

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

114

LPA No.771 of 2022 (O&M)

Date of Decision: September 12th, 2022

Smt. Chameli Devi and others

...Appellants

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Suneel Ranga, Advocate
for the applicant/appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment dated 25.08.2022 passed by the learned Single Judge, whereby the writ petition preferred by the appellants for setting aside the order dated 04.03.2022 (Annexure P-13) passed by the Commissioner, Karnal Division, Karnal, dismissing the revision petition, order dated 09.02.2021 (Annexure P-11) passed by the District Revenue Officer-cum-Collector, Panipat-respondent No.3 dismissing the appeal, the impugned order dated 17.12.2020 (Annexure P-9) passed by the Tehsildar-cum-Assistant Collector, 1st Grade, Madlauda, Panipat and *Naksha bay* (Annexure P-6), has been dismissed. The primary grievance of the appellants is that the basic principles of partition as well as the mode of partition have been violated.

2. Briefly the facts are that the private respondents filed an application for partition of the joint property land on 12.06.2018. On the reply filed by the appellants to the partition application, *Naksha Alf* was prepared on 03.06.2019 and the mode of partition was finalized on 16.09.2022. *Naksha Bay* was prepared by the lower revenue staff, which was placed before the Tehsildar-cum-Assistant Collector 1st Grade, Madlauda, which was direct

violation of and *dehors* of mode of partition. Appellants raised objection to the *Naksha Bay* which was prepared, to which response was filed by the private respondents. The Assistant Collector 1st Grade proceeded to reject the objections vide order dated 17.12.2020 (Annexure P-9). An appeal was preferred against the same, which was dismissed by the Appellate Authority vide order dated 09.02.2021 (Annexure P-11), where a plea had been taken by the appellants that in *Naksha Bay*, the land has been bifurcated into two different parts which is against the fundamental of principles of consolidation and against the interest of agriculture. Upon dismissal of the appeal, revision petition was preferred by the appellants, which has also been dismissed vide order dated 04.03.2022 (Annexure P-13) by the Divisional Commissioner, Karnal Division, Karnal. Before the learned Single Judge what was pressed was that the possession of the parties has been disturbed which is contrary to the standing orders. The learned Single Judge while dealing with this aspect has mentioned that when the partition is to be carried out keeping in view the nature of the land, the value and the location, such disturbance is bound to occur. The Court had, therefore, refrained itself from exercising jurisdiction under Article 226 of the Constitution of India.

3. Learned counsel for the appellants has again reiterated the said aspect that the mode of partition has been violated as the possession has been disturbed. Another argument which has been pressed is that the basic principle of partition has been violated as separate parcels of land have been granted to the parties, especially the appellants, whereas effort has been made to grant consolidated chunk of land to the private respondents. More valuable land has been given to the private respondents vis-a-vis the

appellants and, therefore, the impugned order cannot sustain. Reliance has also been placed upon the judgment of this Court in ***Milkha Singh and others Versus State of Punjab and others 2014 (26) R.C.R. (Civil) 61.***

Another plea which has been taken by the counsel for the appellants is that prejudice has been caused to the appellants by this partition.

4. We have considered the submissions made by the counsel for the appellants and with his assistance, have gone through the pleadings and the orders passed by the authorities, which have been impugned including the judgment of learned Single Judge but do not find ourselves in a position to accept his submissions.

5. The first plea with regard to the mode of partition having been violated as the possession has been disturbed, suffice it to say that when partition takes place, where respective shares have to be taken note of depending upon the price and nature of the land as also the share of the co-sharers, there is bound to be disturbance of the possession. The mode of partition as finalized by the Assistant Collector 1st Grade, Madlauda, on 16.09.2019 reads as follows:-

“1. Total area kite 40 area 245 kanal-1 Marla through jamabandi year 2014-15 Khewat no.156, Khatoni no.158 situated at village Alupur, Tehsil Madlauda, District Panipat, is to be partitioned.

2. Separate Qura of the applicant and the separate second Qura of the Respondent No. 1 and third Qura for the Legal heirs (a and d) of the Respondent No. 2 will be made separately.

3. The land which will be spent on khal and paths, will be cut from the joint land and the rest of the land will be partitioned. There will be no partition of the uncultivable waste land.

4. Partition land will be share to each Qura keeping in view the nature and price of the land. The person who is in

possession of the land according to the price and nature, his share will be completed while keeping in view his possession.

5. If the possession is changed, it should be given at the cost of fruitful and valuable trees.

6. While making partition lack of Marla-2 Marla land will be ignored.

7. The proceedings of the partition will be conducted by the area girdawar with help of area patwari.”

6. In the light of these principles, when we have considered *Naksha bay*, which has been appended along with the appeal, we are satisfied that the mode of partition has not been violated as all efforts have been made to grant the parties their share according to their possession, price and nature of the land. Even location of the land has also been taken note of and accordingly, the shares have been granted to the co-sharers. Care has been taken to provide for *khal*, *rasta* (path) and water. The appellants themselves have admitted before the Revisional Authority that the value of the land adjoining the village is more. The Assistant Collector 1st Grade, Madlauda, has given the share of land adjoining to the village according to the share of all the stakeholders. A well reasoned and detailed order has been passed by the revenue authorities at each stage, which do not call for any interference as not only the principles of partition but the mode of partition has been kept in mind and proceeded with in accordance thereto.

7. Reliance upon the judgment of learned Singe Judge in *Milkha Singh's case (supra)* by the counsel for the appellants would not help his cause as the observations made therein as also the conclusions drawn were based upon the peculiar facts and circumstances of the said case, where mode of partition had been violated, no passage was provided for connecting the different parcels of land assigned to the parties and it was

found that the land was uncultivable by the mode of partition. Present is not the case, where such a situation arises. No prejudice has been caused to the appellants in the partition.

8. Concurrent findings have been recorded by the revenue authorities, which orders have been found to be just and reasonable and the dismissal of the writ petition by the learned Single Judge is in accordance with the facts and circumstances of the case including law which do not call for any interference by this Court in the present appeal.

9. The appeal, therefore, stands dismissed.

10. In the light of the dismissal of the appeal, application for stay i.e. CM No.1846-LPA of 2022 stands disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 12th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No