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**(2009) 05 P&H CK 0197**  
**In the Punjab And Haryana At Chandigarh**

Sham Singh and Others

APPELLANT

Vs

The Financial Commissioner and Others

RESPONDENT

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**Date of Decision :** 04-05-2009

**Acts Referred:**

**Citation :** (2009) 156 PLR 15 : (2009) 3 RCR(Civil) 121 : (2009) 3 RCR(Criminal) 66

**Hon'ble Judges :** Ranjit Singh, J

**Bench :** Single Bench

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## Judgement

Ranjit Singh, J.—Though the challenge in the writ petition is to the order of partition but the facts leading to partition are rather revealing. Respondents are accused of having manipulated and acquired land allotted to the petitioners in partition. This was done in a clandestine fashion, where the counsel also connived with party respondents. On coming to know of this fraud, the petitioners have challenged the same but apparently the revenue Courts have not been able to appreciate the case in proper perspective.

2. The petitioners and private respondents are co-sharers in a land measuring 276 kanals 1 marla in Village Gheer, District Karnal. The abadi of village Chora used to be flooded and the State Government decided to shift the village abadi to some safe place. In the year 1981-82, the Government decided to acquire land in village Gheer for this purpose. 32 kanals 6 marla land comprised in rectangle No. 34, Killa Nos. 19, 20/2, 21/1/1, 22, Rect. No. 47, Killa No. I, 2, 9, 10 and Rect. No. 46, Killa Nos. 5/2/2, 6 and 7/1/1 situated in Village Gheer, District Karnal, in the ownership of the petitioners and private respondents was, thus, acquired by the State Government. The compensation for the acquired land was deposited in the names of respective co-sharers

3. On 5.2.1991, Zile Singh, (predecessor of respondent Nos. 5 to 9), Shanti Devi (predecessor of respondent Nos. 10 to 14), respondent Nos. 16 and 17 being co-sharers in land filed an application for partition of land before Assistant Collector, Karnal. They also sought partition of land, which stood acquired by the State of

Haryana. Neither the petitioners nor State was impleaded as a party. The State had become owner after the acquisition of the same and on pronouncement of the award.

4. It is disclosed that though the partition application was filed on 5.2.1991 on behalf of Zile Singh but he had died on 5.1.1991. Shanti Devi, another applicant, had also died on 5.4.1993 but her legal representatives were not impleaded in the partition proceedings. It is alleged that the intention of the private respondents was to obtain an exparte order of partition against the petitioners stealthily and secretly. To substantiate the same, it is stated that the application was drafted by Sh. D.S. Mann, Advocate, Karnal on 19.12.1990 and filed before the Collector on 5.2.1991, after the death of Zile Singh without impleading his legal representatives. One Mahi Pal Singh, Advocate, who was working as junior to Sh. D.S. Mann was made to appear on behalf of the petitioners before Assistant Collector, 1st Grade, who without any installations from the petitioners, put in appearance on their behalf on 15.2.1991". It is also stated that no summons were issued by the Assistant Collector, 1st Grade as none were found available on the record. On 8.3.1991, Mahi Pal, Advocate, appeared on behalf of the petitioners on his own. The case was adjourned to 14.3.1991 for filing written statement. In the written statement filed, entire claim of the respondents was conceded by admitting each and every para of the partition application. It is averred that power of attorney for Mahi Pal to appear on behalf of the petitioners is forged and fabricated one. The petitioners state that they have never engaged Mahi Pal Singh and did not sign or thumb marked any written statement or power of attorney. It is also disclosed that Mahi Pal belonged to the same village as that of the petitioners and is closely related to the private respondents. Even it is alleged that Halqa Patwari and Kanungo connived with the private respondents.

5. To further show how Mahi Pal, Advocate, helped the respondents, it is stated that he did not raise any objection to Naqsha Be prepared and accordingly the respondents succeeded in achieving their aim by getting allotment of same field numbers, which had already been acquired by the State of Haryana in the year 1987 and for which the compensation has been paid to all the co-sharers, including the private respondents. In fact, the land which had been acquired was to be excluded from the partition proceedings. In this manner, the petitioners have been put to great loss and prejudice. Sanad Takseem was prepared on 15.9.1993 but still no execution petition was filed fearing exposure of this clandestine move. The petitioners learnt about these partition proceedings and order only on 6.7.2000, when the District Revenue-cum-Land Acquisition Collector came on the spot to take possession of the acquired land. The petitioners immediately filed application for setting-aside of the proceedings before the Assistant Collector, who dismissed the same on 15.11.2000. The petitioners appealed against the same before the Collector on 22.11.2000. Collector allowed the appeal on 25.6.2001 by holding that the partition proceedings have been carried out in collusion with the counsel and behind the

back of the petitioners. The operative part of the order passed by the Collector reads as under:

I have heard the learned Counsel for both the parties and have also carefully perused the record. From the perusal of the record, it has been found that the applicants/respondents had filed the application for partition before, the Assistant Collector IInd Grade, Karnal on 5.2.1991. The respondent/appellants appeared in the Court on 8.3.1991, whereas, in the record there is no notice regarding service available. Moreover, the written statement which have been filed, in the same all the paras of the application have been admitted to be true and correct. The Assistant Collector IInd Grade has not passed a speaking order regarding the partition. On 11.3.1993, in the interim order it has been only written that both the parties have made a statement that they have no objection on Naksha Be. Thus, Naksha Be is accepted. On 11.3.1993, apart from Krishan Lal, respondent No. 7, there is no statement of any other respondent. From this suspicion arises that the appellants had no knowledge of the partition application. The Government has deposited the compensation of the acquired land in the name of all the co-sharers, whereas, the acquired land has not been deducted from all the shares of the co-sharers and from which suspicion arises. Hence, finding merit in the appeal of the appellant, the case is remanded to the Assistant Collector, IInd Grade, Karnal with the direction that he should decide the case on merits after providing full opportunities to both the parties.

6. Strangely, the Commissioner allowed the revision filed against this order by the respondents. The Financial Commissioner has also concurred with the Commissioner and so the present petition.

7. Noticing the contentions of the learned Counsel for the petitioners and while issuing notice of motion, this Court issued direction that possession shall not be changed in terms of the instrument of partition. Despite service; no one appeared on behalf of respondent Nos. 5 to 9 and 17. They were accordingly proceeded ex parte on 3.9.2008. Respondent Nos. 11 to 14 were served but no one appeared on their behalf. They were proceeded ex parte on 11.12.2008. Respondent No. 10 had died and his L.Rs were allowed to be impleaded on 9.1.2009 and notice was issued to them. They refused service and were, thus, deemed to be served. Despite opportunities, no reply is filed on behalf of respondent Nos. 15 and 16. Sachin Mittal, Advocate, has appeared on behalf of respondent Nos. 15 and 16 and has made submission without filing any response to the serious allegations made in the petition. The counsel stated that he would make his submission as the order under challenge is quasi-judicial. The factual averments as contained in the writ petition have, thus, not been denied.

8. The fact that partition was done in a clandestine manner without notice to the petitioners and that counsel was made to appear on their behalf without being engaged as a collusion etc., thus, are not rebutted. Mr. Mittal was still asked to confirm or deny if the land acquired by the State has been included in the partition proceedings and secondly whether all the co-sharers had received

compensation for the acquired land or not. The counsel was unable to answer any of the queries raised being not aware about it and sought time to have instructions. Since he had chosen to make submissions willingly, his prayer for adjournment was declined. The averments made in this regard, thus, are required to be taken as true for the purpose of passing any order. It is specifically averred in the petition that the land acquired had been included in the partition without impleading the State, which had become owner of this land after payment of compensation. It is also pleaded that the compensation was paid to all the co-sharers. This when viewed with the other allegations made, in the petition and which have not been rebutted, would clearly indicate that this partition was conducted in a clandestine manner without issuing notice to the petitioners. The result is that the acquired land has been given to the shares of the petitioners in partition. The land which has been acquired and which is not in the ownership of the co-sharers, could not have been included in partition proceedings. No denial is forthcoming to the fact that notice was not issued to the petitioners and that the counsel (Mr. Mahi Pal), who was working as junior to the counsel of the respondents (Mr. D.S. Mann) was made to appear on behalf of the petitioners without any instructions in this regard. All these facts have not been examined by the Commissioner and the Financial Commissioner. The Financial Commissioner has simply declined to interfere in the case by observing that the petitioners could not have been unaware of these partition proceedings which continued for quite some time. He was to see whether the petitioners were served or not and whether the land which was acquired could be put to partition proceedings. The Financial Commissioner, thus, has not exercised his jurisdiction in a proper manner. The Financial Commissioner did not deal with the issues raised before him.

9. Apparently, it was a case of serious fraud. It was so pleaded. The Commissioner and the Financial Commissioner, thus, were required to go into this aspect. The petitioners had also made allegation that their power of attorney was forged and fabricated and on that basis the counsel had appeared on their behalf. The petitioners, thus, pleaded fraud and collusion before the authorities through and through.

10. The action of the respondents in not filing reply despite notice seems to be a deliberate attempt to escape exposure. They would have definitely come forward to deny the allegations if these had been wrongly made. Obviously, they are in no position to deny the allegations made in the petition. The Collector had rightly allowed the appeal and had remanded the case to Assistant Collector Second Grade, Karnal, to decide the same afresh. Action on the part of Commissioner and Financial Commissioner to interfere in this order is not justified in the background of the facts pleaded. What is the effect of fraud played on the Court, was required to be seen in this case. This Court had an occasion of examining in detail the effect of fraud on the Court in the case titled Punjab Beverages Pvt. Ltd. Vs. G.T. Agencies, . It is observed that the fact that a judgment was obtained through fraud or collusion is universally held sufficient reason for

opening or vacating such judgment either during or after the term at which it was rendered. Any judgment which is based on fraud has to be treated as a nullity. As held in this case, where an attorney fraudulently pretended to represent a party but actually connived at his defeat, it would be a ground for equitable relief. It is often stated before the Courts that those who come to the courts must come with clean hands. The Courts are meant for imparting justice. A person who has obtained advantage by misusing the process of Court or abusing the process of Court, can not be allowed to retain his illegal gains indefinitely. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Hon"ble Supreme Court made telling observations in this regard by saying:

property-grabbers, tax- evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

11. In *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, , the Hon"ble Supreme Court clearly observed that it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Chief Justice Edward Coke, has proclaimed long ago that "fraud avoids all judicial acts, ecclesiastical or temporal."

12. Since the averments made in the petition have gone unrebutted, the respondents would not be able to wish away the allegations of fraud and collusion made against them. The impugned orders, thus, are outcome of a fraud and collusion. The impugned orders can not be sustained. The orders passed by the Commissioner and the Financial Commissioner are set-aside. The order passed by the Collector is up-held. The case would stand remanded to Assistant Collector 1st Grade to hear the parties and decide the same afresh after issuing notice to all concerned who are necessary and proper parties.

The writ petition is allowed in the above terms.

13. The conduct of two Advocates, who apparently have not acquitted themselves well, can not be ignored. They have apparently connived with the parties and became instrument in obtaining these orders by way of collusion. They, thus, became participants in the fraud on the Court. A very high standard of honesty can rightly be expected of a counsel as he is meant to assist in the administration of justice and is considered an Officer of the Court. A counsel, thus, can not be seen polluting justice. The power of attorney produced was stated to be forged and fabricated documents. The counsel would have appeared on the basis of instructions of a party and, thus, must have got the signatures or thumb mark on the attorney for him to appear. The respondents have not denied the allegations made. It is for the petitioners to make a move to take action against the respondents. But both the counsel appear to have misconducted

themselves by conniving with litigant to mislead the Courts. Their conduct as such, may need to be scrutinized. This aspect is referred to the Bar Council of Punjab and Haryana to see if it may wish to look into the same and take any appropriate action, if the counsel are found blame worthy in any manner. Copy of the order be sent to the Chairman, Bar Council Punjab and Haryana, Chandigarh for this purpose.