IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 882 of 2019
Date of decision: 10.07.2019

Gajjan Singh and others

… Appellants

Versus

Financial Commissioner Revenue, Punjab, Civil Secretariat, Punjab, Chandigarh and others

… Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present: Mr. B.D.Sharma, Advocate for the appellant.

ARUN PALLI, J. (oral)

This is an *intra* Court appeal under Clause-X of the Letters Patent, against an order and judgment dated 18.01.2019, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants, has since been dismissed.

The facts that are required to be noticed are limited.

Respondent Anudeep Singh moved an application under Section 111 of the Punjab Land Revenue Act, 1887 (for short 'the Act'), seeking partition. Upon a consideration of the matter and vide order dated 21.01.2011, the said application was accepted by the Tehsildar-cum-Assistant Collector Ist Grade-Amritsar-2, for, it was observed that the land in dispute was originally owned by Mohan Singh and Joginder Singh and was partitioned between the two pursuant to a family partition (taksim nama) dated 18.06.1992. Accordingly, the final partition was sanctioned. The said order was assailed by the appellants by way of an appeal which was dismissed by the Collector on 22.06.2011. The revision preferred by the appellants against those orders was also dismissed on 20.05.2015 by the Commissioner. Where-after the appellants filed a revision petition under Section 16 of the Act, but as even the Financial Commissioner concluded that family partition took place and was acted upon and therefore, the orders passed by the authorities below warranted no interference, the revision petition was dismissed on 28.03.2018. That is how, the appellants approached this Court, vide a writ petition, referred to above, which too has been dismissed vide impugned order and judgment. Thus, this appeal.

We have heard learned counsel for the appellants and perused the records.

Originally, Mohan Singh and Joginder Singh (predecessor-in-interest of the appellants) happened to be the owners of a joint holding. The record shows that pursuant to a family partition (taksim nama) dated 18.06.1992, the joint khata was partitioned between the two and acted upon. To substantiate his claim respondent Anudeep Singh examined Makhan Singh Namberdar, village Bal Sachander, Karam Singh Ex-Member Panchayat, Dalip Singh Member Panchayat and Ram Singh, who testified the execution of the family partition (taksim nama) dated 18.06.1992, and also that joint khata was partitioned. No cogent evidence or material was brought on record by the appellants to question the execution and veracity of the said document. Further, post partition of the joint holding, both the co-sharers had even sold their respective shares and that is how respondent

Anudeep Singh had purchased a land measuring 11 kanals, comprised in Khasra Nos.28//10/1/2, 10/2/1, 11/4/2, 12, from Mohan Singh S/o Shingara Singh. Further, vendees from the two erstwhile co-sharers entered into the possession of the specific area they had purchased. The grievance of the appellants that they were not served in the partition proceedings and the Tehsildar-cum-Assistant Collector I[st] Grade Amritsar-2 erred in proceeding against them *ex parte*, is wholly misconceived as upon filing the application by respondent Anudeep Singh, the respondents were summoned to appear, however, the service report showed that Gurmit Kaur etc. had since shifted to U.P. after selling their land, whereas Harinder Singh was residing somewhere in the city upon which *Mustri Munadi* was conducted on 19.01.2011, through Civil Nazar, but as none of the appellants chose to appear and join the partition proceedings, the revenue authority was choice-less but to proceed *ex parte*. Likewise, the argument that as the disputed land was recorded as *gair mumkin*, therefore, the revenue Courts lacked jurisdiction to order partition, was equally erroneous as the Financial Commissioner, on a due analysis of the record held that there was no bar under the Act to partition the property even if it was being used as *abadi*, though the revenue Officer could decline to effect partition in certain peculiar situations. Even otherwise, as observed by the learned Single Judge: "**So far as the assertion of the counsel for the petitioners that the land in question is a *gair mumkin* land and therefore, Revenue Court does not have the jurisdiction, cannot be accepted as it is a mixed land, may be some portion thereof is a constructed area but that does not bar**

the jurisdiction of the Revenue Court under the Punjab Land Revenue Act, 1887”.

Upon being specifically asked, learned counsel for the appellants failed to refer to anything on record to show if the conclusions recorded by the authorities below as also the learned Single Judge was either contrary to the record or suffered from any material illegality.

In the wake of the above, we too are dissuaded to interfere with the impugned order and judgment as also the orders passed by the respondents-authorities. The appeal being devoid of merit is accordingly dismissed.

(KRISHNA MURARI) **CHIEF JUSTICE**	**(ARUN PALLI)** **JUDGE**

10.07.2019
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No