

LPA No.2019 of 2013 (O&M)

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

LPA No.2019 of 2013 (O&M)

Date of Decision: September 30, 2015

Mam Chand and others

...Appellants

Versus

Satish Kumar and others

....Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. L.N. Verma, Advocate,
for the appellants.

..

SATISH KUMAR MITTAL, J.

The appellants have filed this intra-court appeal under Clause X of the Letters Patent against the order dated 16.07.2013 passed by the learned Single Judge, whereby the writ petition (C.W.P. No.2995 of 2011) filed by the contesting private respondents was allowed and the order dated 20.12.2010 (Annexure P-11) passed by the Financial Commissioner as well as the order dated 3.12.2004 (Annexure P-5) passed by the Assistant Collector 2nd Grade, have been set aside.

This appeal is barred by limitation, and along with the appeal the appellants have filed applications (CM Nos.5138 and 5139-LPA of 2013) for condonation of delay of 14 days in re-filing and 33 days in filing the appeal. Though no sufficient grounds have been given explaining the

reasons for not filing and re-filing the appeal within limitation, yet we have heard the learned counsel for the appellants on merits and gone through the impugned order passed by the learned Single Judge.

The instant case pertains to the partition of agricultural land among four brothers having an equal share in the same. The total land under partition is 417 Kanals 18 Marlas. This land is situated in three blocks at different places. Block 1 consists of 257 Kanals 14 Marlas of land adjoining the main road, i.e. Nilokheri-Pehowa Road. The said piece of land is very valuable as compared to other two blocks which are situated near the village *abadi*. The dispute in the present case is about partition of this block. Two brothers, who are appellants herein, claimed that they are in possession of this block, therefore, the land of the entire block should be given to them. On the other hand, the contesting respondents claimed that as per the settled mode of partition, all the four brothers are to be given equal share of land on the road side, as per their respective shares.

Undisputedly, in this case when the partition application was filed by the contesting respondents, an objection was raised that the land has already been partitioned between the parties in a private partition, therefore, the application for partition of the land is not maintainable in view of Section 117 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act'). The said objection was rejected and the partition proceedings were allowed to proceed. The said order was not challenged by the appellants by filing an appeal or revision. Thereafter the mode of partition was prepared by the Assistant Collector 2nd Grade, according to which, out of the joint land, 4 kurras were to be carved out for all the four brothers. The

land which adjoins the road was to be given equally to each of the four brothers. None of the appellants (heirs of two brothers who are in possession of the entire land) file any objection to the mode of partition and ultimately the same was confirmed/sanctioned by the Assistant Collector Ist Grade vide its order dated 03.09.2004 (Annexure P-4).

Undisputedly, against the order of sanctioned mode of partition a remedy of appeal is provided under Section 118(2) of the Act but no appeal was filed by the appellants challenging the said sanctioned mode of partition.

Thereafter, *Naksha-Be* was prepared and all the four brothers were given equal land on the road side as per the sanctioned mode of partition. Instead of filing appeal against the order dated 03.09.2004, the appellants filed a review application before the Assistant Collector 2nd Grade by raising objections to the mode of partition. The Assistant Collector 2nd Grade allowed the said review application vide order dated 03.12.2004 and a reference was made by him in this regard to the Collector. On that reference the Collector got appointed a Local Commissioner for inspection, who submitted his report that partition of the joint land in question is not possible without disturbing the possession as all the co-sharers have to be given equal share on the land abutting the road.

Consequently, vide order dated 31.05.2005 (Annexure P-7) the Collector rejected the reference of review made by the Assistant Collector 2nd Grade.

The appellants challenged the aforesaid order by filing a revision before the Commissioner, Rohtak Division, Rohtak which was dismissed vide order dated 16.11.2006 (Annexure P-9). They further filed

the second revision before the Financial Commissioner which was allowed vide order dated 20.12.2010 (Annexure P-11). The said order of the Financial Commissioner was set aside by the learned Single Judge while observing as under:-

“In the ordinary course of nature, if an order is appealable, before the appeal is filed, the remedy of review can be availed especially when it is found that there is an error of fact apparent on the face of record, but in a case like the present one in which review application has been filed only because of the reason that the limitation to file the statutory appeal had expired, it cannot be granted as a remedy available to respondent nos.3 and 4 because the appeal could have been filed along with application under Section 5 of the Limitation Act, if any, as the scope of appeal is altogether different from the scope of review because in an appeal the Court has the jurisdiction to reconsider the matter while re-appreciating the evidence to find out any perversity, but in the jurisdiction of review, the Court is only confined to correct the errors of omission or commission which too are apparent on the face of the record.

Thus, in my view, the procedure adopted by respondent nos.3 and 4 in filing the review application, as has been referred to above, is not appropriate and in accordance with law and as such, its reference, which has been confirmed by the Financial Commissioner, is also illegal.”

Learned counsel for the appellants argued that though it is not disputed that against the order of sanctioned mode of partition the appellants

could have filed the appeal under Section 118(2) of the Act, but even if they have not availed the said remedy within limitation, they could have also filed a review application before the authority as there is no bar that no such review application can be filed when the remedy of appeal is available. In this regard, it has been argued that the appellants are rustic villagers. They were not aware that the appeal against the order of sanctioned mode of partition was to be filed within fifteen days and they came to know about this fact after 25 days, therefore, they filed an application for review. In our opinion, such explanation has rightly been rejected by the learned Single Judge and it has been held that when the remedy of appeal has been specifically provided and the same has not been availed within the specified period, the Assistant Collector 2nd Grade should not have entertained the review application and made a reference to the Collector for his approval. In this case, the Collector has also considered the recommendations made by the Assistant Collector 2nd Grade about the change in the sanctioned mode of partition and after the Local Commissioner's report, has rejected the reference while observing that in the present case equal partition of the land in question among four brothers is not possible without allotting the land equally to them abutting the road. It does not stand to any reason that such an order, which was affirmed by the Commissioner, was set aside by the Financial Commissioner. Neither in equity nor under the law, the appellants were having a case for allotment of the entire land abutting the road merely on the plea that they were in possession of the valuable joint land. It is equally well settled that possession of a co-sharer is deemed to be possession of all the co-sharers, as held by the Full Bench of this Court in

Bhartu v. Ram Sarup, 1981 PLJ 204. This principle of partition of the joint land has been accepted by this Court in **Hardeva and another v. State of Haryana and others**, 2013(2) R.C.R. (Civil) 897 while observing as under:-

“....While allowing for parties to retain the property in the respective possession is most desirable, it is not always inviolable, for situation, which could arise where it will be grossly inequitable to allow for continuance of such possession in excess of his entitlement. If it was only fair that when an undivided property is sought to be partitioned, equity prevails to ensure that the property is divided in equal moieties keeping in mind the valuation of the property. It does not require any extensive reasoning to see that the property, which is appurtenant to road is more valuable than properties which are interior to the same.”

Thus, looking from any angle, the appellants have no case for interference in the well reasoned order passed by the learned Single Judge.

No merits. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 30, 2015
vkg

(MAHAVIR S.CHAUHAN)
JUDGE