

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

L.P.A.No.1264 of 2016 (O&M) in
Civil Writ Petition No.10748 of 2016
Date of Decision: July 17, 2018

Inderjit Singh

...Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Ms. Ramneeq Kaur, Advocate,
for the appellant.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Kanwaljeet Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate,
for respondent No.5.

Mr. Gautam Kaile, Advocate,
for respondent No.6.

AMIT RAWAL, J.

Present intra-court appeal has been preferred against the order dated 27.05.2016 passed by the learned Single Bench, whereby the writ petition preferred by the appellant challenging the orders dated 15.12.2015 (Annexure P-11) passed by the Financial Commissioner, Haryana, 8.8.2014 (Annexure P-10) of the Commissioner, Ambala Division, Ambala and 18.04.2012 (Annexure P-9) rendered by the Collector seeking direction for restoration of the order dated 14.10.2011 (Annexure P-8) of the Assistant Collector 1st Grade, Guhla, District Kaithal, has been dismissed.

The facts, which emanate from the pleadings of the parties, are that Balkar Singh- respondent No.6, instituted an application for partition of land measuring 213 kanals and 4 marlas, situated in the revenue limits of Village Cheeka. Before filing of the aforementioned application, certain events having taken place are necessary to be referred.

Wazir Singh, father of respondent Nos. 5 and 6, namely, Jasmer Singh and Balkar Singh, along with one Naib Singh were co-sharers in possession of the land measuring 5 kanals comprised in Killa No.53//8/1/2 and 53//13/2/1, situated in Village Cheeka, Tehsil Guhla, District Kaithal. The aforementioned persons, being co-sharers and co-owners, entered into an agreement to sell dated 09.01.1998 (Annexure A-1) with the petitioner. After the execution of agreement to sell, Wazir Singh, father of respondent Nos.5 and 6, unfortunately expired, but his share was inherited by Balkar Singh and Jasmer Singh. Balkar Singh and Naib Singh executed a registered sale deed dated 24.11.1999 (Annexure P-1) to the extent of 3/4th share in favour of the appellant-petitioner, who is stated to have taken the possession of the aforementioned killa numbers with front abutting the road. Sale price agreed and paid was specific to the location of the land of the aforementioned killa numbers. Jasmer Singh, the legal heir of Wazir Singh, did not stick to the promise held out by his late father and refused to execute the sale deed qua his share, necessitating the writ petitioner- appellant to institute a civil suit bearing No.487 of 1999 claiming specific performance of the agreement to sell dated 09.01.1998 in respect of 1/4th share. The said suit, after contest, was decreed vide judgment and decree dated 05.03.2004 (Annexure P-2), which attained finality and sale deed dated 24.08.2006 (Annexure P-3) in execution of the decree was executed in favour of the

petitioner, thus, for all intents and purposes, the appellant-petitioner became the exclusive owner in possession of the land described above by two sale deeds dated 24.11.1999 and 24.08.2006.

Coming back to the question in dispute. In pursuance to the application submitted by Balkar Singh for partition of the land, Assistant Collector 2nd Grade, Guhla entertained the application and prepared the list of Ismail Malkan and thereafter Naksha Alif was also prepared. On 04.06.2009, counsel representing Balkar Singh suffered a statement that there should be a separate parcel of land for applicant Balkar Singh, wherever Tubewell was installed and the possession of the land be given to the owner of the same by carving out a passage.

On 26.02.2010, mode of partition (Annexure P-5) was sanctioned and approved by the Assistant Collector 2nd Grade, Guhla, wherein it was specifically provided that Balkar Singh would be given separate parcel of land and while doing so, possession and type of the land was to be taken into consideration. The persons, who had partitioned the Tubewell and valuable trees, were also protected by giving the aforementioned share, if otherwise, suitable compensation. No objections were filed by respondent No.5 Jasmer Singh regarding the aforementioned partition, which was approved by the Assistant Collector 2nd Grade vide order dated 08.03.2010. As a consequence of mode of partition, Naksha Be (Annexure P-6) was prepared and the land comprised in rectangle number aforementioned was allocated to the appellant- petitioner, i.e., land shown pink in site plan abutting the main road and the land depicted in yellow, was allocated to respondent No.5 as he was found in possession of the aforementioned parcel of land.

Jasmer Singh- respondent No.5 filed objections (Annexure P-7) vis-a-vis Naksha Be to the effect that Inderjit Singh be not given the land out of Rect.No.53, Killa No.8/2(0-15) and Killa No.13/2(4-5). Assistant Collector, Guhla vide order dated 14.10.2011 (Annexure P-8), dismissed the objections. Aggrieved against the aforementioned order, respondent No.5 preferred an appeal before the Collector, which was accepted vide order dated 18.04.2012 (Annexure P-9). Appeal preferred before the Commissioner was also dismissed vide order dated 08.08.2014 (Annexure P-10) and as noticed above, the Financial Commissioner also dismissed the appeal vide order dated 15.12.2015 (Annexure P-11). Learned Single Bench dismissed the writ petition by relying upon the ratio decidendi culled out in **Bhartu Versus Ram Sarup, 1981 PLJ 204.**

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Ms. Ramneeq Kaur, Advocate, representing the appellant submitted that the judgment rendered by the learned Single Bench suffers from illegality and perversity, for, the judgment and decree culminated into sale deed dated 24.11.1999 had attained finality. No objections were filed against Naksha Be, which was prepared according to mode of partition, which also suggested that the possession of the parties be maintained. Even the counsel for respondent Nos.5 and 6 did not raise any objection to the mode of partition and in this regard, referred to the statements extracted in Paras 12 and 14 of the writ petition. Dev Raj- respondent No.7 did not raise any objection to the aforementioned killa numbers allocated to the appellant-petitioner, but the learned Single Bench showed the concern with regard to his rights, thus, for all intents and purposes, Jasmer Singh- respondent No.5 was estopped from objecting to the aforementioned two killa numbers

allocated to the appellant-petitioner.

Mr. Mahajan further contended that the appeal against the dismissal of the objections was preferred only by Jasmer Singh and not by Dev Raj- respondent No.7, thus, for all intents and purpose, the order dated 14.10.2011 (Annexure P-8) vis-a-vis respondent No.7 Dev Raj had attained finality. The parties were bound by the agreement dated 09.01.1998. Dispute would have not arisen had Wazir Singh not died. Field Kanungo rightly allocated the aforementioned land, subject matter of the sale deeds and Naksha Be, thus, the provisions of Section 115 of the Indian Evidence Act, providing estoppel, are squarely applicable. It is settled law that for the purpose of drawing and approval of the mode of partition, the possession of the parties, at best, be maintained until and unless it is impossible. Appellant had already paid extra price for the aforementioned land having close proximity to the main road.

Per contra, Mr. Kanwaljeet Singh, learned Senior Counsel assisted by Mr. Ajaivir Singh, Advocate, representing respondent No.5 submitted that the judgment of the learned Single Bench does not suffer from any error or infirmity as it is in consonance with the ratio decidendi culled out in **Bhartu's case (supra)**. There was a conflict of views as expressed in the case of **Bhartu** and accordingly the matter was referred to the Full Bench of this Court. In **Ram Chander Versus Bhim Singh & others, 2008(3) R.C.R. (Civil) 685**, Full Bench, while interpreting the provisions of Section 44 of the Transfer of Property Act, held that whenever a land is sold by a co-sharer from the joint khewat by reference to specific rectangles and khasra numbers, the status of the vendee would be of a co-sharer of entire khewat and not specific.

It was further argued that the learned Single Bench was conscious of the fact that the partition of the entire land measuring 213 kanals 4 marlas was sought, whereas the stake of the appellant- petitioner was only to a small piece of land, i.e., 5 kanals. The sale of specific khasra numbers would be deemed as sale of his share. Even the possession is to be accepted as far as possible, but the location and the quality of the land cannot be ignored, otherwise, it would seriously affect the right of other share-holders in the land, which is against the principle of equity, thus, urged this Court for dismissal of the appeal by upholding the order under challenge.

We have heard the learned counsel for the parties, appraised the paper book, the judgments cited supra and are of the view that there is force and merit in the submissions of Mr. Mahajan and the reason is not the one but many:-

- a) The sale deeds dated 24.11.1999 and 24.08.2006 executed by Naib Singh and Balkar Singh and on behalf of Jasmer Singh through the Court are not in dispute;
- b) The application for partition was submitted on 25.11.2008 after more than two years of the last judgment and decree. Till then, the appellant had been enjoying the peaceful possession of the suit property, i.e., Rect.No.53, Killa No.8/2 (0-15) and 13/2 (4-5). It would be in the fitness of things to extract the statements suffered during partition proceedings by counsels representing respondent Nos.5 and 6. The same read thus:-

Statement of counsel for respondent No.5

“Stated that Mode of Partition has been seen and there is no objection to same being approved.”

Statement of counsel for respondent No.6

“Stated that there should be a separate parcel of land for applicant, wherever Tubewell is installed, the possession of the same be given to owner of the same, passage be carved out and Channel for irrigation be provided. Bricks, valuable trees and Tubewell kotha be given to whosoever has installed Tubewell and planted trees and that possession and type of land be taken into consideration.”

c) In such circumstances, respondent No.5 Jasmer Singh could not have raised the objection to Naksha Be, which was in accordance with mode of partition dated 26.02.2010 (Annexure P-5);

d) Mode of partition protected the possession of the respective parties;

e) While protecting the interest of Dev Raj and other co-sharers, learned Single Bench remained oblivious of the fact that Dev Raj neither objected to the mode of partition nor to Naksha Be. Dispute was only between the siblings/legal heirs of Wazir Singh;

f) The land allocated to the appellant-petitioner and respondent No.5 is of the same value. Both the parcels of the land are on the main road, i.e., Cheeka-Pehowa road. Nothing prevented the respondents to file written statement, for, the writ

petition was dismissed in limine;

g) There is no dispute to the ratio decidendi culled out in the judgment rendered in **Ram Chander's case (supra)**, wherein while upholding the ratio decidendi culled out in **Bhartu's case (supra)**, it was held that any share sold from the joint khewat, the status of the vendee would be of a co-sharer, but the facts in the present case are totally different, for, the agreement to sell also specified the sale of specific killa numbers. Perhaps litigation would not have arisen had Wazir Singh remained alive. It appears that the objections to the Naksha Be were filed only as a result of greed and nothing beyond.

As an upshot of the findings aforementioned, we find that the learned Single Bench had not noticed the aforementioned facts while dismissing the writ petition in limine. The order under challenge suffer from illegality and perversity. The same is set-aside. As a necessary corollary, order dated 27.05.2016 of learned Single Bench and orders dated 15.12.2015, 08.08.2014, 18.04.2012 impugned in the writ petition are quashed. Writ Petition is allowed. Resultantly, the Letters Patent Appeal is allowed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 17, 2018
ramesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No