

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1344 of 2006

Decided on: 31.07.2008.

Shri Rakesh Kumar

... ... Petitioner.

Versus

The State of H.P. and Other.

... ... Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹ No.

For the Petitioner: Mr. Lalit Sehgal, Advocate.

**For Respondents No.1 to 3: Mr. Rajinder Dogra, Additional
Advocate General.**

For Respondent No.4: Mr. Ajay Sharma, Advocate.

For Respondents No.5 to 13: Mr. Harish Dod, Advocate.

Rajiv Sharma, Judge:

A challenge has been laid in this petition to the order passed by the Financial Commissioner (Appeals) dated 29.5.2006 in revision petition No.71 of 2002.

The brief facts necessary for the adjudication of this petition are that respondent No.4 filed an application No.125/T/98 before the respondent No.3, i.e. the Assistant Collector Ist Grade, Una for partition of his share from joint holding. The application was filed on 10th February,

Whether reporters of local papers may be allowed to see the judgment? No.

1998. The respondents No. 5 to 9 and 13 filed their replies on 3.6.1998. The petitioner was ordered to be proceeded against ex-parte on 3.8.1998. He filed an application on 25.2.1999 for setting aside of ex-parte proceedings dated 3.8.1998. The respondent No.3 vide order dated 23.3.1999 set aside the ex-parte order dated 3.8.1998 but denied the prayer for being afforded opportunity to lead his defence. He preferred an appeal to the learned S.D.O.(Civil) on 12.4.1999. The appeal was dismissed by the S.D.O.(Civil) on 9.10.2000. He thereafter preferred a revision petition No.113 of 2000 before the learned Additional Deputy Commissioner, Una (exercising the powers of Commissioner under the H.P. Land Revenue Act). The revision was also dismissed on 28.12.2001. He preferred a revision under Section 17 of the H.P. Land Revenue Act before the learned Financial Commissioner (Appeals). The revision petition No.71 of 2002 was dismissed by the Financial Commissioner (Appeals) on 29.5.2006. The petitioner has assailed the order dated 29.5.2006.

Mr. Lalit Sehgal had strenuously argued that the order dated 29.5.2006 passed by the Financial Commissioner (Appeals) is not sustainable in the eyes of law. The learned Additional Advocate General and Mr. Ajay Sharma appearing for respondents No.1 to 4 have supported the order dated 29.5.2006 passed by the Financial Commissioner (Appeals). Mr. Harish Dod appearing on behalf of respondents No.5 to 13 has adopted the arguments advanced by Mr. Lalit Sehgal.

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

What emerges from the pleadings of the parties in nut shell is that the application was preferred by respondent No.4 for partition. The respondents were served. In fact the respondents N.5 to 9 and 13 had filed their replies on 3.6.1998. The petitioner was proceeded ex-parte on 3.8.1998. On his application, the respondent N.3 set aside the ex-parte order on 23.3.1999. He was permitted to participate in the proceedings. The appeal preferred before the Sub Divisional Officer (Civil) and the revision petition preferred before the learned Additional Deputy Commissioner, Una were dismissed by them by passing reasoned orders.

Mr. Lalit Sehgal had strenuously argued that his client was bound to be afforded opportunity to file objections against the mode of partition. However, he has failed to point out in what manner his client was prejudiced by the mode of partition. It has come on the record that the petitioner's mother and brothers had already filed replies to the application preferred by respondent No.4. The interest of the petitioner was being watched effectively by his family members who were the contesting parties. The application for partition has been preferred by respondent No.4 as noticed above on 10.2.1998. The proceedings for partition must be expeditiously concluded to facilitate the process of enabling the parties to know their exact status/position.

The petitioner has been permitted by the respondent No.3 to participate in the proceedings while setting aside the ex-parte order dated 3.8.1998 on 23.3.1999. He has not been able to point out even before the authorities that what prejudice he will suffer on account of the partition. The order passed by the Sub Divisional Collector, Una is a speaking order. The contentions of all the parties have been noted by the Sub Divisional Collector while deciding the appeal on 9.10.2000. This

order has been rightly up-held by the Additional Deputy Commissioner, Una vide order dated 28.12.2001. The Additional Deputy Commissioner, Una in his order dated 28.12.2001 in fact has made an observation that all the members of the family of the petitioner live in the same village and were present at the time of preparation of the mode of partition on 5.10.1998. It is, thus, evident that the interest of the petitioner was being watched by the contesting parties. Only the share of respondent No.4, who had filed the partition application on 10th February, 1998 was to be separated and the combined ownership/possession of the contesting parties was kept joint. Mr. Sehgal has failed to substantiate in what manner the interest of his client will be harmed on the basis of the mode of partition prepared on 5.10.1998. The partition has to take place as per order dated 5.10.1998 on the basis of existing possession of the respective parties.

In view of the observations made above, there is no merit in the writ petition and the same is dismissed with no order as to costs. The authorities are directed to complete the process of partition on the basis of the mode of partition, if not already effected, within four weeks from today.

July 31, 2008.
(sck).

(Rajiv Sharma)
Judge.