

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

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2023:PHHC:044452-DB

Letters Patent Appeal No.1409 of 2012

Date of Decision: March 20th, 2023

Babu Ram

...Appellant

Versus

Financial Commissioner (Appeal-II), Punjab and others

...Respondents

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

Present: Mr. Sudeep Mahajan, Advocate
for the appellant.

Mr. Maninder Singh, Deputy Advocate General, Punjab,
for respondent Nos.1 to 4.

Ms. Amandeep Kaur Soni, Advocate
for respondent Nos.5 and 6.

AUGUSTINE GEORGE MASIH, J.

In this intra-Court appeal, judgment dated 03.07.2012 of the learned Single Judge stands assailed, whereby a writ petition preferred by the appellant challenging the orders passed by the revenue authorities declining to interfere in the order dated 01.05.2006 (Annexure P-4) passed by the Assistant Collector 1st Grade ordering partition of the land, stands dismissed.

2. It is the contention of learned counsel for the appellant that the learned Single Judge has failed to appreciate the contentions as have been raised in the writ petition relating to the partition, which has been carried out violating the mode of partition as had been finalized between the parties. He asserts that respondent No.5-Ujjagar Singh son of Angad Singh had sold specific *khasra* numbers to respondent No.6-Smt. Krishna Kumari, his wife, which is not permissible, especially when it was a joint property held by all co-sharers and each co-sharer is owner of each inch of land. The entire land

allotted to private respondents No.5 and 6 is on the metalled road. Further the land which has been allotted to the appellant is in four separate blocks, whereas to the above said private respondents, the same is in only two blocks. Reference has also been made to the documents on record, especially the map to substantiate his contention. It is on this basis the counsel has assailed the order passed by the learned Single Judge as also that of the revenue authorities.

3. Counsel for contesting respondents No.5 and 6, on the other hand, has defended the order passed by the learned Single Judge as also the revenue authorities by asserting that the land, which is a subject matter of partition, is as a matter of fact, in five separate scattered parcels. Her assertion is that the appellant has also sold land in *Khasra* No.32//8 along with Waryam Singh and thus, it cannot be said that it is respondent No.5, who has alone sold the land. The mode of partition has not been challenged and, therefore, the same had to be given effect to, where it was laid down that the possession of the land would be taken into consideration. Counsel has further pointed out from Annexure P-5 that the land, which has been allotted to the appellant, also abuts the road and proportionate land has been allotted to him. Neither the mode which was settled between the parties on 16.12.2005 has been violated nor has any disadvantage been suffered by the appellant. The findings as recorded by the authorities below, therefore, do not call for any interference. She asserts that the appeal deserves to be dismissed.

4. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings as also the annexures attached thereto.

5. The facts are not in dispute i.e. Babu Ram had filed an application dated 13.11.2002 seeking partition of the land. The subject matter of the present appeal is the land measuring 120 *kanals* and 5 *marlas* situated in Village Bhaini Mian Khan, Tehsil and District Gurdaspur. Assistant Collector 1st Grade, Gurdaspur, after following the procedure as prescribed, proceeded to sanction the mode of partition on 07.04.2005 of land measuring 77 *kanals* and 13 *marlas* of *Khewat* No.264 and thereafter with the consent of the parties, fresh mode of partition was prepared on 16.12.2005 comprising of the total land in question i.e. 120 *kanals* and 5 *marlas*. No challenge was posed to this mode of partition dated 16.12.2005 and the same attained finality.

6. Order of partition was passed by the Assistant Collector 1st Grade, Gurdaspur, on 01.05.2006, which was challenged by the appellant before the Collector, Gurdaspur, who proceeded to dismiss the same vide order dated 15.01.2007. Appellant thereafter filed a revision before the Financial Commissioner (Appeals), Jalandhar Division, Jalandhar, which came to be dismissed vide order dated 30.01.2009 followed by a second revision before the Financial Commissioner (Appeals-II), Punjab, which was, after consideration and on hearing the counsel for the parties, dismissed vide order dated 22.07.2009 leading to the filing of the writ petition by the appellant, which has also been dismissed.

7. Mode of partition dated 16.12.2005 holds the field as the same remain unchallenged and is thus the basis for partition of the land in question i.e. 120 *kanals* and 5 *marlas*. It is also not in dispute that the appellant is owner of 1/4th share in the total land, which comes out to 30 *kanals* and 1 *marla*. It is not in dispute that the land which has been allotted

to the appellant is as per his entitlement. What is agitated by the appellant is that the land which has been allotted to respondent No.5, the co-sharer, abuts the main road, whereas the land which has been allotted to the appellant is not so. This assertion of the appellant is found to be incorrect as *Khasra* No.9/2/1 and 9/1/1, which has been allotted to the appellant, is on the main road.

8. It is not in dispute that the entire land is situated in five different parcels of land which are scattered. With such scattered land and at places where very small portion of land is abutting the road with rest of which is away from the road, it is not possible to allot everyone in each chunk of land abutting the road. What is important is that all have been provided land abutting the road as per their proportionate share. As regards the contention that the appellant has been allotted land in four different pieces, whereas the respondents have been granted land in two pieces, suffice it to say that apart from the share of the co-sharers, the other aspect which was to be taken into consideration, was the possession of the land of the co-sharers. The possession having been taken note of vis-a-vis the aspect with regard to the quality of the land, the grievance as has been highlighted by the appellant is apparently without any basis. No prejudice, in any manner, has been caused to the appellant in the partition, which has been carried out in accordance with the mode of partition finalized between the parties. The principle with regard to the partition i.e. 'good for good' and 'bad for bad' has been duly followed keeping in view the proportionate share of the co-sharers.

9. As regards the assertion of the counsel for the appellant that respondent No.5 has sold the specific portion of the land to his wife-

respondent No.6 and that too abutting the road, would not in itself make a difference as similar is the position with regard to the appellant as well, where he along with Waryam Singh has sold *Khasra* No.32//8 in similar manner. Appellant has also been allotted land abutting the main road, as has been recorded above.

10. In view of the above, we do not find any reason to interfere in the order passed by the learned Single Judge dismissing the writ petition.

11. Finding no merit in the present appeal, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

March 20th, 2023
Puneet

**(ALOK JAIN)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No