
(2005) 10 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : ROR No. 527 of 2002

Sardara Singh and others

APPELLANT

Vs

Jagir Singh

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Citation : (2005) 10 P&H CK 0055

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

Advocate : Sh. Jaswant Singh son of Petitioner., Advocates for appearing Parties

Judgement

B.K. Srivastava, FC.

1. This revision petition relates to partition case. The petitioner, Sardara Singh purchased 9/4 share of total land, measuring 1 Bigha 8 Biswas on 3.5.82 and the remaining 1/4 share, measuring 7 Biswas was purchased by the respondent, Jagir Singh on 21.8.86.
2. The respondent, Jagir Singh applied for partition of land on 24.10.86. The Assistant Collector Grade1, Ropar sanctioned Mode of Partition on 19.1.87 in which it has been stated that 7 biswa of land is to be given to the applicant, Jagir Singh toward the north. The respondent, however, felt aggrieved by Clause (3) of the Mode of Partition which provided that the trees will not be separately accounted for and will belong to the person who gets the land. The respondent filed appeal against Clause (3) of the Mode of Partition. The Collector, SubDivision, Ropar accepted the appeal on 4.5.87 and remanded the case to the Assistant Collector Grade1 with the direction that value of Mango trees be assessed in the presence of the parties as well as in the presence of the respectables of the village and a Clause be added to the effect that value assessed would be distributed as per share of the parties. The petitioner did not assail this order which attained finality. The Assistant Collector accordingly assessed the value of Mango trees vide order dated 4.6.96 at Rs. 9,500/.
3. In the meanwhile, while the above appeal was pending before the Collector,

the Assistant Collector Grade1 on 6.3.87 made a reference to the Collector to review Mode of Partition. The review was sought for interchanging the direction of the Taks of the two cosharers. As per the Mode of Partition dated 19.1.87, the applicant (respondent, Jagir Singh) was to get his land toward north (Ropar) as mentioned above and the petitioner, Sardara Singh was to get land toward south (Kurali). The Collector refused to consider the reference stating that appeal had already been filed against the Mode of Partition (appeal was filed as mentioned above by the present respondent against clause (3) regarding value of trees) and, therefore, permission could not be granted for review of Mode of Partition. The appeal was decided (accepted) regarding distribution of value of trees but the question of changing direction of Taks was not touched because it was not impugned in appeal. Therefore, again, Assistant Collector Grade1 on 5.8.97 sought permission to review of the Mode of Partition for amending direction of allotment of Taks. The Collector, Sub Division, Ropar gave permission to review vide order dated 27.11.87.

4. The respondent filed appeal against the above order before the Commissioner (Appeals), Patiala who remanded to case with the following observations :

"I have heard the counsel for the both the parties and examined the record. From the perusal of the map, I find that the front has a length of 18 karmas and the respondent is willing to leave 1/4 share of the appellant which is 4 1/2 karmas. This is a case over very small issue which could be duly sorted out. Now both the parties are agreeable to have the front as per their share i.e. 1/4 for the appellant and 3/4 for the respondent. Accordingly the appeal is partly accepted to this extent and the case is remanded to Assistant Collector 1st Grade (Tehsildar), Ropar with the direction that the appellant should be given 41/2 karmas equal to 1/4 share in the front strip and his total 7 Biswas share including the share in the front be completed. The parties are directed to appear before the Assistant Collector 1st Grade (Tehsildar), Ropar on 30.8.1995."

5. The respondent filed revision petition against the above order before this Court which was dismissed on 19.8.97 in which it was observed that the order of Divisional Commissioner had been passed on the basis of agreement of the parties. Civil Writ Petition No. 28251 of 1997 was also filed by the respondent in the Hon"ble High Court. The Hon"ble High Court on 29.11.99 upheld the order of Divisional Commissioner (Appeals) Patiala stating as under :

"We have heard the learned counsel for the parties. It is apparent from the perusal of the order of the Commissioner dated 17.7.95 Annexure P6, particularly paras 4 and 6 read together that the said order was made on the agreement of the parties, even the petitioner"s revision filed before the Financial Commissioner, Punjab, Chandigarh was also dismissed vide order dated 19.8.97, Annexure P7. We, therefore, find that no interference is called for in the writ jurisdiction. The writ petition is accordingly dismissed.

Sd/ H.S. Bedi, Judge

Sd/ J.S. Khehar, Judge."

6. On the aforesaid remand by the Commissioner, the Assistant Collector, Grade1, Ropar visited the spot and allotted 41/2 karmas abutting road towards Pahar side (North) to respondent Jagir Singh as per the direction in the original Mode of Partition and the rest of the area abutting road was given to the petitioner towards Kurali (south) side vide order dated 15.5.96. The petitioner filed appeal against this order which was dismissed on 11.6.97 by the Collector, SubDivision, Ropar who also visited the spot. The petitioner challenged this order before the Commissioner, Patiala Division who also dismissed the same on 8.8.2001. Hence this revision petition.

7. Dispute in this case, was of three types : (i) regarding direction of allotment who should get toward north and who should get toward south, (ii) regarding frontage (abutment on road), and (iii) distribution of value of trees. Decision on value of trees at Rs. 9,500/ is final as per the aforesaid decision of the Assistant Collector dated 4.6.96 and needs to be distributed between the parties accordingly. Regarding abutment on road, the Commissioner decided (by consent of both as observed in the Commissioner's order) that the two cosharers should get it proportionately as per their 3/4 and 1/4th share i.e. 18 karms and 41/2 karms. This was upheld upto Financial Commissioner and High Court. Regarding direction, the review permitted by the Collector for change of direction did not take effect because the matter went in appeal and the Assistant Collector who was yet to pass an order in review after hearing the parties passed an order dated 15.5.96 retaining the same direction of allotment as was originally stipulated in the Mode of Partition. This happened because the Assistant Collector who had sought the review on 6.3.87 changed in the meanwhile and lot of time also elapsed. The allocation of Taks (41/2 karam toward north/Ropar side to respondent, Jagir Singh and 18 marla toward south/Kurali side to petitioner, Sardara Singh) made by the Assistant Collector vide above order dated 15.5.96 was upheld by the Collector who himself visited the spot. During the arguments before me this (question of direction) was the disputed point and I find that the petitioner Sardara Singh who bought the land first in 1981 made construction and installed a machine (flour mill) toward south/Kurali side. Therefore, allotting land to the other party on the other side i.e. north/Ropar side, as explained by the Assistant Collector in detail in his order, was the right option because on this side 39 feet vacant land is available whereas the land toward south of the construction and machine of the petitioner, there is very little land left between this and the street at the end of the plot whereafter Abadi begins. In fact this small remaining space on the south of Sardara's house is more suited for extension of his own house for which he has left out projected beams (Darha) thereby making provision for extension.

8. I should clarify that the respondent is to get 41/2 karam road frontage beginning from the extreme northern end of the land. Needless to add that the remaining land of the cosharers is to be given to the parties on the back of the

road as per their share. The parties should revert to the Assistant Collector for any further action which may be required to be taken in this connection for leading the partition proceeding to its logical conclusion. The revision petition is dismissed.

Announced.