

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-17496-CWP-2024,
CM-19278-CWP-2024 in/and
CWP-5059-2023 (O/M)
Date of decision : 16.12.2024

Rattan Lal and others

..... Petitioners

Versus

Commissioner, Gurugram Division, Gurugram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Keshav Pratap Singh and Mr. Samsvir Singh, Advocates
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

Mr. Shobit Phutela, Advocate
for respondent No. 4.

Mr. Aashish Chopra, Senior Advocate with
Ms. Mehar Nagpal, Mr. Varun Aryan Sharma, Advocate
for applicant-respondent No. 5.

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HARSH BUNGER, J. (ORAL)

CM-17496-CWP-2024

This is an application filed under Section 151 CPC by
respondent No. 5 for preponing the date of hearing of main case.

Notice in application.

Mr. Keshav Pratap Singh, Advocate, Ms. Upasana Dhawan,
AAG Haryana and Mr. Shobit Phutela, Advocate accept notice on behalf
of petitioners, respondent-State and respondent No. 4, respectively and

state that they have no objection if the application for preponing the date of hearing of main case is allowed.

For reasons stated in application and no objection from learned counsel appearing for respective parties, the instant civil miscellaneous application for preponing the date of hearing of main case is allowed and the main case is taken on board today itself for hearing.

Application is accordingly disposed of.

CM-19278-CWP-2024

This is an application filed under Section 151 CPC for placing on record zimni orders.

For the reasons mentioned in application, same is allowed and zimni orders are taken on record subject to all just exceptions.

Application is accordingly disposed of.

CWP-5059-2023 (O/M)

1. Petitioners have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside order the dated 10.02.2021 (Annexure P-1), order dated 10.03.2021 (Annexure P-4) and order dated 24.03.2021 (Annexure P-5), passed by learned Assistant Collector 1st Grade, Pataudi, District Gurugram.

1.1 Further prayer has been made for setting aside the order dated 11.10.2021 (Annexure P-7), passed by learned Collector, Pataudi, District Gurugram, order dated 30.11.2021 (Annexure P-8) and order dated 02.08.2022 (Annexure P-10), passed by the learned Commissioner, Gurugram Division, Gurugram (in short 'Divisional Commissioner').

2. Briefly, respondent No. 4 (Aparv Space Solution LLP) filed an application seeking partition of joint land comprised in Khewat No. 1777, situated at village Bohrakalan, Tehsil Pataudi, District Gurugram. In the said partition proceedings, the petitioners were proceeded against ex-parte, vide order dated 10.02.2021 (Annexure P-1), passed by learned Assistant Collector. Thereafter, mode of partition came to be approved, vide order dated 10.03.2021 (Annexure P-4) and Naksha 'Bey' was approved, vide order dated 24.03.2021 (Annexure P-5).

2.1 It transpires that the petitioners challenged the aforesaid orders/partition proceedings by filing an appeal before learned Collector, Pataudi, which came to be dismissed, vide order dated 11.10.2021 (Annexure P-7). A further revision filed by the petitioners before learned Divisional Commissioner was also dismissed, vide order dated 30.11.2021 (Annexure P-8) on the ground of jurisdiction. However, on a writ petition (CWP-5228-2022) being filed by the petitioners, order dated 30.11.2021 (Annexure P-8) was set aside and the matter was remanded to the learned Divisional Commissioner for fresh decision on merits, vide order dated 29.04.2022 (Annexure P-9), passed by this Court. Upon remand, learned Divisional Commissioner, vide order dated 02.08.2022 (Annexure P-10), dismissed the revision petition filed by the petitioners. Hence, the present civil writ petition.

3. Learned counsel for petitioners submits that the learned Assistant Collector has failed to follow the procedure as prescribed under Section 20 of Haryana Land Revenue Act, 1887 (in short '1887 Act') and the petitioners were wrongly proceeded against ex-parte. It is stated that

the predecessor of petitioner No. 2, namely Jawahar Lal had expired on 01.12.2020 and his legal heirs were not impleaded. It is submitted that even the partition proceedings have been finalized at the back of the petitioners in a hurried manner. It is next submitted that the appeal/revision petition preferred by the petitioners have also been rejected by the learned Collector, Pataudi and learned Divisional Commissioner without appreciating the issues raised by the petitioners before them. Learned counsel for petitioners submits that the petitioners were in possession of land comprised in Killa No. 218//25 as they had constructed a room, tubewell and a samadhi of their mother on that land, but the said area has not been given to them. On the aforesaid pleas, learned counsel for petitioners submits that the partition proceedings as well as impugned orders be set aside and the matter be remanded to learned Assistant Collector for fresh decision.

4. Per contra, learned counsel(s) appearing for respective respondents opposed the submissions made on behalf of petitioners. It is submitted that due procedure was followed by learned Assistant Collector and even mustri munadi was got conducted in the village, however, the petitioners did not put in appearance before learned Assistant Collector, accordingly, they were proceeded against ex-parte and partition proceedings culminated with the drawing of sanad takseem (instrument of takseem) and thereafter, even the possession has been handed over and the mutation has been sanctioned. It is submitted that no prejudice has been caused to the petitioners with the final partition and, therefore, partition proceedings cannot be faulted with. With the aforesaid

submissions, prayer has been made for dismissal of the present writ petition.

5. Heard.

6. Although, it is not denied by any of the parties that Jawahar Lal, predecessor of petitioner No. 2 had expired on 01.12.2020, however, it is noticed that the partition application came to be filed on 11.12.2020 and the petitioners have not indicated that before filing of the partition application, any mutation was got entered/sanctioned in favour of legal representatives of deceased Jawahar Lal. Evidently, upon filing of partition application, notices were issued whereupon report of refusal to accept summons was received. Upon this, learned Assistant Collector passed following order dated 13.01.2021 :-

“Case file presented. Parties were called. Counsel of Applicant appeared. None appeared on behalf of Respondents, Summons have been received after service compliance report. Report as 'Refusal' has been received on summons. Counsel of Applicant stated that 'refusal' has been received on summon report. Therefore, ex parte proceedings be initiated against Respondents. Therefore, while disagreeing with the contention of Counsel of the Applicant, I hereby pass order to summon Respondents through proclamation keeping in view the principles of natural justice. Therefore, the case file be presented on 10.02.2021 for summoning the respondents through proclamation.

*Sd/-
A.C.II.G
13.01.2021”*

6.1 Thereafter, mustri munadi was made in the village for service upon respondents in the partition application, however, when the

petitioners, in pursuance to the aforesaid proclamation, did not appear before the Assistant Collector, they were proceeded against ex-parte, vide order dated 10.02.2021 (Annexure P-1). Thereafter, the Assistant Collector prepared the mode of partition on 10.03.2021 and on that basis, Naksha 'Bey' came to be prepared and subsequently approved on 24.03.2021 and ultimately, the partition proceedings concluded with the drawing of sanad takseem. Apparently, the appeal/revision petition filed by the petitioners before learned Collector and learned Divisional Commissioner were also dismissed.

7. As regards the plea of the petitioners regarding non compliance of Section 20 of 1887 Act is concerned, it is observed that it is not a case where the petitioners were proceeded against ex-parte only on the basis of service reports, rather the Assistant Collector adopted the mode of proclamation (mustri munadi) for effecting service upon respondents in partition application, which was carried out in the village and since the petitioners did not appear before learned Assistant Collector in pursuance to the mustri munadi, accordingly, they were proceeded against ex-parte. It is noticeable that service by way of proclamation is also a recognised mode of service under Section 20 of 1887 Act.

8. As regards the plea of the petitioners that they are in possession of Killa No. 218//25 as they had constructed a room, tubewell as well as samadi of their mother on the said land, it is observed from the paperbook that no evidence/material has been placed on record in support of said plea raised by the petitioners. There is also no khasra girdawari placed on record of the case to indicate that the said Killa No. 218//25

was in exclusive possession of the petitioners. In the absence of any material on record to show that petitioners were in possession of Killa No. 218//25, the said plea is liable to be rejected.

9. That apart, from a perusal of site plan (Annexure R-5/7), it is revealed that the petitioners have been allocated land with more frontage on the passage/rasta and that too in the form of one contiguous block of land.

10. Learned counsel for petitioners has failed to point out as to what prejudice has been caused to the petitioners by the manner in which the land has been allocated to the petitioners.

11. In my considered view, the manner, in which the land has been partitioned and allocated to respective parties, is fair, just and equitable, which does not call for any interference by this Court.

12. Resultantly, the present writ petition fails and the same is accordingly dismissed.

13. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

16.12.2024
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No