(2003) 04 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12416 of 1998

Jaswant Singh APPELLANT

Vs

Financial Commissioner Appeals II Punjab at Chandigarh RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2004) 1 LJR 761 : (2003) 2 PLJ 65 : (2003) 3 RCR(Civil) 145

Hon'ble Judges : Satish Kumar Mittal, J

Advocate : Mr. A.K. Ahluwalia, Advocate.For the Respondent Nos. 19 to 23, Mr. K.S. Dadwal, Advocate., Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.—The petitioners have filed the instant petition under Articles 226/227 of the Constitution of India challenging the order dated 21.10.1997 (Annexure P16) passed by the Financial Commissioner (AppealsII), Punjab, vide which she set aside the orders dated 1.10.1991 (Annexure P11) and 23.6.1992 (Annexure P13) passed by the Collector, Rajpura and the Commissioner, Patiala Division, Patiala, respectively and remanded the matter to the Assistant Collector Ist Grade, Rajpura for finalising the partition proceedings denovo as per the directions given in the said order.

2. The brief facts of the case are that Jeet Singh and others (respondents No. 19 of 23) filed an application on 14.1.1988 under Section 111 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as `the Act'') for partition of the land measuring 25 bighas 10 biswas situated in Village Akbarpur, Tehsil Rajpura, District Patiala, claiming themselves to be co sharers in the said land. It was averred by them that due to joint holding the applicants (the aforesaid respondents) were unable to cultivate their land properly, therefore, partition of the land was necessary. Upon the said application, notices were issued to the other cosharers and interested parties. Jaswant Singh and others (petitioners herein) filed objections to the aforesaid partition application by pleading that the private partition of the land had already taken place, therefore, the question of title is involved and the partition proceedings initiated by the aforesaid

respondents cannot be proceeded with, but those objections were overruled by the Assistant Collector Ist Grade vide his order dated 8.7.1988. The appeal filed by the petitioners herein against the said order was allowed by the Collector on 31.7.1989 and the matter was remanded to the Assistant Collector Ist Grade with the directions to consider their claim regarding private partition. Thereafter on 21.2.1990, the Assistant Collector Ist Grade again came to the same conclusion that there was no private between the parties. Therefore, the objections raised by the present petitioners to the partition proceedings were dismissed. Thereafter, on 22.5.1990, the order of mode of partition (Annexure P4) was passed by the Assistant Collector Ist Grade. According to the said mode of partition, the total area which was to be partitioned amongst the co sharers was only 25 bighas 10 biswas. The partition was to be effected while keeping in view the possession of the respective parties and their adjustment was to be made as per their share. The latest jamabandi was to be treated as base for the partition. Two karams passage was to be provided to each Tak. If any joint land had been leased out or mortgaged by a cosharer, the same was to be put in his share. Every party/cosharer was satisfied to the aforesaid mode of partition. None of the parties, including respondents No. 19 to 23, filed an appeal against the aforesaid order of mode of partition.

3. Thereafter, the next step for partition was taken i.e. the Assistant Collector Ist Grade asked the Patwari to get the shares of the joint owners separated by preparing a map according to aforesaid mode of partition, which is popularly called as `Naksha Be''. The said `Naksha Be'' was prepared and submitted by the Patwari to the Assistant Collector Ist Grade on 25.6.1990. Thereafter, the objections from any aggrieved party were invited against the aforesaid `Naksha Be''. Respondents No. 19 to 23 filed objections to the same. Their objection was that the passage/pahi was not being properly given in the said `Naksha Be''. It was also objected that in spite of the fact that Khasra No. 312 was in their possession and they have planted fruit trees thereon, it was not given to them. It was further objected by the aforesaid respondents that their Tak was not separated and the pahi was given to them in the low lying area. These objections were duly considered by the Assistant Collector Ist Grade. Both the parties were heard and the spot was inspected. After considering the objections and hearing the parties, the Assistant Collector Ist Grade dismissed the aforesaid objections vide his order dated 3.8.1990 (Annexure P5). It was held by him that the entire land to be partitioned was parallel, therefore, the pahi was properly given to every party, including the objectors. Regarding the allotment of khasra No. 312, it was held that the land was allotted as per the shares of each cosharer and khasra No. 312 could not be allotted to the objectors as the same was in excess of their share and on that Khasra number very small fruit trees of less value were standing. Regarding the objection of the aforesaid respondents that their Tak was not separated, it was held that the said objection was not taken at the time of mode of partition and such objection cannot be taken at that stage. It was found that actually the objectors (respondents No. 19 to 23) wanted to delay

the proceedings. After dismissing the objections filed by the aforesaid respondents, the Assistant Collector Ist Grade called for Naksha Zeem, which was to be submitted on 7.8.1990 and `Naksha Be'' was accordingly approved.

4. Against dismissal of their objections and approval of `Naksha Be'', right of appeal was provided to respondents No. 19 to 23 but they did not file any appeal against that order. Meanwhile, on 3.8.1990, the aforesaid respondents filed an application (Annexure P6) under Section 118(3) of the Act for withdrawal of their partition application by alleging that no pahi was provided to their fields and the Assistant Collector Ist Grade, while illegally rejecting their objections, allowed the pahi to them in lower side. It was also alleged that in spite of their possession khasra No. 312, the same was not given to them, rather it was given to other cosharers due to which they have suffered heavy losses. It was further alleged that the whole of the land was not partitioned and the land measuring 6 bighas 15 biswas (other than the land measuring 25 bighas 10 biswas) which they took in exchange from Harbans Singh and Jaswant Singh was not taken into consideration. Therefore, it was alleged that in these circumstances, they do not want to continue with the partition proceedings.

5. The present petitioners opposed the said application by alleging that now at the stage when the mode of partition had been completed and Naksha Zeem had been called for, the aforesaid respondents cannot be allowed to withdraw their partition application. It was also pleaded that the aforesaid respondents had earlier also withdrawn the partition application on two occasions i.e. on 22.11.1987 and 27.8.1989 and actually they want to harass the petitioners and other cosharers. It was further pleaded that the objection of the aforesaid respondents that 6 bighas 15 biswas of land was not included in the partition proceedings, is frivolous because in the said land, there are different co sharers and that is why the aforesaid respondents themselves did not include this land in the partition application filed by them. It was also submitted that they could have taken this objection at the appropriate stage of partition i.e. at the time of preparation of mode of partition, but no such objection could have been taken by them at the belated stage of partition. Regarding their objection pertaining to khasra No. 312, it was submitted that actually the aforesaid respondents had mortgaged two khasra numbers i.e. khasra No. 399 and 301 of the joint land and as per the clause of mode of partition, those khasra numbers were to be allotted to the aforesaid respondents, and after allotting those khasra numbers to them, khasra No. 312 could not have been allotted to them as that would have increased the area for which they were entitled. For that reason, khasra No. 312 was not allotted to them and it was allotted to other cosharers. Regarding nonproviding of pahi, it was alleged by the present petitioners that this objection was frivolous as the pahi was rightly provided to them.

6. The aforesaid application filed by respondents No. 19 to 23 was duly considered by the Assistant Collector Ist Grade and the same was dismissed vide order dated 24.9.1990 (Annexure P7). The Assistant Collector Ist Grade gave the

following reasons for dismissal of the said application :

i) The application was filed at a belated stage i.e. after confirmation of mode of partition and approval of `Naksha Be'', when all the cosharers got right to continue with the partition proceedings.

ii) No appeal was filed by the applicants against confirmation of mode of partition and approval of `Naksha Be''.

iii) The applicants have filed the application for withdrawal from the partition proceedings on frivolous ground to harass other party.

7. After dismissing the aforesaid application, the Assistant Collector Ist Grade directed the Halqa Kanungo to prepare the instrument of partition. Thereafter, vide order dated 7.11.1990 (Annexure P8), instrument of partition was sanctioned by the Assistant Collector Ist Grade which was to be given effect after 1.11.1990.

8. After sanctioning of the instrument of partition, on 23.11.1990, respondents No. 19 to 23 filed appeal against the order dated 24.9.1990 vide which their application for withdrawal of partition application was dismissed, before the Collector. The said appeal was accepted vide order dated 28.2.1991 (Annexure P9) and the matter was remanded to the Assistant Collector Ist Grade, Rajpura for deciding the withdrawal application of the applicants by making thorough investigation into the claim made by them.

9. Vide order dated 10.7.1991 (Annexure P10), the Assistant Collector Ist Grade again dismissed the said application, while observing as under :

"I have reached at the conclusion that as the mode of partition has been completed the sanad had also been issued, so in such a situation the withdrawal of application for partition will not be justified. As per as the contention of the counsel regarding withdrawal of the application at any time as per Section 118(3), I do not agree with him because further it has been provided that any party can withdraw the partition but in this case the mode of partition has been completed and `Naksha Be'' has been sanctioned and Partition Sanad has been issued and no further proceedings are to be taken. Apart from this the applicant had already withdrawn two applications and by submitting and taking back the application time and again the time of both the parties is wasted unnecessarily. As per as the objection of the applicant that 6 bighas 15 biswas is not part of the partition regarding that copy of the Jamabandi has been produced by the respondents and from which it is evident that all the parties have not shown owner regarding this land which are parties in the application for partition. For the reasons recorded above, the application for withdrawal of the applicant is rejected."

10. Aggrieved against the said order, respondents No. 19 to 23 filed appeal before the Collector. Vide her order dated 1.1.1991 (Annexure P11), the Collector dismissed the said appeal. Meanwhile, the partition proceedings were finalised as

per the instrument of partition. Possession of the land, according to the said instrument of partition, was delivered to the respective parties vide Rapat Roznamcha dated 19.12.1991. Compensation of the crops standing in khasra No. 312 was assessed and ordered to be deposited in the treasury.

11. Respondents No. 19 to 23 challenged the aforesaid order dated 1.10.1991 by filing revision (Annexure P12) before the Commissioner, Patiala Division, Patiala. The said revision petition was also dismissed by the Commissioner vide his order dated 23.6.1992 (Annexure P13). While dismissing the revision petition, the Commissioner observed as under :

"I have heard the learned counsels for the parties at length and have carefully perused the record of the lower court. From the facts brought before me, it is clear that the partition proceedings have been completed and the land has changed hands and compensation paid to the concerned. Therefore, the partition proceedings started at the initiative of the petitioners themselves have now become final and complete. I accept the argument of the learned counsel for the respondents that the partition application cannot be withdrawn at any time by the applicants especially after the partition has been effected. Moreover, the lower courts orders are quite clear and unambiguous and justice seems to have been done to all the parties concerned. Amar Singh applicant has no locus standi as he has sold all the land in share. I also accept the argument given by the learned counsel for the respondents why the land measuring 6 Bighas 15 Biswas in village Akbarpur should not be included in the partition proceedings as all the coowners of that land are not the same in this case."

12. Against the aforesaid orders of the Collector and the Commissioner, respondents No. 19 to 23 filed second revision under Section 16 of the Act before the Financial Commissioner, AppealsII, Punjab, who vide her order dated 21.10.1997 (Annexure P16) allowed the revision petition and set aside the aforesaid orders passed by the Collector as well as the Commissioner and remanded the matter to the Assistant Collector Ist Grade, Rajpura for denovo partition, by making the following observations :

"The main ground on which Jeet Singh''s application dated 3.8.1990 has been rejected at various levels is that the partition proceedings have been completed. In this connection, the learned counsel for the petitioners have invited my attention to case law 1992 PLR742 wherein it has been held by the Hon''ble Punjab & Haryana High Court that the parties remain cosharers till such time as possession is not delivered and the partition proceedings cannot be said to be completed as long as possession has not been handed over. On 3.7.1990 Jeet Singh had raised very specific objections against draft`Naksha Bey''. It is quite natural, therefore, that Jeet Singh should have raised these again on 3.8.1990 and expressed his resentment by saying he was withdrawing from partition proceedings. Assistant Collector GradeI even fixed up a date for considering Jeet Singh''s application but at the last moment summarily rejected it stating that the partition proceedings were over and the application had been merely filed to harass the petitioner as earlier two applications for partition had also been withdrawn by Jeet Singh.....

Mere finalisation of naqsha `Bey'' and preparation of Sanad Taqseem does not complete the partition as it does not result in severance of relationship between coowners. The lower revenue officers have gravely erred in rejecting Jeet Singh''s objections on this main ground.

A cosharer applies for termination of his status as joint holder only when he feels he is in a disadvantaged position. That is why the right to withdraw from partition proceedings under Section 118(3) of Punjab Land Revenue Act, 1887 has been conferred on the applicant, and the applicant alone, and not the respondents. In this case the applicants Jeet Singh ec. had sought withdrawal from partition proceedings on grounds of injustice.

......it is quite evident that a number of irregularities were committed during partition proceedings. There was virtually no naqsha `Alif''. No site plan accompanied this naqsha `Alif''. No spot inspection was carried out before preparing naqsha `Bey'' and the inspection that was carried out ultimately was not accompanied by an inspection note. The description of orchard on Khasra No. 312 is perfunctory. There are no details relating to the number, variety, age etc. of these trees. The petitioners have alleged in revision before the Commissioner that there were 10 safedas which were 89 years old; three fruit bearing mangoes as also two Tahlis and one kikar. He is alleged to have purchased this khasra number from one of the cosharers. While disposing of this objection which was being raised repeatedly, it should have been mentioned why the respondents could not be accommodated on some other piece of land. Naqsha `Bey'' was also not prepared with due caution as brought out in para 14 above. A large chunk of land was left out of the partition without making detailed enquiries. No one tried to appreciate why the petitioner was putting in applications, objections and applying for withdrawal of partition proceedings. Had the lower courts tried to look into the various applications with due objectivity, they would have realised that these were not withdrawal applications per se but specific objections to naqsha `Bey'' which had been raised all through the partition proceedings and had not been dealt with on merits. On the contrary, the haste which has been shown in dispossessing Jeet Singh etc. from the land in the midst of the crop season on 19.12.1991 is a matter which should put any revenue officer to shame. The petitioners were thrown out with police help during the period intervening the filing of the revision petition before the Commissioner and the date fixed for hearing. This is a very unusual step which has been taken in this case. In partition cases normally all proceedings are suspended when a matter is in appeal or revision, even if there is no stay. In this case, it was the petitioner who was raising objections, so the haste was totally unwarranted and apparently mala fide. It is also interesting to note that although the possession has been purported to have been given to all the share holders only the presence of Jaswant Singh and his two grandsons is recorded.

In view of these observations it is immaterial that the possession has changed hands. There are apparent infirmities and there has been miscarriage of justice. The revision petition is accepted and the orders of Commissioner, Collector and Assistant Collector GradeI dated 26.2.1992, 1.10.1991 and 24.9.1990 respectively, are set aside. The case is remanded to Assistant Collector GradeI, Rajpura for fresh decision in the presence of all interested parties. While doing so, he should first give categoric findings on whether the separate parcel of land measuring 6 bighas 15 biswas situated in khewat No. 60, Khataunis 83 to 86 should be included in partition proceedings or not and whether exclusion of this land will not tantamount to partial partition and be void ab initio. He should also deal with the objections of Jeet Singh through a speaking order. The various sales and exchanges between the cosharers should also find a mention even if they are not reflected in the jamabandi as they are admitted by the concerned parties and are relevant to formalising the `taks''. In particular, the should give categorical finding on the existence of an orchard on Jeet Singh''s land and also indicate as to whether any of the old trees are still in existence on this Khasra. He should thereafter proceed to give categoric reasons why this Khasra number should not be allotted to Jeet Singh particularly when he is alleged to have purchased the same from Gurdev Singh. It is alleged that some of the bigger trees were cut and sold. This fact should also be verified. Some details of the trees have been mentioned by the petitioner in partition application; in his appeal before the Commissioner (when possession was still with Jeet Singh) these find mention in greater detail. Since the partition is to be finalised denovo, the location of the `pahi'' may also be gone into. The present `pahi'' appears very lengthy and circuitous and it may be examined whether the request of the petitioners seeking a shorter `pahi'' from the northern side adjoining village Badheri and running northsouth somewhere between khasra numbers 294 and 295 or Khasra numbers 294 and 292293 would not be shorter and more direct and also occupy less area. Both the parties through their counsels are directed to appears before Assistant Collector GradeI, Rajpura on 10.12.1997."

The aforesaid order has been challenged in the instant writ petition.

13. The main controversy in the present petition is whether respondents No. 19 to 23, who initiated the partition proceedings, can be allowed to withdraw the same under Section 118(3) of the Act ? If so, at what time and from which stage of the partition proceedings and on what grounds ?

14. In the instant case, respondents No. 19 to 23 filed application for permission to withdraw from the partition proceedings at the stage when their objections to `Naksha Be'' were rejected and `Naksha Be'' was approved by the Assistant Collector Ist Grade after hearing the parties. The aforesaid respondents sought the withdrawal from the partition proceedings on the grounds that great injustice was done to them; their objections were not considered; they were placed in disadvantaged position while partitioning the land; they were not given the land which was in their possession; some of the land i.e. land measuring 6 bighas 15

biswas, in which they were cosharers, was not included in the partition, which resulted into less allotment of land to them and proper passage was not provided to the land allotted to them. Primarily on the aforesaid grounds, the aforesaid respondents wanted to withdraw from the partition proceedings.

15. Learned counsel for the petitioners submitted that the impugned order dated 21.10.1997 (Annexure P16) passed by the learned Financial Commissioner is wholly illegal, arbitrary and without jurisdiction. He submitted that the observations made by the learned Financial Commissioner that an applicant can withdraw from the partition proceedings under Section 118(3) of the Act till the time the partition is finally effected by delivery of possession under Section 123 of the act is wholly erroneous and contrary to the scheme of the Act. Learned counsel submitted that under Section 118(3) of the Act, an applicant for the partition can only withdraw from the partition proceedings when the case is at the stage of confirmation of mode of partition. But once the applicant did not opt for withdrawal from the partition proceedings at that stage, then subsequently he cannot be permitted to do so on the ground that the partition was being effected in an disadvantaged position against him. Learned counsel for the petitioners further submitted that in the instant case, the mode of partition was confirmed much earlier to the filing of application for permission to withdraw from the partition proceedings. He submitted that after confirmation of the mode of partition and approval of `Naksha Be'', some rights have accrued to the opposite parties to the partition proceedings and respondents No. 19 to 23, therefore, cannot be permitted to withdraw from the partition proceedings at a belated stage. Learned counsel further submitted that in the instant case, the learned Financial Commissioner has totally gone beyond her jurisdiction while ordering denovo partition of the joint land even after including the land which was initially not included by respondents No. 19 to 23 themselves in their partition application. Learned counsel for the petitioners further submitted that under the Scheme of the Act, an aggrieved party has been provided remedy by way of appeal at different stages of the partition proceedings. If a person is aggrieved regarding the area of land which is to be partitioned, he can raise objections at the time of preparation of mode of partition. A right of appeal has also been provided. At that stage, an applicant who initially files the partition application can also withdraw from the partition proceedings on the ground that he is not satisfied with the mode of partition finalised by the revenue authorities, but his right to withdraw from the partition proceedings is not absolute. It is in the discretion of the Revenue Officer to grant or not to grant him such permission. Learned counsel for the petitioners submitted that when the Revenue Officers, after considering the facts and circumstances of the case and after giving valid reasons, refused to grant permission to respondents No. 19 to 23 to withdraw from the partition proceedings in exercise of their discretionary powers, the learned Financial Commissioner should not have upset those orders. He further submitted that before the learned Financial Commissioner, the question was whether respondents No. 19 to 23 be permitted to withdraw from the partition

proceedings or not, but she has gone beyond her jurisdiction while holding that since the Revenue Officers did not conduct the partition proceedings in accordance with law, therefore a de novo partition is required.

16. On the other hand, learned counsel for respondents No. 19 to 23 submitted that there is no restriction on the right of the applicant to withdraw from the partition proceedings at any stage but before completion of such proceedings. Learned counsel for the respondent submitted that the partition proceedings completed with the issuance of instrument of partition and delivery of possession. In support of his contention, he relied upon a Division Bench decision of this Court in Pritam Singh v. Jaskaur Singh, 1993(1) Recent Revenue Reports 390. He submitted that in the instant case, the application for withdrawal from the partition proceedings was filed on 3.8.1990 whereas the instrument of partition was prepared on 7.11.1990. Therefore, prior to that date, respondents No. 19 to 23 could withdraw from the partition proceedings under Section 118(3) of the Act. Learned counsel for respondents No. 19 to 23 further submitted that there were valid reasons with the aforesaid reasons for withdrawing from the partition proceedings because the same were carried in their disadvantaged position; the total land was not included in the partition proceedings; the land measuring 6 bighas 15 biswas was left from the partition proceedings which resulted into less allotment of land to them; and Khasra No. 312 on which the aforesaid respondents had planted fruit trees and which was in their possession, was not given to them. Learned counsel submitted that the learned Financial Commissioner has wide jurisdiction under Section 16 of the Act and he has suo motu power to set aside any order passed by the lower Revenue Officers, if he finds that injustice has been done to any party. Therefore, it cannot be said that the learned Financial Commissioner has exceeded her jurisdiction while ordering for denovo partition of the land, as she found that the partition proceedings were not properly conducted. Learned counsel further submitted that during the pendency of the instant writ petition, the Assistant Collector Ist Grade has completed the partition proceedings afresh as per the directions given by the learned Financial Commissioner in view of the order dated 14.10.1998 passed by this Court, whereby the Assistant Collector Ist Grade was permitted to complete the partition proceedings, but it was ordered that the said partition shall not be given effect to without the permission of this Court. Learned counsel for respondent No. 19 to 23 submitted that since the partition proceedings has been completed denovo by the Assistant Collector Ist Grade as per the directions of the Financial Commissioner, therefore, the instant writ petition be dismissed and the said partition be given effect.

17. I have considered the arguments addressed by learned counsel for the parties and have perused the record of the case.

18. To answer the question involved in the instant writ petition, it is necessary to first go through the scheme of the Act. Sections 110 to 126 contained in Chapter IX of the Act deal with partition. Section 110 provides with regard to the effect of

partitions of estates and tenancies on joint liability for revenue and rent for purposes of the Land Revenue Act. Section 111 is with regard to rights of a joint owner of a land or a joint tenant or a tenancy in which the right of occupancy subsists, to apply to a revenue officer for partition of his share in the land or tenancy, as the case may be. Section 112 is with regard to restriction and limitation on partition. It contains provisions which empower the revenue officers to refuse partition pertaining to any embankment, watercourse, well or tank, grazing ground or any land which is occupied as the site of a town or village and is assessed to land revenue. Section 113 contains provisions with regard to issuance of notices to interested parties and the right of such parties to raise an objection to partition proceedings. Section 114 provides for addition of parties to the partition application. Section 115 gives power to the revenue officer to disallow partition, if in his opinion there is good and sufficient cause to do so. Section 116 deals with procedure on admission of partition application and empowers the revenue officers to ascertain the question as to title in the property as well as the question as to the property to be divided or the mode of making partition. Section 17 deals with the disposal of question as to title of property to be divided. This section empowers the revenue officer either to determine the question of title himself or to ask the parties to get those questions determined by the competent civil court. Section 118 deals with disposal of other questions i.e. the question pertaining to the property to be divided or the mode of making partition. Against the decision on the aforesaid question, a right of appeal has been provided to the aggrieved party and even if an applicant of partition is dissatisfied with the original or the appellate order made under this section, he has been provided an alternative to seek permission from the revenue officer to withdraw from the partition proceedings in so far as they relate to the partition of his share. Such applicant can be permitted to withdraw from the partition proceedings on such terms and conditions as the revenue officer thinks fit. Since this section contains a clue to the answer of the question under consideration in the instant petition, it will be appropriate to re produce the same hereunder :

"118. Disposal of other questions : (1) Where there is a question as to property to be divided, or the mode of making a partition, the Revenue Officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under Subsection (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the authority to whom the appeal has been preferred the Revenue Officer shall stay proceedings pending the disposal of the appeal.

(3) If an application for partition is dissatisfied with an original or appellate order under this society, and applies for permission to withdraw from the proceedings in so far they relate to the partition of his share, he shall be permitted to

withdraw therefrom on such terms as the Revenue Officer thinks fit.

(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."

19. Further, Section 119 provides for administration of property excluded from partition. Section 120 provides for distribution of revenue and rent after partition. Section 121 provides for preparation of instrument of partition and the date of which the partition is to take effect. Section 121 deals with delivery of possession of property allotted in partition. Section 123 deals with affirmation of partition privately effected. Section 124 deals with power to make rules as to costs of partitions. Section 125 deals with redistribution of land according to custom. Section 126 empowers the Revenue Officers to act under this Act.

20. According to the aforesaid scheme, there is only one provision i.e. sub section (3) of Section 118 of the Act, which give right to an application for partition to apply for permission to withdraw from the partition proceedings so far as they relate to partition of his share, if he is dissatisfied with the order passed by the Revenue Officer pertaining to the question as to the property to be divided or the mode of making partition. Such right can be exercised by the applicant for partition if he is dissatisfied with the determination of aforesaid two questions, but such right is not absolute. The Revenue Officer can permit him to withdraw from the proceedings on such terms and conditions as he think fit. Thus, it is in the discretion of the Revenue Officer to permit the applicant for partition to withdraw from the partition proceedings or not. Though in Section 118(3) of the Act the word `shall'' has been used but if this subsection is read as a whole, it reveals that it is the discretion of the Revenue Officer to permit such applicant to withdraw from the partition proceedings or not. The use of words `he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit'' clearly indicate that the discretion lies with the Revenue Officer to grant such permission or not. From the aforesaid subsection, it is clear that an applicant for partition can withdraw from the partition proceedings at the stage when in such proceedings the question as to the property to be divided or the mode of partition is to be determined by the Revenue Officer. Against the decision of the Revenue Officer, a right of appeal has also been provided. Only at the stage when such applicant is dissatisfied with the original as well as the appellate order, he can apply for permission to withdraw from the partition proceedings and not subsequent to that stage. In my opinion, an applicant to the partition can not be permitted to withdraw from the partition proceedings from a stage subsequent to the decision of the questions to be decided under Section 118 of the Act. Once these questions are decided by the Revenue Officers and such decisions become final in appeal and the applicant for partition does not opt for the permission to withdraw from the partition proceedings, he cannot be permitted subsequently to withdraw from the partition proceedings.

21. In the instant case, these questions were decided on 22.5.1990, when the mode of partition was confirmed. At that time, respondents No. 19 to 23 did not reaise any objection that the property which was required to be divided is not complete, as 6 bighas 15 biswas of land, which they claimed, was not included in the partition. In their application, they only mentioned that 25 bighas 10 biswas of land is to be partitioned. At that stage, they did not raise any objection to the said area of the land which was to be partitioned. The mode of partition was sanctioned after hearing both the parties. It has been prescribed in the mode of partition that the partition will be effected by keeping in view the possession of the respective parties. However, it was also provided that the protection of possession will be subject to adjustment which was to be made as per the share of the parties. When the questions pertaining to the property to be divided and the mode of making partition were determined and consequently, mode of partition was prepared on 22.5.1990, the aforesaid respondents did not raise any objection to the said order, either by filing an appeal under Section 118(2) of the Act or by making an application for permission to withdraw from the partition proceedings under Section 118(3) of the Act. Thereafter, the Assistant Collector Ist Grade further proceeded with the partition and ordered for preparation of `Naksha Be'' by the Revenue Officer according to the sanctioned mode of partition. The said `Naksha Be'' was received by the Assistant Collector Ist Grade on 25.6.1990. Respondents No. 19 to 23, being dissatisfied with the said `Naksha Be'' filed their objections, to which the petitioners filed reply. The matter was considered and heard. Spot inspection was made and finally the objections raised by the aforesaid respondents were rejected and `Naksha Be'' was approved by the Assistant Collector Ist Grade vide his order dated 3.8.1990. Upto that stage, respondents No. 19 to 23 were having no grouse. It is only thereafter that they filed the instant application for permission to withdraw from the partition proceedings on the ground that the partition effected by the Assistant Collector Ist Grade is most disadvantaged to them and great injustice has been done to them by not properly effecting the partition as well as by not including 6 bighas 15 marlas of land in the property to be divided by way of partition. Though respondents No. 19 to 23 were having a right to file appeal against rejection of their objections and approval of `Naksha Be'' but they did not file any such appeal. In my opinion, at that stage, they could not be permitted to withdraw from the partition proceedings, because by that time some vested rights had accrued to the petitioners as `Naksha Be'' was approved after considering objections raised by respondents No. 19 to 23. The stage of withdrawal from the partition proceedings by an applicant for partition had already gone. From the provisions of Section 118(3) of the Act, it cannot be held that an application for partition can withdraw from the partition proceedings at any stage of the partition till such proceedings is completed by delivery of possession.

22. Learned counsel for respondent No. 19 to 23 submitted that the partition proceeding come to an end only with the issuance of instrument of partition and

delivery of possession. In this regard, he referred to a Division Bench decision of this Court in Pritam Singh v. Jaskaur Singh (supra). On the other hand, learned counsel for the petitioners submitted that the partition proceedings complete with the severance of status between the cosharers and that severance of status takes place when `Naksha Be'' is approved. In support of his contention, he relied upon a decision of this Court in Lala Ram v. The Financial Commissioner, Haryana, 1992(1) Recent Revenue Reports 231.

23. For the purpose of determination of the question involved in the instant writ petition, it is not necessary to decide as to at which stage the partition proceedings is deemed to be complete. Therefore, it is irrelevant to determine as to when the partition proceedings come to an end i.e. either with the approval of `Naksha Be'' or with the issuance of instrument of partition. The only question involved in the instant writ petition is at what stage and on what ground an applicant for partition can be permitted to withdraw from the partition proceedings. The language of Section 118 of the Act is very clear. It clearly provides that such an applicant can be permitted to withdraw from the partition proceedings when he is not satisfied with the order passed by the Revenue Officer pertaining to the determination of the questions referred in subsection (1) or with the order of appeal passed under subsection (2) against the order passed under subsection (1). Only at that stage an applicant for partition can be permitted to withdraw from the partition proceedings and not subsequent thereto. Therefore, it is irrelevant to decide when the partition proceedings completes. In view of the clear language of Section 118 of the Act, the contention of learned counsel for respondents No. 19 to 23 that the applicant for partition can be permitted to withdraw from the partition proceedings at any stage of the proceedings till the partition is not complete i.e. till the time of issuance of instrument of partition and delivery of possession, cannot be accepted.

24. Now it has to be examined as to whether the learned Financial Commissioner was justified in setting aside the orders passed by the Collector as well as the Commissioner vide which respondents No. 19 to 23 were not permitted to withdraw from the partition proceedings.

25. In view of the aforesaid discussion, the observations of the learned Financial Commissioner can not be accepted that a cosharer applies for termination of his status as joint holder only when he feels that he is in a disadvantaged position and for that he has a right to withdraw from partition proceedings under Section 118(3) of the Act at any stage of the proceedings; that mere finalisation of `Naksha Be'' and preparation of `Sanad Taqsim'' do not complete the partition as it does not result in severance between coowners. Therefore, respondents No. 19 to 23 were rightly declined permission to withdraw from the partition proceedings by the Collector as well as the Commissioner. Further, the matter before the learned Financial Commissioner was with regard to granting permission to the aforesaid respondents for withdrawing from the partition proceedings. The

learned Financial Commissioner has definitely gone beyond his jurisdiction while ordering for denovo partition. Respondents No. 19 to 23 should have raised the objection regarding noninclusion of certain land in the partition proceedings at the appropriate stage. They did not raise such objection when the question relating to the property to be divided was decided under Section 118 of the Act at the time of preparation of mode of partition. In the mode of partition, it was specifically mentioned that only 25 bighas 10 biswas of land was to be partitioned. The application was filed by the aforesaid respondents themselves in which they mentioned only this part of the land for partition. Now at a subsequent stage how they can be permitted to say that 6 bighas 15 biswas of land remains to be partitioned which should have been included in the partition proceedings by the Revenue Officer. Learned Financial Commissioner has also observed that great injustice has been done to the aforesaid respondents while not including that land in the land to be divided. Learned Financial Commissioner has completely ignored the fact that how 6 bighas 15 biswas of land could have been included in the partition while preparing `Naksha Be'' when in the mode of partition, there was no mention of the said land. It is well settled that partition is to be effected according to the sanctioned mode of partition, and when the mode of partition was sanctioned, respondents No. 19 to 23 did not raise any objection nor they filed an appeal against the order of sanction of mode of partition. At that time, there was no occasion for inclusion of the land measuring 6 bighas 15 biswas in the land to be partitioned. Therefore, the entire base of the order passed by the learned Financial Commissioner is erroneous and misconceived. As far as the question of allotment of Khasra No. 312 to respondents No. 19 to 23 is concerned, it has been observed by the Revenue Officer below that these respondents have mortgaged two khasra Numbers i.e. khasra No. 299 and 301 to third party. Since these khasra numbers were mortgaged by the aforesaid respondents, therefore, these were to be allotted to them as per the sanctioned mode of partition. After allotting these two khasra numbers, their share was complete and they could not have been allotted khasra No. 312 which could have been in excess of their share. Therefore, the question of allotting the excess land to them merely on the basis of possession does not arise. The Financial Commissioner has not considered this aspect of the matter while observing that the partition was not properly effected and even Khasra No. 312 which was in possession of respondents No. 19 to 23 was not allotted to them in spite of the fact that they have grown fruit trees therein. Regarding the other minor irregularities pointed by learned counsel for respondents No. 19 to 23 in the preparation of `Naksha Be'', the aforesaid respondents were having a right to appeal against the rejection of their objections to `Naksha Be''. Admittedly, no such appeal was filed against rejection of their objections and approval of `Naksha Be''. In these circumstances, it was wholly unjustified for the learned Financial Commissioner to set aside the partition proceedings and remand the matter for denovo partition.

26. The revenue authorities below have taken into consideration the conduct of

respondents No. 19 to 23 while deciding their application. On earlier two occasions also, the aforesaid respondents have withdrawn the partition applications. It was found by the authorities that the aforesaid respondents time and again were withdrawing the partition applications with intention to harass the petitioners and other cosharers, and with object to delay the partition proceedings, as they are enjoying excess possession. In view of these facts, I am of the opinion that the learned Financial Commissioner has wrongly interfered in the orders passed by the revenue authorities below who have rightly rejected the application of respondents No. 19 to 23 for permission to withdraw from the partition proceedings. There was no occasion for the Financial Commissioner to interfere in the discretion exercised by the revenue authorities below.

27. The contention of learned counsel for the respondents No. 19 to 23 that the instant writ petition be dismissed as infructuous as the Assistant Collector Ist Grade has now completed the partition proceedings after the remand of the case in view of the permission granted by this Court vide order dated 14.10.1998, cannot be accepted, as vide order dated 14.10.1998, this Court had permitted the Assistant Collector Ist Grade, Rajpura to only complete the partition proceedings but subject to the decision of this case. Since I have come to the conclusion that the learned Financial Commissioner has passed the impugned order illegally and without jurisdiction, therefore, it would be injustice to the petitioners to give effect to the order of de novo partition.

In view of the aforesaid discussion, the writ petition is allowed. The impugned order dated 21.10.1997 (Annexure P16) passed by the Financial Commissioner, Appeals II, Punjab is set aside and the orders dated 1.10.1991 (Annexure P11) and 23.6.1992 (Annexure P13) passed by the Collector, Rajpura and the Commissioner, Patiala Division, Patiala are hereby restored.

No order as to costs.