

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

**CWP No.3355-2016(O&M)
Date of Decision: 24.05.2016**

Balbir and another

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Arun Jain, Senior Advocate, with
Mr. Kushagra Mahajan, Advocate
for the petitioners.

Paramjeet Singh Dhaliwal, J.(Oral)

CM No.3451-CWP of 2016

CM is allowed. Accompanying annexes P12 to P16 are taken on record subject to all just exceptions.

CWP No. 3355 of 2016

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing order dated 15.03.2012 (Annexure P-9) passed by respondent No. 1 Financial Commissioner, Haryana; order dated 15/01/2010 (Annexure P-8) passed by respondent No. 2 Commissioner, Hisar Division, Hisar; order dated 24/03/2009 (Annexure P/6) passed by respondent No. 3 Collector Subdivision, Jind and order dated 09/09/2008 (Annexure P-4) passed by respondent No. 4 Assistant Collector 2nd Grade, Julana, District Jind.

Heard.

Learned senior counsel for the petitioners vehemently contends that land has already been partitioned amongst the co-sharers and co-sharers are in their respective possessions since long, while partitioning the land respective possessions of the co-sharers have been disturbed. Actually there are 2 taks of land, in one tak, a set of 2 co-sharers is in possession and in other tak, another set of 2 co-sharers is in possession. Co- sharers have 1/4th share each in total land measuring 416 Kanal 11 Marla. The Learned senior counsel for the petitioners made reference to the application for partition and contends that in the application it is mentioned that land was partitioned, which indicates that co-sharers were in established possession. The learned senior counsel relied upon judgment titled as *Ajmer Singh versus Dharam Singh 2006 vol 2 PLR 25*.

I have considered the contention raised by the Ld. senior counsel for the petitioners the same is not acceptable on the face of it as the perusal of the Jamabandi for the year 2013 -14 shown during the course of arguments reveals that in cultivation column No. 5 of Jamabandi entry shown is Makbuza Malkan, Khudkashat means possession of all owners/co-sharers meaning thereby possession of all co-sharers is joint. There is no separate Khatuni indicating individual possession of co-sharers. So far as the judgment cited is concerned the same is not applicable to the facts of the present case as in the present case there is no oral partition nor exclusive possession has been established on record. In the judgment referred by the learned Senior counsel for the parties it was established that co-sharers have entered into respective possessions with mutual consent and were in enjoyment of their respective shares. In the present case, no document has been brought on record to show separate possession of each of the co-

sharer.

Admittedly, upon notice in the application for partition before A/C 1st grade the petitioners appeared. After consideration of the application AC 1st grade ordered to proceed with the application for partition. The petitioners did not challenged that order nor raised the question of title so that partition may not proceed. After that *Naksha Alaf (ka)* was called thereafter mode of partition was prepared and approved. No appeal or revision was filed against the order of proceeding with the application for partition as well as mode of partition. Ultimately mode of partition became final. Thereafter, *Naksha bey (kha)* was called, objections invited. Petitioners filed objections to *Naksha Bey (kha)*. After hearing objections to *naksha bey (kha)* same were considered and rejected. Thereafter, issue of private partition is being raised which is not at the appropriate stage. The petitioners should have challenged the initial order of proceeding with the partition application. Now the only option which remains with the petitioners is to approach the civil court against the partition. In view of the above the contention of the learned senior counsel for the petitioners that they are in exclusive possession on the basis of earlier partition is rejected being devoid of merit.

The Ld. senior counsel for the petitioners further contends that the impugned orders passed by the revenue authorities are non speaking and sketchy and as such not sustainable in the eyes of law. Specific reference has been made to the impugned order dated 09/09/2008 (Annexure P-4) passed by Assistant Collector 2nd Grade, Julana. It is true that AC 2nd Grade has not dealt with the objection properly and he has only stated objection

perused and dismissed. In partition proceeding at the stage of approving mode of partition and against *Nakshay "Bey" (Kha)* parties can file objection if same is not according to mode of partition. The orders of the revenue authorities are not happily worded. They have not dealt with the objection to *Naksha Bey (Kha)* in detail. The matter is lingering on for more than 8 years. It would be appropriate to have a look on the objections (Annexure P-2) dated 29/07/2008 filed by the petitioners to *Naksha Bey*. The said objections are vague in nature. Only objection No. 3 has some specific averments that petitioners have planted fruit trees and have set up an orchard in the land which was in their possession. Learned senior counsel has made reference to the report dated 7/2/ 2009 (Annexure P/5) at page No. 32–33 of this paper book. A perusal of this report indicates that only reference made in the report is that there are total 8 trees of various varieties, i.e. mango, Shisham, toot and Jamun which are said to be in the land of Satish, Madan and Vinod. There are 18 trees of various varieties like Toot, Shisham and jamun. Similarly in the land of Shrei Niwas @ Ram Niwas there are total 15 trees of various varieties likeneem, Shisham, Kikar etc. Similar is the situation with regard to the trees in the land of Balbir, Ramphal, Rajender, Suresh and Krishan, where there are Shisham, lemon, mango, neem, toot and Jamun trees. There is no mention in the objections as to in which specific Khasra numbers trees have been planted by the petitioners and in which Khasra numbers orchards are existing. It is not the case of the petitioners that trees are in a particular Khasra number only. The farmers plant trees in their fields at various places for shade and wood. In clause 5 of the mode of partition it is mentioned that trees, khotha, tubewel will go with the land. Thus, this contention of the Ld. Senior counsel for the

petitioner also does not survive, hence is rejected.

The learned senior counsel for the petitioner vehemently contends that the land levelled by the petitioners has not been given to them. No evidence has been brought on record with regard to the levelling of the land and the expenses incurred for it. It is settled principle of law that when the land is joint each and every co-sharer has a right over each parcel of the land even if he is not in possession of it. It will be a deemed possession of the co-sharers in the joint land specifically when in the cultivation column No. 5 of Jamabandi entry is of "*MakbuzaMalkan, Khudkast*". This contention is also devoid of merit, hence is rejected.

Now it would be appropriate to have a look at *Nasha Bey (Kha)* (Annexure P-14). A perusal of site plan reveals that every co-sharer has been given equal area, in both taks. The valuable land has been given to every co-sharer according to their shares. The 1st tak consists of rectangle No. 67, out of which every co sharer/ shareholder has been given approximately 2 acres of land touching the road. The petitioners tak has been shown with yellow colour and they has been given a compact tak near the main road. Whereas, other co-sharers have been given taks in a scattered manner. A perusal of the *naksha bey (kha)* reveals that petitioners got the compact tak at both places whereas others got comparatively scattered taks. The petitioner in spite of getting best possible area and compact taks are not still satisfied. For these reasons, I do not find any justification to interfere in the orders of authorities.

The learned senior counsel further contends that some area is near to village abadi the same has not been given to them. There is no reference of such land in the objections to *Naksha Bey (Kha)* otherwise also

the land falls into two taks and every co-sharer has been given land according to share in both taks. It is a common practice that when a person is in possession of more land or valuable land out of joint land he tries to linger on and delay the partition. The partition in question is between brothers and cousins, they should have otherwise settled the matter. So this court instead of remanding the matter to the revenue authorities to deal with the objections and pass speaking order thought it appropriate to decide the same in this court. So that issue of partition be settled and the litigation may come to an end and the parties may improve and develop the land coming to their share according to their resources.

The writ petition is dismissed in limine.

Costs made easy.

24.05.2016
PA

(Paramjeet Singh Dhaliwal)
Judge