

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

LPA No.1540 of 2016 (O &M)
Date of decision: 14.09.2016

Padam Singh and others

.....Appellants

Vs.

The State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Sanjeev Kumar Panwar, Advocate for the appellants.

Ajay Kumar Mittal,J.

1. This Letters Patent Appeal has been filed by the appellants against the vacation of stay order dated 11.1.2016 and order dated 5.8.2016 passed by the learned Single Judge whereby application for staying the dispossession proceedings has been rejected.
2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Hari Pal, Megh Raj, Dev Raj and Karanvir, private respondents filed an application for partition of the land keeping in view the separate respective possession of the parties. It was also prayed that the possession be kept intact. There was already a mutual family partition between the parties by the grandfather Kundan Singh and since then all the co sharers were continuing in respective possession of their land. Accordingly, mode of partition dated 9.10.2002, Annexure P.1 was sanctioned with the consent of both the parties. As per clause 2 of the said mode of partition, the partition had to be carried out by keeping the

possession intact. No objections were filed by anybody against the said mode of partition. *Naksha Be* was prepared on 8.8.2003 and the same was sanctioned on 24.12.2003 by the Assistant Collector, 2nd Grade, Karnal on the statements of all the co sharers except Jai Pal who had filed objections to the effect that *Naksha Be* had not been prepared as per the mode of partition which was rejected vide order dated 24.12.2003 by the Assistant Collector Ist Grade. The said Jai Pal filed an appeal before the Collector which was dismissed vide order dated 13.6.2005 by the Collector, Karnal. Thereafter, a revision petition was preferred by him before the Commissioner, Rohtak Division, Rohtak. Vide order dated 21.7.2006, the Commissioner remanded the matter with the direction that the court guardian for the minors be appointed and that the partition proceedings be conducted afresh from the stage of mode of partition. It was further observed by the Commissioner that Jai Pal had installed a tube-well in Killa No.10/22 and inspite of his being in possession, he had only been given 2 kanals 12 marlas of land in the said Killa. On this limited aspect, the matter was remanded by the Commissioner. The Assistant Collector 2nd Grade on remand framed a fresh mode of partition dated 20.10.2006, Annexure P.3. According to the appellants, the Assistant Collector 2nd Grade had no jurisdiction to review the earlier order of partition without obtaining the sanction of higher officer i.e. the Collector. No sanction had been obtained by the Assistant Collector 2nd Grade as laid down under section 15 of the Punjab Land Revenue Act, 1887. Further, the second mode of partition had been sanctioned on the same day without affording any opportunity to the appellants to file their objections. According to the appellants, subsequent proceedings of *Naksha Be* sanctioned on 2.8.2010 and *Naksha Jeem* sanctioned on 14.10.2010 and *Sanad Takseem* dated 3.12.2010 were illegal and without jurisdiction. The

appellants filed revision petition before the Commissioner, Rohtak Division, Rohtak against the order of *Sanad Takseem* dated 3.12.2010. The Commissioner, Rohtak Division dismissed the revision petition being not maintainable vide order dated 20.5.2011, Annexure P.5. The appellants challenged the said order before the Financial Commissioner through revision but the same was also dismissed vide order dated 24.3.2014. According to the appellants, the subsequent mode of partition had been prepared without jurisdiction. The entire possession of the petitioners as well as of other co-sharers had been changed by fresh mode of partition. Aggrieved thereby, the appellants approached this Court through Civil Writ Petition No. 721 of 2015. Vide order dated 11.1.2016, the said writ petition was admitted. The interim stay was vacated. Since the parties were already in possession of their respective shares, it was observed that there was no reason to hold up the entire partition particularly when the division was more or less equally balanced. The matter was referred to the mediation cell for resolving their dispute. Till then, the order of admission and vacation of stay was kept in abeyance. The mediation remained a non-starter and the matter was returned to the court. Thereafter, the appellants filed an application in the said writ petition for staying their dispossession. Vide order dated 5.8.2016 passed by the learned Single Judge, it was held that once the stay granted by this court had already been vacated, fresh stay could not be granted as the appellants had the remedy to challenge that order if they were so aggrieved against the same. Consequently, the application was dismissed. Hence the instant Letters Patent Appeal by the appellants against the interim order.

3. We have heard learned counsel for the appellants.
4. Admittedly, the main appeal has been filed against the interim

orders dated 11.01.2016 and 05.08.2016 passed by the learned Single Judge in the writ petition. Vide order dated 11.1.2016, the writ petition was admitted and the interim stay granted vide order dated 29.06.2015 was vacated. While vacating the interim stay on 11.1.2016, it was observed by the learned Single Judge that it was not reasonable to hold up the entire partition keeping in view the factum that the division was almost equally balanced. Learned counsel for the appellants could not substantiate that the variation in the interim protection vide order dated 11.1.2016 whereby stay was vacated warrants intervention by this Court. The order dated 11.1.2016 is in consonance with the principles governing the grant of interim protection in a lis between the parties. Consequently, it cannot be faulted. Equally, vide order dated 5.8.2016, prayer for grant of stay thereafter was declined by the learned Single Judge by observing that once the stay already granted by this Court had been vacated, there was no occasion to grant fresh stay as the appellants had the remedy to challenge that order if they were so aggrieved against the same. Thus, the application was dismissed. Even before us, learned counsel for the appellants has not been able to show that the orders passed by the learned Single Judge dated 11.1.2016 and 5.8.2016 are illegal or perverse in any manner. Even otherwise, the main writ petition is pending adjudication for final determination of rights of the parties. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 14, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes