
(2005) 11 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 104 of 2001

Manjit Singh

APPELLANT

Vs

Shamsher Singh and others

RESPONDENT

Date of Decision : 10-11-2005

Acts Referred:

Citation : (2007) 2 LLR 212 : (2006) 4 RCR(Civil) 692

Hon'ble Judges : B.K.Srivastava;FC, J

Advocate : R.S. Chauhan, Advocate.G.S. Nagra, Advocate., Advocates for appearing Parties

Judgement

B.K. Srivastava, F.C.

1. The presenter petition filed application for partition. Mode of Partition was approved on 9.9.1997 in which constructed portions were to be adjusted against agricultural land. Appeal against this Mode of Partition filed by the respondent, Shamsher was dismissed on 15.4.1998 and no further revision was filed by him against this. Thus, the Mode of Partition dated 9.9.1997 became final. Naksha 'Be' was approved by the Assistant Collector on 4.5.1998 in violation of this Mode of Partition by not accounting for constructed portions. Therefore the petitioner filed appeal before the Collector who instead of examining whether impugned Naksha 'Be' was as per the approved Mode of Partition dated 9.9.1997 or not, went beyond his jurisdiction to set aside the Mode of Partition itself which had been upheld earlier by his predecessor, dismissing the appeal of the present respondent. Against this order dated 10.7.1998 of the Collector, the petitioner moved in revision before the Additional Commissioner (Appeals), Patiala Division who dismissed the same vide order dated 12.10.2000 with the following sketchy conclusion :

"I have gone through the record of the case and arguments advanced by both the parties. Order passed by the Collector is fully justified and detailed one and need not to be disturbed. Since Sanad Takseem has been issued, there is no force in the revision petition and the same is dismissed."

2. My view is that the Collector had no power to revise the order dated 15.4.1998 of his predecessor vide which Mode of Partition dated 9.9.1997 was upheld. As no appeal/revision had been filed by the respondents against this order, it became final. Therefore, merits of petitioner's appeal should have been examined by the Collector in the light of this Mode of Partition which was not done. The Collector's order was, therefore, liable to be set aside. The Commissioner overlooked this aspect and dismissed the appeal by the aforesaid nonspeaking order.

3. Before parting with this order, I would like to clarify that there is a difference between partition of builtup area and adjustment of builtup portion against agricultural land. If it is possible to decide the partition of agricultural land by such an adjustment in order to avoid necessity of another partition proceeding of builtup area through a civil litigation, it should be preferred. In doing so, two important aspects should be kept in mind : (i) that partition of builtup area as such is not subjected to partition except with the mutual consent; and (ii) that it should be in the interest of justice.

4. These days, people have to construct houses in fields due to limitation of space within the limit of Lal Lakir. The land in the Lal Lakir is non agricultural and beyond jurisdiction of Revenue Officer to consider such a land for the purpose of partition. But constructed portion in agricultural land can be taken into consideration during the partition for adjustment against any other agricultural land of the cosharers without subjecting the builtup portion as such to partition unless the parties mutually agree for partition of such builtup area as part of the deal. In this case, the stipulation in the Mode of Partition dated 9.9.1997 was not for the builtup area as such; it only stipulated adjustment of agricultural land against the land partly built up. Such an arrangement is fair and legitimate.

I may illustrate this point through an example. If the agricultural land to be partitioned between two cosharers is 10 kanals and if one cosharer constructed over one kanal, there are two options in partitioning such agricultural land : (a) 9 kanals of unbuiltup agricultural land is partitioned by the Revenue Officer leaving one kanal of builtup portion; and (b) including the entire 10 kanals for partition without disturbing possession of the cosharer who invested and constructed the builtup portion. In the first option $4\frac{1}{2}$ kanals of agricultural land will come to share of each co sharer while the other cosharer who constructed over one kanal will continue to retain extra one kanal constructed portion in addition to the $4\frac{1}{2}$ kanals. In such a case the former cosharer will have to apply to the civil Court for partition of the builtup portion which he may not at all require because he may be having some other house and thus partition of such builtup area will be unnecessary and it would be against the interest of both the cosharers because even the other cosharers would not like the house etc. built up by him as per his design to be disturbed in partition. In the second option, each cosharer gets 5 kanals without disturbing the builtup portion by allotting the same to the cosharer who invested or constructed this portion. This second option was

applied in the instant case as it did not involve partition of builtup portion as such. Thus, there is difference between partition of builtup portion as such and merely accounting for such land for apportionment during partition so that cosharers get the land as per their share without disturbing each other's possession.

5. In view of the above, the revision petition is accepted and the parties are directed to report back to the Assistant Collector on 24.12.2005 for such further action in this partition proceeding as may be pending for conclusion of the same.

Announced.