

LPA-279-2022 &
CM-706-LPA-2022

Date of Decision: 4th April, 2022

HARDYAL SINGH @ HARDAYAL AND ANOTHER

...APPELLANTS

Versus

FINANCIAL COMMISSIONER (REVENUE) AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasmail Singh Brar, Advocate,
for the appellants.

Mr. B.P.S.Virk, Advocate,
for the respondent No. 3/caveator.

AUGUSTINE GEORGE MASIH, J.

LPA-279-2022

Challenge in this appeal is to the judgment/order passed by the learned Single Judge dated 16.12.2021, wherein the writ petition preferred by the petitioners (appellants herein) challenging the *sanad takseem* issued vide order dated 14.08.2013 (Annexure P-3) by the Assistant Collector IInd Grade-cum-Naib Tehsildar, Bhawanigarh, District Sangrur-respondent No. 2 as well as the order dated 07.02.2018 (Annexure P-7) passed by the Financial Commissioner, Punjab, Chandigarh-respondent No. 1 dismissing the revision petition preferred by the appellants, was dismissed.

2. Learned counsel for the appellants has contended that the Assistant Collector IInd Grade-cum-Naib Tehsildar, Bhawanigarh, District Sangrur-respondent No. 2, while passing the order dated 14.08.2013

(Annexure P-3), has acted illegally while clubbing up the two partition applications, which do not relate to the same Khewat but pertain to two separate Khewats. He asserts that the action on the part of the Assistant Collector IInd Grade being violative of the basic principles of partition renders the orders passed by the said authority illegal and, therefore, liable to be set aside.

3. It is further submission of the learned counsel for the appellants that the share holders in the two partition applications are not the same as there are some who have no share in a particular chunk of land in one application whereas in the other, they are the share holders. With even single share holder being different in a partition application, the same could not have been clubbed together and, therefore, the process of clubbing up leading to the passing of the final order itself renders the *sanad* issued on partition of the land unsustainable and, therefore, deserves to be set aside.

4. It is further contention of the learned counsel for the appellants that the revisional authority also i.e. the Financial Commissioner has failed to appreciate that the *sanad takseem* has been carried out in a very hasty manner without even affording an opportunity to file an objection to the proposed *sanad takseem* as also against the mode of partition and, therefore, cannot sustain.

5. On the other hand, learned counsel for the caveator-respondent No. 3 has brought to the notice of the Court that the order dated 14.08.2013 (Annexure P-3) passed by the Assistant Collector IInd Grade-cum-Naib Tehsildar, Bhawanigarh, District Sangrur-respondent No. 2 has been passed after giving full opportunity to the parties. They were very much aware of the fact that the said proceedings were pending before the Assistant

Collector IInd Grade and they did appear before the said authority but absented thereafter. The appellants have no *locus standi* as they have already sold their share of the land. There was no interest, therefore, left out as far as the appellants are concerned.

6. During the proceedings before the Assistant Collector IInd Grade, no objections were filed against the maps (*nakshas*) drawn after the finalization of the mode of partition nor any challenge was made of the orders of clubbing up of the two separate partition applications having waived their rights of raising objections. They cannot now be permitted to challenge the *sanad* on the basis of the objections which were never raised by them during the partition proceedings.

7. It is further contention of the learned counsel for the caveator-respondent No. 3 that the present litigation is malicious and has tried to motivate and manipulate the process by misusing the procedure of law, firstly, by approaching the revenue authorities and thereafter, this Court by way of a writ petition and now the present appeal. Reference has also been made to the fact that the father of the appellants had sold his share in Khewat No. 46/46 to respondent No. 3-Baljinder Singh son of Ranjit Singh vide sale deed dated 18.06.2010 and, therefore, he had no *locus standi* to oppose the said *sanad takseem*. However, he preferred to challenge the same before the Financial Commissioner. Even Baljinder Singh son of Kishan Singh (uncle of the appellants and purchaser of the share of the appellants) also challenged the impugned *sanad takseem* but ultimately, settled with the caveator-respondent No. 3. The revision petition, out of which the writ petition had arisen, was filed four months after the dismissal of the revisions filed by the father and uncle of the appellants. This, he

asserts, is with an intention to delay the proceedings so that the partition proceedings cannot be finalized. He, therefore, prays that the present appeal is mere misuse of process of law and, therefore, deserves to be dismissed.

8. Having considered the submissions made by the learned counsel for the parties, we do not find any ground to interfere with the order passed by the learned Single Judge as it is an admitted position that the father of the appellants had sold his share in the property in question to Baljinder Singh son of Ranjit Singh-respondent No. 3 vide sale deed dated 18.06.2010. With this, there was no interest left of the appellants in the proceedings before the Assistant Collector IInd Grade. They were duly served and appeared but had stopped appearing before the said authority after that. Obviously, with having lost interest in the partition proceedings, no objections to the clubbing up of the partition applications or the various maps (*nakshas*), which were prepared after the finalization of the mode of partition, have been filed by the appellants. With having not participated in the process of the partition proceedings and having taken no objection, they are now stopped from taking such a plea before the revisional authority as well as the writ Court and the present appeal.

9. The mala-fide on the part of the appellants is apparent as they are left with no interest in the partition proceedings and still are harassing the caveator-respondent by making an effort to delay the process of partition. There being no error in the orders passed by the revenue authorities as also the Writ Court, we do not find any ground for accepting the prayer made in the present appeal and, therefore, dismiss the same.

10. We refrain ourselves from imposing any cost although this case is a fit case for imposing one.

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In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

4th April, 2022
pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No