

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

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Civil Writ Petition No.17207 of 2018

Date of Decision: July 25th, 2018

Balwant Singh now deceased through his LRs

...Petitioners

Versus

The Financial Commissioner (Revenue), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Beant Singh Seemar, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petitioners, who are legal heirs of Balwant Singh, have preferred this writ petition challenging and praying for quashing of the order dated 24.08.2012 (Annexure P-5) passed by the Assistant Collector Ist Grade, Shaheed Bhagat Singh Nagar, ordering final partition, *sanad taksim* dated 08.10.2012 (Annexure P-9 colly.) passed as a consequence of order dated 24.08.2012, order dated 20.12.2013 (Annexure P-7) passed by the District Collector-cum-SDM, Shaheed Bhagat Singh Nagar-respondent No.2, dismissing the appeal of the petitioner as not maintainable as the *sanad taksim* had been issued.

2. Counsel for the petitioners submits that two applications were filed by Mohinder Singh-respondent No.4, one for partition of land measuring 500 kanals, 19 marlas and the other for 16 kanals and 14 marlas comprising in two different khatahs situated in village Rahon, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar. Final partition of the land was ordered by the Assistant Collector Ist Grade on 30.07.2010, however, on an appeal preferred by the petitioners, Collector

vide order dated 20.04.2011 remanded the case back with direction for fresh decision on the same. Assistant Collector Ist Grade vide order dated 24.08.2012 sanctioned the final partition and subsequently issued *sanad taksim* on 08.10.2012. Appeal filed by the petitioner before the Collector was dismissed as not maintainable on the ground that after the issuance of the *sanad taksim*, the said Court has no jurisdiction to entertain the appeal. Petitioner thereafter preferred revision petition which has been dismissed by the Financial Commissioner, Punjab, vide order dated 18.05.2017 (Annexure P-12) in which review petition was filed which has also been dismissed on 02.05.2018 (Annexure P-13).

3. Counsel for the petitioners asserts that partition applications of Mohinder Singh-respondent No.4 has been allowed and the partition sanctioned without even serving the respondents in the case. Petitioners had preferred an appeal against the initial order of partition before the Collector, who remanded the case back for fresh decision. On remand, there being no Presiding Officer, matter was adjourned to various dates and thereafter without calling for any objections from the parties, petitioners were declared *ex parte* except respondent No.4 and respondent No.5. Partition has been effected amongst the co-sharers. Partition map shows that different tucks have been given to the parties in a zigzag manner and even the ancestral house has been partitioned which could not have been done as it was a residential area and would fall within the abadi area which is beyond the jurisdiction of the Revenue Officer and cannot be a part of the partition proceedings except through the Civil Court. He, however, could not dispute the fact that the shares

which have been assigned to all the co-sharers, are as per their entitlement but he asserts that less valuable land has been given to the petitioners, whereas more valuable land has been given to the private respondents. This he asserts has primarily occurred because the proceedings before the Assistant Collector Ist Grade were held in the absence of the petitioners without there being any objections filed by any of the parties to the maps, which were prepared. He, therefore, contends that the impugned orders deserve to be set aside.

4. I have considered the submissions made by learned counsel for the petitioners and with his able assistance, have gone through the impugned orders as also the records of the case including the maps which have been prepared at the time of the partition and the final partition but do not find myself in agreement with the contentions as raised by the counsel for the petitioner.

5. Undisputed facts indicate that the partition applications were filed by respondent No.4-Mohinder Singh as there were two different khata situated within Village Rahon, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar. Initially final partition was sanctioned on 30.07.2010, which was set aside vide order dated 20.04.2011 in an appeal preferred by the petitioner by the Collector remanding the case back to the Assistant Collector Ist Grade for fresh decision. Petitioners had not been vigilant enough in pursuing the case of partition rather they had been very casual and careless in asserting their rights at the right moment. Having absented during the partition proceedings before the Assistant Collector Ist Grade despite there being a

remand order in favour of the petitioner and in the appeal preferred by them, they failed to pursue their remedy effectively. Now they cannot be permitted to take a plea that the partition proceedings have been carried out and finalised in their absence.

6. The contention of the counsel for the petitioners that they have been given inferior quality of land as compared to the private respondents and that the land has been partitioned in a zigzag manner with different tucks assigned to one party, suffice it to say that the Assistant Collector Ist Grade had taken care and caution so that equal quality and value of land is given to all co-sharers which has necessitated the land to be in different tucks assigned to each shareholder. Due share has been given to all co-sharers in the partition taking care that the frontage of the road and similarly the other areas are given to all the parties as per their entitlement. It is not in dispute rather admitted by the counsel for the petitioners that the land which has been partitioned is in consonance with the respective shares of the parties in the land in question, thus this plea of the counsel cannot sustain.

7. As regards the contention of learned counsel for the petitioners that the ancestral house which falls in khasra No.35//26 falls in the abadi area and, therefore, could not be partitioned as the same is beyond the jurisdiction of the Revenue Court, the said contention also cannot be accepted as the khasra number assigned to the house does not fall within the abadi and that being so, there is no bar to partition of such land by the Revenue Court, where construction has been made or exists.

Further, there is no assertion made by the petitioners even before the

Financial Commissioner, Revenue, that the house belongs to the petitioners or had been given by them to the respondents. No prejudice has been caused to the petitioners at all during and in the partition which has been ordered.

8. In view of the above, finding no merit in the present petition, the same stands dismissed.

July 25th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No