

LPA No. 2124 of 2014. [O&M]
Date of Decision: 09th March, 2015.

State of Punjab & Ors.	Respondents
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The order dated 29th September, 2014 passed by learned Single Judge is under challenge in this Letters Patent Appeal. The learned Single Judge has set aside the order of the Financial Commissioner whereby the partition proceedings which are almost ripe being at the final stage, were set aside and the matter was remanded to the Assistant Collector Grade-I, Kharar for a fresh decision.

[2]. The above stated order was passed by the Financial Commissioner at the instance of predecessor-in-interest of the appellants who admittedly had purchased 2 kanal land out of the joint holding of 81 kanals 7 marlas vide sale deed dated 20.09.1994. The contesting respondents No. 3 and 4 on the other hand purchased 1/6th share of the land measuring 61 kanal 1 marla, i.e., 10 kanals 3 marlas vide sale deed dated 27.05.1991. Another piece of land measuring 9 kanals 13 marlas was purchased by them in the year

1999.

[3]. The partition proceedings commenced in the year 1994. Even after more than 20 years the proceedings are awaiting finality. The record reveals that earlier also the matter was remanded and then the proceedings re-started in the year 2003. The Assistant Collector Grade-I, Kharar vide order dated 06.07.2005 [P-3] observed that the factum of possession at the spot would be kept in view, though certain changes in the Site Plan were carried out by him on acceptance of the objections raised by the respondents.

[4]. Learned Single Judge has found no justification in the order passed by Financial Commissioner as the remand order ought not to have been passed at the behest of a subsequent vendee. Such a recourse would never allow the proceedings to conclude.

[5]. The grievance of appellants is that they have raised construction over their land measuring 2 kanals and their possession thus deserves to be protected while partitioning the joint holding.

[6]. We have given our thoughtful consideration to the submissions made on behalf of the appellants. Their total share is admittedly 2 kanals only out of the total land which is more than 81 kanals. As against it, the private respondents have a substantial share of more than 20 kanals. Nevertheless, the appellants want to protect their possession over 2 kanals of land abutting the road. This would be totally detrimental to the interest of major share holders like the private respondents. The appellants can not have their share exclusively on the front side and abutting the road. Front side would ordinarily be partitioned proportionate to the respective shares.

[7]. We have no reason to doubt that the Assistant Collector Grade-I shall proceed with the matter keeping in view the settled principles including balance of equity in favour of the parties.

[8]. Dismissed.

(SURYA KANT)
JUDGE

March 09, 2015.
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(NARESH KUMAR SANGHI)
JUDGE