(2008) 12 P&H CK 0189

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 100 of 2008

Phalwinder Singh & Ors.		APPELLANT
	Vs	
Santa Singh & Ors.		RESPONDENT

Date of Decision: Dec. 2, 2008

Citation: (2009) 5 RCR(Civil) 612

Hon'ble Judges: Vinod K.Sharma, J

Advocate: Mr. Sudeep Mahajan, Advocate, Mr. K.S. Cheema, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. The petitioners have invoked the jurisdiction of this court under Article 227 of the Constitution of India to challenge the order dated 24.10.2007 passed by the learned Additional District Judge (ad hoc), Amritsar accepting an appeal filed by the defendant/respondents against the order passed by the learned Civil Judge (Junior Division), Amritsar on an application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

2. The plaintiff/petitioners filed a suit for permanent injunction. In the said suit an application under Order 39 Rules 1 and 2 of the Code was moved seeking temporary injunction against the defendant/respondents from interfering in their suit land.

3. The petitioners claimed that they were members of proprietary body of village which owns land in the shamilat in the name of Patti Mahanand and Patti Issar. Shamilat land is in possession of the cosharers of the said Patti.

4. Plaintiff/petitioners further claimed that the predecessorsininterest of the plaintiffs got exchanged the share in shamilat land from one Mehnga Singh son of Veer Singh vide registered exchange deed dated 3.11.1961.

5. Partition proceedings of the Patti took place before the revenue authorities but Sanad Takseem has not yet been prepared. However, entries were changed in the name of cosharers vide report No. 88 dated 6.11.2001 whereby symbolic possession of the suit land and some other land was changed from the names of the plaintiffs to other cosharers.

6. The petitioner/plaintiffs claimed that Assistant Collector First Grade, Amritsar vide order dated 7.3.2002 had directed the revenue authorities to prepare Sanad Takseem to complete the partition proceedings but no such proceedings have taken place. The petitioners claimed that in spite of change in revenue entries they continued to cultivate the land being coowners and cosharers. The petitioners sought injunction against forcible dispossession.

7. The suit was contested. It was pleaded that the plaintiffs were not residents of village Bal Khurad, rather they are residents of village Bal Kalan. It was denied that they are members of proprietary body. It was also denied that the plaintiff/petitioners were not in possession of the land. Defendants denied that the land was exchanged. It was claimed that partition of the suit land has been completed. Appeal filed by the plaintiffs was dismissed by the Court of Commissioner, Jalandhar Division, Jalandhar on 1.4.2001.

8. It was denied that Sanad Takseem was not prepared. It was claimed that they got physical possession of the land under the orders of revenue court and thus, it was claimed that the suit be dismissed.

9. Learned trial court disposed of the application by directing the parties to maintain status quo. It was also made clear that the order would not come in the way of revenue authorities for implementing the order with regard to the partition of the suit land.

10. In appeal learned Additional District, Fast Track Court, Amritsar held that the plaintiff/petitioners have failed to prove as to how the suit land fell to their share being part of the shamilat land. The learned appellate court further observed that the petitioners intentionally withheld the final order of partition to show as to which particular land had been given to them in partition proceedings.

11. The learned appellate court further observed that presumption of truth attached to entries in Jamabandi stood rebutted by the orders of the Financial Commissioner vide Roznamcha dated 6.11.2001.

12. The learned appellate court also observed that the order dated 26.8.2006 passed by the Financial Commissioner, Revenue, Punjab showed that the property stood partitioned and Sanad Takseem prepared. Thus, the application moved by the petitioners was ordered to be dismissed.

13. Mr. Sudeep Mahajan, learned counsel appearing on behalf of the petitioners vehemently contended that the order passed by the learned lower appellate court

cannot be sustained as the respondentdefendants failed to produce on record Sanad Takseem.

14. Learned counsel for the petitioners placed reliance on the Division Bench judgment of this court in the case of Pritam Singh v. Jaskaur Singh, 1993(1) RRR 390 to contend that completion of partition takes place when an instrument of partition is prepared and it is to take effect, only when the joint status of the parties comes to an end. The partition is not effective in the absence of instrument of partition and till this is done the petitioners were to be held as cosharers.

15. On consideration of the matter, I find no force in the contentions raised by the learned counsel for the petitioners.

16. In this case learned lower appellate court has observed that the petitioners failed to produce on record the final order passed by the learned Financial Commissioner in the partition proceedings. The learned court further observed that the order passed by the Financial Commissioner shows that Sanad Takseem stood prepared and the property stands partitioned.

17. Learned lower appellate court, thus, rightly held that the petitioners have not come to court with clean hands and further that they did not have any prima facie case to seek temporary injunction.

Order passed by the learned appellate court does not suffer from any illegality or an error which may call for interference by this court in exercise of supervisory revisional jurisdiction.

No merit.

Dismissed.

Revision dismissed.