
(2014) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5740 of 2014

Reshma

APPELLANT

Vs

Randeep Kaur

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2 151
Constitution of India, 1950 — Article 227

Citation : (2015) 178 PLR 814

Hon'ble Judges : Inderjit Singh, J

Bench : Single Bench

Advocate : Ashwani Verma, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Inderjit Singh, J.

1. Reshma-petitioner/plaintiff has filed this civil revision petition against Randeep Kaur etc.-respondents/defendants under Article 227 of the Constitution of India praying for setting aside the impugned judgment dated 15.5.2014 (Annexure-P. 5) passed by the learned District Judge, Fatehabad, vide which the order dated 12.8.2013 (Annexure-P. 4) passed by learned Additional Civil Judge (Senior Division), Fatehabad has been set aside. I have heard learned counsel for the petitioner and have gone through the record.

2. From the record, I find that the learned Additional Civil Judge (Senior Division), Fatehabad vide order dated 12.8.2013 accepted the application under Order 39 Rules 1 and 2 C.P.C. read with Section 151 C.P.C. filed by the plaintiff and the defendants were restrained from acquiring possession over the land allocated to their shares in consequence of the order dated 13.8.2012 and to restrain the plaintiff from enjoying a joint possession over the suit land, equivalent to her share.

3. As per the facts of the case, the plaintiff is co-sharer to the extent of 52/313

share in the suit land on the basis of sale deed No. 4481 dated 19.8.2011. Subsequently, the plaintiff alienated 2 Kanals 2 Marlas 5 Sarsai land to Smt. Radhika. The plaintiff filed application before A.C. IInd Grade, Fatehabad for partition of the suit land. It is the case of the plaintiff, that though, defendants No. 1 and 2 appeared during the proceedings of that application, yet they did not disclose about the case pending and during the proceedings defendants No. 1 and 2 managed to get a false report from the postal authorities on the registered envelope as - "Left", whereas the plaintiff is still residing in House No. 268, Sector 14, Sonapat. It is stated that the applicant was required to file correct address of the present plaintiff. Husbands of defendants No. 1 and 2 are politically influential persons. Therefore, the entire land falling on the main road had been allocated to the share of defendants No. 1 and 2. It is argued that the impugned order dated 11.7.2012 and 13.8.2012 passed by A.C. IInd Grade, Fatehabad are illegal and if defendants No. 1 and 2 are not restrained from taking forcible possession of the agricultural land falling on the front area along the main road, the plaintiff shall suffer irreparable loss and injury, which would not be compensated in terms of money.

4. The learned Additional Civil Judge (Senior Division) vide order dated 12.8.2013 allowed this application and held that there is prima facie case in favour of the plaintiff. It was held that balance of convenience also lies in favour of the plaintiff. It is further held that during the pendency of partition proceedings, the plaintiff became cosharer to the extent of 52/313 share in the suit land on the basis of sale deed dated 19.8.2011. The previous co-sharer/vendor of the plaintiff, viz. Girdhari Lal would have become different to the said partition proceedings. The defendant had become aware of the transfer of title qua a part of share in the suit land in favour of the plaintiff. The lower Court held that the plaintiff has not been properly served in those proceedings and the ex parte partition proceedings are not as per law.

5. The learned Additional District Judge on filing of appeal by Randeep Kaur against the impugned order set aside the order of the learned Additional Civil Judge (Senior Division) by stating that petition for partition of joint land measuring 62 Kanals 12 Marlas was filed at the instance of appellant-defendant as well as co-defendant Smt. Manjeet Kaur against Girdhari Lal, Mange Ram and Rohtash. During the pendency of that petition, the respondent-plaintiff purchased land measuring 12 Kanals 16 Marlas from Girdhari Lal. Even mutation was sanctioned in her favour. Subsequent to that, the respondent-plaintiff sold land measuring 2 Kanals 2 Marlas 5 Sarsai and the same also led to sanction of mutation. When this fact came to the knowledge of the appellants-defendants and Naksha "Kha" was prepared, an application dated 16.4.2012 for adding them as a party was moved before the Court, but despite due service, they failed to put in appearance, which led to passing of an ex parte proceedings against them on 8.6.2012 and subsequently, passing of final order dated 13.8.2012. It is held by the learned District Judge, Fatehabad that if the respondent-plaintiff was aggrieved against that order, then she could have challenged the same before

higher revenue hierarchy, but she came up with a plea that she has already filed a petition for partition of joint land on 5.9.2012, wherein the alleged partition of joint land on the basis of order dated 13.8.2012 was not disclosed. It is also held that the respondent-plaintiff also challenged that order before A.C. 1st Grade by filing a petition on 5.9.2012, which was rejected on 28.3.2013. In these facts and circumstances, the learned District Judge held that the order of the learned Additional Civil Judge (Senior Division) to hold the land as joint between the parties is not as per law.

6. A perusal of the record specially the impugned order shows that no illegality has been committed by the learned District Judge while passing this order dated 15.5.2014. The order passed by the learned District Judge is correct and as per law. When once the competent authority partitioned the land and if there is any irregularity or any grievance that the plaintiff has not been properly served etc. all this is to be seen by the revenue authorities. The plaintiff-petitioner has remedy to approach the higher authorities by way of appeal, revision etc. Even as per this order, she has challenged that order of ex parte proceedings which was also dismissed.

7. So, keeping in view the facts and circumstances, I find that Section 158 of the Punjab Land Revenue Act bars the jurisdiction of the civil Court. In no way, at this stage prima facie it can be held that these orders are void orders and not passed as per the procedure.

8. Learned counsel for the petitioner placed reliance on the judgment of this Court in *Giani Ram and Others Vs. Ompati and Others*, . I have gone through this judgment. This judgment having distinguished facts will not apply in the present case. Learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Supreme Court in *Rabindra Singh Vs. Financial Commissioner, Cooperation, Punjab and Others*, regarding substituted service. This judgment is also of no help to the petitioner. This is to be seen by the competent authority whether the petitioner has been proceeded ex parte correctly or whether she has been served properly. In no way, on the face of it, it can be held that no notice has been given to the plaintiff. The fact that she has not been properly served is to be seen by the revenue authorities. Therefore, the impugned order passed by the learned District Judge is correct and as per law which does not require any interference from this Court and the same is upheld. Finding no merit in the civil revision petition, the same is dismissed.