



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.1451 of 2024 (O&M)

Reserved on:29.07.2024

Date of Decision:14.08.2024

Makhan Singh

.....Appellant.

Versus

Financial Commissioner (Appeals) Punjab and others

.....Respondents.

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

Argued by:- Mr. Sherry K. Singla, Advocate
 for the appellant.

Ms. Arundhati Kulshreshtha, AAG, Punjab
for respondents No.1 to 4.

Mr. Ajaypal Singh Sandhu, Advocate
for respondent No.5.

MEENAKSHI I. MEHTA, J.

By way of the instant Letter Patent Appeal, the appellant has laid challenge to the judgment handed down by learned Single Judge on 22.05.2024, whereby *Civil Writ Petition No.12205 of 2024*, as preferred by him for seeking the issuance of the writ in the nature of certiorari, quashing the orders passed by respondent No.4 on 23.06.2017 (Annexure P-2) and 30.10.2019 (Annexure P-3), respondent No.3 on 23.09.2019 (Annexure P-4), respondent No.2 on 17.01.2020 (Annexure P-5) and by respondent No.1 on 15.03.2024 (Annexure P-6) in respect of the partition proceedings,



pertaining to the land measuring 86 Kanals 05 Marlas situated in Village Patti Sadiq, Tehsil Abohar, District Fazilka, has been dismissed.

2. As per the brief factual-matrix, emerging from the perusal of the file, the genesis of the present appeal lies in the application (Annexure A-1) as filed by respondents No.5 to 9 before respondent No.4-Assistant Collector 1st Grade, for seeking the partition of the afore-referred land, while averring that initially, Harbans Singh and Dayal Singh sons of Labh Singh were the owners of the said land, in equal shares and they (respondents No.5 to 9) as well as the appellant and respondents No.10 to 17 became co-sharers in the above-mentioned land, by way of purchase of the shares therefrom. The appellant had purchased 06 Kanals 08 Marlas land out of the afore-said land, from the co-sharer named Hardeep Kaur, vide the sale-deed Annexure P-1 dated 08.06.2005.

3. Vide the order dated 05.12.2016, respondent No.4 proposed the Mode of Partition in the presence of the parties and the same was approved/sanctioned on 07.12.2016 vide order Annexure P-7, after hearing the counsel for the respondents therein. '*Naksha Bey*' was received from '*Kanungo Halqa*' on 05.06.2017 and since the parties did not prefer any objections thereto, it had also been sanctioned on 19.06.2017. Then, on the receipt of '*Naksha Zeem*', (Annexure A-3), from '*Girdawar Halqa*' and keeping in view the fact that none of the parties had filed any objections against '*Naksha Bey*' and '*Naksha Zeem*', respondent No.4 sanctioned the same and finally, the '*Sanad Taksim*' had been issued on 30.10.2019 vide the order Annexure P-3.



4. Feeling dis-satisfied with the above-referred proceedings, the appellant moved an appeal to respondent No.3-Collector and the same had been dismissed vide order Annexure P-4 passed on 23.09.2019 and then, the appellant chose to file the revision-petition before respondent No.2-Commissioner, to assail the order Annexure P-4 but it was also dismissed vide the order Annexure P-5. Thereafter, the appellant availed the statutory remedy under Section 16 of the Punjab Land Revenue Act, 1887 by filing the ROR before respondent No.1-Financial Commissioner (Appeals) and it met the same fate by virtue of the order dated 15.03.2024 (Annexure P-6). Finally, the appellant preferred the afore-said Civil Writ Petition which came to be dismissed vide the order, impugned in the instant appeal.

5. We have heard learned counsel for the appellant as well as learned State counsel for respondents No.1 to 4 and learned counsel for respondent No.5 in this appeal and have also perused the file carefully.

6. Learned counsel for the appellant has contended that vide the sale-deed dated 08.06.2005 (Annexure P-1), the appellant had purchased the land comprised in specific Killa numbers and had been in possession thereof since then and as per the Mode of Partition, sanctioned vide order Annexure P-7, the possession of the co-sharers had to be kept intact while affecting the partition but the appellant had been allocated the portion of the land, different from the specific chunk purchased by him and thus, the Mode of Partition had not been adhered to by the Competent Authorities but learned Single Judge has not considered this material aspect in the right perspective and has erroneously dismissed the writ petition.



7. However, we do not find any merit in the above-raised contention as it is well-settled that the sale of any specific portion out of the joint land holding, would amount to the sale of a share only which shall always be subject to the partition of the entire chunk of the land and it being so, the afore-named vendor, being merely a co-sharer in the total land under reference, could not have sold any specific Killa Numbers out of the same. Hence, the appellant, having stepped into his vendor's shoes, cannot stake his claim over any specific portion of the joint land, on the strength of the above-said sale-deed, as executed in his favour.

8. Learned counsel for the appellant has, further, contended that while passing the orders Annexures P-2 to P-6, the Competent Authorities had not followed the prescribed procedure because the Mode of Partition was proposed on 05.12.2016 and had been sanctioned on 07.12.2016 and 'Naksha Bey' and 'Naksha Zeem' had been sanctioned during the period from 05.06.2017 to 23.06.2017 in a hurried manner and these facts, in themselves, do suffice to vitiate the entire partition proceedings and moreover, the wider front area of the land, denoted in yellow colour and abutting the path as shown in red colour in the site-plan prepared for the purpose of 'Naksha Zeem', Annexure A-3, has been allocated to respondents No.5 to 9 and afore-said Dayal Singh whereas the remaining co-sharers, including the appellant, have been given much narrower front area (shown in blue colour in the said site-plan) towards the above-referred path, in violation of the sanctioned Mode of Partition. To buttress his contentions, he has placed reliance upon the verdicts rendered by the Co-ordinate Bench



in CWP No.13999 of 1994 titled as Girwar vs. Financial Commissioner Haryana decided on 23.09.1996 and the Single Benches in CWP No.25252 of 2015 titled as Amrik Singh vs. State of Haryana and others decided on 15.07.2019 and CWP No.2995 of 2011 titled as Satish Kumar and others vs. The Financial Commissioner and others decided on 16.07.2013.

9. Again, the afore-described contentions do not hold any water because it has specifically been mentioned in the application bearing **CM No.4035 of 2024** itself that the Mode of Partition had been proposed on 05.12.2016 and the same had been sanctioned/approved on 07.12.2016 in the presence of the parties, after hearing the arguments as advanced by the counsel for the respondents therein, including the present appellant. Then, ‘Naksha Bey’, prepared by ‘Kanungo Halqa’, was received on 05.06.2017 and considering the fact that the parties had not preferred any objections thereto, respondent No.4, vide the order dated 19.06.2017, had directed the ‘Kanungo Halqa’ to prepare ‘Naksha Zeem’ in accordance with ‘Naksha Bey’. Since the parties had again chosen not to file objections in respect of ‘Naksha Bey’ and ‘Naksha Zeem’, the ‘Sanad Taksim’ regarding the above-referred land was ordered to be issued vide order Annexure P-2 passed on 23.06.2017. From the afore-discussed facts and circumstances, it becomes clear that the above-referred proceedings had been finalised expeditiously as none of the parties had opted to prefer/file any objections qua the same at any stage.

10. Then, so far as the contention regarding the appellant and the other co-sharers having been allocated the narrower front area, abutting the



path as shown in red colour in the site-plan annexed to 'Naksha Zeem', i.e Annexure A-3, is concerned, it is worth-while to mention here that the appellant has not placed the copies of the Grounds of Appeal or revision-petition or the ROR as moved by him to the official respondents, on the record for the reasons best known to him despite the fact that the same were supposed to be quite readily available with him. The afore-referred documents would have facilitated this Court to ascertain as to whether he had taken up/raised the above-discussed plea during the afore-said partition proceedings or not. To add to it, throughout in the pleadings as canvassed in the Civil Writ Petition and the instant appeal as well, the appellant has not whispered even a single word regarding the above-mentioned ground/plea. Therefore, the same cannot be given any credence or weightage at the stage of the adjudication of this appeal. Even otherwise, it is also pertinent to mention here that respondents No.5 to 9 and said Dayal Singh have been given 43 Kanals 02 Marlas land out of the total land measuring 86 Kanals 05 Marlas and the rest of the land has been allocated to the appellant and the remaining co-sharers and the appellant owns only 06 Kanals 08 Marlas land out of the same and none of the other co-sharers in this portion has raised any objection regarding having been given the narrower frontage.

11. The observations, as made in **Girwar (supra)**, **Amrik Singh (supra)** and **Satish Kumar and others (supra)**, do not come to the rescue of the appellant as the facts and circumstances of the present matter/case are quite distinguishable from those of the cited above. In **Girwar (supra)**, the sanctioned Mode of Partition provided that the possession and nature of



land would be considered but respondents No.3 and 4 were given ‘*Barani*’ land whereas the petitioner and his brother had been given ‘*Nehri*’ land in partition whereas in the present case, as per ‘*Naksha Zeem*’ Annexure A-3, the entire land under partition has been described as ‘*Nehri*’ land. Then, in *Amrik Singh (supra)*, it had been held that when the co-sharers of two or more Khewats were different, separate applications had to be filed for the partition of the land involved in each of the Khewats but however, in this case, the co-sharers in Khewats No.121 and 122 are the same and rather, as mentioned earlier, initially, two brothers namely Harbans Singh and Dayal Singh, were the owners of the entire chunk of land which was sold to the appellant and the private respondents subsequently. In *Satish Kumar and others (supra)* also, all that had been observed was that the land abutting the road was in possession of the objectors and the same had to be equally divided as the land, which adjoined the road, became valuable but in the instant case, the site-plan, annexed with ‘*Naksha Zeem*’, shows that there is merely a path in between the Rectangle and Killa Numbers denoted therein and it is not the main road and there is nothing on the file to suggest that the land abutting the said passage/path is more valuable than the land situated at a distance therefrom. To cap it all, as discussed in the preceding paragraph, the appellant has not placed any document on the record so as to show that he had taken/set-forth such plea, at any stage, during the partition proceedings and has also not raked up the same in the writ petition and also in the pleadings as put-forth in the instant appeal and has chosen to raise the same, only at the time of addressing the arguments in this appeal.



12. As a sequel to the fore-going 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 in the impugned judgment. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

August 14, 2024
Yag Dutt

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>