

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-19367, 19368-CWP-2024 in/and
CWP-11501-2024 (O/M)
Date of decision : 29.11.2024

Renu and others Petitioner(s)

Versus

State of Haryana and others Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravinder Malik, Advocate
for applicant-petitioner(s).

Ms. Upasana Dhawan, AAG Haryana.

Mr. Ankur Malik, Advocate
for respondents No. 11 to 15.

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HARSH BUNGER, J. (ORAL)

CM-19367-CWP-2024

1. This is an application for preponing the actual date of hearing of the main case.

2. Notice in application.

3. Ms. Upasana Dhawan, AAG Haryana and Mr. Ankur Malik, Advocate, appear on behalf of respondent-State and respondents No. 11 to 15, respectively and submit that they have no objection if the instant application for preponing the actual date of hearing is allowed.

4. For the reasons mentioned in application and no objection from counsel(s) opposite, the instant application for preponing the actual date of hearing of main case is allowed and the main case is taken on board today for hearing.

5. Application is accordingly disposed of.

Main case

1. Prayer in this civil writ petition filed under Articles 226/227 of Constitution of India is for setting aside the orders dated 17.06.2016 (Annexure P-9) and 30.09.2016 (Annexure P-10), passed by learned Assistant Collector 1st Grade, Samalkha, District Panipat and also for setting aside the order dated 21.12.2023 (Annexure P-13), passed by learned Financial Commissioner, Haryana.

2. Succinctly, the facts noticed by learned Financial Commissioner, Haryana, are that respondents No. 4 to 6 filed an application for partition of agricultural land, measuring 67 kanal – 10 marla, situated in village Kiwana, Tehsil Samalkha, District Panipat. Upon notice to parties concerned, all the persons appeared on 31.08.2004 and on 07.09.2004, one Shri Jagdeep Singh, Advocate appeared on behalf of respondents in the partition application. Naksha 'Ka' was proposed on 17.11.2004 and objections thereto were invited. In the meanwhile, one Smt. Pataso Devi (respondent No. 9 herein) filed an application for impleading as party respondent in the partition application by claiming that she is co-owner to the extent of 1/4th share alongwith respondents No. 4 to 6 herein (being mother of Pardeep, whereas respondent No. 4 Balvinder Kaur was wife of Pardeep and respondents No. 5 and 6 herein, namely, Harsh Kumar and Ankita were children of Pardeep). It appears that the said application for impleadment filed by Smt. Pataso Devi was rejected, however ultimately, vide order dated 27.06.2005, passed by learned Financial Commissioner, Haryana, Smt. Pataso Devi was also impleaded as party respondent to the partition proceedings.

2.1 It transpires that the petitioners alongwith some other co-owners failed to appear in the partition proceedings, accordingly, they were proceeded against ex-parte on 11.10.2007, however, later on, the ex-parte order was set aside on 23.10.2007 and mode of partition was proposed on 05.02.2008 and objections thereto were called. Subsequently, the mode of partition came to be approved on 11.05.2011. Thereafter, Naksha 'Kha' was proposed and objections thereto were called. The objections to Naksha 'Kha' came to be decided, vide order dated 13.08.2012 and Naksha 'Kha' was approved.

2.2 On appeal(s) being filed by petitioner No. 1-Renu against Naksha 'Kha', the learned Collector, Samalkha, allowed the appeal(s) and remanded the matter to Assistant Collector with a direction to finalize the Naksha 'Kha' on merits. On 17.06.2016, again the petitioners failed to appear before learned Assistant Collector, accordingly, they were proceeded against ex-parte and thereafter, Naksha 'Kha' was approved on 17.06.2016. After the receipt of Naksha 'Ga' on the file, the partition was finalized on 29.08.2016 and sanad takseem (instrument of partition) was issued on 30.07.2016.

2.3 In the aforementioned circumstances, two revision petitions i.e. one (ROR No. 123 of 2017-18) by Shri Kuldeep Singh (petitioner No. 4 herein) and other (ROR No. 713 of 2018-19) by Renu (petitioner No. 1 herein) were filed before learned Financial Commissioner, Haryana. Both the said two revision petitions came to be dismissed, vide common order dated 21.12.2023 (Annexure P-13), passed by learned Financial Commissioner, Haryana. Hence, the instant civil writ petition.

3. Learned counsel for petitioners, inter alia, submits that the partition proceedings had been carried out at the back of the petitioners and no proper opportunity of hearing was provided to them. It is submitted that husband of petitioner No. 1 and father of petitioners No. 2 and 3, namely, Shri Sanjay had expired, however, petitioners No. 1 to 3 were not impleaded as necessary party. It is further submitted that there is a question of title involved in this case, therefore, the partition proceedings could not have been proceeded with. It is next submitted that proper passages/water channels have not been provided in the partition proceedings, therefore, the partition proceedings/sanad takseem alongwith impugned orders are liable to be set aside.

4. Heard.

5. The aforesaid submissions raised on behalf of the petitioners have been duly considered and decided by learned Financial Commissioner, Haryana, vide impugned order dated 21.12.2023 (Annexure P-13), by holding as under :-

“ I have gone through the arguments raised by Counsel for both the parties and also through the record placed on file. Sh. Sanjay Kumar, (respondent No. 4 before Assistant Collector 1st Grade in partition application) appeared before the Assistant Collector 1st Grade on each and every date. He sought time on 27.04.2011 to file objection on the mode of partition and finally the mode of partition was sanctioned on 11.05.2011 and Naksha 'B' was called for 25.05.2011. In the meanwhile, Sh. Mahender Singh (respondent No. 5 in the partition application) filed an application on 08.06.2011 alongwith copy of order dated 12.12.2007 passed by the Civil judge, Panipat, whereby status quo with regard to

possession of land in question was issued, with a request to stay the partition proceedings. Reply to the said application was filed by the present respondents No. 1 to 3 and the said application was dismissed on 13.07.2011. The said order was challenged by Sh. Mahender Singh, the father in law of Smt. Renu Devi, the present petitioner in ROR No. 713 of 2018-19 and LR of Sh. Sanjay before the Collector against the order dated 13.07.2011. The said appeal was dismissed by the Collector on 22.12.2011 with a direction to the Assistant Collector 1st Grade to continue with the partition proceedings. On receipt of file back from the Collector, Assistant Collector 1st Grade issued notice to the parties for further proceedings and in response thereto Counsel for both parties appeared before ACIG on 28.03.2012 and sought time to file objections on Naksha 'B'. Smt. Renu, the present respondent No. 6 alongwith other LRs of Sanjay and others filed objections to Naksha 'B' through Sh. Kanwar Bhan Arya, Advocate on 30.05.2012. The Assistant Collector 1st Grade vide order dated 31.05.2012 rejected the objections on Naksha 'B' and accepted Naksha 'B' on 13.06.2012 and adjourned the matter to 27.06.2012 for Naksha 'Zeem'. On 27.06.2012, the Naksha 'Zeem' was not prepared and in the presence of Counsel for both parties, i.e., 11.07.2012, Naksha 'Zeem' was not received, so case was adjourned to 25.07.2012 in the presence of Counsel for both parties. In the meanwhile the order dated 31.05.2012, whereby Naksha 'B' was approved, was challenged by the present petitioner and proforma respondent Smt. Renu W/o Sanjay son of Mahender Singh before the Collector by filing two appeals and both appeals were allowed and the order dated 31.05.2012 was set aside and the ACIG was directed to decide Naksha 'B' after hearing both the parties afresh. Parties were directed to appear before ACIG on 05.10.2015.

Pursuant thereto, both the parties, through their Counsel, appeared before the ACIG and sought time for filing objections on various dates. On 17.06.2016, the Counsel for the applicants/respondents No. 1 to 3 was present but on behalf of the petitioner and proforma respondents neither the Counsel was present nor they themselves present, therefore, were proceeded ex-parte and Naksha 'B' was approved on 17.06.2016 itself. Thereafter, Naksha 'Zeem' was received on 29.08.2016 and was taken on record and the partition proceedings were finalized with a direction to issue Sanad Taksim after expiry of one month. Thereafter, on the request of present respondents No. 1 to 3, the Sanad Taksim was issued on 30.09.2016. Thus, the above mentioned contentions/issues raised by the petitioner and other proforma respondents regarding ex-parte order dated 17.02.2016, non-impleadment of Smt. Renu, the petitioner in ROR No. 713 of 2018-19 after the death of her husband Sanjay (respondent No. 4 in the partition application), non-issuance of proper notice to her and approval of Naksha 'Kh'/'B' against the mode of partition are not sustainable on record. The ex-parte order was rightly passed due to non-appearance of the petitioners or their Advocate willfully with the intention just to delay the matter. A perusal of record of lower Court reveals that the conduct of the petitioner and other proforma respondent was not fair as time and again they failed to appear or sought unnecessary adjournment just to delay the proceedings. Till finalization of partition on 29.08.2016 no application for setting aside the said ex-parte order was filed despite knowledge of the proceedings. Therefore, the petitioner only aim is to delay the proceedings. As already noticed the conduct of the present petition and proforma respondents throughout the entire proceedings is just to delay and linger

on the proceedings which is against the principle of natural justice.

In view of the above discussion, I do not find any merit in the present petition and accordingly the same is hereby dismissed.”

5.1 A perusal of the above extracted findings returned by learned Financial Commissioner, Haryana would clearly indicate that petitioner No. 1-Renu was well aware about the partition proceedings as she had filed two appeals against order dated 31.05.2012, passed by Assistant Collector, whereby Naksha 'Kha' was approved. Infact, learned Collector had set aside order dated 31.05.2012, approving Naksha 'Kha' and the matter was remanded to learned Assistant Collector 1st Grade with a direction to decide Naksha 'Kha' afresh after hearing the parties and the parties were directed to appear before learned Assistant Collector 1st Grade on 05.10.2015. It has been specifically observed by learned Financial Commissioner, Haryana, that the parties through their counsels had appeared before learned Assistant Collector 1st Grade and had sought time for filing objections on various dates and ultimately, they were proceeded against ex-parte on 17.06.2016 when Naksha 'Kha' was again approved.

6. Learned counsel for petitioners has failed to controvert the aforesaid observations recorded by learned Financial Commissioner, Haryana. In this view of the matter, there is no force in the contention raised on behalf of the petitioners that the partition proceedings were carried out at the back of petitioners.

6.1 Furthermore, a categoric observation has been made by learned Financial Commissioner, Haryana, that the petitioners or their

counsel willfully with an intention to delay the matter, did not appear before learned Assistant Collector 1st Grade and were rightly proceeded against ex-parte. It has further been noticed by learned Financial Commissioner, Haryana, that till the finalization of the partition on 29.08.2016, no application for setting aside the ex-parte order was filed by the petitioners, despite knowledge of the partition proceedings, whereas respondent No. 9-Smt. Pataso Devi had not preferred any petition.

7. As regards the contention raised on behalf of petitioners that there is a question of title involved in this petition, it is noticed that the question of title, if any, was raised by Smt. Pataso Devi, who is none other than mother-in-law of respondent No. 4 herein (Balvinder Kaur) and grandmother of respondents No. 5 and 6 (Harsh Kumar and Ankita), who had only sought 1/4th share in the land under partition alongwith respondents No. 4 to 6 herein. Smt. Pataso has not raised any challenge to partition proceedings. Therefore, the petitioners cannot raise the plea that question of title is involved in this case.

8. As regards the contention raised on behalf of petitioners that proper passages/water channels have not been provided to the parties, learned counsel for petitioners has failed to substantiate the said plea by producing any material/document whatsoever. In the absence of same, the aforesaid contention raised on behalf of petitioners cannot be appreciated.

9. It is further noticeable that the partition proceedings were initiated way back in the year 2004 and almost 20 years have gone by.

The reason for delaying the proceedings on behalf of petitioners can also be gauged from the vernacular copy of Annexure P-3, which is Naksha 'Ka' (as the translation thereof is not correct); wherein it is clearly reflected that respondents No. 4 to 6 were not in possession of any portion of land. Therefore, only in order to prolong their possession over the entire land under partition, the matter has been lingered on for years together, which is wholly unjustified and unwarranted.

10. Considering the totality of circumstances, I do not find any merit in this civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

29.11.2024
sjks

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