



LPA-1474-2024(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

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LPA-1474-2024(O&M)

Date of decision : 01.07.2024

Gyaneshwar Dutt and others

... Appellants

Versus

Ld. Commissioner, Gurugram, District Gurugram and others

... Respondents

**CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA,  
ACTING CHIEF JUSTICE  
HON'BLE MR.JUSTICE VIKAS BAHL**

Present: Mr.Yogesh Goel, Advocate  
for the appellants.

**VIKAS BAHL, J.**

1. Challenge in the present Letters Patent Appeal is to the judgment dated 09.05.2024 passed by the learned Single Judge in CWP-27638-2023 dismissing the writ petition filed by the petitioners. Prayer in the writ petition was for issuance of a writ in the nature of certiorari for quashing the order dated 21.09.2023 (Annexure P-10) passed by the Divisional Commissioner, Gurugram in Executive Revision Petition no.085 of 2022 as well as the orders dated 15.09.2021 and 14.12.2022 (Annexures P-7 and P-8) passed by the Assistant Collector Ist Grade, Sohna, District Gurugram and Collector, Sohna, respectively in partition case no.71/TEH of 2017 filed by the private respondents.

2. Brief facts of the present case are that respondents no.2 and 3-

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Ram Dutt and Om Dutt, both sons of Kunji Lal, had filed an application for partition of land measuring 3 kanal 17 marla situated in Khewat no.70, Khata no.78, Khasra no.468(0-4), 469(3-5), total Kitta 2 total Rakba 3 kanal 9 marla and land situated in Khewat no.1045 Min, Khata no.1259, Khasra no.467(0-8), total Rakba 0 kanal 8 marla, total land measuring 3 kanal 17 marla situated in revenue estate of village Sohna, Tehsil Sohna, District Gurugram. Although the application for partition had not been annexed along with the writ petition or with the present LPA, but the said facts are apparent from a perusal of paragraph 3 of the writ petition. It is the case of the petitioners that to the said application, reply was filed on behalf of the petitioners and a copy of the said reply has been annexed as Annexure P-1 alongwith the writ petition. It would be relevant to note that no plea had been taken in the said reply with respect to the aspect that any construction was raised by respondents no.2 and 3 on any part of the property in question, which plea and argument is being sought to be raised before this Court. The mode of partition dated 09.01.2019 (Annexure P-2) was prepared and no objection was filed thereto and the same was duly approved. A perusal of the said mode of partition dated 09.01.2019 which has been annexed as Annexure P-2 along with the writ petition, would show that in clause 2 thereof, it was provided that while finalizing and carrying out the partition proceedings, the nature, value (cost) of the land in question as well as possession were to be taken into consideration and it was further provided that if the land was abutting the road, then every co-sharer was to be provided with land as per their respective share.

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3. It is the case of the appellants in the writ petition in paragraph 4 (page 42) that the said order of mode of partition was passed with the consent of all the parties and it was thus, apparent that the said mode of partition was final and no challenge was made to the same. Naksha Bey (Annexure P-5) was prepared and a perusal of the same would show that the land was proposed to be divided by the authorities in accordance with the shares of the respective parties. It is the case of the appellants that they had filed objections dated 17.10.2019 (Annexure P-6) to the said Naksha Bey and a perusal of the said objections would show that no objection with respect to there being any construction done by respondents no.2 and 3 on the property in question having come to the share of the appellants, had been raised in the same, although as stated hereinabove, the said issue has been raised as the primary issue before this Court. The objections to the Naksha Bey were rejected vide order dated 15.09.2021 (Annexure P-7). The appeal filed by the appellants against the said order was dismissed by the Collector, Sohna vide order dated 14.12.2022 (Annexure P-8) and in the said order, it was observed by the Collector that the Naksha Bey had been prepared keeping in view the value of land and possession of the parties. It was further observed that the petitioner was only wanting to delay the proceedings.

4. The revision petition filed by the appellants against the said order was also dismissed by the Commissioner, Gurugram Division, Gurugram, vide order dated 21.09.2023 and it was observed therein that the inspection report from Naib Tehsildar, Sohna had been called for and the

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Naib Tehsildar in its inspection report dated 29.08.2023 had clearly mentioned that at that time, there was no construction / building over the land bearing khasra no.467, 468, 469 total measuring 3 kanal 17 marla which was the land in question and on the basis of the same, it was further observed that in the above said partition, there was no *gair mumkin* land and thus, the partition carried out had been done in accordance with law, after following the relevant rules and that there was no defect in the order of the authorities. Aggrieved against the aforesaid orders, the appellants filed civil writ petition no.27638 of 2023 which was dismissed by learned Single Judge vide judgment dated 09.05.2024 in which reference was made to the inspection report wherein it was found that no construction over the land in question had been found. It was further observed that taking into consideration the overall facts and circumstances of the case, the Court did not find any infirmity in the impugned orders and accordingly, dismissed the writ petition. Aggrieved against the same, the present Letters Patent Appeal has been filed.

5. The primary argument raised on behalf of learned counsel for the appellants is that respondents no.2 and 3 had raised construction on khasra no.469/1 and said khasra no.469/1 has been given to the appellants which is illegal. Reference in this regard has been made to Annexure P-5, which is the Naksha Bey, to show that the land, which has been shown in green colour, has been allotted to the appellants and the same also includes khasra no.469/1 whereon as per the case of the appellants, construction had been raised by respondents no.2 and 3. Learned counsel for the appellants

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has further referred to Annexure A-3, which are the photographs of the alleged construction raised by respondents no.2 and 3 on the property in question. It would be relevant to note that the said Annexure A-3 which are stated to be photographs of the alleged construction, were not part of the writ petition and the same are sought to be produced in additional evidence by moving an application i.e., CM-3462-LPA-2024 under Order 41 Rule 27 CPC read with Section 151 CPC. It is further submitted that possession of the appellants has also been disturbed and thus, it is prayed that the Letters Patent Appeal be allowed and the judgment of the learned Single Judge as well as the impugned orders passed by the revenue authorities be set aside.

6. We have heard learned counsel for the appellants and have perused the paper book. Both arguments raised by learned counsel for the appellants are meritless and do not call for setting aside the judgment of the learned Single Judge and the impugned orders passed by the revenue authorities.

7. With respect to the primary argument raised by learned counsel for the appellants, which has been noticed hereinabove, it would be relevant to note that a perusal of the order of the Commissioner, Gurugram Division, Gurugram dated 21.09.2023 (Annexure P-10) (moreso page 83) would show that the Commissioner had called for the inspection report from the Naib Tehsildar, Sohna. In the said inspection report dated 29.08.2023, it was observed that at that time there was no construction / building over the land bearing khasra no.467, 468, 469, total land measuring 3 kanal 17 marla which was the land in question. The said report dated 29.08.2023 has

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neither been annexed along with the writ petition nor with the Letters Patent Appeal, nor it has been shown that there was any illegality or perversity in the said report. The said report has also been relied upon by the learned Single Judge in the judgment dated 09.05.2024. Even a perusal of Annexure P-1 (at page 53) (which was the reply filed on behalf of the appellants to the partition application), would show that no plea had been taken by the appellants to the effect that any construction had been raised by respondents no.2 and 3 on the land in question and that land under the said construction should not be given to the appellants and should be given to respondents no.2 and 3. Even a perusal of the objections dated 17.10.2019 (Annexure P-6) to Naksha Bey would show that no such objections with respect to the fact of any construction having been raised by respondents no.2 and 3 herein and also the fact that the said land should not be given to the appellants had been raised. A reference to Annexure A-3 (which are stated to be photographs of the alleged construction raised by respondents no.2 and 3) also does not further the case of the appellants as admittedly neither the said photographs were produced before the learned Single Judge nor does a perusal of the photographs show that they pertain to the land in question. Thus, the plea sought to be raised by learned counsel for the appellants to the effect that the alleged construction raised by respondents no.2 and 3 has come to the share of the land allotted to the appellants does not call for setting aside the partition proceedings which had been pending for the last more than 5 years. Moreover, even assuming for the sake of arguments, that in case some construction raised by respondents no.2 and 3



had come into the share of the appellants, the same cannot be stated to have caused any serious prejudice to the appellants, thereby calling for setting aside the entire partition proceedings.

8. With respect to the second argument, it would be relevant to note that no khasra girdawari, which is a document which shows actual possession, prior to initiation of partition proceedings, has been annexed along with the writ petition or with the present appeal to even remotely show as to which were the khasra numbers which were in possession of the appellants, which now as per the appellants have not been given to them in the final instrument of partition. Moreover, it is not disputed that in the mode of partition (Annexure P-2), it had been specifically provided in clause 2 that the nature, value (cost) of land and possession, all were to be taken into consideration for the purpose of finalizing the partition and that the land abutting the road was to be given to each co-sharer as per their respective shares. It is not the case of the appellants that the land given to the appellants in the partition proceedings is of inferior value than that given to respondents no.2 and 3 or that they have not been given land abutting the road. It is a matter of settled law that in partition proceedings utmost importance is to be given to the value and nature of land and when the revenue authorities while keeping the said principle in mind, partition the land by disturbing the possession to some extent, then the same cannot be made a ground for setting aside the entire partition proceedings. A perusal of the report dated 06.07.2021 ( Annexure A-1) and the site plan (Annexure P-5) would show that even the said aspect of possession had

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been taken into consideration by the authorities while finalizing the partition. The proceedings have been carried out in accordance with law and the learned Single Judge after considering the entire issue has dismissed the writ petition. It is a matter of settled law that the High Court while exercising the jurisdiction under Article 226 of the Constitution of India is not to sit as a Court of appeal over the orders passed by the revenue authorities in a partition case moreso, when the revenue authorities upto the level of the Commissioner have duly considered the matter as in the present case.

9. Keeping in view the above said facts and circumstances, this Court does not find any reason to interfere in the judgment passed by the learned Single Judge and the orders passed by the revenue authorities and accordingly, the present Letters Patent Appeal is dismissed.

(G.S.SANDHAWALIA)  
ACTING CHIEF JUSTICE

(VIKAS BAHL)  
JUDGE

July 01, 2024

Davinder Kumar

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |