

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

Letters Patent Appeal No. 1116 of 2019 (O&M)

Date of Decision: 28.05.2019

Fateh Ram and others

.....Appellants

versus

State of Haryana and others

.....Respondents

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

Present : Mr. Rakesh Kumar Sharma, Advocate, for the appellants.

KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 18.03.2019 passed by the learned Single Judge dismissing the writ petition filed by the appellants challenging the orders passed by Financial Commissioner (Revenue), Haryana, Commissioner, Gurgaon Division, Gurgaon and Assistant Collector Ist Grade, Hodel, District Palwal, dismissing the objections filed by the appellants at the stage of issuance of Naksha 'B' and partition proceedings. The facts required to be noticed for adjudication of the controversy are as under:-

2. Respondents No. 5 to 10 initiated proceedings for partition of the land measuring 334 kanals 18 marlas bearing khewat/khata No. 1178/1254, Mustatil No. 160, Killa No. 6(8-0), 15(8-0), 16(8-0), 25(8-0), Mustatil No. 161, Killa No. 19/2(6-10), 20(8-0), 21(8-0), 22(8-0), Mutatil No. 168, Killa No. 4(8-0), 5/1(2-13), 7/1(3-5), Kitta No. 11, total area 76 Kanal 18 Marla and Khewat/Khata No. 1179/1255, Mustatil No.

170, Killa No. 1/1(3-3), Mustatil No. 171, Killa No. 5/2(4-0), Kita 2, Area 7 Kanal 3 Marla and Khewat/Khata No. 1180/256, Mustatil No. 168, Killa No. 2/2(3-4), 7/2(4-5), 8(8-0), 9(6-0), Mustatil No. 170, Killa No. 1/2 (4-17), 2(6-0), 3/2(1-12), 8(8-0), 9(6-0), 10/1(4-0), 12/2(4-0), 13(8-0), Kitta 12 Area 69 Kanal 18 Marla and Khewat/Khata No. 1181/1257, Mustil No. 161, Killa No. 17/2(5-3), 18(8-0), 19/1(1-10), 23(8-0), 24(8-0), Mustatil No. 170, Killa No. 3/1(6-8), 4(8-0), 7/2(6-7), 11(7-15), Mustatil No. 171, Killa No. 15/4(3-18), Mustatil No. 309, Killa No. 4/2(5-3), 5(8-0), 6(8-0), Kitta No. 13, Area 84 kanal 4 marla and Khewat/Khata No. 1182/1258, Mustatil No. 161, Killa No. 16/1(4-0), 25/1(3-15), Kitta 2 Area 7 Kanal 15 Marla and Khewat/Khata No. 1182/1259, Mustatil No. 167, Killa No. 9(4-18), 10/1(7-10), 10/2(0-9), 11(8-0), 12(8-13), 20(7-9), Mustatil No. 168, Killa No. 6/1(4-0), Mustatil No.170, Kila No. 6/2(6-13), 7/1(1-13), Kitta 9 Area 49 Kanal 6 Marla and Khewat/Khata No. 1186/1263, Mustatil No.161, Kila No. 170, Killa No. 5/1(4-16), 10/2(2-4), Mustatil No. 171, Killa No. 5/1(2-4), 6(7-15), 7/1(4-17), 15/2(0-17), Kitta 9 Area 39 Kanals 14 Marla, as per the jamabandi for the year 2002-2003.

3. Admittedly, the appellants-petitioners did not file any objection at the stage of preparation of Naksha-A and accordingly the mode of partition was proposed and approved vide order dated 06.12.2013. Thereafter the proceedings were started for preparation of Naksha-B. It is at this stage the petitioners filed objections raising the following three grounds:-

- i) The share of the petitioners has been wrongly determined in the partition application and in Naksha 'B'.

ii) There was a title dispute between the parties before the Civil Court and therefore, the revenue authorities ought not to have proceeded with the partition proceedings and await the decision of the Civil Court.

iii) There were some other khewats also which have to be clubbed together with the partition of khewats regarding which partition was being sought.

3. The aforesaid objections raised by the appellants-petitioners were rejected by the Assistant Collector Ist Grade, Hodel and the order was affirmed in revision by the Commissioner, Gurgaon Division as well as in appeal by the Financial Commissioner (Revenue) as also by the learned Single Judge.

4. All the aforesaid authorities have concurrently held that the objection raised with respect to wrong determination of the shares since was not raised at the earlier stage, the same was not liable to be accepted at this stage when the mode of partition was already determined and finalization of the partition had attained finality. It is also worthwhile to note at this stage that the finding of fact has also been recorded by the three authorities that the appellants-petitioners were in possession of excess land than their shares.

5. In so far as the objection with regard to postponement of proceedings on account of pendency of civil court is concerned, all the three authorities found that the civil suit which was preferred by the appellants-petitioners was dismissed as withdrawn because of the technical objection and even if a fresh suit was filed and was pending, the fact cannot be denied that till the time of finalizing of the mode of partition, there was no determination by any civil court with respect to the title of the properties.

6. The third objection was also dismissed by the three fact finding authorities on the ground that since admittedly the co-sharers in the khewats were different on account of which the khewats which were sought to be included by the appellants-petitioners in the objections for a consolidated partition proceedings was impermissible as it is well settled that where there are different co-sharers the Khata can only be clubbed together with the consent of all the co-sharers. The aforesaid finding of fact recorded by the Assistant Collector Ist Grade and affirmed by two fact finding authorities also came to be confirmed by the learned Single Judge in the writ proceedings.
7. It is well settled principle of law that the findings of fact are not liable to be interfered with in exercise of writ jurisdiction unless it is demonstrated that the said findings are based on non-consideration of any material piece of evidence or based on misreading of evidence.
8. The appellants-petitioners since failed to demonstrate the same before the learned Single Judge in writ proceedings, the writ petition was concluded by findings of fact and has rightly been dismissed by the learned Single Judge hardly leaving any scope for interference in this Letters Patent Appeal.
9. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

28.05.2019
ravinder

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