

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(123)

CWP-1339-2023

Date of decision: - 23.01.2023

Kulwinder Singh and another

....Petitioners

Versus

Financial Commissioner (Appeals) and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vikas Mehsempuri, Advocate,
for the petitioners.

Mr. Ferry Sofat, Additional Advocate General, Punjab
for respondents No.1 and 2.

VIKAS BAHL, J. (ORAL)

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing the order dated 25.08.2022 (Annexure P-17) passed by the Financial Commissioner (Appeals), Punjab, Chandigarh-respondent No.1 vide which the revision petition filed by the petitioners i.e., ROR no. 619 of 2018 in which the challenge was to the order dated 13.04.2010 (Annexure P-10); order dated 04.03.2010/10.03.2010 (Annexure P-9) and order dated 23.02.2010 (Annexure P-8) passed by respondent No.2, whereby the *sanad takseem*, Naksha Irri and Naksha Arra had been prepared, was dismissed. A further prayer has been made in the writ

petition for directing respondent no.2 to decide the partition application afresh by impleading the petitioners in the *sanad takseem* with respect to Khasra nos. 216 (8-5), 217(6-5) and 218 (6-5).

2. Brief facts of the present case are that on 22.12.2005, respondents No.3 to 5, namely, Harjinder Singh, Hardit Singh and Bhagwant Singh, had filed an application under Section 111 of the Punjab Land Revenue Act (for short 'the Act') for partition of the land at village Dharamkot, Tehsil and District Patiala. Total land measuring 320 bighas 17 biswas as per the jamabandi for the year 2001-2002 was the subject matter of the said partition application. The petitioners who were not the co-sharers on the date of the filing of the application were not parties in the said partition application dated 22.12.2005 (Annexure P-1 Pg 37 of the paperbook). Ajmer Singh-respondent no.6, who is the predecessor-in-interest of the petitioners, was respondent no. 9 in the said partition application. On 23.10.2009 (Annexure P-7), the mode of partition was prepared. Ultimately, the partition proceedings culminated with the issuance of *sanad takseem*/instrument of partition dated 13.04.2010 (Annexure P-10) and the rights of the co-sharers crystallized. As per the case set up by the petitioners, they had purchased land measuring 20 bighas 15 biswas from aforesaid Ajmer Singh-respondent No.6, vide registered sale deed dated 01.01.2018 (Annexure P-2). It is further the case of the petitioners, as is apparent from Para 4 of the Writ Petition, that the said Ajmer Singh, predecessor-in-interest of the petitioners, had filed a suit for declaration challenging the Order dated 10.03.2010 and Order dated 13.04.2010 (*sanad takseem*) and the said suit was dismissed. It has

further been averred that, when respondent no. 4 and 5 were trying to get possession of the land then, the petitioners filed a Civil Suit bearing No.1629 of 2018 against Hardit Singh, Bhagwant Singh (who are respondents No.4 and 5 in the present petition) and Inder Moudgil, for permanent injunction restraining the defendants therein, from dispossessing the plaintiffs from the land comprising Khewat No.1/1, Khatoni No.16, Khasra No.216 (8-5), 217 (6-5), 218 (6-5), total measuring 20 bigha 15 biswa, situated at village Dharmkot, Tehsil and District Patiala, as per jamabandi for the year 2011-2012. In the said civil suit, initially, vide order dated 23.05.2018, *ex parte ad interim* injunction was granted in favour of the petitioners. The said suit had been dismissed, as has been averred in paragraph 4 of the present writ petition and as is apparent from the Order passed by the Financial Commissioner dated 25.08.2022. An appeal against the said order is stated to be pending. The judgement of the said civil suit however, has not been annexed with the present petition. Even the judgement passed in the suit filed by Ajmer Singh has not been annexed with the present petition. On 23.05.2018, as is apparent from Annexure P-11 (Page 115 of the paperbook), the possession of the land in accordance with the *sanad takseem* was given to Harjinder Singh, Hardit Singh and Bhagwant Singh (respondents No.3 to 5 herein). Having not succeeded in the civil Court, the petitioners had filed ROR No.619 of 2018 (P-12) challenging the *sanad takseem* dated 13.04.2010, Naksha Irri dated 10.03.2010 and Naksha Arra dated 23.02.2010. The Financial Commissioner (Appeals), Punjab, after considering the facts, dismissed the revision petition filed by the

petitioners alongwith another revision petition filed by Jasvir Kaur and Manjit Kaur, on the ground that there was a delay of more than seven years in filing of the revision petition and no plausible argument had been raised by the petitioners for getting the same condoned and it was further observed that the petitioners had purchased the land in the year 2018 i.e., after the issuance of *sanad takseem* and the onus was upon them to verify the details of the property before investing their money and purchasing the land. The argument of the private respondents to the effect that the warrant of possession was earlier issued on 13.05.2014 and on account of the civil suits, the same could not be executed was also noticed.

3. Sole argument raised by the Learned counsel for the petitioners is that, as per Section 122 of the Punjab Land Revenue Act 1887, a person can apply for seeking possession of the land allotted to him in partition only within a period of three years from the date recorded in the instrument of partition and the possession could have been taken only within a period of three years from 30.04.2010 and since the same has not been done thus, the entire proceedings including the issuance of *sanad takseem*, should be set aside.

4. This Court has heard learned counsel for the petitioners and has perused the paper-book.

5. Chapter IX of the Punjab Land Revenue Act, 1887 is a complete code governing the Partition of agricultural land. Section 111 provides that any joint owner of land can apply for partition. Section 113 provides that notice of the said application is required to be served on the recorded co-sharers who have not been joined in the application. In case,

any question of title is raised with respect to the property to be partitioned, then the question as to whether such question of title is involved or not between the applicant and the respondent, is to be decided by recording reasons within 30 days as per the provisions of Section 116. In case, a question of title is involved then the Revenue Officer is to decline to grant the application for partition until said question is determined by a Court of competent jurisdiction. The mode of partition is to be finalized under the provisions of Section 117 of the Act. After the partition is completed, then an instrument of partition/*sanad takseem* is to be prepared and issued under Section 121 of the Act. Relevant portion of Section 121 of the Act is reproduced hereinbelow:

“121. Instrument of partition. - When a partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared at the expiry of sixty days from the order passed under Section 118 and it shall take effect after thirty days of its first copy being issued.”

A perusal of the same would show that the said *sanad takseem*/instrument of partition is to be issued when the partition is complete.

6. In the present case, it is not in dispute that the petitioners were not parties to the partition proceedings which were instituted on an application moved by respondents No.3 to 5 on 22.12.2005 (P-1 at page 37). The said partition proceedings continued and attained finality on 13.04.2010 with the issuance of the instrument of partition/*sanad takseem*. The co-sharers were allotted various pieces of land. Since the

petitioners had no right in the land in question as on 13.04.2010, thus, their names did not figure in the *sanad takseem*. It is the case of the petitioners that they had purchased the land measuring 20 bigha 15 biswa from respondent No.6-Ajmer Singh, vide sale deed dated 01.01.2018. The respondent no.6-Ajmer Singh, as per the averments made in para 4 on page 13 of the paper-book, had filed a suit for declaration challenging the *sanad takseem* dated 13.04.2010 and the same was dismissed. The respondent No.6-Ajmer Singh, predecessor-in-interest of the petitioners has neither filed the revision petition before the Financial Commissioner nor has filed any writ petition before this Court. The petitioners who, even as per their own case, have stepped into the shoes of respondent No.6-Ajmer Singh after a period of more than 7 years from the issuance of the instrument of partition, have no *locus standi* to challenge the partition proceedings including the instrument of partition/*sanad takseem*. Thus, the filing of the revision petition before the Financial Commissioner with the prayer for setting aside the *sanad takseem* dated 13.04.2010, Naksha Irri and Naksha Arra, was completely misconceived. No law has been cited before this Court to show that a person who is a subsequent purchaser after the preparation of the instrument of partition has a right to challenge the partition proceedings, moreso, when the predecessor-in-interest of the said person has already lost his challenge to the partition proceedings.

7. It would also be relevant to note that a perusal of Annexure P-11 (page 115 of the paperbook) would show that the respondents No.3 to 5 were given possession of the land in pursuance of the *sanad takseem*.

A perusal of Annexure P-11 would also show that reference has been made in the same to the order of the Collector 1st Class, Patiala dated 07.12.2017 as well as to the report submitted to the office of the District Magistrate, vide memo dated 30.01.2018 which *prima facie* shows that the application for seeking possession in pursuance of the *sanad takseem* was made much prior to 23.05.2018. A perusal of the order passed by the Financial Commissioner dated 25.08.2022 (at Page 155) would also show that the argument of the respondents to the effect that the warrant of possession was earlier issued on 13.05.2014 had also been noted. In the entire writ petition, no date as to when the application was moved by the respondents No.3 to 5 for seeking possession has been mentioned. It is also relevant to note that the petitioners had, after purchasing the land measuring 20 bighas 15 biswas from Ajmer Singh, instituted a civil suit against Hardit Singh, Balwant Singh (respondents No.4 and 5 herein) and one Inder Moudgil, Kanungo Halqa Dhablan, Tehsil and District Patiala, for permanent injunction restraining the defendants therein from dispossessing the petitioners from the land comprising Khewat No.1/1, Khatoni No.16, Khasra No.216 (8-5), 217 (6-5), 218 (6-5), total measuring 20 bigha 15 biswa, situated at village Dharmkot, Tehsil and District Patiala, as per jamabandi for the year 2011-2012. Although, vide order dated 23.05.2018, *ad interim ex parte* injunction was granted but as is apparent from Paragraph 4 of the Writ Petition, and also the order of the Financial Commissioner (Appeals), Punjab, Chandigarh, dated 25.08.2022, the said civil suit was dismissed. A perusal of Para 4 of the writ petition would show that an appeal against the said judgement is

stated to be pending. The issue as to whether the petitioners are entitled to injunction or not, is pending final adjudication before the civil court. Thus, on the said ground also, the filing of the revision petition before the Financial Commissioner as well the present writ petition is completely misconceived. It would also be relevant to note that neither a copy of the plaint nor a copy of the detailed judgement dated 26.11.2018 has been annexed along with the present petition, although, interim order dated 23.05.2018 has been annexed.

8. The sole argument raised by the learned counsel for the petitioners to the effect that under the provisions of Section 122 of the Punjab Land Revenue Act, warrant of possession cannot be issued after a period of three years from the date of the instrument of partition and since, in the present case the possession as per Annexure P-11 is shown to have been taken after a period of three years thus, on the basis of the said plea the entire partition proceedings including the instrument of partition/*sanad takseem* are required to be set aside, is completely misconceived for the following reasons: -

- (i) This Court has already held that the petitioners do not have any locus standi to challenge the partition proceedings as they had purchased the property after more than 7 years from the issuance of the *sanad takseem*/instrument of partition and Ajmer Singh-the predecessor-in-interest had already filed a civil suit challenging the partition proceedings and the said suit, as per the averments made in para 4 of the present writ petition, was dismissed and suit for permanent injunction

filed by the petitioners had also been dismissed and the appeal therefrom is stated to be pending.

(ii) Section 122 of the Act is reproduced hereinbelow:-

“122. Delivery of possession of property allotted, on partition. - An owner to whom any land is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue-officer shall, on application made to him for the purpose by any such owner at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property.”

A perusal of the said section would show that it is the application for possession which is to be filed within a period of 3 years. In the entire writ petition, no reference has been made to the date of the filing of the said application. Reference has been made to a document dated 23.05.2018 (P-11 at page 115), which as per the case of the petitioners, is the warrant of possession. A perusal of the said document Annexure P-11 (at page 115 of the paper-book), would show that reference has been made to the Order of the Collector dated 07.12.2017 and also to the report dated 30.01.2018 submitted to the District Magistrate which would *prima facie* show that the application for possession in pursuance of the *sanad takseem* was much prior to 23.05.2018. Moreover, the document i.e. Annexure P-11 shows that the possession has been delivered to respondents no. 3 to 5 with police help.

The order dated 07.12.2017 and the report dated 30.01.2018 have not been annexed by the petitioners alongwith the present writ petition.

- iii) A perusal of the Order dated 25.08.2022 passed by the Financial Commissioner (at Page 155) would show that the argument of the private respondents to the effect that warrant of possession was earlier issued on 13.05.2014 also and on account of the pendency of the civil suits, could not be executed, has also been noticed. The said fact has not been controverted by the Learned Counsel for the petitioners before this Court and the same also *prima facie* shows that the application for possession under Section 122 of the Act was filed prior in time to the year 2014. At any rate, no date of the application has been mentioned in the entire writ petition.
- iv) No law has been cited by the Learned Counsel for the petitioners to show that even in case, the period for seeking possession or execution of Order has elapsed then, the entire proceedings are to be set aside and that too at the instance of a person who is not even a party to the said proceedings.
- v) A perusal of Paragraph 7 of the Writ Petition would show that *prima facie* grievance of the petitioners is that respondent No.6-Ajmer Singh had not informed the petitioners about the withdrawal of the area from his “Khata” vide *sanad takseem*/instrument of partition and that he had

concealed the said facts from the petitioners while executing the sale deed 01.01.2018. Even if the said grievance is taken on face value, then also, it is not open to the petitioners to challenge the partition proceedings, more so when respondent no. 6 has already challenged the partition proceedings and his suit has been dismissed and their only remedy is to seek damages/compensation etc. against respondent no.6. Moreover, a perusal of the Sale Deed dated 01.01.2018, would show that reference in the same has been made to the Jamabandi for the year 2011-2012 and not to the latest jamabandi and at any rate, even as per the Jamabandi for the year 2011-12 (Annexure P-3), Khasra no. 216 (8-5), 217 (6-5), 218 (6-5) are a part of the joint khewat which is jointly owned by all the co-sharers and thus, as per settled law, a sale deed mentioning sale of specific khasra numbers, which form part of a joint khewat, jointly owned by various co-sharers, would be deemed to be sale of a share from the joint khewat & the vendee would be deemed to be a co-sharer in the entire joint khewat. Reference in this regard be made to the judgement of the Full Bench of this Court in case titled as “**Ram Chander Vs. Bhim Singh & others, & connected matters, reported as 2008(3) R.C.R. (Civil) 685.** It is further settled law that the recitals made in a sale deed between two parties do not bind the other co-sharers. Thus, even in case the allotment of land as per the *sanad takseem* is

not taken into consideration and the jamabandi for the year 2011-2012 is to be seen, the grievance of the petitioners with respect to purchase of specific khasra numbers is *prima facie* misconceived.

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the present writ petition is meritless and misconceived and is accordingly, dismissed.

January 23, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes