



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

LPA-996-2024 (O&M)

Date of decision : 24.04.2024

Om Parkash @ Om Singh

...Appellant

Vs.

**The Financial Commissioner,
Haryana and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Ashwani Gaur, Advocate for the appellant.

DEEPAK MANCHANDA, J.

1. Through present intra-court appeal, the appellant has assailed the judgment dated 28.02.2024 passed by the learned Single Judge, whereby the writ petition filed by the appellant for quashing of the orders dated 20.12.2023 (Annexure P-11), 23.12.2014 (Annexure P-10), 14.11.2014 (Annexure P-8) and 15.04.2011 (Annexure P-4), passed by respondents No.1 to 4 respectively, with a further prayer for setting aside the instrument of partition dated 12.06.2012 (Annexure P-5) was dismissed.

2. The facts emanating from the pleadings of the present appeal are that respondent Nos.5 and 6 filed an application for partition of the land measuring 160 kanal 11 marlas situated within the revenue estate of Village Kurar Ibrahimpur, Tehsil and District Sonipat on 02.06.2008, where the dispute of partition was orally settled and amended mode of partition was prepared on 18.03.2010, but respondent Nos.5 and 6 filed their objections to the same on 06.05.2010, which were dismissed by the respondent No.4. Thereafter, the said

order was challenged by filing an appeal before the Collector i.e. respondent No.3, where during the pendency of the said appeal, respondent No.4 issued the instrument of partition on 12.06.2012 and the appeal filed by the appellant was dismissed on 11.01.2013, but respondent No.2 accepted the appeal filed by the appellant, vide order dated 20.12.2013 and remanded back the case to respondent No.3 for a fresh decision. However, respondent No.3-Collector again dismissed the appeal vide order dated 14.11.2014. In pursuance to the same, respondent Nos.5 and 6 filed the execution petition for execution of judgment and decree dated 16.08.2013, but the said execution was dismissed vide order dated 20.08.2016 and the revision petition against the order dated 14.11.2014 was also dismissed by the Commissioner in *limine* vide order dated 23.12.2014, which was challenged by the appellant. The same was also dismissed vide impugned order dated 20.12.2023 passed by respondent No.1. Therefore, appellant filed CWP-4065-2024 aggrieved against the said orders with the plea that the partition proceedings was shown to be completed with symbolic possession only in the papers but in real no physical possession was transferred, but the learned Single Judge vide impugned judgment dated 28.02.2024, wrongly dismissed the writ petition which is under challenge through this intra-court appeal.

3. Learned counsel for the appellant contends that the learned Single Judge dismissed the writ petition in *limine* without appreciating the material available on record where sanad taksim had been sanctioned after following the due procedure, and the fact regarding construction of house was recorded in the revenue record, but same was ignored by the learned Single Judge. He further contends that respondent No.3 did not make any observation after spot

inspection qua constructed house of the appellant and the learned Single Judge while passing the impugned judgment relied upon the observations made by respondent No.3 only without looking into the material available on record i.e. photographs, revenue record, khasra girdawari to substantiate that the stable has been constructed which is a valuable construction. Learned counsel has argued that the mode of partition has been done in violation of the statutory provisions as well as without appreciating the material available on record.

4. We have heard learned counsel for the appellant and have perused the record.

5. The learned Single Judge while passing the impugned judgment observed that the partition proceedings were initiated at the behest of respondents No.5 and 6, whereby mode of partition was prepared vide order dated 18.03.2010 and the objections filed against the Naksha Be(Kha) were decided after granting opportunity to both the parties and were rejected vide order dated 15.04.2011. The said findings were affirmed by the respondent-authorities vide order dated 11.01.2013, 14.11.2014 and 23.12.2014. Relying upon the findings given in aforesaid orders, learned Single Judge observed that the Sanad Taksim was issued only after following necessary procedure that too after the spot inspection, which revealed that a constructed valuable house was only on the land which was allotted to the parties, where there was no violation of the mode of partition, affirming the concurrent findings given by the revenue authorities. We have also perused the aforementioned orders passed by the respondent/revenue authorities as well as the findings in reference to order dated 15.04.2011 (Annexure P-4/T) passed by respondent No.4, the same reads as under:-

“The case file was presented. Counsels of the parties are present. The respondents have raised objection against Naksha Kha. Both the parties have been heard on Naksha Kha which has been received from the field staff. Finding no merits in the objections against Naksha Kha by the respondents, the partition is accepted and this partition shall be incorporated in the revenue record after expiry of a period of limitation of appeal. Now the file be presented on 16.05.2011 for Naksha Ga.”

The findings in reference to order dated 11.01.2023 (Annexure P-6/T) passed by respondent No.3 read as under:-

“The records available on the case were carefully perused and the arguments of the learned advocates of both the parties were heard in detail. Counsel for respondents while arguing drew my attention to VOL.CXLI-(2005-3) Punjab Law Report Page 519 according to which if Sanad Partition is issued then partition proceedings are completed. According to 2001 (2) RCR (Civil) Page No.739, if the partition proceedings are completed then the Revenue Officer cannot set aside that partition. Only the Honorable High Court has the right to set aside. In this case, Sanad Taksim has been issued and possession proceedings have been completed. With which I completely agree. The court below on 18.3.2010 proposed the mode of partition and no appeal was made against the proposed method of partition by the appellants. In paragraph no.5 of the proposed mode of partition, there is a provision for petition by respecting the possession and in paragraph no.7 there is a provision for land adjacent to the G.T.Road to be allotted according to the share. Naksha Kha has been perused, land to be partitioned is situated in 3 pierces (kurra), and in each piece (Kurra), there is a path and water course for each stakeholder as per requirement and each stakeholder has been given land according to his share on the G.T.road. Therefore, keeping in mind the above facts, the appeal of the appellants is dismissed being devoid of merit. The file be consigned to the record room after due compliance.”

The findings in reference to order dated 14.11.2014 (Annexure P-8/T) passed by respondent No.3 read as under :-

“After hearing the arguments of the Counsels of both the parties, a spot inspection was done. With the presence of both the parties, the entire inspection was done through Patwari. On the spot, Inder Singh S/o Jailal, Jaikuwar s/o Jailal, Chandram s/o Jyotram, Om Prakash s / o Jyotram, Pawan Kumar S/o Singh Ram were found present on the spot. The valuable house on the spot has been given to the Appellant only. The stables and water tank have been built during the proceedings, and a case in respect of which was pending in the civil court and a stay was issued by the civil court regarding this suit land, which proves that this construction has been done illegally, which is not even valuable. As stated by the Appellants in their appeal and which has been divided between the two parties according to the share, the land which is adjacent to G.T. road is very valuable, it has been divided equally between both the parties as per the share, its method of partition has

been provided in point no. 7. Quality and price have been completely taken care of. The house and the tube well have been allotted to the same person who used to occupy it. After spot inspection, final orders were finalized. Counsel of both the parties came to the court.

After listening to both the Counsel at length, perusing the records available on file and inspecting the spot myself, I have come to the conclusion that as per the points given in the proposed mode of partition by the court below, mainly point no. 5 the partition has been done by retaining the possession. The valuable house constructed by the appellant has been allotted to him. Roads and paths have been given as per requirement. According to point no. 7, the land situated on GT Road is very valuable. The shares have been divided equally between both the parties. According to point no. 8, while making the Partition the tube well has been fallen to the share of the party to whom it belongs, land has been given along with the tube well and the most important thing is that the quality and price have been kept in mind. Apart from this, as far as the question of stable and water tank which is said to be very valuable by the appellant, those numbers have been shown in the Jamabandi of the year 2004-05 as Chahi produced by the appellants and the construction has been raised by the appellants during the proceedings of Partition whereas they knew very well that a case No. 171 of 2008 regarding the said land is pending in the civil court and a restraining order has been issued by the civil court against any tampering or construction on the land which proves that the said construction done by the appellant is completely illegal and against law, which is not even of much value. And temporary construction has been done and any time demolition can be done. Therefore, the provisions given in the proposed mode of partition issued by the Court below have been completely followed. The interests and facilities of both the parties have been taken care of. Partition has been completed according to quality and price of land. However, in the present appeal, a sanad taksim has been issued by the Assistant collector First Class, Sonipat. Therefore, finding no strength in the appeal of the Appellant, the present appeal is dismissed. The order under appeal is upheld. The order was pronounced in open court in the presence of both the parties. My signature is on each page of the order. One photocopy of this should be sent to Assistant collector First Class and Tehsildar Sonipat. The file be consigned to record room after due compliance.”

The findings in reference to order dated 23.12.2014 (Annexure

P-10) passed by respondent No.2 read as under:-

“3. After hearing the counsel for the petitioners and perusing the documents brought on the file, I have reached the conclusion that there is no merit in the case due to the following reasons.

4. Firstly, the counsel has stated that spot inspection has not been conducted by the lower court whereas the Collector has clearly mentioned in his order dated 14.11.2014 that spot inspection was conducted by him in the presence of both the parties and thereafter he decided the case on merit. Merely by making assertion that spot

inspection was not done without any support or corroboration does not near any thing.

5. Secondly, instrument of partition, sanad taksim, has already been issued in this case. As per settled law, appeal/revision is not maintainable after issuing the instrument of partition and this court is not competent to entertain appeal/revision after issuance of sanad taksim There is a catena of decided court cases on this point.

6. Thirdly, the jurisdiction of this court is limited in the case of revision petition. This court can interfere into the orders of the lower court in revision only if there is any patent illegality, material irregularity, error of jurisdiction, or perversity in the lower court's order. The counsel has failed to prove any such illegality, irregularity, error of jurisdiction or perversity Therefore, there is no ground to interfere into orders of the lower courts

7. No other issue was pressed upon.

8. Accordingly, the revision petition is dismissed in limine for being non- maintainable. Even on merit there is no ground to interfere. File be consigned in the record room after due compliance.”

6. We have also analyzed the amended mode of partition i.e. Annexure P-1 and are in agreement with the observations made by learned Single Judge qua aforementioned concurrent findings that there is no violation of mode of partition.

7. In light of the above, we do not find any perversity and illegality in the impugned judgment passed by the learned Single Judge.

8. Consequently, the intra court appeal fails and is dismissed.

9. Since the main case has been dismissed, pending application(s) if any have been rendered infructuous.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

24.04.2024
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No