

(2014) 07 P&H CK 0849

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. Nos. 8217 and 7379 of 2010

Piara Singh

APPELLANT

Vs

Financial Commissioner
(Appeals-II)

RESPONDENT

Date of Decision: July 11, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Land Revenue Act, 1887 - Section 19, 20

Citation: (2014) 176 PLR 245 : (2014) 3 RCR(Civil) 1038

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: G.S. Nagra and Pankaj Jain, Advocate for the Appellant; V. Ramswaroop, Addl. A.G, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Paramjit Singh Patwalia, J.

Both the above mentioned Civil Writ Petitions i.e. CWP Nos. 8217 and 7379 of 2010 have been listed together for hearing. Both the above mentioned writ petitions are being disposed of by common judgment. Learned counsel for the petitioner has referred to the facts in CWP No. 8217 of 2010. Therefore, for the sake of convenience, facts from this case are being taken. Civil Writ Petition No. 8217 of 2010 has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 02.12.2009 (Annexure P/11) passed by the Financial Commissioner (Appeals-II), Punjab - respondent No. 1, order dated 17.08.2004 (Annexure P/7) passed by the Commissioner, Jalandhar Division, Jalandhar - respondent No. 2, order dated 27.03.2003 (Annexure P/5) passed by the Collector, Gurdaspur - respondent No. 3 and order dated 11.09.2002 (Annexure P/3) passed by the Assistant Collector Ist Grade, Gurdaspur - respondent No. 4.

2. Both the aforementioned writ petitions arise out of partition proceedings of land measuring 374 kanals 4 marlas situated within the revenue limits of Village Saraspur, Tehsil and District Gurdaspur. Respondent Nos. 5 to 7 filed a partition application before respondent No. 4. It is alleged in the writ petition that without following the procedure and effecting personal service upon the petitioners, said partition application was allowed to be proceeded, as a result of which subsequent proceedings have also been carried out without any notice to the petitioners. It is the case of the petitioners that petitioner No. 1 was not impleaded as party, although he is recorded as a co-sharer in the jamabandi for the relevant year and service upon the other petitioners was also not effected in accordance with law. The entire proceeding are not sustainable in the eyes of law.

3. Upon notice, respondents No. 2 to 4 and 5 & 6 filed their separate written statements averring that the partition application has been rightly decided by the authorities below and in the application, every one was impleaded as a party as per the jamabandi prevalent at the time of filing of application for partition. Due service was effected by way of munadi.

4. I have heard learned counsel for the parties and perused the record.

5. The only contention of the learned counsel for the petitioners is that application for partition was filed on 07.04.2000. At that time, the relevant jamabandi was for the year 1996-97. Piara Singh son of Shiv Singh i.e. petitioner No. 1 has been recorded as purchaser from Shingara Singh and his name figures in the jamabandi for the year 1996-97 (Annexure P/1). However, the name of petitioner No. 1 does not figure in the partition application, rather one name i.e. Piara Singh son of Arjan Singh appears as respondent No. 27 in the application. Learned counsel for the petitioners contended that there is no valid service upon the other petitioners.

6. Per contra, learned counsel for the respondents contended that the partition application has been rightly decided by the authorities below and in the application, every one was impleaded as a party as per the jamabandi prevalent at the time of filing of application for partition.

7. I have considered the contentions raised by the learned counsel for the parties.

8. The only controversy is whether name of petitioner No. 1 figured in the partition application and the service upon other petitioners was legally effected in the partition proceedings. Since partition application was filed on 07.04.2000, the relevant jamabandi applicable was for the year 1996-97. Perusal of jamabandi for the year 1996-97 (Annexure P/1) clearly indicates that name of petitioner No. 1 - Piara Singh son of Shiv Singh has been recorded as purchaser from Shingara Singh. However, perusal of order dated 11.09.2002 (Annexure P/3) reveals that name of petitioner No. 1 does not figure in the memo of parties, but the name of one Piara Singh son of Arjan Singh respondent No. 27 only figures. Petitioner No. 1 is the son of Shiv Singh and his correct parentage does not find anywhere in the partition

application, in spite of the fact that petitioner No. 1 is recorded as co-sharer in the jamabandi for the year 1996-97 in column No. 5 being a purchaser from Shingara Singh etc.

9. So far as effecting of personal service upon the other petitioners is concerned, learned counsel for the respondents has failed to show that service was effected upon any of them personally. The personal service at least at initial stage is required. If there are numerous respondents, the service can also be effected by way of munadi. Section 19 of the Punjab Land Revenue Act, 1887 clearly envisages that revenue officer is required to issue summons for effecting service and the person so summoned shall be bound to appear at the time and place mentioned in the summons. Section 19 envisages effecting personal service by way of issuing summons upon the respondents and so is also recorded in Section 20 of the Act that summons issued by the revenue officer if practicable, be served (a) personally on the person to whom it is addressed or failing him (b) his recognized agent or (c) an adult male member of the family usually residing with him. If the service is not effected in the manner aforesaid or is refused to accept, then it can be by way of pasting a copy of the summon at the last known address of the person. Sections 19 and 20 of the Act lays down a comprehensive law with regard to mode of service of summons. In this case, firstly Piara Singh - petitioner No. 1 has not been shown to be a party and secondly others have not been shown to have been validly served under the provisions of the Act.

10. In view of above, the impugned orders are set aside. Entire partition proceedings from the initial stage whereby application for partition was allowed to proceed till the finalization are set aside. The case is remanded to the Assistant Collector First Grade for fresh decision. The opportunity shall be afforded to the petitioners to file reply and thereafter, the Assistant Collector First Grade shall proceed de novo. Needful shall be done preferably within a period of six months from the receipt of certified copy of this order. The parties are directed to appear before the Assistant Collector First Grade, Gurdaspur on 11.08.2014. Both the aforementioned writ petition are disposed of in the above terms.