

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

Sr. No.109

**CWP-14833-2021 (O&M)
Date of decision : 11.07.2022**

Jaspal Singh and another

..... Petitioners

VERSUS

Financial Commissioner, Revenue, Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. C.S. Bagri, Advocate, for the petitioners.

SUDHIR MITTAL, J. (Oral)

Naksha Bey was approved in the partition proceedings vide order dated 04.07.2013 and *sanad* was issued on 19.08.2013. The petitioners only challenged the mode of partition and Naksha Bey vide ROR No.31 of 2013-14 which was dismissed vide order dated 17.09.2014. Consequently, the revision petition was filed challenging the *sanad*. The same has also been dismissed vide impugned order dated 18.01.2021 leading to the filing of the present writ petition.

A perusal of the impugned shows that the grounds taken before the Financial Commissioner were;

(i) A family partition having taken place in the year 1970 and thus, a question of title having arisen as family partition has taken place in the year 1970, the revenue authorities had no jurisdiction to proceed with the case.

(ii) Partition is contrary to the mode of partition as the petitioners have been given land in three different khewats.

(iii) Land cannot be effectively cultivated as very little land has been given close to their house.

(iv) A plot situated in the abadi area has already been included in the partition and

(v) No question of *res judicata* arises.

These arguments have been reiterated by learned counsel for the petitioners.

In support of the private partition, learned counsel for the petitioners has referred to sale deed dated 10.05.1983 as well as sale deed dated 17.01.2003. It is his submission that family partition has been mentioned therein and thus, the authorities below were in error in refusing to recognise the family partition.

The argument cannot be accepted as all that has been said in the sale deeds is that a particular khasra number is in possession of the vendor by virtue of agreement between the parties. There is no reference to an oral private partition in respect of the entire land. Thus, the Financial Commissioner was justified in holding that evidence of a family partition cannot be permitted to be led in the revisional proceedings.

The finding that question of title does not arise in case, an issue of family partition is raised, is also perfectly legal. The argument to the contrary is misconceived and is rejected.

Regarding the argument that partition has been carried out contrary to the mode of partition, it only needs to be said that the argument has not been supported by the record and thus, it cannot be accepted.

Similarly, there is nothing on record to suggest that *gair mumkin* land has also been partitioned.

Learned counsel for the petitioners has relied upon Division Bench judgments in Sahib Singh dead (by his Legal Heirs) Vs. The Financial Commissioner, Haryana Law Finder Doc Id # 14287, Harbhajan Singh and others Vs. Financial Commissioner, Cooperation, Punjab, Chandigarh and others, Law Finder Doc Id # 192708 and Single Bench judgments in Babu Ram Vs. Banarsi Dass and another, Law Finder Doc Id # 635284, Bhagwan Ram Vs. Brij Lal, Law Finder Doc Id # 19219, Jai Singh Vs. Smt. Bhanti, Law Finder Doc Id # 2734, Lal Chand Vs. Sunil Kumar and others, Law Finder Doc Id # 633450 and Mohan Singh Vs. Lachhman Singh, Law Finder Doc Id # 49587. In addition, reliance has been placed upon a Single Bench judgment of the Himachal Pradesh High Court in Khima Ram Vs. Mast Ram, Law Finder Doc Id # 762095 and two orders passed by the Financial Commissioner (Punjab) in Harbakash Singh Vs. Bhola Singh etc. Law Finder Doc Id # 51813 and Inderjit Kaur and others Vs. Avtar Singh and others, Law Finder Doc ID No.966233.

Neither of the aforementioned judgments is applicable to this case. Sahib Singh (supra) is a case in which finding of family partition recorded by the authorities below was upheld as it was supported by evidence. Harbhajan Singh (supra) is a case where family partition was proved by evidence on record and mode of partition was affirmed in accordance therewith. Bhagwan Ram (supra) is a case where finding of a family partition was returned as the co-sharers had admitted the same and admission being the best piece of evidence. Babu Ram (supra) is a case

by the parties. Jai Singh (supra) is also not applicable as there is no evidence of *gair mumkin* land having been partitioned. For the same reason Lal Chand (supra) is also not applicable. Mohan Singh (supra) is a case where family partition had been proved by the parties therein by leading evidence before the civil Court. Reference is being made to Khima Ram (supra) only for the satisfaction of the learned counsel for the petitioners, even though, the said judgment is of the Himachal Pradesh High Court and is not binding on this Court. The case cannot help the petitioners as there is no evidence that *gair mumkin* land has been partitioned. The remaining two orders in Harbakash Singh (supra) and Inderjit Kaur (supra) are not being considered as the same have been passed by the Financial Commissioner.

The writ petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

11.07.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No