

Before K. Kannan, J.

DARSHAN SINGH AND OTHERS—Petitioners

versus

STATE OF PUNJAB & OTHERS—Respondents

CWP No. 17833 of 2009

25th April, 2012

Constitution of India, 1950 - Art. 226 - Punjab Land Revenue Act, 1887 - S. 117 - Private respondents commenced partition proceedings before Assistant Collector 1st grade - Petitioners in the writ petition, resisted the above proceedings on the ground that there existed a partition by private arrangement between their predecessors-

in-interest, and that they had applied for the shares to be affirmed - Asstt. Collector 1st grade rejected contention on the ground that no partition deed was executed - In appeal, the above contention was upheld by the Collector, who observed that the issue of title be decided by ACIG under S.117 of the Act - Commissioner & Financial Commissioner disagreed with Collector - High Court held that there is no requirement of law that division of immovable property could only be effected through a written instrument - Order of Collector restored - Parties directed to appear before ACIG for decision on the issue of title as contemplated under S.117 of the Act - Writ Petition allowed.

Held, that I would hold that the decisions of the Commissioner and the Financial Commissioner are erroneous. The Commissioner was in error by stating that the Collector's power in revision was merely to affirm or set aside the decision taken by the Assistant Collector 1st Grade. If the law contemplates that in a situation, where there existed a dispute on title and that the revenue officer before whom the partition proceedings are brought, could decline an application for partition until the question of determination of title by a competent Court, such a power of the revenue officer could be exercised by every successive authority in the higher hierarchy. It will be absurd to assume that the power that could be exercised by the Court of first instance could not be exercised by the higher official. If the Assistant Collector could have himself invoked the Section 117 of the Act for an adjudication regarding title through a Court, in the manner contemplated under Section 117 of the Act, a fortiori the Collector in the revisional jurisdiction also had such a power. The Collector was, therefore, justified in a case to stop partition proceedings where there clearly existed a prima proof for the fact that the parties had partitioned the properties and made an affirmation before the Assistant Collector, who had directed a proclamation to be made regarding the partition in the year 1972. All that remained to be done was execution of a partition deed. The fact whether the partition was final or not or it was merely tentative, which could become final after drawing up the registered deed was a question of fact. There is no requirement in law that a division of immoveable property could be done only through a written instrument of party. Oral partition is not an anathema to law. It will be quite different, if the bargain between the parties before effecting

a division is itself secured through an instrument of partition. Then, the trappings of the stamp law and the registration Act would apply. On the contrary, if the parties had brought about a partition orally and the fait accompli is sought to be reduced to an instrument and an affirmation by an application before the authority had been made, it ought not to be taken that the execution of a partition deed or the non-registration of the partition would allow the parties to remain joint. The oral partition itself will constitute a division in status as well as a division of property.

(Para 4)

G.P.S. Bal, Advocate, *for the petitioners.*

Nawab Singh Virk, Addl. AG, for respondents No.1 to 5.

Sarabjit Singh, Advocate, for respondent No.6.

None for respondents No.7 to 10.

K. KANNAN, J.

(1) The subject of challenge in this Court is the order passed by the Commissioner, who set aside the order of the Collector and further the order of the Financial Commissioner, who affirmed the order of the Commissioner. The proceedings for partition had been initiated by the private respondents before the Assistant Collector 1st Grade contending that all the properties set out in the petition must be partitioned. It was resisted by the petitioners on the ground that the private respondent's father Jawala Singh and their father Dalip Singh had affected a partition between themselves and they had applied for the shares to be affirmed in the manner already compromised between them. This was put in before the Assistant Collector 1st Grade, Kapurthala on 23.02.1972, who received the signatures of the parties on the list of properties to be partitioned and allotted respectively to the parties. A proclamation was issued on 23.02.1972 that the partition put in by them was being accepted and the 1st party would produce the stamp paper for preparation of articles of partition. It was an admitted fact that the partition deed was not effected.

(2) The contention of the petitioners before the Assistant Collector 1st Grade was that there had already been a complete partition and a fresh partition by taking all the properties as though they remained joint was not

justified. The Assistant Collector 1st Grade rejected the contention and directed the parties to file the statements by observing that so long as the partition deed was not made, the partition could not be said to be completed and, therefore, directed that the case would be taken up for hearing for a future date on 29.11.2001. This was challenged by the petitioners before the Collector on a plea that once a partition had been effected by compromise and the private partition was only being produced before the revenue authority for affirmation of partition, the fact that the partition deed was not drawn up could not afford a ground to the son of one of the parties to apply for fresh partition by disregarding the partition already brought about by a private arrangement. This contention was partially accepted by the District Collector when he observed that the issue involved one of title and, therefore, it should be decided as such by the Assistant Collector 1st Grade under Section 117 of the Punjab Land Revenue Act (for short, 'the Act'). The District Collector also observed that the observation made by him, accepting *prima facie* contention that there had been already a partition by private arrangement through compromise must be resolved through a determination of title and not to be taken as having any bearing on the merits of the case. This order of the District Collector was challenged before the Commissioner by the private respondents herein at whose instance, the partition was sought to be started afresh before the Assistant Collector 1st Grade.

(3) The Commissioner held that the Collector had no power in revision to direct a determination of title and that his duty was only to either affirm the decision or reject it. He had no power to pass an order directing a determination of title under Section 117 of the Act. He also held that so long as the registered partition deed was not brought out, the compromise could not be relied on. He, therefore, directed that the parties would be present before the Assistant Collector 1st Grade for further partition proceedings. This decision was affirmed by the Financial Commissioner in a challenge by the petitioners before him.

(4) I would hold that the decisions of the Commissioner and the Financial Commissioner are erroneous. The Commissioner was in error by stating that the Collector's power in revision was merely to affirm or set aside the decision taken by the Assistant Collector 1st Grade. If the law contemplates that in a situation, where there existed a dispute on title and that the revenue officer before whom the partition proceedings are brought,

could decline an application for partition until the question of determination of title by a competent Court, such a power of the revenue officer could be exercised by every successive authority in the higher hierarchy. It will be absurd to assume that the power that could be exercised by the Court of first instance, could not be exercised by the higher official. If the Assistant Collector could have himself invoked the Section 117 of the Act for an adjudication regarding title through a Court, in the manner contemplated under Section 117 of the Act, *a fortiori* the Collector in the revisional jurisdiction also had such a power. The Collector was, therefore, justified in a case to stop partition proceedings where there clearly existed a prima proof for the fact that the parties had partitioned the properties and made an affirmation before the Assistant Collector, who had directed a proclamation to be made regarding the partition in the year 1972. All that remained to be done was execution of a partition deed. The fact whether the partition was final or not or it was merely tentative, which could become final after drawing up the registered deed was a question of fact. There is no requirement in law that a division of immoveable property could be done only through a written instrument of party. Oral partition is not an anathema to law. It will be quite different, if the bargain between the parties before effecting a division is itself secured through an instrument of partition. Then, the trappings of the stamp law and the registration Act would apply. On the contrary, if the parties had brought about a partition orally and the *fait accompli* is sought to be reduced to an instrument and an affirmation by an application before the authority had been made, it ought not to be taken that the execution of a partition deed or the non-registration of the partition would allow the parties to remain joint. The oral partition itself will constitute a division in status as well as a division of property. The effect of a private partition brought out orally, with no instrument of partition being drawn up has been considered in several other cases and before me a particular decision of the Court rendered in second appeal title **Ajmer Singh versus Dharam Singh (1)**, is placed, where the Court has observed as under:

“19. It is open to any of the co-sharers to seek such affirmation who may apply to the revenue officer. There is no provision in the Act which entails any penal consequences of not

recording such private partition in the revenue record. Thus, the affirmation of the revenue officer of the private partition in the revenue record is a director provision. The purpose of such affirmation is only to determine the right of the State to recover land revenue and to keep its record update. Mere fact that such private partition has not been recorded in the revenue record will not render an act of the parties as totally redundant. It is well-settled that entries in the revenue record do not determine, create or extinguish the title of any person. The revenue record is corroborative of the fact recorded in the revenue record as it is maintained in normal course of the affairs of the State and carries presumption of truth. But failure to seek affirmation of private partition, if otherwise proved on record, cannot be negated only for the reason that the same has not the affirmation from the revenue authorities."

(5) I am in respectful agreement with the said view taken by this Court as reflecting the correct proposition of law and would hold that allowing for partition proceedings to continue, in the manner sought by the private respondents, shall be inappropriate when the defence was that the partition had already been effected and there is nothing to be partitioned afresh. There clearly involved a question of the title and the Collector was justified in directing that the issue of title must be decided and constituted the Revenue Officer himself to assume the jurisdiction, in the manner contemplated under Section 117 of the Act. The order of the Collector, Kapurthala is restored and the impugned orders of the Commissioner and the Financial Commissioner are set aside. The parties will join issues on the respective contentions before the Assistant Collector 1st Grade and they are directed to appear before him on 22.05.2012.

(6) The writ petition is allowed on the above terms.