

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9866 of 2017

Date of Decision.09.05.2017

Randhir Singh and others

.....Petitioners

Vs

The State of Haryana and others

.....Respondents

Present: Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Gulshan Nandwani, Advocate
for caveators-respondent Nos.3 to 5.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioners, 7 in number, who were respondent Nos.1 to 7 in the application submitted seeking partition of the land measuring 205 kanals 2 marlas, Khewat No.4, Khatoni No.6, Kitta No.30 situated in village Nurpur, Tehsil and District Rewari, are aggrieved of the orders passed by the Assistant Collector 1st Grade and the Financial Commissioner, resulting into dismissal of the revision petition filed before the Financial Commissioner, in view of the ratio decidendi culled out in a judgment rendered by Division Bench of this Court in Amar Khan and others Vs. State of Punjab and others 2009(1) RCR (Civil) 741.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioners submits that the memorandum of partition (Annexure P-2) was passed, however, no objection was filed and *naksha bay* was approved vide order dated 19.08.2015 (Annexure P-4), which reads as under:-

“File presented. Case called. Counsel for the parties are present. Naksha Bay was perused. On Naksha Bay none of the parties has filed any objection. Thus, Naksha Bay is approved as it is. File be put up on 22.09.2015 for Naksha

Jim after expiry of limitation for filing appeal.”

Thereafter on 22.09.2015, Naksha Jim was also approved. Since the final partition proceedings came to be passed, the petitioners preferred the revision petition as no remedy of appeal was available. The Financial Commissioner in a most erroneous and fallacious manner dismissed the revision petition without taking into consideration the following aspects.

In partition proceedings, parties are neither plaintiff nor defendant but have equal right to seek partition.

Kartar Singh, respondent No.3 in the present petition and petitioner No.1 in the partition application has 1/5th share i.e. 41 kanals and Surender Kumar and Tarun Kumar, respondent Nos.4 and 5 in the present petition and petitioner Nos.2 and 3 in the partition application have 1/10th share each i.e. 41 kanals and rest of the share is owned by the petitioners, who are since in possession.

Petitioner Nos.6 and 7 vide sale deed dated 10.05.2013 had purchased 19 kanals 18 marlas from petitioner Nos.2 and 3 and vide another sale deed 8 kanals from petitioner No.1 and they were put into specific possession of killa numbers mentioned in the sale deeds. The sale deed reflected the shares of the vendors.

He submits that order of the Financial Commissioner rejecting the revision petition on account of having not submitting objection is bereft of any reasons, much less, against the ratio decidendi culled out by Division Bench of this Court in **Girwar Vs. Financial Commissioner Haryana and others 1996 PLJ 672**. In other words, he submits that the appeal or revision against the final partition in the absence of *naksha bay* or the mode of

partition has been held to be maintainable. The partition has not been taken into consideration strictly as per the mode of partition and therefore, the grievance of the petitioners has not been vindicated. The order of the Financial Commissioner is also not in conformity with the provisions of Section 16 as there is no cogent reasons assigned.

There is a caveat on behalf of respondent Nos.3 to 5 i.e. Kartar Singh, Surender Kumar and Tarun Kumar, who were applicants in the application seeking partition to contend that sale deeds of the petitioners as indicated above clearly makes mention of handing over the specific killa numbers, which in the absence of partition could not have been done, as every co-owner is owner of every inch of land. In the absence of no objection when the counsel for the parties were also present, much less, on perusal of *naksha bay* (Annexure P-3), partition has been done in a most reasonable and cogent manner. The authorities below have taken into consideration all the aspects, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Jain. *Naksha bay* (Annexure P-3) reveals that the portion in orange colour i.e. major holding of the petitioners have been kept in tact. The grievance pointed out during the course of the hearing was that killa Nos.23, 24 and 25 had been purchased by the petitioners, in fact, had been put into possession and therefore, their possession has been disturbed now. In my view, the aforementioned argument is not sustainable as the major holding of the petitioners themselves and the private respondents i.e. 41 kanals each have been kept in tact in one tuck and another tuck is also facing the main

road. Potentiality and quality of the land has also been taken into consideration.

In my view, filing of the appeal was nothing but to take the benefit of contents of sale deeds. On perusal of one sale deed shown to me it is revealed that vendors have been shown to have share of 238/4102 and 160/4102. Vendee had also been put into possession of various killa numbers indicated therein, which is not permissible in the absence of partition, rightly so, the revenue authorities below have taken into consideration shares of the parties in the partition proceedings. The memorandum of partition, much less, *naksha bay* prepared on the basis of memorandum of partition is perfectly legal and justified.

There is no dispute to the judgment cited supra by the counsel for the petitioners that the parties cannot be prevented to take up the plea or challenge the partition but facts and circumstances of each case has to be taken into consideration threadbare, much less, touchstone of reasonability.

The findings arrived at by the revenue authorities are perfectly legal and justified and according to the revenue record. No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 09 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No