

136 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-637-2025 (O/M)

Date of decision : 13.02.2025

Partap and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ranjit Saini, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Prayer in the instant civil writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 08.04.2021 (Annexure P-2), passed by Assistant Collector 2nd Grade, Hisar (in short 'Assistant Collector'), whereby the petitioners were proceeded against ex-parte in the partition proceedings.

1.1 A further prayer has been made for setting aside the order dated 31.10.2022 (Annexure P-5), passed by Assistant Collector; order dated 15.05.2023 (Annexure P-6), passed by learned Collector, Hisar (in short 'Collector') and also the order dated 26.11.2024 (Annexure P-8), passed by learned Commissioner, Hisar Division, Hisar (in short 'Divisional Commissioner').

2. Briefly, respondents No. 5 and 6 herein, namely, Suman and Ram Niwas (in short 'respondents No. 5 and 6') filed an application

seeking partition of joint land, measuring 23 Kanal-19 Marla, comprised in Khewat No. 955 (as per jamabandi for the year 2016-17), situated at village Raipur, Tehsil and District Hisar. The present petitioners were respondents No. 8 and 11 in the partition proceedings.

2.1 It appears from the zimni orders reproduced by the petitioners in the paperbook that the present petitioners had refused to take summons and accordingly, the Assistant Collector ordered service upon unserved respondents by way of munadi (proclamation). Despite munadi, since nobody appeared on behalf of present petitioners, accordingly, they (petitioners) alongwith others were proceeded against ex-parte, vide order dated 08.04.2021 (Annexure P-2), passed by Assistant Collector.

2.2 It transpires that the petitioners preferred an application dated 13.11.2021 (Annexure P-3) for setting aside the ex-parte proceedings against them and the said application came to be disposed of, vide order dated 31.10.2022 (Annexure P-5), passed by Assistant Collector.

2.3 A perusal of vernacular of aforesaid order dated 31.10.2022 (Annexure P-5) would show that the application submitted by the petitioners for setting aside the ex-parte proceedings was allowed on the condition that the petitioners can join the partition proceedings from that stage onwards i.e. when Naksha 'GA' has already been received on the file. Thereafter, the petitioners preferred an appeal against order dated 31.10.2022 (Annexure P-5), however, the same was dismissed by learned Collector, vide order dated 15.05.2023 (Annexure P-6).

2.4 A further revision petition filed by petitioners before learned Divisional Commissioner was also dismissed, vide order dated 26.11.2024 (Annexure P-8).

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

4. It is the submission of the petitioners that they were proceeded against ex-parte and an application submitted by the petitioners for setting aside the ex-parte proceedings was allowed, however, with a condition that the petitioners can join the partition proceedings from that stage onwards i.e. when Naksha 'GA' has already been received on the file. It is contended that the petitioners should have been permitted to join the partition proceedings from the initial stage and since the same has not been permitted to them, they have filed the present writ petition before this Court.

5. I have heard learned counsel for petitioners and perused the paperbook with his able assistance.

6. Apparently, the petitioners had refused to take summons in the partition proceedings, whereupon the Assistant Collector ordered service upon unserved respondents by way of proclamation (munadi). Since the petitioners did not appear despite proclamation being made, the petitioners were proceeded against ex-parte. Subsequently, the petitioners preferred an application for setting aside the ex-parte proceedings, which was allowed by Assistant Collector, vide order dated 31.10.2022 (Annexure P-5) with a condition that the petitioners were permitted to

join partition proceedings from that stage onwards i.e. when Naksha 'GA' has already been received on the file.

6.1 As regards the contention of the petitioners that they should have been permitted to join the partition proceedings from the initial stage, suffice it to say that no material has been placed on record to show that the petitioners were wrongly proceeded against ex-parte. In the absence of the same, the petitioners cannot be permitted to come to the Court at their own leisure and seek setting aside of the entire partition proceedings merely on their asking. If the aforesaid course is to be allowed then no partition proceedings would ever culminate. Once, it has not been shown that the petitioners were wrongly proceeded against ex-parte, there is no justification for permitting the petitioners to join partition proceedings from the initial stage.

7. Considering the totality of circumstances, I find no merit in the instant civil writ petition and the same is accordingly dismissed.

8. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

13.02.2025
sjks

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