

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.W.P. No.8826 of 2015 (O&M)

Date of Decision: April 06, 2017

Ranjit (since deceased through L.Rs) & others

...Petitioners

Versus

The Commissioner, Gurgaon Division, Faridabad Camp & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Pankaj Jain, Advocate &  
Mr.Sumeet Jain, Advocate,  
for the petitioners.

Mr.Rajbir Singh, AAG, Haryana,  
for the State.

Mr.Vikas Lochab, Advocate,  
for respondent Nos.4 to 11.

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**AMIT RAWAL, J. (Oral)**

CM No.5168 of 2017

Prayer in the application is for placing on record application for partition along with jamabandi as Annexure P-6 and seeking exemption from filing certified copy thereof.

Allowed subject to just all exceptions.

CWP No.8826 of 2015

Grievance of the petitioners in the present petition is to the orders Annexures P-3 and P-5, whereby the appeal preferred against the order of the Collector has been dismissed on the ground that during the interregnum of initiation of the partition proceedings, Sanad Takseem had been passed.

Mr.Pankaj Jain assisted by Mr.Sumeet Jain, representing the petitioners submits that perusal of Annexure P-6, i.e., application for partition does not reflect impleadment of the petitioners aforementioned. Thus, the application for partition without impleading the other co-sharers with regard to khewat Nos.40 and 41 was not maintainable, whereas the application is for seeking partition with regard to many khewats, i.e., 29, 40, 41, 82, 83, 156, 160, 2, 114, 244 and 221 etc. Thus, the partition qua khewat Nos.40 and 41 could not have been initiated in the manner and mode.

He further submits that the application for all the khewats was not maintainable as the separate applications were to be filed. All these aspects were required to be pondered upon by the authorities, thus, the petitioners were deprived of ascertaining the right in the aforementioned proceedings. They acquired the knowledge on 18.8.2010 when execution of the aforementioned proceedings was being sought. Immediately, they filed an appeal on 26.8.2010, therefore, the objection of the State qua delay would be inconsequential. This aspect has not been taken into consideration by all the authorities.

Per contra, Mr.Rajbir Singh, learned Assistant Advocate General, Haryana and Mr.Vikas Lochab, learned counsel representing respondent Nos.4 to 11 submit that the petitioners were having the knowledge of the same owing to the fact that appeal against the same very order was filed and, thus, could not have remained oblivious of the aforementioned and thus, prays for upholding the orders.

I have heard the learned counsel for the parties and appraised the paper book.

For the reasons aforementioned, I am of the view that the

petitioners, who are co-sharers in Khewat Nos.40 and 41, have not been impleaded and this fact was of a prime importance being raised before the authorities and having not pondered upon the same, the orders under challenge are not sustainable in the eyes of law. The factum of co-sharer is reflected from the jamabandi (Annexure P-6 colly). Revenue record carries presumption of truth until and unless the same is not rebutted.

There is another aspect of the matter. One application for different khewats, as indicated above, is not maintainable. There has to be separate applications, particularly when the co-sharers are different.

Resultantly, the impugned orders (Annexures P-3 and P-5) are set-aside. The matter is remitted back to the Collector to decide the same afresh in view of the observations made in this order after affording opportunity of hearing to all the parties, much less in accordance with law.

This order shall be construed only with regard to the khewats of which the petitioners are co-sharers, i.e., Khewat Nos.40 and 41.

The parties, through their counsel, are directed to appear before the Collector on 1.5.2017.

Writ petition stands allowed in the aforementioned terms.

**April 06, 2017**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**