
(2010) 02 P&H CK 0340
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 345 of 2003 (O and M)

Jeet Singh and Others

APPELLANT

Vs

Financial Commissioner, Appeals - II, Punjab and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Punjab Land Revenue Act, 1967 — Section 111

Citation : (2010) 2 RCR(Civil) 325

Hon'ble Judges : Alok Singh, J;A.K. Goel, J

Bench : Division Bench

Advocate : R.S. Chauhan, for the Appellant; Anil Kumar Ahluwalia, for the Respondent No. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—This appeal has been preferred against the order of the learned Single Judge dated 25.04.2003 whereby the writ petition was dismissed, challenging order dated 21.10.1997 passed by the Financial Commissioner, Appeals- H, Punjab, thereby orders dated 01.10.1991 and 23.06.1992 passed by the Collector, Rajpura and the Commissioner, Patiala Division, Patiala, respectively, were set aside and the matter was remanded to the Assistant Collector, 1st Grade, Rajpura for finalizing the partition proceedings de novo.

2. Brief facts of the case are that respondents No. 19 to 23 filed an application on 14.01.1988 u/s 111 of the Punjab Land Revenue Act, 1887 for partition of the land measuring 25 Bighas 10 Biswas, claiming to be co-sharers in the said land. Vide order dated 08.07.1988, the Assistant Collector 1st Grade allowed the aforesaid application. The aforesaid order was challenged by filing an appeal. Vide order dated 31.07.1989, the said appeal was allowed and the matter was remanded to the Assistant Collector, 1st Grade with the direction to consider their claim regarding private partition. Thereafter on 21.02.1990, the Assistant Collector, 1st Grade came to the conclusion that there was no private partition between the parties and on 22.05.1990, the order regarding mode of partition

was passed by him. Consequently the land was partitioned and the "Naksha Be" was prepared and submitted by the Patwari to the Assistant Collector, 1st Grade. Respondents No. 19 to 23 raised certain objections against the aforesaid "Naksha Be". After considering the aforesaid objections, the Assistant Collector, 1st Grade dismissed the objections vide order dated 03.08.1990. No appeal was filed against the aforesaid order. Rather the aforesaid respondents moved an application for withdrawal of their partition application. The said application filed by respondents No. 19 to 23 was dismissed by the Assistant Collector, 1st Grade, vide order dated 24.09.1990 (Annexure P7) on the grounds that the application was filed belatedly; no appeal was filed by them against the order of mode of partition; and lastly, that the application for withdrawal has been filed on frivolous ground to harass the other party. The aforesaid order was challenged by respondents No. 19 to 23 by filing an appeal. The appeal was accepted vide order dated 28.02.1991 and the matter was remanded to the Assistant Collector, 1st Grade, Rajpura for deciding the withdrawal application by making thorough investigation into the claim made by them.

3. Again vide order dated 10.07.1991 (Annexure P10), the Assistant Collector, 1st Grade dismissed the said application. The respondents again filed an appeal against the aforesaid order before the Collector. The Collector vide order dated 01.10.1991 dismissed the appeal filed by respondents No. 19 to 23. The aforesaid respondents filed a revision against the order dated 1.10.1991 passed by the Collector. The said revision petition was also dismissed vide order dated 23.06.1992 passed by the Commissioner. Respondents No. 19 to 23 preferred a second revision against the orders passed by the Collector and the Commissioner, before the Financial Commissioner, Appeals-11, Punjab, which was allowed vide order dated 21.10.1997 and the orders passed by the Collector and the Commissioner were set aside and the matter was remanded to the Assistant Collector, 1st Grade, Rajpura for denovo partition. The aforesaid order was challenged by filing the writ petition.

4. The learned Single Judge set aside the order dated 21.10.1997 passed by the Financial Commissioner, Appeals-II, Punjab and restored the orders dated 01.10.1991 and 23.06.1992 passed by the Collector, Rajpura and the Commissioner, Patiala Division, Patiala, respectively.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellants vehemently argued that the learned Single Judge committed grave error of law by interfering in the remand order that too when after remand, the Assistant Collector, 1st Grade, completed the partition proceedings.

7. From the order impugned, it can safely be said that the learned Single Judge vide order dated 14.10.1998 directed the Assistant Collector to proceed with the partition proceedings but subject to the decision of this case. Hence it cannot be said that the learned Single Judge should not have interfered with the remand

order.

8. From the perusal of the record, we find that mode of partition was settled and "Naksha Zeem" was called for. Hence, thereafter, there was no need to remand the matter.

9. 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 Marlas 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 03.08.1990. 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 15 Marlas of land in the property to be partitioned. It is also important to note that against the confirmation of "Naksha Be" vide order dated 03.08.1990, the appellants had not preferred any appeal, while they could have done so.

10. In view of the above, we do not find any reason to interfere with the order passed by the learned Single Judge. Accordingly, the appeal is dismissed.