

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15307-2020 (O/M)

Reserved on : 12.11.2024

Date of decision : 11.02.2025

Balwant and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. P.K. Ganga, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG Haryana.

Mr. P.S. Jammu, Advocate
for respondents No. 6 to 10.

Mr. Lal Singh Sandhu, Advocate
for applicant in CM-5730-CWP-2024.

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HARSH BUNGER, J.

CM-5730-CWP-2024

1. This is an application filed under Order 1 Rule 10 CPC read with Section 151 CPC for impleading the applicant-Amandeep son of Om Parkash as respondent No. 15 in the instant writ petition.

2. The aforesaid application has been filed by the applicant-Amandeep on the plea that petitioner No. 1-Balwant had entered into an agreement dated 03.07.2014 for total sale consideration of Rs. 11,00,000/-, whereunder a sale deed was to be executed on 05.01.2015, however, since petitioner No. 1-Balwant did not perform his part of the agreement, accordingly, the applicant-Amandeep filed a

Civil Suit No. 6 dated 22.04.2015, seeking specific performance of agreement dated 03.07.2014, which was decreed by the trial Court, vide judgment and decree dated 21.10.2017 (attached as Annexure A-1 with the application). It is further stated that in compliance of the aforesaid judgment and decree dated 21.10.2017, sale deed bearing Vasika No. 2941, dated 26.11.2018, has been executed and according to which, he has become a co-sharer to the extent of 8 Kanal. On the aforesaid plea, the applicant-Amandeep is seeking impleadment in the instant writ petition by stating that he is a proper and necessary party.

3. I have considered the aforesaid submissions of the applicant, however, I do not find any merit in the same for the simple reason that concededly the applicant-Amandeep had entered into an agreement dated 03.07.2014 with petitioner No. 1-Balwant during the pendency of the partition proceedings initiated by Smt. Rukma and he would be entitled to avail his remedies in terms of judgment and decree dated 21.10.2017 and/or sale deed dated 26.10.2018, independently against his vendor.

4. The instant application is accordingly dismissed in the aforestated terms.

CWP-15307-2020 (O/M)

1. Petitioners have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the Sanad Takseem dated 19.08.2014 (Annexure P-13) and all partition proceedings; order dated 10.02.2016 (Annexure P-14), passed by learned Financial Commissioner, Haryana in

ROR No. 502/2013-14 and also order dated 03.09.2019 (Annexure P-8), passed by learned Financial Commissioner, Haryana in ROR No. 337/2015-16.

2. Briefly, one Rukma Devi (respondent No. 14) filed an application seeking partition of joint land, situated in village Chilkani Dhab, Tehsil Ellenabad, District Sirsa. The said partition proceedings were contested by present petitioners, inter alia, on the plea that they are in possession of 97 kanal, 2 marla land, out of which half share is under their possession in the capacity as co-owners, whereas the remaining 1/2 share is under their possession as tenants since 1977. It was stated that the tenancy rights of the petitioners were intact as they had never been evicted from the land in question nor had they relinquished their possession.

2.1 Petitioners further claimed that their possession in the capacity of tenants was under the co-sharer Smt. Ram Piari, who became co-sharer to the extent of 1/3rd share in the total land measuring 291 kanal 5 marla, vide mutation No. 369 and the petitioners were inducted as tenants by Smt. Ram Piari since crop Sauni 1977.

2.2 It is the case of the petitioners that Smt. Ram Piari sold her 1/3rd share to the petitioners by surrendering her ownership rights as well as physical possession, vide sale deed dated 20.06.1979.

2.3 It is stated that one Sahib Ram challenged the sale deed dated 20.06.1979 alongwith mutation No. 410 by claiming preferential rights to purchase the land sold in favour of the petitioners by filing Civil Suit No. 563 of 1980, however, the said suit was dismissed, vide

judgment and decree dated 29.11.1982 (Annexure P-9), however, an appeal filed by Sahib Ram was allowed, vide judgment and decree dated 09.01.1984 (Annexure P-10).

2.4 Petitioners state that on 19.08.2016, the petitioners were shocked to know that Sanad Takseem dated 19.08.2014 had been issued by Assistant Collector 1st Grade, and the said Sanad Takseem was sought to be implemented through warrants of possession and that too against the land which is in possession of the petitioners as tenants, whereas the petitioners had already installed a tubewell and also constructed a room there and even underground pipelines have been laid down for irrigation purposes. It is contended that the Assistant Collector 1st Grade was trying to dis-possess the petitioners by taking away their tenancy rights without initiating any eviction proceedings; whereupon the petitioners approached the learned Financial Commissioner, Haryana, by filing a revision petition (ROR No. 337/2015-16), wherein dis-possession of the petitioners was initially stayed, vide order dated 09.11.2016 (Annexure P-7); however, subsequently the aforesaid revision petition (ROR No. 337/2015-16) has been dismissed, vide order dated 03.09.2019 (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. The writ petition has been opposed by the counsel representing respondents No. 6 to 10 by stating that the petitioners have not come to the Court with clean hands as they have concealed material

facts from the Court. It is submitted that the learned Civil Courts had clearly held that the petitioners have failed to prove that they are tenants on the land in question, accordingly, the stand taken by the petitioners in this petition is totally mis-conceived. It is stated that the petitioners never remained as tenants of Ram Piari and there is no such entry in the revenue records with regard to tenancy of the petitioners under Smt. Ram Piari nor Smt. Ram Piari inducted the petitioners as her tenants since crop Sauni 1977. It is stated that Smt. Ram Piari had sold land to petitioners, vide sale deed dated 20.06.1979, whereas she was only entitled to sell 1/2 share and the other half share belonged to Smt. Rukma (mother-in-law of Smt. Ram Piari). It is stated that Smt. Rukma had filed a civil suit for declaration challenging the sale deed dated 20.06.1979, executed by Ram Piari in favour of the petitioners, which was decreed, vide judgment and decree dated 22.07.1992 (Annexure R-6/1) and an appeal against the same was dismissed by the appellate Court on 27.05.1995 and further RSA No. 1910 of 1995, filed by the petitioners was also dismissed by this Court. Accordingly, Smt. Rukma became owner to the extent of 1/2 share out of land measuring 97 kanal 2 marla. It is stated that the said judgment had attained finality. It is further stated that thereafter, the petitioners filed another Civil Suit No. 231 of 2016, which was also dismissed on 05.12.2019 (Annexure R-6/2).

4.1 As regards partition proceedings, it is submitted that Smt. Rukma filed an application seeking partition of joint land and in the said partition proceedings, the mode of partition was prepared and Naksha 'Bey' was called from the field staff. Upon receipt of Naksha 'Bey',

objection thereto was invited from the respective parties, wherein the petitioners submitted objection to Naksha 'Bey' that they are tenants on the whole land, however, the said objection was rejected by learned Assistant Collector 1st Grade, vide order dated 31.05.2011 and Naksha 'Bey' was confirmed. The appeal filed by the petitioners against the aforesaid order dated 31.05.2011 was also dismissed on 07.05.2012 and subsequently, a revision petition filed by the petitioners was dismissed by the learned Commissioner, Hisar Division, Hisar, on 10.06.2014. It is stated that thereafter, the petitioners preferred revision petition (ROR No. 502/2013-14) before the learned Financial Commissioner, Haryana, and during the pendency of the said revision petition, Sanad Takseem came to be issued on 19.08.2014. It is stated that thereafter, the petitioners preferred another revision petition (ROR No. 143/2014-15) before the learned Financial Commissioner, Haryana, wherein Sanad Takseem dated 10.06.2014 was also challenged. Both the aforesaid revision petitions (ROR-502/2013-14 and ROR-143/2014-15) came to be dismissed, vide common order dated 10.02.2016 (Annexure P-14). It is submitted that thereafter the petitioners preferred a revision petition (ROR No. 337/2015-16), which came to be dismissed, vide impugned order dated 03.09.2019 (Annexure P-8). It is contended that once the petitioners has lost in earlier round of litigation, vide order dated 10.02.2016 (Annexure P-14), subsequent revision petition (ROR No. 337/2015-16) filed by the petitioners was not maintainable and is a sheer abuse of process of law; especially when order dated 10.02.2016

(Annexure P-14) has already attained finality. With the aforesaid submissions, prayer for dismissal of the writ petition was made.

5. Heard.

6. It is not disputed before this Court that the petitioners purchased 97 Kanal-2 Marla land out of total joint land measuring 291 Kanal-5 Marla comprised in Khewat No. 95 (as per Jamabandi 1983-84), situated at village Chilkani Dhab, Tehsil and District Sirsa, from Ram Piari, vide Sale Deed dated 29.10.1979. Ram Piari was daughter-in-law of Smt. Rukma alias Smt. Nathi widow of Sh. Sukh Ram. Smt. Rukma alias Nathi filed Civil Suit No. 509 of 1986 seeking declaration that she is owner in possession of 1/6th share in total land measuring 291 Kanal-5 Marla and that the sale deed dated 29.10.1979 executed by Smt. Ram Piari in favour of present petitioners i.e. Mani Ram and Balwant sons of Raju is illegal, null and void. The said suit was decreed, vide judgment and decree dated 22.07.1992 (Annexure R-6/1) in favour of Smt. Rukma and she was declared owner of 1/6th share in total joint land measuring 291 Kanal-5 Marla and was further held to be in joint possession of said land. The aforesaid judgment and decree dated 22.07.1992 was upheld upto this Court in RSA No. 1910 of 1995, filed by petitioners, as the same was dismissed on 27.05.1995.

6.1 Thereafter, the petitioners filed another suit bearing No. CS-183-2016 wherein following reliefs were sought :-

“(a). That they be declared lawful owners of land measuring 97 Kanal 02 Marla being 1942/4785th share out of 289 Kanal 05 Marla land forming part of Khewat No. 195, Khatoni No. 385 to 389 situated in Village Chilkani

Dhab, Tehsil Ellenabad, District Sirsa (hereinafter to be referred as the suit land) on basis of registered sale deed dated 20.06.1979 executed by defendant No. 9 in their favour.

(b). That judgments and decrees dated 22.07.1992 as well as 27.05.1995 and order passed by Hon'ble High Court in RSA No. 1910 of 1995 (for brevity, impugned-judgments, decrees and order) are to be declared wrong, illegal, not binding on plaintiffs due to fraud and concealment and are liable to be set-aside.

(c). That mutation No. 369 be declared legal and valid while mutation No. 672 dated 19.09.1995 (hereinafter to be referred as the impugned mutation) is illegal alongwith all subsequent records and same are to be corrected in favour of plaintiffs and against the defendants.

(d). That a decree of permanent injunction has been sought against defendants No. 1 to 8 with prayer to restrain them from causing any interference in peaceful and settled possession of plaintiffs on suit land and they be also restrained from alienating it or creating any charge over it by resorting to impugned judgments, decrees and order.

(e). That a decree of injunction has also been sought with prayer to direct defendants No. 1 to 8 to get the suit land redeemed which has been mortgaged by them to the bank.

(f). In alternative, it is prayed that if defendants succeed in dispossessing the plaintiffs from suit land during pendency of suit then its possession be restored to them.”

6.2 The said suit was dismissed, vide judgment and decree dated 05.12.2019 (Annexure R-6/2).

6.3 In the meanwhile, Smt. Rukma filed application seeking partition of joint land. In the partition proceedings, the present petitioners had appeared and also submitted objection to Naksha 'Bey', wherein a

claim was raised as regards their tenancy rights in the land under partition, however, the said objection was rejected by Assistant Collector 1st Grade, vide order dated 31.05.2011 and Naksha 'Bey' was confirmed. An appeal filed by the petitioners against the said order dated 31.05.2011 was dismissed by learned Collector, Sirsa, vide order dated 07.05.2012. Further revision petition filed by the petitioners before learned Commissioner, Hisar Division, Hisar, was also dismissed on 10.06.2014 and revision petition (ROR No. 502/2013-14), challenging the order approving Naksha 'Bey' and also another revision petition (ROR No. 143/2014-15), challenging sanad takseem dated 19.08.2014, were dismissed, vide common order dated 10.02.2016 (Annexure P-14). Apparently, the petitioners did not raise any challenge to order dated 10.02.2016 (Annexure P-14), which has already attained finality.

7. It appears that in order to prolong their possession over the land under partition, the petitioners filed another revision petition (ROR No. 337/2015-16), which has been dismissed, vide order dated 03.09.2019 (Annexure P-8) by observing as under :-

“5. I have duly considered the arguments advanced by both the counsels, perused the relevant record of the case and have also examined the impugned application dated 19.08.2016 and notice dated 24.08.2016. An application for partition was filed by Smt. Rukma Devi against the other co-sharers for partition of land measuring 289 kanal 05 marla situated in village Chilkani Dhab, Tehsil Ellenabad, Distt. Sirsa in the year 2001. The petitioners raised objections to Naksha 'Bey' that they are in possession of the 97 kanal 02 marla of land out of which half share is in possession as owners and remaining half share is

in possession of the petitioners as tenants and the said tenancy rights were still intact at the spot. The objections of the petitioners were dismissed by the Assistant Collector vide his order dated 31.05.2011 and the Naksha 'Bey' was confirmed. The petitioners filed appeal against the same before the Collector, Sirsa which was dismissed on 07.05.2012. Subsequent revision filed by the petitioners was dismissed by the Commissioner, Hisar on 10.06.2014. The petitioners filed revision petition before this court. During the pendency of the revision petition instrument of partition was issued and another revision petition against the instrument of partition was filed by the petitioners before this court. The court of Financial Commissioner vide order dated 10.02.2016 dismissed both the revision petitions filed by the petitioners against the partition proceedings. After the decision passed by this court the respondents/applicants filed an application before the Assistant Collector for delivery of possession of the land which has come to their share in the partition proceedings. The revenue officials approached the Deputy Superintendent of Police for police help for delivery of possession to the respondents/applicants. The revenue officials issued a notice dated 24.08.2016 to the petitioners for delivery of possession of the land in dispute to the respondents/applicants on 26.08.2016. The petitioners have mainly agitated application dated 19.08.2016 and notice dated 24.08.2016 on the ground that the petitioners are recorded as Gair Marusi Tenants in the revenue records on the land in question and they can be only ejected/evicted from the land in question after following the due procedure of law. On the other hand, the respondents/applicants have stated that the petitioners are not recorded as Gair Marusi Tenants on the land in question in the revenue record. They are only recorded as co-sharer to the extent of their share in the revenue record. The counsel for the petitioners was

asked by this court to bring on record the revenue record to substantiate that they are recorded as Gair Marusi Tenants in the revenue record. The petitioners were given ample opportunity, but have failed to produce any such record before this court. The perusal of the Jamabandi reveals that the petitioners are recorded as Hissedar in the land in question and are not recorded as tenants.

6. In view of the above discussion, the present revision petition is devoid of any merit and the same is accordingly dismissed.”

7.1 Learned counsel appearing for petitioners has failed to dislodge the aforesaid observations made by learned Financial Commissioner, Haryana, especially the finding that the petitioners had raised objection to Naksha 'Bey' by stating that they were in possession of 97 kanal – 02 marla, out of which 1/2 share was in their possession as owner and remaining half share is in their possession as tenants and that the said objections were dismissed by learned Assistant Collector 1st Grade, vide order dated 31.05.2011. The said finding has attained finality upto the court of learned Financial Commissioner, Haryana, vide order dated 10.02.2016 (Annexure P-14), whereby the two revision petitions (ROR No. 502/2013-14 and ROR No. 143/2014-15) were dismissed. Therefore, once the petitioners had lost upto the court of learned Financial Commissioner, Haryana, then filing of the second revision petition (ROR No. 337/2015-16) was clearly an abuse of process of law. Such practice is liable to be deprecated.

7.2 That apart, even as per the revenue records (Jamabandi and Khasra Girdawaris) attached with this writ petition as Annexure P-5 and

Annexure P-6; the petitioners are shown in possession of land under partition in the capacity of “co-sharer” and not as “tenants”.

8. Considering the totality of circumstance, I find no merit in the present writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

11.02.2025
sjks

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