

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

Civil Writ Petition No.23891 of 2014 (O&M)

Date of Decision: 06.05.2015

Laxmi Chand and others

..... Petitioners

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Arvind Singh, Advocate for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana
for respondent Nos.1 to 4.

Mr. Pritam Singh Saini, Advocate for applicant/respondent No.5
in C.M. No.447 of 2015.

JASWANT SINGH, J. (Oral)

Krishan Lal/respondent No.5 on having purchased 2 Kanal and 4 Marlas of land in two chunks from Mehar Chand s/o Jagdish Chand, vide Sale Deed dated 22.09.2010, filed an application on 03.05.2011 (**Annexure P-1**) seeking partition of his share from rest of the co-sharers, who are concededly the family members. In the application, the prayer was for allotment of land at two places. The Para 3 of the application reads as under:-

“ 3. That the land in dispute is situated at different places. One chak of the land in dispute is near the Village Abadi which is more valuable, therefore, the partition be done by disturbing the possession and a separate kurra of the applicant be made along with khasra no.24//2 and the balance area be completed with the abutting land and a separate kurra of khasra no.30//23/5 be made so that the applicant may take benefit of the land in dispute. ”

The petitioners (respondents in the partition proceedings) filed amended written statement of the application for partition on 17.04.2012. It included the counter-claim with the assertions that the oral partition had taken place between the

family members including the said Mehar Chand and, therefore, partition had taken place as detailed in Para 1 of the counter-claim. Accordingly, the prayer was made for entering the details for effecting the partition as per family partition in the revenue record.

The grievance of the petitioners is that without giving any opportunity to the petitioners for filing objections to the *Naksha bey*, the Revenue Officer proceeded to finalize the mode of partition on 21.09.2012 (**Annexure P-14**), moreso when the appeal filed by the petitioners against the dismissal of their objections/counter-claims to the proposed mode of partition were pending.

From the separate written statement filed by the State and the respondent-Krishan Lal, it is revealed that after finalization of the mode of partition vide impugned order dated 21.09.2012 (**P-14**), the *Sanad Taksim* was prepared on 09.05.2013 (**Annexure R-2/5**).

The record also bears out that the Financial Commissioner, Haryana in the pending proceeding regarding challenge to the dismissal of the objections to the proposed mode of partition filed by the present petitioners had obtained a report regarding the factual position of the possession of Krishan Lal before and after the partition. The said report dated 25.07.2014 submitted by the Tehsildar, Bilaspur is available at **Annexure P-9**.

Perusal of **P-9** reveals that Krishan Lal at the time of sale from the previous co-sharer-Mehar Chand was put in possession on the south western corner of Khasra No.25//5/1 measuring 2 Kanal 4 Marlas on which he had cultivated his crop. After partition, he has been put in possession in Khasra No.36//24/2/1, 25/5/1 measuring 2 Kanal 4 Marlas. From the perusal of the extract of *Aksh Shijra* prepared before and after partition, it is revealed that respondent/Krishan Lal has been put in possession of a portion of joint land the

frontage of which is much more than to the extent of his share in the joint land.

Adding to the aforesaid argument regarding frontage, learned Counsel for the petitioners submits that the partition proceedings have been finalized without separating the share of each of the co-sharers by ignoring the claim of the said co-sharers.

Faced with the situation, learned Counsel for the applicant/respondent-Krishan Lal, very fairly states that he has no objection if the partition are relegated back to the stage of finalization of *Naksha bey*, subject to the maintenance of the possession of the applicant-Krishan Lal as existing today till the finalization of the partition proceedings. He, however, undertakes that his client would not change the nature of the land in his possession as on today. It is hoped that no hindrance shall be caused to the use of the parcel of land in his possession.

In view of the aforesaid discussion and the common stand, the sanctioning of the *Naksha bey* on 21.09.2012 (**P-14**) and the subsequent *Sanadh Taksim* dated 09.05.2013 (**Annexure R-2/5**) are set aside and the parties are relegated back before the Assistant Collector 2nd Grade, Bilaspur to the stage of mode of partition after preparation of *Naksha bey*, the fact of the possession of the parties prior to the finalization of the **P-14** would be kept in mind while finalizing the mode of partition. Parties to appear before Assistant Collector 2nd Grade, Bilaspur on 28.07.2015. The Authorities are further directed to complete the partition proceedings by giving limited opportunities within three months from the date of receipt of certified copy of this order.

Disposed of in the above terms.

May 06, 2015
Gagan

(JASWANT SINGH)
JUDGE