

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15392-2018 (O/M)

Date of decision : 11.09.2024

Satbir and others

..... Petitioner

Versus

The Commissioner, Hisar Division, Hisar, Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ajay Kumar Kansal, Advocate
for the petitioners.

Mr. Randhir Singh, Additional A.G. Haryana.

Mr. R.S. Panghal, Advocate
for respondent No. 3.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Satbir and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 19.04.2018 (Annexure P-9 Colly.), passed by the learned Assistant Collector 2nd Grade, Julana, District Jind, whereby sandad takseem (instrument of partition) was issued.

1.1 A further prayer has been made by the petitioners for setting aside the order dated 21.05.2018 (Annexure P-11), passed by the learned Divisional Commissioner, Hisar Division, Hisar (in short 'Divisional Commissioner'), whereby the appeal filed by the petitioners against the order dated 19.04.2018 (Annexure P-9 Colly.), was dismissed.

2. Briefly, respondent No. 3 (Dharma) filed an application seeking partition of joint land, measuring 63 bighas-11 biswas, comprised

in khewat No. 170 (as per jamabandi 2011-12), situated at village Malvi, Tehsil Julana, District Jind. The petitioners appeared in the aforesaid partition case and made a statement that the partition be carried out by keeping the possession intact. A similar statement was made by respondent No. 3 as well, however, he stated that the land from which the oil pipeline was going, the same be partitioned equally.

2.1 It transpires that learned Assistant Collector 2nd Grade, Julana, proposed the following mode of partition :-

“ *The mode of partition is formulated as follows :-*

- 1. A total of 63 Bigha 11 Biswa land is to be partitioned in the present file.*
- 2. Partition is to be done by keeping the possession intact.*
- 3. Total two Tak (Portion) may be made i.e. one for the plaintiff Dharma s/o Piare Lal and the second Tak for all the defendants (1. Satbir, 2. Phool Kumar, 3. Rajbir, 4. Azad, 5. Krishan sons of Tek Ram s/o Piare Lal).*
- 4. That some portion of aforesaid land is having underground oil pipeline This land be distributed equally in both the Taks.*
- 5. That deficiency may be made good from the adjoining land, land for which be deducted from common land.*
- 6. Passage and Water channel be provided to every Tak.*
- 7. Trees, Rooms and Tubewell may be kept as it is.*
- 8. Fee of Rs. 4000/- is being assessed as fee of partition which will be paid by the plaintiff on the spot.*

Sd/- AC IInd Gr. Julana”

2.2 It further transpires that the petitioners submitted their objections to the aforesaid mode of partition, however, the same were dismissed, vide order dated 13.02.2018 (Annexure P-7) and thereafter, Naksha 'Bey' was called. The said Naksha 'Bey' was approved on 01.03.2018.

2.3 It appears that at that stage, the petitioners approached learned Collector, Jind, seeking transfer of the partition case to Tehsildar, Jind, which was allowed and the matter was ordered to be transferred to the court of Tehsildar, Julana, vide order dated 07.03.2017 (Annexure P-8).

2.4 Thereafter, on transfer of the case to the other court, the sanad takseem (instrument of partition) was issued on 19.04.2018. Even an appeal filed by the petitioners against sanad takseem (instrument of partition) was dismissed by learned Divisional Commissioner, vide order dated 21.05.2018 (Annexure P-11).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioners submits that the learned Assistant Collector, while partitioning the joint land, has not followed the due procedure prescribed under the law. It is submitted that the objections raised by the petitioners have wrongly been brushed aside. It is further submitted that the partition is against the sanctioned mode of partition wherein it was provided that the partition is to be carried out by keeping the possession intact, however, in the final partition, the possession of the petitioners has been disturbed. It is also submitted that even clause No. 4 of the mode of partition was wrongly sanctioned by

dismissing the objections of the petitioners. It is next submitted that the partition proceedings have been carried out in haste and the land has not been partitioned in an equitable manner. It is further submitted that even learned Divisional Commissioner has failed to address the grievance raised by the petitioners. Accordingly, it is prayed that the impugned orders be set aside and the matter be remanded to the Assistant Collector for fresh decision.

5. Per contra, learned counsel for respondent No. 3 has opposed the submissions made on behalf of the petitioners by submitting that as regards the contention of the petitioners that the mode of partition has been wrongly sanctioned by ignoring the objections of the petitioners, the petitioners have never challenged the sanctioned mode of partition although a specific remedy was available to them under Section 118 of Punjab Land Revenue Act, 1887 (as applicable to Haryana). It is submitted that once the sanctioned mode of partition has attained finality, in those circumstances, the final partition can be challenged only on the ground that the same was not in consonance with the sanctioned mode of partition. It is submitted that in the present case, the partition has been carried out in accordance with the sanctioned mode of partition, which does not call for any interference by this Court. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

6. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

7. During the course of hearing, learned counsel appearing for petitioners has conceded that the petitioners have not laid any challenge to the sanctioned mode of partition nor they challenged Naksha 'Bey'.

7.1 In *Lala Ram v. Financial Commissioner, Haryana*, 1992 (1)

RRR 231, this court held as under:-

“ A perusal of the scheme of partition contained in Chapter IX would manifest that after the mode of partition is determined, the partition proceedings come to an end, and in so far as the preparation of instrument of partition is concerned it is only an executory act. An appeal has been specifically provided against an order dealt with by Section 118, i.e., the mode of partition. In case such an appeal is filed within 15 days from the date of determination of the mode of partition and the institution of such an appeal has been certified to the Revenue Officer, it amounts to an automatic stay of proceedings pending disposal of the appeal. If the orders specifically dealt with in the Act against which an appeal is provided or which otherwise determine the rights of the parties, like an order refusing partition, or determining title of the parties, are not appealed against and the partition proceedings are permitted to go on till finalisation of the mode of partition then the consequential orders which only implement what has been determined earlier cannot be the subject-matter of appeals...

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..... In the petitions filed in this court not a word has been mentioned as to how and in what manner the proceedings conducted by the revenue officer were either illegal or improper or caused in any manner injustice to the petitioner. Mr. Verma, however, points out from the grounds of appeal taken before the Collector such illegalities or improprieties but even the perusal of the grounds taken before the Collector do not depict any specific point raised. These grounds are of general nature only and even in regard to such allegations nothing has been pointed out to this court. In order to invoke the extraordinary jurisdiction of this court

under Article 226 of the Constitution of India, the petitions must, in order to entitle himself to any relief, show that manifest injustice has been caused to him as a result of the impugned orders. When nothing at all has been either stated or shown that any injustice, much less manifest injustice, has occurred to the petitioner no relief can be granted to him...”
[emphasis supplied]

7.2 Keeping in view the observations made in case of **Lala Ram** (supra); since the sanctioned mode of partition in the present case was never challenged by the petitioners and had attained finality, the petitioners can question the final partition only on the ground that the same is not in consonance with mode of partition.

7.3 Learned counsel for petitioners has miserably failed to demonstrate as to how the final partition is in violation of the sanctioned mode of partition or which clause of the sanctioned mode of partition has been violated. It has also not been shown as to what prejudice has been caused to the petitioners by the manner in which the partition has been carried out.

7.4 I have also carefully perused Annexure P-14, which is a site plan indicating the manner in which the land has been allocated to the petitioners and respondent No. 3 in the final partition. It is observed that the land under partition is comprised in six separate blocks located at different places. The land allocated to the petitioners is depicted in blue colour, whereas the land allocated to respondent No. 3 is shown in orange colour.

7.5 Considering the location and layout of the land under partition (as evident from Annexure P-14), in my view, the manner in

which the final partition has been carried out, is fair, equitable and justified.

8. No other argument has been raised.

9. In view of the aforementioned facts and circumstances, there is no scope for any interference by this Court in the impugned partition proceedings/sanad takseem (instrument of partition). Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

10. All pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

11.09.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No