

**C.M. NO.6961 OF 2016 &
CIVIL WRIT PETITION NO.25252 OF 2015**

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

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**C.M. NO.6961 OF 2016 &
CIVIL WRIT PETITION NO.25252 OF 2015
DATE OF DECISION: JULY 15, 2019**

Amrik Singh

.....Petitioner

VERSUS

The State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P. K. Ganga, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana,
for the State.

Mr. Ashok Verma, Advocate,
for respondent Nos.6,7,9 to 11 and 13 to 18.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the orders dated 17.06.2011 (Annexure P-1) passed by the Tehsildar-cum-Assistant Collector-Ist Grade, Ellenabad, whereby an application preferred by the petitioner for clubbing up of the land which was not included by the applicants (private respondent Nos.5 to 7 herein) in their partition application, has been dismissed on the ground that the owners of both the khewats are different and, therefore, the application of the respondents (petitioner herein) is dismissed, appeal against which preferred by the petitioner also stands dismissed vide order dated 30.09.2011 (Annexure P-2) by the Commissioner, Hisar Division

(Camp Sirsa). Prayer has also been made for quashing of order dated 09.05.2013 (Annexure P-3) whereby the Sanad Takseem was issued by the Tehsildar-cum-Assistant Collector Ist Grade, Ellenabad; order dated 24.07.2013 (Annexure P-4) whereby application for stay of Sanad Takseem dated 09.05.2013 was declined by the Financial Commissioner, Haryana and order dated 27.11.2013 (Annexure P-7) passed by the Financial Commissioner, Haryana, whereby in the revision petition preferred by the petitioner has also been dismissed, wherein challenge was to the orders, Annexures P-1, P-2 and P-3. Challenge is also posed to the order dated 09.05.2013 (Annexure P-11) whereby the Sanad Takseem has been issued, accepting the *Naksha Bey* and *Naksha jeem* and all subsequent proceeding arising therefrom.

Briefly, the facts are that an application for partition of land in Khewat No.39 min, Khatauni No.47 min, Rectangle No.54, Killa No.20/2/1 (2-0), 21/2 (2-0), 22 (1-16) total measuring 5 kanals 16 marlas situated within the revenue estate of Village Keshupura, Tehsil Ellenabad, District Sirsa, was filed by respondent Nos.5 to 7, Makhan Singh, Harphool Singh and Satbir Singh in the year 2010. The petitioner moved an application for clubbing of the land of two other Khewats with the land involved in this partition application on the ground that the land was joint between the co-sharers and, therefore, all three khewats are to be taken together for the purposes of partition. This application preferred by the petitioner was dismissed by the Tehsildar-cum-Assistant Collector Ist Grade, Ellenabad vide order dated 17.06.2011 (Annexure P-1) on the ground that the co-sharers in both the khewats were different.

Petitioner filed an appeal before the Collector, which powers

were conferred on the Sub Divisional Engineer (Civil), Ellenabad, who vide order dated 19.08.2011, proceeded to dismiss the same, finding no merit therein. Petitioner thereafter filed a revision petition before the Commissioner, Hisar Division, challenging the orders dated 17.06.2011 and 19.08.2011, which was dismissed vide order dated 30.09.2011 (Annexure P-2). Petitioner thereafter filed a revision petition before the Financial Commissioner, Haryana, alongwith an application for stay. The application for stay was dismissed by the Financial Commissioner vide order dated 24.07.2013 (Annexure P-4). This order passed by the Financial Commissioner was challenged by the petitioner by filing Civil Writ Petition No.16847 of 2013 titled as Amrik Singh Vs. State of Haryana and others, which was disposed of by this Court on 05.08.2013 (Annexure P-6) by observing that the order dated 09.05.2013 of the Assistant Collector Ist Grade shall remain stayed during the pendency of the revision petition and the said revision petition be decided expeditiously preferably within a period of two months. In pursuance of the said order, Financial Commissioner proceeded to decide the revision petition vide order dated 27.11.2013 (Annexure P-7), dismissing the said revision petition, upholding the orders passed by the Courts below, including the order of Sanad Takseem. Petitioner thereafter proceeded to approach this Court for the relief which has been denied to him of clubbing up of the different khewats for which the application filed by him has been rejected by the Assistant Collector Ist Grade, Ellenabad, which order has been upheld upto the Financial Commissioner.

It is the contention of learned counsel for the petitioner that in

Khewat No.39 min, Khatauni No.47, Rectangle No.54 total measuring 5

kanals 16 marlas, an application for partition of land was filed by Makhan Singh, Harphool Singh and Satbir Singh in the year 2010, which is part of total land measuring 16 kanals 19 marlas comprised in Khewat No.39, Khatauni No.47, Kitta No.11 and 38 kanals 4 marlas in Khewat No.32, Khatauni No.40 as the land in all three khewats is joint. He asserts that since the land is joint, partition has to take place between all the co-sharers and thus the application, which had been preferred by the petitioner, should have been allowed. It is submitted that while filing an application for partition, the private respondents have not disclosed the fact that they are only seeking partition of 5 kanals and 16 marlas of land whereas the land of the two other khewats is also joint between the parties as garmumkin and after clubbing two khewats, partition should be done together. He contends that the order passed by the Assistant Collector Ist Grade, Ellenabad, dated 09.05.2013, leading to issuance of Sanad Takseem on the same date i.e. 09.05.2013 by accepting *naksha Bai* cannot sustain and deserves to be set-aside.

When the case came up for hearing, learned counsel for the private respondents had taken an objection that the co-sharers of the three khewats are different and, therefore, the plea of the petitioner cannot be accepted. He also asserted that there is no consent given by all the co-sharers for clubbing up of the land for partition. Assertion has also been made that the petitioner is intentionally delaying the partition proceedings in the light of the fact that he is in possession of the total area of 5 kanals and 16 marlas of land in Khewat No.39 which is the subject of the partition application whereas as per the Sanad Takseem, his share comes to 1 kanal 9 marlas only.

Thereafter, when on 10.04.2019, case was taken up for hearing, following order was passed:-

“Synopsis in the form of list of co-sharers of both the khewats has been submitted by the counsel for private respondents, which is taken on record. Copy supplied to the counsel for the petitioner.

It has been submitted by the counsel for private respondents that the co-sharers in the two khewats are different and, therefore, there is no question of clubbing up two separate applications for different khewats for partition purposes, especially when there is no consent by all the co-sharers.

Counsel for the petitioner prays for an adjournment to go through the said synopsis and make submissions.

Adjourned to 15.07.2019.

To be shown in urgent list.”

Today when the case has been taken up for hearing, counsel for the petitioner has not been able to repel the contention of learned counsel for the respondents that the co-sharers in the two khewats are different and that there has been no consent of all the co-sharers for clubbing up of the different khewats. The list of co-sharers, which has been produced by Mr.Ashok Verma, Advocate, counsel for private respondents, leaves no manner of doubt that all the co-sharers are not common. If that be so, the order, as passed by the Assistant Collector Ist Grade, Ellenabad, dated 09.05.20113 (Annexure P-3) which has been upheld upto the Financial Commissioner, Haryana, vide order dated 27.11.2013 (Annexure P-7) cannot be faulted with in the light of the fact that it is a settled position in

law that when co-sharers of two or more khewats are different, then separate applications have to be filed for partition of the land involved in each of the khewats and the partition of more than one khewat can be carried out by way of single application only if co-sharers of all the khewats are the same or there is consent of all the co-shares for clubbing up of the land in all khewats for the purpose of partition. In the present case, this is not the position and, therefore, the impugned orders passed by the revenue authorities cannot be faulted with.

Learned counsel for the petitioner has asserted that despite the pronouncement of the order on 27.11.2013 by the Financial Commissioner in the revision petition, the order was not dictated nor was it supplied to the parties and the same has been supplied only after the order was passed by this Court on 07.12.2015 i.e. after a period of more than two years. He, thus, contends that the order dated 27.11.2013 (Annexure P-7) passed by the Financial Commissioner cannot sustain and deserves to be set-aside in the light of the observations of the Hon'ble Supreme Court in Kunwar Singh and others Vs. Sri Thakurji Maharaj, 1995 Supp (4) Supreme Court Cases 125 as also the judgment passed by this Court on 15.05.2009 in Civil Writ Petition No.12536 of 2007 (Ram Kanwar & another Vs. The Assistant Collector Ist Grade, Sonapat & others).

The observations as made by Hon'ble Supreme court in Kunwar Singh's case (supra) and also by the Coordinate Bench in Ram Kanwar's case (supra) are well taken but on going through the merits of the case as well the impugned order dated 27.11.2013 passed by the Financial Commissioner, Haryana, this Court does not find any illegality or any aspect which would fall within the ambit of the observations of the Hon'ble

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Supreme Court, especially when all the pleas, as have been raised by counsel for the petitioner, have been recorded and then properly dealt with by the said authority. It is not the plea of counsel for the petitioner that any of the grounds which have been raised and argued have not been dealt with. Therefore, the assertion of counsel for the petitioner based on the observations in the judgment of Hon’ble Supreme Court is not accepted.

The writ petition, being devoid of merit, stands dismissed.

Since the main writ petition stands dismissed, no orders are required to be passed on C.M. No.6961 of 2016.

**July 15, 2019
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No