

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10000 of 2010
Date of Decision: 15.10.2015

Amrit Pal and another

. . . .Petitioners

Versus

Financial Commissioner, Appeals-II, Punjab and Chandigarh

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikram Anand, Advocate,
for the petitioners.

Mr.R.S. Chauhan, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J. (ORAL)

The brief facts of the case are that one Balwant Singh son of Ram Singh was the owner of land falling in Khewat No.65 Khasra No.15-R/4/2 (1-8), 4/3 (0-8), 5/1(7-2), Khewat No.56 Khasra No.34-R/9/1 (1-8), 12/2(2-4), 40-R/23/2 (6-4), Khewat No.57 khasra No.22-R/20/2 (4-16), 34-R/2(3-8), 13/1 (5-13), 40-R/18/2 (6-1), 44-R/3/2 (3-0), 4(2-12), situated in the area of Bheekhowal Tehsil and Distt. Hoshiarpur.

After the death of Balwant Singh, all his three sons became owner of 1/3rd share each. Balkar Singh filed an application under Section 111 of the Punjab Land Revenue Act, 1887 [for short 'the Act'] for a separate khewat. The mode of partition was sanctioned on 29.3.2006, *Naksha Be* was prepared on 23.6.2006 and *Sanad Taksim* was prepared on 17.10.2006. The petitioners,

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I attest to the accuracy and
authenticity of this document

who are the heirs of Dharam Singh, did not challenge the sanctioned mode of partition and *Naksha Be* prepared on the basis of mode of partition rather three separate appeals were filed before the Collector by Amrit Pal Singh and Jatinder Pal Singh both sons of Dharam Singh and their mother Baldev Kaur widow of Dharam Singh. All the three appeals were dismissed by the Collector and the revision preferred before the Commissioner and Financial Commissioner was also dismissed. Thereafter, the land in question was also mutated separately in the name of answering respondents vide mutation No.2179 and they also entered into possession of their separate khewats. It is also not disputed that after entering into possession, both the parties, namely, the present petitioners and the answering respondents have raised construction over their respective portions. However, the present writ petition has been filed by Amrit Pal Singh and Jatinder Pal Singh but not by their mother Baldev Kaur, who had also lost before the Financial Commissioner, to challenge order dated 23.6.2006 passed by the AC 1st Grade, order dated 10.10.2007 passed by the Collector, Hoshiarpur and order dated 23.4.2009 passed by the Commissioner.

The only argument raised by learned counsel for the petitioners is that though they were having 1/3rd share each in the total land yet they have been given land, in partition, on road side to the extent of 2 karam out of 30 karam. After notice, answering respondents have filed their reply in which they have averred that the petitioners have been allotted land in Rect. No.34 i.e. Khasra No.9/1/1/2 (1-2), 12/2/2 (1-18) in equal share i.e. 1/2 share and similarly 1/2 share each in Rect. No.34 khasra No.8/2/1 (1-4), 13/1/2 (4-4). It is also averred that the answering respondents

have been allotted the land in Rect. No.34 Khasra No.8/2/2 (2-4), 9/1/1/1 (0-6), 12/2/2 (0-6), 13/1/1 (1-9). It is also averred that the total front of the land is not 30 karams but 35 karams, out of which 17 karams have been given to the petitioners and 18 karams have been given to the answering respondents. It is further submitted that the averments made in this regard have not been denied by the petitioners by way of replication, therefore, it has been accepted by them.

During the course of hearing, learned counsel for the answering respondents also submitted that the petitioners have raised construction over the land which has been allotted to them in partition, therefore, they cannot agitate about the error in the partition proceedings at this stage.

I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that since the petitioners have not challenged the sanctioned mode of partition, *Naksha Be* prepared by the Kanango on the basis of sanctioned mode of partition and one of the co-sharers namely, Baldev Kaur has not even challenged the order of the Financial Commissioner before this Court in the writ petition and has accepted the order passed by the Collector, Commissioner and Financial Commissioner against the deed of partition dated 17.10.2006, the petitioners have no legal right to challenge the order passed by the Financial Commissioners as it would operate *res judicata* as the finding recorded by the Financial Commissioner in the case of one of the co-sharers Baldev Kaur has become final. Moreover, the petitioners have already entered into possession over the land in question which has been mutated in their favour and have raised

construction over it, therefore, they have accepted the partition and are now agitating this issue only to create unnecessary harassment to the answering respondents.

In view thereof, I do not find any merit in the present petition and the same is hereby dismissed.

15.10.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**