125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-759, 760-CWP-2025 in/and
CWP-20414-2024 (O/M)
Date of decision : 21.01.2025

Mukesh and another ...... Petitioners

Versus

State of Haryana and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Munish Gupta, Ms. Dharika Sikka, Advocates
for respondents No. 4 to 11.

Mr. J.S. Dhaiya, Mr. Phool Kumar, Advocates
for respondent No. 12.

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HARSH BUNGER, J. (ORAL)

CM-759-CWP-2025

This is an application filed under Order 22 Rule 4 CPC read with Section 151 CPC for bringing on record legal representative(s) of deceased-respondent No. 12 (Mange).

Learned State counsel, learned counsel for respondents No. 4 to 11 as well as learned counsel for petitioners state that they have no objection if the application for impleading legal representative(s) of deceased-respondent No. 12 (Mange) is allowed.

For the reasons mentioned in the application and having no objection from learned counsel(s) opposite, application is allowed and

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legal representative(s) of deceased-respondent No. 12 (Mange), as mentioned in Amended Memo of Parties, are permitted to be brought on record for the purpose of pursuing this litigation only. Amended Memo of Parties filed with the application is taken on record subject to all just exceptions. Registry to do the needful.

Application is disposed of accordingly.

CM-760-CWP-2025

This is an application filed under Section 151 CPC placing on record short reply of legal representative(s) of respondent No. 12.

For the reasons mentioned in application, same is allowed and short reply of legal representative(s) of respondent No. 12 is taken on record subject to all just exceptions.

Application is disposed of accordingly.

CWP-20414-2024 (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 order dated 30.10.2018 (Annexure P-2), passed by learned Assistant Collector 1st Grade Rai (Sonepat), whereby the Naksha 'Kha' was approved and also order dated 30.11.2018 (Annexure P-3), whereby sanad takseem was issued.

1.1 A further prayer has been made for setting aside the order dated 12.07.2023 (Annexure P-5A), whereby an appeal preferred by the petitioners was dismissed by learned Collector, Sonepat (in short 'Collector') and also an order dated 06.06.2024 (Annexure P-9), passed by learned Financial Commissioner, Haryana (in short 'Financial

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Commissioner'), dismissing the review application (RA-88-2024) filed by the petitioners seeking recall/review of order dated 05.01.2024 (Annexure P-7), passed in revision petition ROR-343-2023.

2. Briefly, in January, 2017, respondents No. 4 to 11 filed an application seeking partition of joint land measuring 29 Kanal – 2 Marla, comprised in Khewat No. 468, situated in village Nangal Kalan, Tehsil Rai, District Sonepat, as per Jambandi for the year 2014-15.

2.1 In the said partition proceedings, the petitioners appeared through their counsel on 24.08.2017. The mode of partition came to be proposed on 10.08.2018 and objections thereto were called from the respective parties.

2.2 Since no objections were received on proposed mode of partition, the same was approved, vide order dated 11.09.2018, passed by learned Assistant Collector 1st Grade, Rai (Sonepat) and Nakha 'Kha' was called from the field staff.

2.3 On receipt of Naksha 'Kha', objections thereto were called from the respective parties and the matter was adjourned to 30.10.2018. Since no objections were submitted to Naksha 'Kha' by any of the parties, the same came to be approved by the Assistant Collector 1st Grade, Rai (Sonepat), vide order dated 30.10.2018 (Annexure P-4, Colly.), the relevant extracts of which read as under :-

> *"Today file has been presented. Counsel for the parties are present. None of the parties has any objection on Naksha KHA. Naksha KHA is accepted. This order be implemented in the revenue record after the expiry of limitation period of appeal. Naksha GA be called from Field Staff. File be produced on 6.11.2018."*

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2.4 Thereafter, Naksha 'Ga' was received on 20.11.2018 and ultimately, the partition proceedings concluded with the issuance of sanad takseem, vide order dated 30.11.2018 (Annexure P-3).

2.5 It transpires that the petitioners challenged the partition proceedings and sanad takseem by filing an appeal before the learned Collector, however, the same came to be dismissed, vide order dated 12.07.2023 (Annexure P-5A), being not maintainable.

2.6 Thereafter, the petitioners preferred a revision petition (ROR-343-2023) before the learned Financial Commissioner, however, the same was also dismissed, vide order dated 05.01.2024 (Annexure P-7).

2.7 Still dis-satisfied, the petitioners preferred a writ petition (CWP-2624-2024) before this Court, which was initially dismissed, vide order dated 06.02.2024 (Annexure P-7A), however, on a review application (RA-82-2024 in CWP-2624-2024) being filed by the petitioners, order dated 06.02.2024 (Annexure P-7A) was recalled by allowing the review application and the writ petition was ordered to be dismissed as withdrawn with liberty to the petitioners herein to seek review of order dated 05.01.2024 (Annexure P-7), passed by learned Financial Commissioner, vide order dated 05.03.2024 (Annexure P-8). Thereafter, the petitioners preferred a review application (RA-88-2024 in ROR-343-2023), which was also dismissed, vide order dated 06.06.2024 (Annexure P-9), passed by learned Financial Commissioner.

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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. Learned counsel for petitioners submits that Naksha 'Kha' was prepared by the revenue staff in collusion with respondents No. 4 to 11 and no proper opportunity of hearing was afforded to the petitioners to submit their objections thereto. It is submitted that the partition has not been carried out in a fair, just and equitable manner inasmuch as that the valuable piece of land has been allocated to respondents No. 4 to 11 and petitioners have been allocated land in small pieces. It is further submitted that the partition has been carried out in an arbitrary manner, therefore, the impugned orders be set aside and the matter be remanded to Assistant Collector 1st Grade, Rai (Sonepat) for deciding the partition proceedings afresh.

5. Learned senior counsel appearing for respondents No. 4 to 11 has opposed the submissions raised on behalf of the petitioners by submitting that the petitioners have failed to raise any objection to the mode of partition or to the Naksha 'Kha' at the relevant time. It is further submitted that once the petitioners have failed to object to Naksha 'Kha', now after issuance of sanad takseem, they cannot be permitted to raise any objection in that regard. Accordingly, prayer has been made for dismissal of the instant civil writ petition.

6. Heard.

7. Recently, Hon'ble Apex Court in ***Jhabbar Singh (Deceased) Versus Jagtar Singh, 2023 AIR (SC) 2074***; while considering the scheme

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of partition proceedings envisaged under Haryana Land Revenue Act and the stage of severance of status of joint ownership of land in partition proceedings carried out by revenue authorities; held 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*

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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*

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> *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

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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…"

8. Keeping in view the above extracted observation in case of ***Jhabbar Singh*** (supra), it is noticed that in the case in hand, the

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petitioners herein were duly served and had appeared through their counsel. It is not disputed before this Court that the petitioners herein have not raised any objection either at the time of mode of partition or to the proposed Naksha 'Kha'. Since none of the parties raised any objection to Naksha 'Kha', the same was approved and on that basis, Naksha 'Ga' and ultimately sanad takseem was issued. In the peculiar facts and circumstances of this case, once the petitioners have failed to raise objections to Naksha 'Kha' or Naksha 'Ga' at the relevant time, they cannot be permitted to raise objections as regards mode and manner in which the final partition has been effected between the parties.

9. Further, learned counsel for petitioners has also not referred to any material to indicate that the petitioners have been allocated less valuable land or that they have not been allocated land as per their entitlement.

10. In view of the above, I find no merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

21.01.2025
sjks

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

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