



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.835 of 2016 (O&M)
Reserved on: 08.08.2024
Date of Decision: 11.09.2024

Sukhdev Singh and others

...Appellants

Versus

State of Punjab and others

...Respondents

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

Argued by:- Mr. M.L. Saggar, Senior Advocate with
 Ms. Armaan Saggar, Advocate
 for the appellants.

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

Mr. Sherry K. Singla, Advocate
for respondent No.5.

None for respondent No.6.

Meenakshi I. Mehta, J.

Feeling aggrieved by the judgment handed down by learned
Single Judge on 21.03.2016, whereby ***Civil Writ Petition No.18737 of 2014***,
filed by the appellants for seeking the issuance of a writ in the nature of
certiorari, setting-aside the order as passed by respondent No.1-Financial
Commissioner, Punjab on 09.07.2014 (Annexure P-15), qua the dismissal
of the revision-petition moved by them (appellants) and the order, rendered
by respondent No.2-the Divisional Commissioner, Patiala on 29.08.2012
(Annexure P-13), accepting the revision-petition, as filed by respondent



No.5 to assail the orders Annexures P-10 and P-11 passed by respondent No.4-Assistant Collector Ist Grade, Payal and respondent No.3-Collector, Sub Division, Jagraon on 16.11.2011 and 19.06.2012 respectively, has been dismissed and the appellants have been burdened with the costs to the tune of Rs.2,00,000/-, payable to respondent No.5 and have also been imposed another sum of Rs.50,000/- as costs to be deposited with the District Legal Services Authority, Ludhiana, they (appellants) have chosen to prefer the instant Letters Patent Appeal to lay challenge to the same.

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 appellants filed the above-said Civil Writ Petition against the orders Annexures P-15 & P-13, while averring that they had filed application Annexure P-1 under Section 123 of the Punjab Land Revenue Act, 1887 (for short 'the Act of 1887') for seeking the partition of the land measuring 59 Kanals 05 Marlas, situated in Village Gureh (for short 'the subject land') in accordance with the agreement dated 31.05.1988. The Assistant Collector Ist Grade, Jagraon passed an order on the afore-mentioned application on 13.11.2006 regarding staying his hands from deciding the same, in view of the pendency of the Civil Suit between the parties. The appellants preferred an appeal before respondent No.3 against the above-referred order who, vide order Annexure P-3 dated 30.05.2007, accepted the same by way of setting-aside the order dated 13.11.2006 and remanding the case to respondent No.4 for deciding it afresh after affording opportunity to both the parties to produce evidence and hearing them.



3. In pursuance of order Annexure P-3, respondent No.4 passed the order Annexure P-6 on 12.10.2009 for preparation of '*Sanad Taksim*' (final instrument of partition). However, respondent No.5 filed an appeal against the afore-said order, which was dismissed by respondent No.3 on 17.06.2010 vide the order Annexure P-7. Then, respondent No.5 availed the statutory remedy under Section 16 of the Act of 1887 by moving a revision-petition before respondent No.2 and it was also rejected on 14.06.2011 vide order Annexure P-8. Thereafter, respondent No.5 approached this Court by way of filing **CWP No.13993 of 2011**, which was allowed on 04.08.2011 vide the order Annexure P-9 and the parties were asked to appear before the present respondent No.4, who was directed to pass the fresh order after hearing the parties and considering their respective objections/arguments.

4. In compliance of the above-referred order, respondent No.4 passed the order dated 16.11.2011 (Annexure P-10) and thereby, rejected the objections preferred by respondent No.5 against '*Naksha Arra*' and '*Naksha Irri*'. The appeal moved by respondent No.5 against the afore-said order was dismissed by respondent No.3 vide order Annexure P-11, as passed on 19.06.2012. Then, respondent No.5 filed the revision-petition which was accepted by respondent No.2 on 29.08.2012 vide the order Annexure P-13 and the orders Annexures P-10 and P-11 were set-aside and the case was remanded to respondent No.4 with the direction to prepare fresh '*Naksha Arra*' while allocating the share to respondent No.5 in the land located on main Ludhiana to Moga Road as per his entitlement and to pass a fresh speaking order after hearing all the parties in detail qua their contentions. The appellants filed **CWP No.21987 of 2012** to assail the above-mentioned



order which was disposed of vide the order Annexure P-14 passed on 25.03.2013, with the direction to the appellants to approach respondent No.1-Financial Commissioner, Punjab. Thereafter, the appellants filed the revision-petition in pursuance of the afore-referred order and the same came to be dismissed vide the order Annexure P-15 handed down on 09.07.2014 and the Civil Writ Petition moved by the appellants against the orders Annexures P-13 and P-15 has been dismissed by learned Single Judge, as already indicated in the opening para of this judgment.

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

6. Learned Senior counsel for the appellants has contended that vide order Annexure P-10, respondent No.4 had correctly observed that '*Naksha Arra*' and '*Naksha Irri*' had been prepared in accordance with the Mode of Partition and had rejected the objections filed by respondent No.5 against the same and vide order Annexure P-11, respondent No.3 had also rightly dismissed the appeal preferred by respondent No.5 against the order Annexure P-10 but while deciding the revision-petition vide the impugned order Annexure P-13, respondent No.2 has gravely erred in setting-aside the above-mentioned orders and remanding the matter to respondent No.4 with direction to prepare '*Naksha Arra*' afresh and to allocate the share to respondent No.5, in the land situated on main Ludhiana to Moga Road as per his entitlement and respondent No.1 has also wrongly upheld the afore-referred order, vide the impugned order Annexure P-15 and both these



orders, Annexures P-13 and P-15, are liable to be set-aside.

7. Per-contra, learned counsel for respondent No.5 has argued that the portion of the subject land abutting the above-said main road is more valuable than the rest of the land in the chunk and respondent No.5 is entitled to get a portion out of the land adjoining the afore-mentioned road as per his entitlement on the basis of his share in the subject land and the orders Annexures P-13 and P-15 are perfectly legal and justified.

8. It is well-settled that besides the possession of the co-sharers over the portions in the joint land holding, the value and location as well as the nature of such land have also to be taken into consideration at the time of affecting the partition so that all the co-sharers get the portions of the land without any prejudice to their entitlement as per their respective shares in the total land under partition. As is explicit from the site-plan prepared during the partition proceedings before respondent No.4 (annexed at Page No.132 in the Paper-Book), the entire portion of the subject land abutting the above-referred road, as shown in green colour, has been allocated to the appellants and respondent No.5 has not been given even an inch of land out of the same which, by no stretch of imagination, can be termed to be justified and equitable at all.

9. Moreover, Annexure R-1 is the copy of '*Naksha Zeem*' as sanctioned by respondent No.4 on 23.05.2017 during the pendency of the present appeal and a perusal of the site-plan, annexed therewith, shows that now, respondent No.5 has also been given a portion comprised in Rectangle No.92 Killa No.15/2, as shown in the red colour, abutting the afore-said main road and the appellants have been allocated the remaining portion



comprised in Killa No.15/1, as shown in the blue colour therein and thus, respondent No.5 has rightly been given a portion in the land adjoining the said road.

10. Learned Senior counsel for the appellants has, further, contended that during the pendency of the writ petition, learned Single Judge had made the efforts to get the dispute between the parties settled amicably and had passed an order on 15.10.2015 mentioning therein that respondent No.5 had agreed to get the share out of the land comprised in Rectangle No.92 Killa Nos. 5 & 6 but however, he (respondent No.5) had, later-on, refused to adhere to the above-referred proposal and had, rather, demanded the share in Killa No.15/2 also, constraining the appellants to back out from the proposed mode for the settlement of the dispute and in view of the afore-narrated conduct on his (respondent No.5's) part, he does not deserve any portion out of the land touching the said main road.

11. However, the above-raised contention is devoid of any force because it has categorically been mentioned in the impugned judgment itself that the parties had agreed that the appellants would cut their trees and respondent No.5 would remove the encroachment from the passage as comprised in Khasra No.183 and though, respondent No.5 had demolished the portion of his house, as constructed in the afore-said passage but the appellants had resiled from abiding by the above-mentioned agreement and had, rather, sought the decision of the writ petition on merits. Throughout, in the said judgment, it has nowhere been mentioned that it was respondent No.5 who had insisted for getting the portion out of the land abutting the afore-said main road, as alleged by the appellants to be the reason for their



refusal to adhere to the terms of the above-referred settlement/agreement. Keeping in view the loss suffered by respondent No.5 consequent upon the demolition of his house in anticipation of bringing a peaceful quietus to the dispute between him and the appellants and the afore-described conduct of the appellants, it becomes explicit that learned Single Judge has rightly dismissed the writ petition and has imposed the costs upon the appellants.

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 and valid reason/ground to interfere with the impugned judgment. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

11.09.2024
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Whether speaking/reasoned: Yes
Whether Reportable: No