

(2012) 10 P&H CK 0163

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 21162 of 2012

Rishi Aggarwal

APPELLANT

Vs

Financial Commissioner, State of
Haryana and OthersRESPONDENT

Date of Decision: Oct. 19, 2012**Acts Referred:**

- Punjab Land Revenue Act, 1887 - Section 116, 117
- Transfer of Property Act, 1882 - Section 53A

Citation: (2013) 169 PLR 224 : (2013) 2 RCR(Civil) 575**Hon'ble Judges:** Ranjit Singh, J**Bench:** Single Bench**Advocate:** V.K. Sachdeva, for the Appellant;**Final Decision:** Dismissed

Judgement

Ranjit Singh, J.

The petitioner has filed this petition whereby the order dismissing the application by AC-I has been set aside allowing the partition to continue. Alleging this to be in contravention of Section 117 of Punjab Land Revenue Act, 1887, the petitioner has approached this court pointing out that question of title of the land between the petitioner and respondent No. 3 is still pending adjudication before the civil court and so the partition proceedings can not continue. The petitioner and his aunt (respondent No. 3) jointly purchased land measuring 35 kanals 7 marlas, situated in village Baghola, Tehsil and District Palwal (Haryana) in equal shares on 5.2.1996. As per the petitioner, respondent No. 3 agreed to sell her share to the petitioner on 18.8.1999 and received the whole sale consideration amount through bank draft. She also agreed to execute the sale deed in favour of the petitioner. The petitioner claims to have been put in exclusive possession of the entire land. After nine years, respondent No. 3 has filed an application for partition of land on 1.5.2008. When the petitioner received a notice, he filed a civil suit on 16.11.2008 praying for specific

performance of an agreement to sell made by respondent No. 3 in his favour. Civil Judge, Palwal has restrained the alienation of the suit property till the disposal of the suit.

2. Assistant Collector 1st Grade carried out physical inspection of the land and vide his order dated 29.1.2010 dismissed the partition application by observing that petitioner is in possession of the entire land and that suit for specific performance is pending. The appeal filed by the respondent against this order was also dismissed on 7.12.2010. Thereafter, respondent No. 3 filed a revision petition which is allowed on 17.4.2012 by Commissioner, Gurgaon, who has set aside the orders passed by the Assistant Collector and Collector. Financial Commissioner has dismissed the revision filed by the petitioner on 1.8.2012. The petitioner accordingly has filed this writ petition to impugn the orders passed by the Commissioner and Financial Commissioner. As per the petitioner, the partition proceedings should wait till the question of title is decided and has accordingly challenged the orders passed by the Commissioner and the Financial Commissioner being bad in law.

3. The whole claim of the petitioner is based on an agreement to sell. No doubt, suit for specific performance is pending where respondent No. 3 has been restrained from alienating the suit property, but the Commissioner has viewed that the suit was filed in the year 2008 and is yet to be decided. Both the parties are recorded as owners and so partition proceedings cannot be held in abeyance only on the ground that suit for specific performance is pending.

4. Financial Commissioner has also noticed that name of the respondent is recorded in the revenue records and there is only an agreement on which the petitioner is relying upon to claim title. This agreement to sell does not even make a mention to the details of khasra numbers and the area of the land in dispute. The Financial Commissioner also found that no reasons are found recorded for not executing the sale deed despite the petitioner having made the full payment. The agreement to sell is also unregistered document. On the basis of effect of these cumulative factors, the Financial Commissioner has viewed that mere existence of an agreement does not raise a question of title and has even doubted the bonafide for not getting the sale deed executed till date despite the fact that the agreement was entered in the year 1999. On this basis, the partition application has been directed to be taken up for hearing and decided accordingly.

5. The counsel for the petitioner, however, was vehement in his submission that the agreement to sell would vest a right in his favour and, thus, the question of title indeed would arise. In support, he has made reference to [Ram Gopal and Others Vs. The State of Punjab and Others](#), . This was a case where the court was considering the effect of consolidation proceedings on a partition application. It was held that when there is a dispute regarding partition, the Consolidation Officer has to decide the questions somewhat similar to those a Revenue Officer has to decide u/s 116 of the Punjab Land Revenue Act and that is to distinguish between the question as to

title in the property of which partition is sought and question as to property to be divided or mode of making partition. It is further observed that it is difficult to lay down any hard and fast rule in the matter. The ratio in this case obviously is not attracted to the facts of the present case where no case of consolidation is pending, which could affect the title in any manner.

6. Reference is also made to [Jeet Kumari Vs. Girdhari Lal](#), where sale of property on the basis of power of attorney, agreement to sell, affidavit and will was being considered by the Court. In this case, on receipt of entire sale consideration, power of attorney was executed in favour of the vendee and he was put in possession of the premises. It is observed that the contract of sale of immovable property though does not create interest in or charge on such property, yet where a contract of sale is not a mere agreement to sell but more than that because practically the transaction was complete in all respect except the execution of the regular sale deed and registration thereof, such contract of sale definitely creates an interest in the property which is protected u/s 53A of Transfer of Property Act. These observations obviously are made in the facts of those case which, as would be noticed here, may not strictly apply to the facts in the present case. Here except for agreement to sell, no document is relied upon by the petitioner to claim title in the property. There is no power of attorney, no will and an agreement to sell entered in the year 1999 was not enforced for nearly 13 years till the suit for specific performance is filed, when an application for partition was moved. This agreement to sell may not inspire confidence as it can not in any manner be related to the property in question. Copy of the agreement to sell is on record as Annexure P-5. This agreement to sell is not witnessed by anyone and is alleged to have been drafted by an Advocate. It is not clear whether the payment allegedly made through draft was got encashed or not. There is no time specified for executing the sale deed. Even the place of agreement is not specified, The seller-lady is the resident of Delhi, whereas the purchaser is a resident of Chandigarh. No reasons are forthcoming as to why this agreement to sell was not executed for all these years. In the agreement, address of the petitioner is mentioned as H.No. 162, Sector-8, Chandigarh, whereas in the petition, his address is shown as resident of L-1/18, Hauz Khas, New Delhi. This agreement does not contain usual terms as one would notice in agreements to sell of such nature. This agreement to sell does not make a mention of any property which is subject matter of sale in this agreement. No khasra number of land is recorded in the agreement to sell. This agreement to sell, thus, in no manner can be related to the property in dispute. It may also need a mention that even if the petitioner and the respondent are held to be co-sharers, then the petitioner cannot claim to be in exclusive possession as co-sharer would be deemed to be in possession of every inch of a land till the same is partitioned. The agreement, in my view, was rightly doubted by the Commissioner and the Financial Commissioner. It appears to be of a dubious origin. The judgment relied upon by the counsel for the petitioner apparently would not help the cause of the petitioner,

who is basing his entire claim on an agreement which is of a doubtful nature. For the same reasons, the ratio of judgment in the case of [Sodagar Singh and Others Vs. Smt. Sham Kaur and Others](#), would not apply as in the said case the question of title really was in issue. In addition, this court also found that the suit of the appellant therein could not be dismissed as barred by time merely because it was filed beyond the time fixed by the Revenue Officer and the order under appeal had to be set aside. These were the peculiar facts which weighed with the court to take a view that the question of title was indeed pending. In the present case, no real question of title is pending. Where is the guarantee that the suit for specific performance filed by the petitioner is going to be allowed? What happens if the suit is dismissed. Even if the partition is allowed, the respondents are not going to take the land away since the civil court has fairly protected the rights of the parties by restraining the respondent from alienating the suit property. The view taken by the Commissioner and Financial Commissioner is legally justified and would not call for any interference in exercise of writ jurisdiction.

The petition is accordingly dismissed.