings the mode of partition, the Naksha Irri, the Naksha Be and the Zeen stood drawn up. To permit the petitioners to withdraw partition proceedings at this belated stage would adversely affect the rights of other cosharers.

7. Reference in this regard may be made to a Division Bench judgment of this court reported as Jeet Singh and others v. Financial Commissioner, AppealsII, Puniab and others, 2010(2 I)n RCR (Civil) 325. A relevant extract from the judgment reads as follows:

"In the instant case, undisputedly, mode of partition was confirmed. Appellants herein did not raise any objection at the time of confirmation of mode of partition that the property in question is not complete and 6 Bighas and 15 Marias of land as they now claimed, was not included in the partition. Mode of partition was sanctioned after hearing both the parties. Hence, after confirmation of the mode of partition, the appellants cannot be permitted to withdraw from the partition. Not only this, "Naksha Be" was approved by the Assistant Collector vide order dated 3.8.1990. Upto that stage, the appellants had absolutely no grievance. It is only thereafter, that they filed the application for withdrawal of partition on the ground that the same was most disadvantageous to them and great injustice has been done to them by not properly effecting the partition by not including 6 Bighas and 1 5 Marias, of land in the property to be partitioned. It is also important to note that against the confirmation of "Naksha Be" vide order dated

3.8. 1990, the appellants had not preferred any appeal, while they could have done so."

8. In view of what has been stated hereinabove, the writ petition is dismissed with no order as to costs.