

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

CWP-5344-2022 (O&M)
Date of decision : 11.02.2025

ANITA DEVI

...Petitioner

Versus

THE FINANCIAL COMMISSIONER REVENUE (ROHTAK)
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Singal, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, A.A.G., Haryana

Mr. B.S. Rana, Sr. Advocate
with Mr. Nayandeep Rana, Advocate
Mr. Manav Dhull, Advocate
and Ms. Anu Chaudhary, Advocate
for respondents No.6 to 8.

HARSH BUNGER, J. [ORAL]

Petitioner (Anita Devi) 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 15.05.2019 (Annexure P-7) passed by the learned Commissioner, Rohtak Division, Rohtak.

2. Briefly, the present petitioner (Anita Devi) filed an application seeking partition of joint land comprised in *Khewat No.547/530*, total land

measuring 76 Kanals–11 Marlas, situate at Village Sanghi, Tehsil and District Rohtak, as per *jamabandi* for the year 2015-16.

2.1 In the said partition application, the present contesting respondent Nos.5 to 8, herein were impleaded as respondent Nos.4 to 7.

2.2 It transpires that respondent Nos.5 to 8, herein were proceeded against *ex-parte* and thereafter, the partition proceedings were finalized with the drawing of *Sanad Taksim* (Instrument of Partition) dated 31.05.2018 (Annexure P-4).

2.3 It further transpires that respondent Nos.5 to 8, herein challenged the partition proceedings/*Sanad Taksim* by filing an appeal before the learned Collector, Rohtak; however, the same was dismissed being not maintainable vide order dated 23.01.2019 (Annexure P-5).

2.4 Thereafter, respondent Nos.5 to 8, herein preferred a revision petition before the learned Commissioner, Rohtak Division, Rohtak, which was allowed vide order dated 15.05.2019 (Annexure P-7); whereby, the partition proceedings/*Sanad Taksim* were set aside and the matter was remanded to the learned Assistant Collector Ist Grade, Rohtak for conducting the partition proceedings afresh.

2.5 Being aggrieved against the afore-said order dated 15.05.2019 (Annexure P-7) passed by the learned Divisional Commissioner, Rohtak Division, Rohtak, the present petitioner preferred a revision petition (**ROR-612-2019**) before the learned Financial Commissioner, Haryana; however, the same was dismissed vide order dated 29.11.2021 (Annexure P-9) after taking note of the fact that the State of Haryana, vide notification dated 10.04.2017 had amended the Punjab Land Revenue Act, 1887 (for short 'the 1887 Act') (as applicable to Haryana); whereby Section 16 of the 1887 Act, has been substituted and the powers under

Section 16 of the 1887 Act, had been conferred upon the concerned Commissioner.

3. In the afore-mentioned circumstances, the present writ petition has been filed before this Court, for the relief/s, as noticed here-in-above.

4. Heard.

5. The seminal question, which arises for consideration in this case is “ *whether respondent Nos.5 to 8 herein were served in the partition proceedings initiated by the petitioner in accordance with law.* ”

6. It is noticeable that present respondent Nos.5 to 8, herein were respondent Nos.4 to 7 in the partition application filed by the petitioner. A perusal of ‘Memo of Parties’ to the partition application would indicate that the petitioner had given therein the following addresses of respondent Nos.5 to 8, herein (respondent Nos.4 to 7 in the partition application) :-

“4. Col. Dhirender Singh Hooda son of Chandgi Ram resident of 66, Rajender Nagar, Sirsi Road, Vaishali, Jaipur.

5. Jogender Hooda son of Sh. Chandgi Ram resident of H. No.1156, Sector 15, Faridabad.

6. Smt. Krishna Devi daughter of Sh. Chandgi Ram resident of 1156, Sector 15, Faridabad.

7. Suman daughter of Sh. Chandgi Ram resident of H.No.1156, Sector 15, Faridabad.”

7. A perusal of the *zimini* orders (Annexure P-10) would show that the partition case was filed on 17.07.2017, when notices were ordered to be issued to the opposite parties for 17.08.2017. On 17.08.2017, only respondent No.1 in the partition application (Surender son of Sh. Ramsarup) and respondent No.2(a) in the partition application (Balwan son of Phool Kumar) appeared and the notices issued to the other respondents were not received back, accordingly, fresh notices were issued

to the parties for 11.09.2017. On 11.09.2017, the following order was passed :-

“Today this case was presented. Case is called for hearing. Counsel for the applicant is present. Opposite party 2(a) is present. Notices issued to the respondents have not been received back. Today counsel for the applicant has filed an application for impleading LR’s of respondent no.2 and 3. Opposite parties present today have not filed reply and are seeking more time to file reply. Summoning of other opposite parties is not being affected through regular process. Therefore remaining respondents no.2(b), (c) and 3 to 10 be summoned through combined process of simple notice, registered notice and proclamation for 25.10.2017.”

8. It is further borne out from the *zimini* orders that respondent Nos.5 to 8, herein were proceeded against *ex-parte* vide order dated 25.10.2017 passed by the learned Assistant Collector Ist Grade, Rohtak, the relevant extract of which reads as under :-

“Today this case was presented. Case is called for hearing. Counsel for the applicant is present. Opposite parties no.1 and 2(a) are present. Other opposite parties were summoned but despite affecting even proclamation they are not present in court. Therefore now opposite parties 2(b) and (c) and 3 to 10 are being proceeded ex-parte. Summoning process is complete now. Let Naksha A be summoned from patwari. The case is now adjourned to 21.11.2017.”

9. A perusal of the above extracted order dated 25.10.2017 would show that respondent Nos.5 to 8, herein were taken to have been served on the basis of proclamation (*munadi*).

10. As regards the proclamation (*munadi*) is concerned, the same appears to have been reflected in the *Rapat Roznamcha* dated 23.10.2017

(Annexure P-3), the relevant extract of which reads as under :-

<i>Mustri Munadi</i>	<i>Rapat No.118</i>	<i>02 Kartik Shak Samvat 1939 as per 23 October, 2017 Today, as per order of Sh. Bansilal, Assistant Collector, Ist Grade and Sub-Tehsildar, Rohtak vide letter no.437/R- 2 dated 18.09.2017 Mustri Munadi has been done by beating of drum in the area of village Sanghi through chowkidar Raj Kumar in loud voice that Anita Devi wife of Suresh Kumar Vs. Surender son of Ram Sarup etc. Case No.54/NT/Partition Instt. Date 17.07.2017 khewat No.547 Kite 11 measuring land 76 Kanal 11 Marla is pending in this court. In this case the applicants Arpit son of Dharamvir alias Beera son of Phool Kumar, Prateek son of Rakesh son of Phool Kumar, Smt. Ajusuiya deceased through Lrs. The service of respondent no.4 to 7 Col. Dhirender Singh Hooda son of Sh. Chandgi Ram resident of H.No.66, Rajender Nagar, Sirsi Road, Vaishali, Jaipur, Jogender Hooda, Smt. Krishna Devi and Suman daughters of Sh. Chandgi Ram r/o H.No.1156 Sector 15, Faridabad, Priti daughter and Anil son of Krishan son of Jagdish and Sachin son of Sanjay residents of Pana-Dalyan Sanghi Tehsil and District Rohtak is not effecting in ordinary course. Therefore, they be appear in the above court to attend the proceedings on 25.10.2017 personally or through an advocate, in case of non appearance the ex-parte order will be passed.</i> <i>Sd/- in Hindi Chowkidar</i> <i>Sir,</i> <i>Copy is correct as per original. The fee of copy has been received.</i>
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11. A perusal of the above extracted *munadi* report would show that in fact, the *munadi* (proclamation) was carried out in Village Sanghi, whereas, concededly, respondent Nos.5 to 8, herein were not the residents of Village Sanghi.

12. In somewhat similar circumstances, Hon’ble the Apex Court in the case titled as ***Rabindra Singh v. Financial Commissioner, Cooperation, Punjab, 2008(3) RCR (Civil) 929***, while dealing with a case of substituted service under the Punjab Land Revenue Act, observed that a substituted service is meant to be resorted to serve the notice at the address known to the parties where he had been residing last. In the said case, the appellant therein was residing in America for the last about 25 years and

accordingly, it was held that a purported service by beat of drum or publication of a notice in a local newspaper which has no circulation in the United States of America etc. cannot be said to be an effective service. The relevant extract thereof reads as under :-

“10. Indisputably the authorities under the Punjab Land Revenue Act, 1887 (hereinafter referred to as 'the Act') could entertain an application for partition of the joint family property. It lays down the procedures for summoning the parties, witnesses etc. For the said purpose it has the power of a civil court. Section 20 of the Act provides for the mode of service of summons, stating that the same shall be served personally on the person to whom it is addressed, or, failing him his recognised agent or an adult male member of his family usually residing with him.

11. Section 21 of the Act provides for the mode of service of notice, order or proclamation or copy thereof in the following terms :

"21. Mode of service of notice, order or proclamation or copy thereof. - A notice, order or proclamation or copy of any such document, issued by a Revenue officer for service on any person shall be served in the manner provided in the last foregoing section for the service of a summons."

12. Section 22 of the Act also provides for mode of making proclamation in the following terms :-

"22. Mode of making proclamation. - When a proclamation relating to any land is issued by a Revenue officer, it shall, in addition to any other mode of publication which may be prescribed in any provision of this Act, be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates."

13. xxx xxx xxx

15 to 17. xxx xxx xxx

13. When the case in hand is considered in the light of the observations made by the Hon'ble Apex Court in ***Rabindra Singh's case*** (*supra*), it leaves no manner of doubt that respondent Nos.5 to 8, herein cannot be said to be served in accordance with law.

proceedings/*sanad taksim* after recording a finding of fact that the Court

below had not followed the procedure for effecting service in terms of Section 20 of the Land Revenue Act and that there was also a suspicion as regards the conduct of proclamation is concerned.

15. In this view of the matter, there is no illegality or perversity in the order dated 15.05.2019 (Annexure P-7) passed by the learned Commissioner, Rohtak Division, Rohtak. Resultantly, finding no merit in the present petition, the same is, hereby, dismissed.

16. All pending applications (if any) shall also stand closed.

February 11, 2025
gurpreet

(HARSH BUNGER)
JUDGE

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