



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30030-2024 (O&M)
Date of decision : 06.11.2024

SURENDER ...Petitioner

Versus

STATE OF HARYANA AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Surinder Gaur, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioner (Surender) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 27.01.2012 (Annexure P-4) passed by learned Assistant Collector 1st Grade, Matanhail; whereby *sanad Taksim* (Instrument of partition) was issued.

A further prayer has been made for setting aside the order dated 09.07.2024 (Annexure P-5) passed by the learned Financial Commissioner, Haryana; whereby the revision petition (***ROR-288 of 2018-19***) filed by the petitioner, was dismissed.

2. During the course of hearing, learned counsel for the petitioner has raised two fold arguments; firstly that the *sanad Taksim* dated 27.01.2012 (Annexure P-4) is defective inasmuch as that it does not record the date on which the partition is to take effect; secondly, that respondent

Section 122 of the Land Revenue Act, therefore, the final partition cannot be implemented.

3. I have considered the aforesaid submissions raised by learned counsel for the petitioner, however, I do not find any merit in the same.

4. As regards the first contention that the *sanad Taksim* is defective as it does not record the date on which the partition is to take effect; suffice it to say that a *sanad Taksim* is prepared after the partition is completed, in terms of Section 121 of the Land Revenue Act. Recently, Hon'ble Apex Court in ***Jhabbar Singh (Deceased) v. Jagtar Singh, 2023 AIR (SC) 2074***; while considering an issue regarding stage of severance of status of joint ownership of land in partition proceedings carried out by revenue authorities; has held that drawing of instrument of partition (*sanad Taksim*) is only an executory or ministerial act, as the partition would stand completed upon rendering of a decision on the property to be divided and on the Mode of Partition taken by the Revenue Officer under Section 118 of the Land Revenue Act. The relevant extract of the findings returned in ***Jhabbar Singh's case (supra)***, read as under: -

“26. In our opinion, it is difficult to subscribe the view taken by the High Court in the impugned order that since no instrument of partition was drawn on the date of passing of the decree by the trial court, the joint status of the parties had not come to an end. Having duly considered the provisions contained in the Punjab Land Revenue Act and also the Haryana Land Records Manual placed on record by the learned counsel for the parties, it clearly emerges that as per Section 118 of the Land Revenue Act, when there is a question as to the property to be divided, or the mode of making a partition, the Revenue Officer after such inquiry as he deems necessary, is required to record an order stating his decision on the question and record his reasons for the decision. Sub

section 2 of Section 118 provides for an appeal to be preferred from decision of the Revenue Officer on the question of property to be divided, or the mode of making the partition. As such, there is no further appeal provided against the order in appeal passed under Section 118(2) of the Land Revenue Act. Section 119 deals with the administration of the property excluded from partition referred to in Clause 2 of Section 112, with which we are not concerned. Section 120 deals with the provisions with regard to the distribution of revenue and rent after the partition.

27. The relevant Section 121 states that when the partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein. If the said provision contained in Section 121 is closely read, it clearly appears that it deals with the procedure to be followed by the Revenue Officer, after the partition is completed. Meaning thereby, the Revenue Officer after the Partition is completed, has to cause an instrument of partition to be prepared and record therein the date on which the partition is to take effect. Therefore, when the inquiry as contemplated in Section 118 on the question as to the property to be divided, or the mode of making partition is made by the Revenue Officer, and an order stating his decision on the question along with the reasons for such decision is passed, the partition is deemed to have completed, subject to the decision of appeal that may be preferred against such order as contemplated in sub-section 2 of Section 118.

28. It is pertinent to note that Section 117 of the Punjab Land Revenue Act confers discretion upon the Revenue Officer to decide the question as to the title in any property of which the partition is sought, either by himself or to refer the question to be determined by the competent court. Thus, the jurisdiction of the Revenue Officer in the cases of partition is concurrent with that of the civil court. Therefore, for the purpose of interpreting Section 121 of the Land Revenue Act, the Court

can safely draw an analogy from the provisions contained in Order XX, Rule 18 C.P.C. which pertain to the procedure to be followed on the passing of the decree for the partition of the property. The said provision reads as under :-

"18. Decree in suit for partition of property or separate possession of a share therein.-Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required."

*29. This Court in case of **Shub Karan Bubna Alias Shub Karan Prasad Bubna v. Sita Saran Bubna and Others (2009) 3 SCC (Civ) 820**, had an occasion to deal with the said provisions contained in Order XX, Rule 18, and it was observed as under:-*

"7. In a suit for partition or separation of a share, the court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as "decree" under Order 20 Rule 18(1) and termed as "preliminary decree" under Order 20 Rule 18(2) of the Code. The consequential

division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject-matter of the final decree under Rule 18(2)."

30. If the said analogy is applied to the provisions contained in the Punjab Land Revenue Act pertaining to the Partition, we are of the opinion that when a decision is taken by the Revenue Officer under Section 118 on the question as to the property to be divided and the mode of partition, the rights and status of the parties stand decided and the partition is deemed to have completed. At this stage, such decision is required to be treated as the "decree". The consequential action of preparing the instrument of partition as contemplated in Section 121 of the Land Revenue Act would be only ministerial or administrative act to be carried out to completely dispose of the partition case instituted before the Revenue Officer. Hence, once the decision on the property to be divided and on the mode of partition is taken by the Revenue Officer under Section 118, the joint status of the parties would stand severed on the date of such decision, subject to the decision in appeal if any preferred by the party. The consequential action of drawing an instrument of partition would follow thereafter. Hence, merely because the instrument of partition was not drawn, it could not be said that the partition was not completed or that the joint status of the parties was not severed.

31. The first part of Section 121 of the Land Revenue Act states that "when a partition is completed". Meaning thereby, when the issue with regard to the properties to be divided and the mode of making partition stand decided and rights of the parties stand determined by the Revenue Officer, the latter part of Section 121 for preparing the instrument of partition and recording the date of partition would come into play. Such

actions required to be taken as contained in the latter part of Section 121, would be only an executory work or administrative act to be carried out for completely disposing of the partition case instituted by the party before the Revenue Officer. Just as in case of a decree in civil suit, the adjudication conclusively decides the rights of the parties with regard to the matter in controversy, however the decree would be preliminary when further proceedings have to be taken before the suit can be completely disposed of. In the same way, when the decision is taken by the Revenue Officer under Section 118, the partition would stand completed, the joint status of the parties would stand severed and would remain no more joint, after the period of limitation prescribed under the Act. The further proceeding to draw an instrument of partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case...”

5. Once the drawing of instrument of partition (*sanad Taksim*) is a ministerial act, any defect in preparation of the same would not amount to any illegality so as to take away the effect of partition. In my considered opinion, if the *sanad Taksim* does not contain the date from which the partition is to take effect, the same would amount to an irregularity, which can always be cured by the Revisional Authority or by this Court, when the matter is brought before it.

5.1 That apart, in my considered view the purpose of providing a date from which the partition is to take effect, is to tide over a situation when Instrument of Partition (Sanad Taksim) is issued on a date when the crops sown by different co-sharers, may still be standing on the land under partition and some time would be required for reaping the said crops.

5.2 In the past, it has been observed that when the possession of land under partition is to be delivered by the executing authority to the respective owners in accordance with the Instrument of Partition

(*Sanad Taksim*) and it is found by the executing authority that the crops are standing on the land under partition; then in those circumstances, the value of the standing crops are usually assessed by the executing/competent authority, so that the same are paid to the rightful person, who had sown such crops.

5.3 In view of what has been observed above, it is held that non-mentioning of date of effectuation of partition in the Instrument of Partition (*Sanad Taksim*), would not make the partition defective.

6. As regards the second contention that the partition cannot be implemented on account of the fact that respondent No.3 did not file any application for delivery of possession of the property allotted on partition within three years in terms of Section 122 of the Land Revenue Act; it is observed that under Section 122 *ibid*, an owner or a tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue Officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition, give effect to that instrument as far as it concerns the applicant as if it were a decree for immovable property.

6.1 Concededly, in the present case, no date was recorded in the instrument of partition (*sanad Taksim*) from which, the partition was to take effect. Accordingly, it would be debatable as to when the period of three years would lapse.

7. Normally the date of the issuance of the Instrument of Partition (*Sanad Taksim*) would be considered reckonable for the purposes of calculation of three years period envisaged under section 122 of the Land

Revenue Act. However, what would be the position if the Instrument of Partition (Sanad Taksim) is subjected to challenge before the higher authorities. Whether the doctrine of merger come into play?

8. Here it would be apposite to refer to a few judicial pronouncements. In the case of ***S. Kharak Singh v. Harbhajan Singh, 1978 Current Law Journal 470***, the execution application was held to be filed within time from the date when the appeal was decided. The findings recorded in this regard in paragraph 5 are:

"The second question that requires determination is whether the execution application is within time. It has been argued by the learned counsel for the petitioner that the decree-holder is executing the decree of the trial Court which was passed on October 31, 1963. The learned counsel submits that the decree could be executed within three years, as the limitation of three years had been provided by the Limitation Act, 1908. I regret my inability to accept the contention of the learned counsel. It is not disputed that an appeal was filed against the judgment and decree dated October 31, 1963 to the District Judge, Hoshiarpur, which was dismissed by him on March 12, 1964. This is an established principle of law that the decree of the trial Court merges in that of the appellate Court and after the passing of the decree by the appellate Court it is the decree of that Court which is executed. The decree-holder is entitled to take limitation for execution from the date of decree of the appellate Court. On January 1, 1964, Indian Limitation Act, 1908 was repealed by the Limitation Act, 1963. By virtue of the Limitation Act of 1963 a period of 12 years was prescribed for executing the decree. Thus the decree-holder became entitled to execute his decree till March, 1975. The present execution application was filed by him somewhere in 1973. The application is, therefore, clearly within limitation. The contention of the learned counsel for the petitioner is, therefore, rejected."

8.1 In the case of ***Lakshmi Narayan Guin and others v. Niranjan Modak, AIR 1985 Supreme Court 111***; the same question about merger of the judgment of the trial Court with that of the appellate Court was considered by the Hon'ble Apex Court and it was held that it is the decree of the appellate Court which rules. Hon'ble Supreme Court held as under:

"It is well settled that when a trial Court decrees a suit and the decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial Court decree is said in law to merge in. the appellate decree, and it is the appellate decree which rules."

8.2 A Full Bench of the Patna High Court in the case or ***Jokhan Rai v. Baikunth Singh, AIR 1987 Patna 133*** considered the question as to whether the period of limitation would start, running from the date the decree of the trial Court is passed or that of the Appellate Court. The answer provided by the Full Bench was that it would start running from the date the judgment and decree is passed by the Appellate Court.

8.3 This Court in ***Chhota Ram v. Naginder Singh, 2000(1) PLR 720***; held as under:-

"9. After pondering thus for some of the precedents, it is clear that period of limitation would be reckoned from the date, the appeal was dismissed. Even if there was no stay granted during the course of the appeal, the decree would be enforceable for purpose of limitation as passed by the Appellate Court. The doctrine of merger permits us to say so. The moment Appellate Court decree comes into being, the original judgment and decree loses its independent entity..."

8.4 In an authoritative pronouncement by seven Judge Bench of Hon'ble Apex Court in ***S.S. Rathore v. State of Orissa of M.P, 1990 AIR (SC) 10***; the legal position is well crystalised that the doctrine of merger is

adjudication and in discharge of quasi-judicial functions. Hon'ble Supreme Court held thus:

"14. The distinction adopted in Mohammad Nooh's case, AIR 1958 Supreme Court 86 at page 403 between a Court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in Courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the jurisdiction of the Court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between Courts and Tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31.8.1966..."

9. Now coming to the case in hand, evidently the *sanad Taksim* dated 27.01.2012 (Annexure P-4) was challenged by the petitioner by filing an appeal before the learned Collector, Jhajjar, which was dismissed vide order dated 08.11.2012. A further revision filed by the petitioner before the learned Divisional Commissioner, Rohtak was also dismissed on 27.04.2017. Thereafter, the petitioner preferred a revision petition (**ROR 288 of 2018-19**) before the learned Financial Commissioner, Haryana, which was also dismissed vide order dated 09.07.2024 (Annexure P-5).

9.1 In my considered view, in the light of the judicial pronouncements noticed above and applying the doctrine of merger, the final order of partition/*Sanad Taksim* (Instrument of Partition) stood merged in the order dated 09.07.2024 (Annexure P-5) passed by Learned Financial Commissioner. Accordingly, if the respondent No. 3 has filed an

application for delivery of possession within the period of three years from the date of passing of order dated 09.07.2024 (Annexure P-5) by Learned Financial Commissioner, the same has to be held to be within the prescribed period and maintainable.

- 10. No other argument was raised.
- 11. Considering the totality of circumstances and finding no merit in the writ petition, the same is dismissed.
- 12. All pending applications (if any) shall also stand closed.

November 06, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No