

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

LPA No.81 of 2015 (O&M)
Date of Decision: 12.05.2015

Vikas Gupta & Ors.

... Appellants

VS.

FCR Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present: Mr. RS Chauhan, Advocate for the appellants

Mr. Aman Bahri, Addl. AG Punjab

Mr. Amardeep Singh Gill, Advocate
for respondent-Caveator

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal impugns the order dated 12.11.2014 whereby learned Single Judge has dismissed the appellants' writ petition in which orders passed by the Revenue authorities in partition proceedings were challenged.

(2) Heard learned counsel for the appellants and the contesting respondents who are on caveat.

(3) The facts may be noticed briefly. The total land measuring 72K-4M is situated within the revenue estate of village Mehmadpur, Tehsil and District Jalandhar. The appellants purchased 24K 1M land out of the above mentioned total land vide three different sale deeds dated 25.05.2000.

(4) Respondents No.5&6 also purchased the land measuring 27 kanal 2 marla 6 sarsai out of the above mentioned

land vide three different sale deeds registered on 30.04.2001, 02.05.2001 and 09.05.2001.

(5) The contesting respondents applied for partition of the suit land which was a joint holding and vide order dated 10.04.2006, the Assistant Collector, 1st Grade proposed the mode of partition which expressly stipulated that the joint holding shall be partitioned equitably amongst all the co-sharers keeping in view the value of the land and that the land abutting the road shall be given to the co-sharers proportionately as per their respective share by breaking the existing possession. Since the contesting respondents were satisfied with the proposed mode of partition they did not submit any objections. However, the Assistant Collector for the obvious reasons, while finalizing the mode of partition on 28.04.2006 made sweeping changes in the mode of partition and ordered that "*partition should be done by keeping the possession intact*".

(6) As the appellants are in possession of the land abutting the road more than their proportionate share in the joint holding, the private respondents went in appeal which was dismissed by the Collector vide order dated 05.02.2010. Thereafter they preferred a revision petition which was allowed by the Additional Commissioner (Appeals) Jalandhar vide self-speaking order dated 26.10.2010 (Annexure P7) observing as follows:-

“All the co-sharers are entitled to proportionate share in the qualitative land having more value in comparison to the other land. There seems to be weight in the contention that the entire land is situated in two different blocks. One block contains land situated on Adampur Alawalpur Road which is definitely more valuable. It was rightly provided in clause 2 of the mode of partition that the partition shall be done by disturbing the possession and keeping in view the quality of the land under partition. It was provided in clause No.2 of the proposed mode of partition that the land situated on the road shall be distributed amongst the co-sharers as per share/entitlement. I am at a loss to understand as to what prompted the AC Ist Grade to change clause No.2 of the mode of partition while approving the same vide order dated 28.4.2006 the AC Ist Grade has completely changed this clause and provided only one line that the partition shall be effected by maintaining the possessions.”

(7) Consequently, the mode of partition as finalized on 28.04.2006 was set aside and the matter was remanded to AC-I,

Jalandhar for fresh decision to do fair and equitable partition of the land amongst the parties. The Financial Commissioner also upheld that order.

(8) The aggrieved appellants approached this Court but their writ petition has been dismissed by learned Single Judge giving rise to the LPA.

(9) It may be seen that out of the total land measuring 72K 4M, share of the appellants is slightly more than 24K whereas the share of the contesting respondents is more than 27K 2M. The remaining land is owned by other co-sharers.

(10) In this view of the matter and keeping in view the settled principles which need to be followed in partition proceedings, the entire land abutting the main road cannot be given to the appellants only because they are in its possession. The land abutting the road has to be partitioned after breaking the possession so as to give the same proportionately to all the co-sharers keeping in view their respective landholdings. This is what was proposed as per the mode of partition dated 10/13.04.2006. The said mode was, however, drastically changed by Assistant Collector in favour of the appellants so as to protect their possession over the land abutting the main road but that exercise being contrary to the well-known principles of partition, learned Additional Commissioner (Appeals) rightly intervened in the matter and directed that the land be partitioned keeping in

view the value of different blocks and also by breaking the possession so that every co-sharer gets the land abutting the main road depending upon his total land-holding. Such a mode of partition is totally fair, just and equitable. It was also agreed to by the parties on 10/13.04.2006 when none of them filed their objections. The subsequent changes behind the back of the contesting respondents was an illegal exercise and has been rightly set at naught.

(11) It shall be the duty of the Assistant Collector First Grade to issue notice to the other co-sharers and ensure that the mode of partition as was proposed on 13.04.2006 is meticulously complied with.

(12) The appeal stands dismissed accordingly.

(Surya Kant)
Judge

12.05.2015
vishal shonkar

(P.B. Bajanthri)
Judge