

2024:PHHC:138557-DB



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.1621 of 2024
Reserved on: 27.08.2024
Pronounced on: 23.10.2024

Mahender Singh

...Appellant

Versus

The Assistant Collector IInd Grade,
Loharu & Ors.

...Respondents

CORAM: *HON'BLE MR. JUSTICE G.S. SANDHAWALIA*
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Ashok Kumar Verma, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Sumit Sangwan, Advocate
for caveator-respondent No.6.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment handed down by learned Single Judge on 03.05.2024 whereby *Civil Writ Petition No.9163 of 2012*, filed by the appellant for seeking the quashing of the orders Annexures P-2, P-6 and P-7, as passed by respondent No.1-Assistant Collector IInd Grade, Loharu, respondent No.3-The Commissioner, Hisar Division and respondent No.4-The Financial Commissioner, Haryana on 03.03.2010, 26.11.2010 and 30.08.2011 respectively, has been dismissed, he (appellant) has chosen to prefer the instant Letters Patent Appeal.



2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present appeal, are that the appellant filed the above-referred writ petition, averring therein that respondent No.10 had moved an application before respondent No.1 under Section 111 of the Punjab Land Revenue Act, 1887 (for short, 'the Act of 1887') for seeking partition of the land measuring 334 Kanals 15 Marlas located in the Revenue Estate of Village Barwas, Tehsil Loharu, District Bhiwani. Vide the order Annexure P-2 dated 03.03.2010, respondent No.1 called for the amended '*Naksha Bey (Kha)*' with the direction that the Objectors, i.e the present respondents No.5 to 9, be allocated the land out of Rectangle Nos.40 and 47 as per their share. However, the appellant filed an appeal to lay challenge to the afore-mentioned order (Annexure P-2) which was allowed by respondent No.2 on 30.07.2010 vide the order Annexure P-5 and the case had been remanded while observing that there did not appear any infirmity in '*Naksha Bey (Kha)*', as summoned according to the Mode of Partition and also directing that the further proceedings be taken after sanctioning the same { '*Naksha Bey (Kha)*' }.

3. Thereafter, respondents No. 5 to 9 moved an Executive Appeal before respondent No.3 against the order Annexure P-5 which was accepted on 26.11.2010 vide the order Annexure P-6 and the order Annexure P-5 was set-aside and order Annexure P-2 was upheld. Then, the appellant availed the statutory remedy under Section 16 of the Act of 1887 by way of filing the revision-petition before respondent No.4 to assail the order Annexure P-6 and the same was dismissed on 30.08.2011 vide the order Annexure P-7. Finally, the appellant approached this Court by filing the above-said writ



petition. Respondents No.5 to 9 submitted their joint written-statement and respondents No.11, 14 to 18, 20 to 22, 24, 26 & 27 also filed their separate joint written-statement and contested the claim of the appellant on various grounds. The appellant submitted his replication, controverting the claim as set-forth by respondents No. 5 to 9 in their joint written-statement, besides reiterating his earlier averments/pleadings as canvassed in the afore-referred writ petition. After hearing the counsel for the parties, learned Single Judge has dismissed the above-said writ petition vide the impugned judgment, as already discussed in the opening para of this judgment.

4. We have heard learned counsel for the appellant as well as learned counsel for the caveator-respondent No.6 in the instant appeal and have also gone through the file carefully.

5. Learned counsel for the appellant has contended that the appellant was in possession over the land measuring 21 Kanals 01 Marla comprised in Rectangle No.47 and there were lot of sand dunes in it but he cleared the same and made it cultivable after incurring huge expenses and he had also raised his residential house in it and had been residing therein and as per the Mode of Partition Annexure P-1 approved by the Competent Authority, the partition of the joint land holding was to be affected by taking the possession of the co-sharers on the portions thereof, into consideration but vide the order Annexure P-2, respondent No.1 had wrongly called for the amended '*Naksha Bey (Kha)*' and vide the order Annexure P-5, respondent No.2 had rightly set-aside the order Annexure P-2 but respondent No.3 had erroneously reversed the order Annexure P-5 vide order Annexure P-6 and respondent No.4 had also gravely erred in upholding the afore-said order, i.e



Annexure P-6, vide the order Annexure P-7 because respondents No.5 to 9 were having an insignificant share in the total land holding and they had correctly been allocated the land of their share out of the remaining chunks of the joint land but learned Single Judge has not considered the above-discussed material aspects of the matter in the right perspective and hence, the impugned judgment is liable to be set-aside.

6. However, learned counsel for respondent No.6 has argued that respondent No.6 and the other respondents/co-sharers were entitled to get the land of their respective shares, out of the chunks of the joint holding located near the '*abadi* (inhibited) area' of the Village and the road as well and the amended '*Naksha Bey (Kha)*', i.e Annexure P-3, has been prepared strictly in accordance with the Mode of Partition, i.e Annexure P-1, which specifically provided that the possession over the partible land as well as the quality thereof had to be taken into consideration for the purpose of carrying out the partition and moreover, the Final Instrument of Partition (*Sanad Taksim*) had already been issued by the Competent Authority and it being so, the present appeal deserves dismissal.

7. As per Clause 2 of the amended Mode of Partition Annexure P-1, the partition was to be carried out by keeping in view the possession and quality of the partible land. There is nothing on the record to show that the entire joint land, as subjected to the partition, was of the same quality. Undisputedly, none of the co-sharers had ever challenged the afore-referred Mode of Partition, meaning thereby that the same has attained finality. Even otherwise, it is well-settled that besides the possession of the co-sharers over the portions of the joint land holding, the value and location as well as



the nature of such land are also to be taken into consideration at the time of affecting the partition, so as to ensure that all the co-sharers get the portions of the land, as per their respective shares in the total land under partition, without any prejudice to their entitlement, in terms of quality/value thereof, *vis-a-vis* the other co-sharers. Respondent No.3 has specifically observed in the order Annexure P-6 that the appellants, i.e present respondents No.5 to 9, were fully entitled to the allotment of the land, which is located adjacent to the Village and on the road, as per their shares. Annexure P-3 is the amended '*Naksha Bey (Kha)*' showing the allocation of the land to the co-sharers in different chunks of the joint land holding.

8. Further, the mere factum of the appellant having constructed a house in the portion of the joint land, which has been claimed by him as his share during the partition proceedings, can, by no stretch of imagination, be construed to be a valid reason/ground to allot the same to him, by depriving the other co-sharers from the allocation of the land as per their respective shares in the joint land holding because learned Single Judge has specifically observed in para No.9 of the impugned judgment that the total land under partition was measuring 334 Kanals 15 Marlas and as was reflected from the Mode of Partition, the partible land had been found out to be 318 Kanals 18 Marlas, meaning thereby that the area of the houses etc, had already been left out and the rest of the land had been put to the partition.

9. To add to it, Annexure R-5/7 is the copy of the partition Khatauni and Annexure R-5/5 is the copy of the order passed by respondent No.1 on 27.03.2012 in connection with the Partition Application, as decided on 14.09.2011, for sending the warrant of possession to Kanungo, Loharu,



with the direction to submit his report in the Court after the delivery of the possession of the land in accordance with the Instrument of Partition etc. These documents unequivocally speak volumes of the fact that the Final Instrument of Partition (*Sanad Taksim*) had been prepared and issued long back in the year 2011 and the appellant has filed the writ petition thereafter and is pursuing the instant appeal just to prolong the partition proceedings which were initiated in 2003, i.e more than two decades ago.

10. As a sequel to the foregoing discussion and in view of the findings as recorded by the learned Single Judge, we are of the considered opinion that there is no cogent reason/ground to interfere with the impugned judgment. Resultantly, the appeal in hand, being devoid of any merit, stands dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

23rd October, 2024
pooja

Whether speaking/reasoned: Yes
Whether Reportable: No