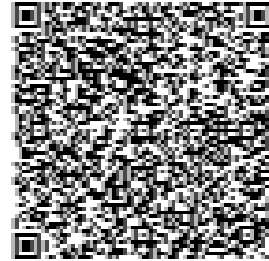


2024:PHHC:087301-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

LPA-798-2024 (O&M)
Decided on: 15.07.2024

Ram Sarup now deceased through his LRs & others

.....Appellant(s)

Versus

State of Haryana & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE KARAMJIT SINGH**

Present: Mr.Vikram Singh, Advocate for the appellant (s).

Mr.Ankur Mittal, Addl.A.G., Haryana
Mr.Saurabh Magu, AAG, Haryana.

G.S. Sandhawalia, J. (Oral) :

CM-1958-LPA-2024

1. Application for condoning the delay of 69 days in filing the appeal is allowed in view of the averments made in the application, duly supported by affidavit of Kamla, wife of the deceased, Om Parkash, son of the deceased appellant-Ram Sarup. Delay of 69 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

CM-1959-LPA-2024

3. Application has been filed for impleading the LRs of deceased-appellant, Ram Sarup who has since expired, leaving behind his

LRs as mentioned in para no.1 of the application. It is further stated that the applicants have not filed any such application.

4. Accordingly, in view of the averments made in the application, duly supported by affidavit of Kamla, wife of the deceased son-Om Parkash of the deceased appellant-Ram Sarup, said is allowed. LRs as mentioned in para no.1 of the application are allowed to be brought on record, only for the purpose of pursuing the present litigation. Amended memo of parties is taken on record.

5. CM stands disposed of.

CM-1960-LPA-2024

6. Exemption application is allowed, as prayed for.

7. CM stands disposed of.

LPA-798-2024 (O&M)

8. Consideration in the present appeal is to the judgment dated 16.11.2023 vide which CWP-22009-2023 had been dismissed whereby the Learned Single Judge had refused to interfere in the partition proceedings of agricultural land measuring 111 kanals and 16 marlas situated in the revenue estate of Village Ponkar Kheri, Tehsil & District Jind, as per Jamabandi for the year 2005-2006.

9. Counsel for the appellants has pointed out from the site-plan that the frontage given amongst the three share-holders was less to the appellants in comparison to the other two share-holders who had got more frontage. It is thus his case that the appellants had filed objections against the said proposal which were not dealt with by the authorities below. The Learned Single Judge noticed that the appellants-writ petitioners had been issued notice and the parties had been heard and due opportunity had been

given to file objections. The mode of partition had contained the terms and conditions which were duly followed. The Naksha-Kha was prepared in conformity of the same and possession was to be kept intact and was to be given due priority. It was accordingly recorded that the frontage area was given less to the writ petitioners/present appellants since possession was to be kept intact and Naksha-Kha was amended to allot Killa No.84/16 with tubewell to the petitioners. It was in such circumstances, the Learned Single Judge had not interfered in the findings recorded by the authorities below.

10. We have perused the record. Apparently, the objections were filed whereby plea was taken that the writ petitioners had not been provided land abutting on 33' wide path, which apparently is incorrect. However, in the later part of the objections, it was mentioned that they had not been given their part as per the share and they were entitled for the same. Another objection was taken that there was a tubewell running in Killa No.16 which had been given to the co-sharer-Ram Kumar and that Killa No.16 ought to have been given to the appellants.

11. The objections were accordingly dealt with by the Assistant Collector-IIInd Grade, Jind vide order dated 03.06.2013 (Annexure P-4) and after inspecting the spot and hearing the arguments of the counsels, the Naksha Bey was modified. The tubewell was then given to the writ petitioners and the area of Raj Kumar which was less was given from the southern side of Killa No.6 measuring 4 kanals 8 marlas. Similar exercise also was done on Killa No.6 of min northern side regarding Hari Ram etc. and thereafter, the *Sanad Takseem* was prepared on 16.12.2013 (Annexure P-5).

12. An appeal was filed before the Sub-Divisional Collector, against the orders dated 23.01.2013 and 03.06.2013 regarding the mode of partition and Naksha Bey being wrongly approved, which was dismissed vide order dated 12.02.2014 (Annexure P-7) by noting that the *Sanad Takseem* was prepared and he had no jurisdiction to hear the appeal. The matter was then taken to the Commissioner, by way of filing revision, which was dismissed on 26.05.2015 (Annexure P-9) on the same ground of jurisdiction and the same ought to be challenged before the Financial Commissioner by filing revision. The same was also dismissed on 05.09.2023 (Annexure P-11) and the reasoning was that Naksha Kha was amended to allot Killa No.84//16 with tubewell to the petitioners and there was no challenge to the mode of partition whereby possession of the parties was to remain intact. In such circumstances, the Financial Commissioner declined to interfere. Relevant portion of the order dated 05.09.2023 reads as under:

“4. After considering the rival submissions, the Ld. Counsel for Petitioners has not been able to point out any specific illegality in the proceedings below. As per the Mode of Partition agreed to between the parties, the partition was to be carried out protecting the existing possession of the parties. There is no mention in the Mode of Partition that the three divisions must have equal share on the road front. A cursory look at the map shows that if the partition was to be disturbed now, to give each of the three khewats equal share on the road front, it would lead to fragmentation of land due to the Petitioners’ insistence to retain Killa no.84//16 containing their tubewell. The scope of a revision petition is limited. A petition u/s 16 (1) cannot be converted into an appeal unless there is a grave miscarriage of justice. I, therefore, find no

merits in the present Revision petition, which is hereby dismissed.”

13. It is thus apparent that the appellants having consented to the mode of partition and wanting their possession to remain intact and they were further protected at the time of consideration on the objections and were given the tubewell. It was in such circumstances, the frontage had got reduced. It was for the appellants, at that point of time, to either give up on one of their objections and press for frontage and to shift their tubewell, if they so wanted. Apparently, they did not do so as even they did not want to break their possession as per the mode of partition. In such circumstances, the findings which have been recorded by the Financial Commissioner, which were upheld by the Learned Single Judge, do not suffer from any infirmity which would warrant any interference.

14. Resultantly, in view of the above discussion, finding no merit in the present appeal, the same is hereby dismissed in limine. All pending application(s) if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

15.07.2024
Sailesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No