

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**LPA-2022-2023 (O&M)
Reserved on:15.12.2023
Date of decision:05.01.2024**

Malkit Singh & others

... Appellants

Vs.

State of Haryana & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. S.S. Salar, Advocate for the appellants.

...

SUKHVINDER KAUR, J.

1. The present Intra Court Appeal is directed against the order dated 22.09.2023 passed by a learned Single Judge of this Court, whereby Civil Writ Petition No.21294 of 2023 filed by the appellants has been dismissed.

2. Brief facts are that respondent no.6 – Dayal Singh @ Gurdayer Singh filed an application for partition of land measuring 49 kanals and 4 marlas situated at village Lalouda, Teshil Tohana, District Fatehabad in the Court of Tehsildar-cum-Assistant Collector 1st Grade, Tohana. After considering the objections, Assistant Collector 1st Grade, Tohana approved *Naksha Bey* on 16.12.2009. On 18.01.2010, *Naksha Zeem* was received and *Sanad Takseem* was prepared on 18.02.2010. Against these orders an appeal was preferred by Desa Singh s/o Punjab Singh before Collector, Tohana, which was dismissed on 23.02.2010. A revision petition preferred before Commissioner, Hisar Division, Hisar was dismissed on 24.01.2011. Thereafter, another revision petition was filed before the Financial

Commissioner, Haryana by Desa Singh which was also dismissed vide order dated 19.06.2023. Feeling aggrieved of the aforesaid order, the appellants knocked the doors of this Court by filing a writ petition being CWP-21294-2022 – Malkit Singh & others Vs. State of Haryana & others. The said writ petition was dismissed by a learned Single Judge of this Court on 22.09.2023. Hence, the present intra Court appeal.

3. It has been contended by learned counsel for the appellants that as per mode of partition which was settled and approved after due consideration, every *takk* was to be provided with passage and a water channel. However, in the final partition i.e. *Naksha Bey* and *Zeem* as also in the *Sanad Takseem* neither any water channel nor any passage has been provided. By referring to the *Aks Latha*, he has contended that the appellants and others are the owners in possession of khasra nos.46/22 and 23 which is not the subject matter of partition. The appellants have been allotted khasra nos.42/1 and 52/2/1. But if the appellants are allotted land from khasra nos.52/2 and 52/3, then it would be the best utilization of land by the appellants without causing any loss to the other co-sharers and there would be no requirement to provide any passage or water channel to any co-sharer. He has submitted that both these contentions have not been dealt with by the learned Single Judge while dismissing the writ petition. He has further argued that it is well settled that while partitioning the land, the revenue authorities cannot go beyond the mode of partition and that as per the mode of partition, possession was to be kept intact but without keeping the possession intact and without any requirement of disturbing the possession of co-sharers, the possession has been disturbed. He has urged that the

impugned order passed by the learned Single Judge and orders which were impugned in the writ petition are liable to be set aside and a direction is required to be given to the Tehsildar to again conduct the partition proceedings.

4. We have heard learned counsel for the appellants and have perused the record thoroughly.

5. From a perusal of the record, it transpires that partition proceedings were initiated at the instance of respondent no.6. A perusal of order dated 16.12.2009 passed by Assistant Collector 1st Grade, Tohana shows that it is a reasoned order. Before passing of the same, the objections filed against *Naksha Bey* have been duly considered. As no documentary evidence was produced in support of the contentions made by Desa Singh that a family partition had already taken place, his objections were rightly rejected and *Naksha Bey* was approved and *Naksha Zeem* was called. Then vide order dated 18.01.2010 passed by Tehsildar-cum-Assistant Collector 1st Grade, Tohana, *Naksha Zeem* was received. As no objections to the same were filed, it was also accepted and thereafter *Sanad Takseem* was ordered to be prepared. Then vide order dated 18.02.2010 Tehsildar-cum-Assistant Collector IInd Grade, Sanad Takseem was issued, as against the order dated 18.01.2010 neither any appeal/revision had been filed. Then Desa Singh filed an appeal before the Collector against the aforesaid orders which was dismissed. Thereafter revision was filed before the Commissioner, Hisar Division, Hisar. Perusal of order dated 24.01.2011 passed by the Commissioner, Hisar Division, Hisar reveals that it is a detailed and speaking order. It has been specifically mentioned therein that:

“There was no solid proof available on the file regarding family partition. The revisionist have also not produced any proof to make improvement of the land and making it cultivable. So far as the prayer of allotting land from khasra no.51//1, 2/1, 2/2, and 8 to the revisionist as per his share, it may be observed that if all co-sharers are given land from both takks, their land holding shall be divided into two takks and there will be two small takks for each co-sharer, whereas the kind of entire land is Nehri. Therefore, there is no justification to give land to every respondent from all the takks. So far as passage and water channel is concerned, where there is water channel available, the main kurra of the revisionist has been provided with water channel. The main passage is already not available. Therefore only to provide Rasta to separate takks will not benefit any. From the above it is clear that the partition of the land has been done as per rules and mode of partition. I find no irregularity in the partition proceedings. After completion of partition, Sannad Takseem has already been issued. Therefore, finding no merits in the present revisions, it is dismissed.”

6. The revision filed against the afore quoted findings before the Financial Commissioner, Haryana was also dismissed through a reasoned order.

7. Thus, the mode of partition was approved after granting due opportunity to the co-sharers. In the absence of any documentary evidence, the parties could not establish the plea regarding family partition. As the authorities found that there was no substantial variation in the value of the land and providing land from every chunk would have resulted into multiple fragmentation of the land, so land from every chunk was not provided. The learned Single Judge has rightly observed that as per the mode of partition,

proper passage and *khaal* had been provided to the main chunk. So, there was no violation of the approved terms and conditions of the mode of partition. The learned Single Judge has further rightly held that there are concurrent findings returned by all the revenue authorities and from an overall view of the facts and circumstances of the case, there is found no perversity in the partition proceedings.

8. Thus, the learned Single Judge had properly considered the matter in the right perspective. We do not find any illegality in the order passed by the learned Single Judge, warranting any interference by us.
9. Accordingly, the instant intra Court appeal is dismissed.
10. Pending application(s), if any, shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

05.01.2024
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No