

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 369 of 2015.

Date of decision: 31st March, 2016

Vineet Sood and others **...Petitioners**

Versus

Sh. Netar Singh and others **...Respondents**

Coram

The Hon’ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? No.

**For the Petitioners : Mr. Bimal Gupta, Senior Advocate,
with Mr. Vineet Vashisht, Advocate.**

**For the Respondents : Mr. V.K.Verma and Ms. Meenakshi
Sharma, Additional Advocate
Generals with Ms. Parul Negi, Deputy
Advocate General.**

Tarlok Singh Chauhan, Judge (Oral)

This petition under Article 227 of the Constitution of India seeks quashing of the order passed by the learned lower Appellate Court on 18.8.2015 whereby it set-aside the order of status quo passed by learned trial Court and dismissed the application of the petitioners preferred by them under Order 39 Rules 1 and 2 CPC.

2. The brief facts leading to filing of the instant petition are that the petitioners (hereinafter referred to as the ‘plaintiffs’) filed a suit against respondents No. 1 and 2 herein, as also 30 other persons for declaration to the effect that the order dated 17.12.2012 passed by

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ? Yes*

the Assistant Collector, 1st Grade, Kullu in case No. 18-PT/2012 and subsequent order drawing up instrument of partition dated 18.1.2013 be declared as wrong, illegal, void and inoperative insofar as it relates to the petitioners since they were not even parties to the said proceedings. The petitioners asserted the joint ownership and possession alongwith other co-sharers over the land of the following description:

(A) *land measuring 6-16-0 bighas comprised in Khasra Nos. 2563/192 min, 2563/192 min and 2563/192 min contained in Khatauni Nos. 352, 353 and 353/1,*

(B) *land measuring 2-3-0 bigha comprised in Khasra No. 196 contained Khatauni No. 348 of Khata No. 251.*

(C) *land measuring 0-6-0 bigha comprised in Khasra No. 189 contained in Khatauni No. 354 of Khata No. 255,*

Incorporated in Jamabandi Phati Dhalpur, Kothi Maharaja Tehsil and District Kullu for the year 2001-02. The plaintiffs further sought declaration that mutation No. 2837 attested and accepted on the basis of aforesaid orders, be declared wrong, illegal and not binding upon the plaintiffs and revenue entries may be directed to be corrected accordingly.”

3. It was the specific case of the petitioners that the father and predecessor-in-interest Sh. Banarsi Dass Sood was owner in possession of 1/3rd share i.e. 1-18-0 bighas out of the land described in para-1 supra. It is alleged that the entries in the revenue record were not updated and other co-sharers threatened to raise construction, constraining their predecessor to file a suit for declaration and injunction which was decreed by the trial Court. The decree was affirmed in appeal No. 30 of 2007 vide judgment and decree dated

27.9.2010 declaring the father of the petitioners to be the joint owner in possession of 1/3rd share in the suit land with consequential relief restraining the defendants from questioning the title at the time of partition and the defendants therein were also restrained from changing the nature till the same was ordered to be lawfully partitioned. It was alleged that the respondents in connivance with some of the co-sharers had filed an application for partition of the suit land before the Assistant Collector 1st Grade, Kullu, that too, without impleading the petitioners as parties and to the contrary some of the dead persons and some other persons, who had no right, title or interest of any kind over the suit land had been impleaded as parties. The Collector illegally partitioned the land and thereafter prepared the instrument of partition on 18.1.2013. This fact came into the knowledge of the plaintiffs only in February, 2013, constraining them to firstly issue notice and thereafter file a suit.

4. The respondents No. 1 and 2 filed their written statement raising therein preliminary objections regarding maintainability, jurisdiction, suppression and concealment of true and material facts. On merits, it was averred that the application for partition was filed by impleading all the necessary parties whose names appeared in the revenue record and it was further submitted that the judgment and decree passed by the learned Courts on the suit instituted by the predecessor-in-interest of the petitioners was not binding upon the respondents since they were not party to the suit.

5. During the pendency of the suit, the plaintiffs filed an application under Order 39 Rules 1 and 2 CPC with prayer to restrain

the respondents from interfering in the joint ownership and possession of the petitioners and from forcibly dispossessing them under the garb of the order of partition and instrument of partition drawn up by the Assistant Collector 1st Grade, Kullu.

6. The learned trial Court allowed the application and directed the parties to maintain status quo and on appeal being carried to the learned lower Appellate Court, the order passed by the trial Court was set-aside and the application was ordered to be dismissed leading to the filing of the instant petition.

I have heard learned counsel for the parties and have gone through the records of the case carefully.

7. It is evident from the material placed on record that the learned trial Court has categorically held that since both the parties were claiming to be in possession and their rights were yet to be determined and the same would be possible only after the parties had led their evidence, ordered the maintenance of status quo. While the learned lower Appellate Court after relying upon the order passed by the Assistant Collector 1st Grade, Kullu, and after further holding that the judgment and decree passed in favour of the predecessor-in-interest of the petitioners was not binding on the respondents since they were not parties to the same, vacated the stay order.

8. It is not in dispute that the petitioners are owners to the extent of 1/3rd share in the land as described in para (A) supra. Once that is the admitted position, then I fail to understand how the partition could have legally been ordered to be carried out without impleading

the petitioners as parties to the proceedings. After all, partition has to be amongst the share-holders.

9. Further, the decree passed by a competent Court of jurisdiction could not have been discarded simply on the ground that the same was not *inter se* the parties, more particularly, when even the respondents did not dispute that the petitioners were co-sharers of the land. Even otherwise, the only contention put-forth by the respondents was that since the predecessor-in-interest of the petitioners had themselves acknowledged that he purchased the suit land by means of *tatima*, therefore, the petitioners could not have been held to be co-sharers of the suit land. Even if it assumed to be so, then where was there a requirement to have moved the application for partition of the land. That apart, once the application for partition had been preferred, then it was incumbent upon the Assistant Collector, 1st Grade to have arrayed all the co-sharers as parties.

10. In addition to the aforesaid, it would be noticed that this Court vide order dated 3.9.2015 had called for the records of the partition proceedings conducted by the Assistant Collector 1st Grade, Kullu and after perusal of the same, this Court would rather not comment on such proceedings because the less said the better. Anyhow, these are the matters, which are required to be determined on the basis of legal evidence. Suffice it to say that in the teeth of the findings already recorded by the Civil Court much reliance ought not have been placed on the proceedings conducted by the Assistant Collector 1st Grade, Kullu, the legality and validity of which was yet to be determined.

11. It is more than settled that it is the findings recorded by the Civil Court which are binding on the revenue Court and not vice-versa. Therefore, due deference ought to have been given to the decree of the Civil Court especially when none of the respondents had questioned the same either by separate suit or by having filed a counter-claim.

12. Having said so, the order passed by the learned lower Appellate Court dated 18.8.2015 cannot be countenanced and sustained and is accordingly set-aside. Consequently, the order passed by the learned trial Court dated 25.11.2014 is ordered to be restored. However, it is made clear that the findings, observations, reasons and conclusions recorded hereinabove are solely for the purpose of determination of this petition and the trial Court shall without being influenced by the same proceed to decide the matter on merit in accordance with law.

With these observations, the petition stands disposed of, so also the pending application(s) if any, leaving the parties to bear their own costs.

Copy ***dasti***.

March 31, 2016
(GR)

(Tarlok Singh Chauhan)
Judge