that the other parties have no interest in the litigation as they have remain absent in the proceedings. The court while passing the order impugned has ignored the fact that other parties including the petitioner were the applicants to whom no notice of any kind was ever served by the court below. And this has been done by the defendant no. 5 with a malafide and calculated intention to only get her share in the property by concealment of certain facts.

e. That the petitioner, though having her name recorded in the mutation no. 471, is without any land as the petitioner being entitled to her share in the property was never put into possession by the officer making the order impugned. Also, no instrument of partition has been made in the case, and as such the order impugned suffers from legal infirmities needs to be revised.

5. Counsel for respondent No. 1 filed objections wherein it has been submitted that:

a. That the petitioner has made Civil Revision before this Court with prayer for putting the petitioner into possession of her separate share after ascertain her share, which means that the petitioner wants this Court to determine her share in the Property after holding partition proceedings and be put in to possession accordingly, which is misconceived and against the provisions of law as contained under Section-119A (Proceedings) of the Land Revenue Act Svt. 1996, which provides that the proceedings under this chapter i.e. Chapter –X, partition shall be undertaken by a Revenue Officer not below the rank of Assistant Collector of 1st Class.

b. That section 117 of the Land Revenue Act, Svt. 1996 states that when the Order of Partition has become final, the Officer making the partition shall

put the parties entitled to separate possession into possession of such properties.

If for any reason any party to a Partition complains that he has not been put into separate possession of the land to which he is entitled under the Partition, he may apply to the Revenue Officer or his successor in Office to put him in possession.

Such an application must be made within three years of the preparation of instrument of Partition as prepared under Section- 116. If an application be made after the expiry of three years, the applicant shall be referred to the Civil Court to seek his relief by a Suit for possession.

In substance, the Court of Divisional Commissioner is not an appropriate Forum to decide the instant Revision as per provision of Section-117 supra and has prayed that the instant Revision Petition has no legal substance and is, liable to be rejected, being against the provisions of law; and

c. That Section -105 to 118-E of the Land Revenue Act, Svt. 1996 deals with partition of land of all kinds, and none of the Sections aforementioned provides for Revision against the instrument of Partition, and therefore, the present Revision has no legal substance and is liable to be rejected.

d. That the Tehsildar has passed Order dated 20.08.2011 after following due procedure of law contained under Section-105 to 117 of the Land Revenue Act, Svt. 1996. The Order of the Tehsildar is legally valid and does not suffer from any legal infirmity. Moreover, Chapter –X Partition of the land Revenue Act, Svt. 1996 does not provided for Revision. As such, the Revision against the Order of Tehsildar dated 20.08.2011 has no legal substance and cannot be proceeded with under law and is, therefore, liable to be rejected, being no nest in the eyes of law.

e. That the Tehsildar, before passing the Order impugned dated 20.08.2011, has recorded that he is satisfied that none legal heirs of Kesri Singh Co-sharer, except for Darshna Devi, have presented themselves before the court despite service, which shows that they have no interest in the case. Moreover, they have acknowledged before the Court of Settlement Officer that they have No Objection in respect of partition of land, and thereafter the Impugned Order dated 20.08.2011 was passed accordingly. As such, the order of Tehsildar dated 20.08.2011 is perfectly valid and does not suffer from any legal infirmity which may need no interference of this Hon'ble Court.

6. During pendency of petition, publication was made for the service of respondents on 03.06.2016 in Hindi newspaper Amar Ujala by virtue of which Advocate Keshav Gupta appeared for respondent no. 1 and remaining respondents did not appear and, thereafter, the respondents No. 2 to 5 were set ex-parte and the case was fixed for arguments on merits.

7. Counsels for both the parties are present. Counsel for petitioner pleaded that she never moved any application for partition before any competent authority. Though her name also exists in the mutation of inheritance but her share has not been given to her. Only the Respondent No. 5 has been given the share after partitioned. Tehsildar in his order has mentioned that other than Darshna Devi, no one else is interested and has no objection to the partition, whereas statement of the other interested parties was never recorded by him.

8. Counsel for respondent pleaded that applicant/ petitioner is not in possession and as per Section-12 of LRA the petitioner is not entitled for partition. He further pleaded that Tehsildar has passed order after following due procedure contained under Sections 105 to 117 of LR Act and does not suffer from any legal infirmity, and that the petitioner, if aggrieved, may approach Civil Court for obtaining possession.

9. I have heard the counsels for both the parties and perused the impugned order. It has been found that the parties are successors of Kesri Singh (deceased) and mutation of inheritance No. 471 has been attested in their favour. The contention of the petitioner is that despite her name figuring in the mutation of inheritance, she has been deprived of her share, whereas on the other hand the respondent no. 5 who filed partition application had also included her (petitioner's name) in the application without her knowledge, and got her share partitioned. The court below has not issued any notice to her and has passed order only on the basis of statement of other share holders as recorded before the Settlement Officer. This contention and argument of the petitioner has legal force. It was the Tehsildar who should have satisfied himself by recording statements of all the co-shares and should not have passed order merely relying on the statements of other co-sharers as noted to have been recorded before the court of Settlement Officer, as mentioned in impugned order, and such order passed at the back of the effected parties is nonest in the eyes of law.

10. The plea of the counsel of respondent no. 1 that the petitioner is not in possession over the land under her share, and if aggrieved she may approach the Civil Court, is not justified because the issue is whether respondent no. 5 was in possession when her share was decided by the Tehsildar and was accordingly handed over to her. The counsel for Respondent No. 1 has therefore, tried to apply different yardsticks for different parties, who otherwise are similarly placed.

11. The proper course was to initiate partition proceedings under law to partition the whole landed estate of Late Kesri Singh and divide the shares of the parties due to them, and to put all the share holders in their respective possession, rather than singularly putting the respondent No. 5 only in possession of her share as has been done in the instant case.

12. In view of the above, this court has come to the conclusion that petition having merit deserves to be allowed and order impugned set aside. The case deserves

to be remanded back to Tehsildar concerned for de-novo enquiry and to pass fresh order after hearing all the interest parties.

13. Accordingly the case file under Section 15-3 (B) of LR Act is submitted to Ld. Financial Commissioner (R) J&K, Jammu for information and for further proceedings.

14. Both the parties are directed to appear before Ld. Financial Commissioner (R) J&K, Jammu on 30.01.2018.

(Dr. M.K. Bhandari) IAS
Divisional Commissioner,
Jammu.

Announced
10-1-2018