



RSA No. 2693 of 1995 (O&M)

1

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

202

RSA No. 2693 of 1995 (O&M)
DATE OF DECISION :- 07.11.2025

Jang Singh and another

...Appellants

Versus

Hakam Singh (since deceased) through LRS and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Ashok Kumar Khubbar, Advocate with
Mr. Shivam Singh Chauhan, Advocate for the appellants.

Mr. S.S. Dalal, Advocate for the
legal representatives of deceased-respondent No. 1.

VIRINDER AGGARWAL, J. (Oral)

1. The appellants-defendants have invoked the appellate jurisdiction of this Court by filing the present Regular Second Appeal, assailing the judgment and decree dated 15.11.1995 passed by the learned Additional District Judge, Kurukshetra, whereby the appeal preferred by the respondent-plaintiff against the judgment and decree dated 30.09.1994 rendered by the learned Sub Judge IInd Class, Kurukshetra, was allowed, resulting in the reversal and setting aside of the judgment and decree passed by the trial Court.

2. The brief facts leading to the present litigation are that Jagjit Singh sold the suit land vide sale deed dated 19.12.1990 in favour of the appellants, Jang Singh and Gurvinder Singh. The respondent-plaintiff,



Hakam Singh, claiming himself to be a co-sharer in the suit land, instituted a suit for pre-emption.

3. Upon notice, the defendants appeared and filed their written statement, raising various preliminary objections and denying the claim of the respondent-plaintiff regarding his status as a co-sharer.

4. On the basis of the pleadings of the parties, the learned trial Court framed the requisite issues for determination. Both parties were afforded adequate opportunities to adduce evidence in support of their respective claims.

5. After considering the evidence and hearing the learned counsel for the parties, the learned Civil Judge dismissed the suit, holding that the plaintiff had ceased to be a co-sharer in the suit property as of the date of the decree. It was further held that to avail the right of pre-emption, the plaintiff was required to retain his co-sharer status until the passing of the decree. The Court observed that the plaintiff's co-ownership came to an end upon the conclusion of partition proceedings, which culminated in the Sanad Taksim dated 21.06.1994.

6. Aggrieved by the said judgment and decree, the respondent-plaintiff preferred an appeal, which was allowed by the learned Additional District Judge, Kurukshetra, vide the impugned judgment and decree. Hence, the appellants-defendants have filed the present Regular Second Appeal.



7. Notice of the appeal was duly served upon the respondents. The respondent-plaintiff appeared through counsel and contested the appeal. The complete record of the Courts below was requisitioned for perusal.

8. I have heard learned counsel for both sides at considerable length and accorded my anxious consideration to their submissions, while undertaking a comprehensive and critical examination of the record of the case.

9. The sole and substantial question of law that falls for consideration and determination in the present appeal is as under:-

“Whether the status of co-sharer between the respondent-plaintiff and the vendor, Jagjit Singh, subsisted till the passing of the decree by the learned Sub Judge IInd Class, Kurukshetra, on 30.09.1994?”

10. Learned counsel for the appellants contended that the learned Additional District Judge, Kurukshetra committed an error in law by holding that the relationship of co-sharers continued to subsist till the passing of the decree, despite the fact that the order of partition had been made by the competent authority. It was argued that the findings of the learned First Appellate Court are unsustainable in law.

11. On the contrary, learned counsel for the respondent-plaintiff submitted that the learned First Appellate Court rightly concluded that the relationship of co-sharers between the parties subsisted till the decree was passed by the learned trial Court and that such relationship had not come to an end. It was further argued that the preparation of the Sanad Taksim is not an appealable order and, therefore, could not have been challenged in



appeal. Hence, it was contended that the findings of the learned First Appellate Court are well-reasoned and suffer from no illegality or infirmity, and the appeal deserves to be dismissed.

12. The learned First Appellate Court has recorded its findings in paragraphs No. 9 and 10 of the impugned judgment, which read as under:-

“Now by way of additional evidence i.e. judgment Ex.P5 it is clear that the appeal filed by the respondents against the order of Collector has been the dismissed on 21.2.95, i.e. after passing of impugned Judgment and decree. If this is the position, then the order for preparation of naksha be on 29.3.94 stands set aside. The other proceedings for preparation of partition deed etc. becomes automatically infructuous.. I do not agree with Mr. Chandermani that the appellant having not preferred appeal against the final order of partition, the interim order of the Commissioner and Collector would be of no consequence. Because as has been held in Lala Ram Vs. The Financial Commissioner, Haryana and others, 1992 P.L.J.(P&H) 45 the instrument of partition is an executory act and only a step towards execution order of partition which is not appealable. Counsel for the respondents has relied upon Pritam Singh vs. Jaskaur Singh 1992 P.L.J.(P&H) 435. This is Division Bench Authority of our own Hon'ble High Court. In that case it was held that only preparation of Naksha Be, would not amount to complete partition and even preparation of Instrument and delivery of partition is necessary for effecting partition. I am unable to appreciate as to why this authority has been relied upon by counsel for the respondents. Because, even by implication if it can not be said that in view of this authority preparation of instrument of partition would amount to final order of partition. In other words, it is clear that the final order of Naksha-Be' passed on 29.3.94 has been set aside and the case remanded back. The argument of the counsel for the appellant



that since the stay has been vacated by the Commissioner only after passing of the decree by the learned trial court and as such it can not be used for holding that there was no partition is without force as held in Suresh Kumar Vs. Chanchal Singh and another, 1995 P.L.J. (P & H)323.

10) In this view of the matter I hold that there was no severance of co-sharership between the plaintiff and the vendees till the passing of the decree by the learned trial court. That being so, the Impugned Judgment and decree is liable to be set aside.”

13. The learned First Appellate Court appears to have proceeded on the assumption that since the order regarding the preparation of **Naksha-Be** was set aside, all subsequent proceedings and orders flowing therefrom stood rendered null and void. However, this assumption is misconceived, as the interim order pertaining to the preparation of **Naksha-Be** had already merged into the final order of partition of the suit property culminating in the preparation of the *Sanad Taksim*.

14. As is clear from the judgment passed by this Court in the case of **‘Ramkishan and others versus State of Haryana and others’ LPA No. 357 of 2022 Neutral Citation No : 2022:PHHC” 054120-DB** decided on May 07th, 2022, wherein it has been held as under :-

“5. In the light of the fact that the sanad taksim had already been issued, there can be no dispute that the appeal as has been preferred by the appellants challenging naksha 'B' as sanctioned on 28.02.2016 would not sustain as no appeal is maintainable at that time. In any case, the appeal was found to be time barred and, therefore, dismissed leading to the filing of the revision petition before the Commissioner, Gurugram Division, Gurugram. The challenge, therefore, to naksha 'B' in the light of the sanad taksim having already been finalized and issued, the same would not be sustainable.”



15. Once the *Sanad Taksim* has been issued, any challenge to the *Naksha-Be* ceases to be maintainable. Consequently, all proceedings and orders passed by the revenue authorities in relation to the *Naksha-Be* after the issuance of the *Sanad Taksim* are rendered illegal, null, and void, having been passed by an authority lacking jurisdiction.

16. In view of the settled legal position enunciated by the Division Bench of this Court, once an interim order merges into the final order, any appeal directed against such interim order becomes infructuous. Even if such an appeal is subsequently decided, it cannot have the effect of nullifying the final order, unless the final order itself is specifically challenged before the competent authority. It is not disputed that no revision was filed against the order of partition or against the preparation of the *Sanad Taksim*. Accordingly, the findings recorded by the learned First Appellate Court are unsustainable in law. The present appeal is, therefore, allowed; the judgment and decree passed by the learned First Appellate Court are hereby set aside, and those rendered by the learned Sub Judge IInd Class, Kurukshetra, are restored.

17. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

07.11.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No