

CWP-9809-2015

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

CWP-9809-2015

Date of Decision: 01st February, 2019

Vijaypal

...Petitioner

Versus

Kirori Mal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Anil Kumar Gehlawat, Advocate,
for the petitioner.

Mr. Prem Chand Yadav, Advocate,
for respondents No.1 to 8.

Mr. Manish Dadwal, AAG, Haryana
for respondents No.9 to 12.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court challenging the order dated 13.03.2014 (Annexure P-5) passed by the Financial Commissioner, Haryana – respondent No.9, whereby, revision petition preferred by the petitioner stands dismissed, order dated 10.04.2009 (Annexure P-4) passed by the Commissioner, Hisar Division, Hisar – respondent No.10, order dated 27.09.2007 (Annexure P-3) passed by the Sub-Divisional officer (Civil)-cum-Collector, Charkhi Dadri – respondent No.11 and order dated 06.06.2006 (Annexure P-2) passed by the Assistant Collector 2nd Grade, Tehsil Charkhi Dadri, District Bhiwani – respondent No.12, whereby, partition has been finalized and the appeals preferred by the petitioner against these orders stand dismissed.

CWP-9809-2015

2. It is the contention of the learned counsel for the petitioner that the petitioner is in possession of Killa No.53//5/1, in which, a tube-well was installed by him in the year 1995. Initially, it was a diesel operated tube-well and subsequently, it was converted into a tube-well powered by electricity in the year 2013 and since then, the said tube-well is running on electricity and in support of the contention, he has placed reliance upon the bills which have been appended along with the revision. Counsel for the petitioner further relied upon the demarcation report dated 19.01.2015 (Annexure P-7), which has been carried out by a Local Commissioner, who was a retired Girdawar, wherein, it has been stated that Killa No.53//5/1 has, on the north eastern line at a distance of 17 karam, a tube-well in the said land with a constructed room as well. On the basis of this demarcation report, he asserts that the mode of partition which was finalized between the parties vide order dated 30.12.2014 (Annexure P-6), stands violated to the extent of clause-IV, according to which, the tube-well and construction after verification would be allotted to the share-holders. He, thus, contends that the mode of partition having been violated, the impugned orders as passed by the authorities below cannot sustain and deserve to be set aside.

3. Counsel for the respondents, on the other hand, have opposed the assertions made by the learned counsel for the petitioner. Counsel for respondents No.1 to 8 has stated that there was no tube-well on the land in question, which is being sought to be asserted at the time when the application for partition was filed in the year 2004 i.e. 28.09.2004 . He contends that this plea, which is being sought to be taken in the present writ

CWP-9809-2015

petition, has never been raised by the petitioner before any of the revenue authorities that there was a tube-well in Killa No.53//5/1. Rather all through the claim and plea of the petitioner was that there was a tube-well in Killa No.64//2/1. His further contention is that at the time of preparation of the various modes including Naksha 'Kh', no objection was raised by the petitioner in this regard. It is also asserted that the orders as has been passed by the authorities below are, as per the mode of partition and there being no violation thereof, do not call for any interference by this Court.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned orders.

5. On considering the submissions made by the learned counsel for the parties, this Court is unable to accept the contentions as has been raised by the learned counsel for the petitioner. Firstly, there is no proof that there was a tube-well in Killa No.53//5/1 prior to partition application having been filed i.e. prior to 28.09.2004. Secondly, no plea has been taken before any of the revenue authorities with regard to the factum of there being a tube-well in Killa No.53//5/1. The plea which is being sought to be taken now, the same cannot be allowed to be raised nor can it be accepted.

6. Counsel for the petitioner has placed reliance upon the demarcation report dated 19.01.2015 (Annexure P-7), on the basis of which, it is asserted that there is a tube-well along with a room in Killa No.53//5/1. This demarcation report being of January, 2015 cannot, in any case, be taken into consideration to indicate that there ever existed a tube-well prior

CWP-9809-2015

to filing of the application for partition. If that be so and keeping in view the orders passed by the authorities below, where, there is no indication with regard to the petitioner ever having agitated this aspect before the authorities, the plea of the counsel for the petitioner cannot be accepted.

7. The assertion of the counsel for respondents No.1 to 8 that no objection has been taken at the time of framing of Naksha 'Kh', the said Naksha 'Kh' has been accepted by the petitioner before the authorities which fact is not disputed. The plea of the counsel for the petitioner, on the basis of the Division Bench judgment of this Court in Girwar Vs. Financial Commissioner, Haryana 1997 (2) RCR (Civil) 114, that failure to filing objection to preparation of Naqsha kh cannot itself justify departure from sanctioned mode of partition, would thus, save the petitioner to that extent if the position would have been so, in the light of the fact that one of the clauses of mode of partition was that the tube-well and construction would be allotted to the share-holders, which is being sought to be projected as a ground for stating that the mode of partition has been violated has not been established by the petitioner.

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

01st February, 2019

Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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