

130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-129-CWP-2025 in/and
CWP-26042-2024 (O/M)
Date of decision : 15.01.2025

Sukhdev Singh and another Petitioners

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ramesh Chand Sharma, Advocate
for applicant-petitioners.

Mr. Navneet Singh, Senior DAG Punjab.
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HARSH BUNGER, J. (ORAL)

CM-129-CWP-2025

1. This is an application filed under Section 151 CPC for placing Khasra Girdawari (Annexure P-11) on record.
2. For the reasons mentioned in application, same is allowed and Khasra Girdawari (Annexure P-11) is taken on record subject to all just exceptions.
3. Application is accordingly disposed of.

CWP-26042-2024

1. Petitioners (Sukhdev Singh and another) 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 quashing the orders dated 19.03.2021, 23.09.2021 (Annexure P-6 and Annexure P-7,

respectively), passed by Assistant Collector 1st Grade, Shahkot, and the order dated 15.05.2024 (Annexure P-8), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner').

2. Briefly, respondent No. 3 herein, namely, Jagdeep Singh filed an application seeking partition of joint land measuring 56 kanal-6 marla, comprised in Khewat No. 305/345, 306/346, 307/347, 308/348 and 487/548, situated in village Bahmania, Tehsil Shahkot, District Jalandhar.

2.1 It appears that the present petitioners were proceeded against ex-parte in the aforementioned partition proceedings, vide order dated 13.09.2019. The mode of partition was prepared on 05.01.2021 (Annexure P-2) and thereafter, Naksha 'Arra' and Naksha 'Erri' were approved, final order of partition was passed on 19.03.2021 (Annexure P-6) and ultimately sanad takseem (instrument of partition) was issued on 23.09.2021 (Annexure P-7).

2.2 Petitioners challenged the partition proceedings/sanad takseem by filing a revision petition (ROR No. 74 of 2023) before learned Financial Commissioner, however, the same was dismissed, vide order dated 15.05.2024 (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 notice hereinabove.

4. Learned counsel for petitioners submits that learned Assistant Collector 1st Grade, Shahkot has carried out the partition proceedings in a totally illegal and arbitrary manner wherein the present petitioners were wrongly proceeded against ex-parte. It is further

submitted that even the final partition is against the sanctioned mode of partition as the possession of present petitioners over the land comprised in Rect. No. 34, Killa No. 2/2, 3/1 has been disturbed. Accordingly, it is prayed that the impugned partition proceedings/impugned orders be set aside and the matter be remanded to Assistant Collector 1st Grade, Shahkot for carrying out partition proceedings afresh in accordance with law.

5. Heard.

6. As regard the contention raised on behalf of the petitioners that present petitioners were wrongly proceeded against ex-parte, learned Financial Commissioner has considered the said submission raised on behalf of petitioners and rejected the same by observing as under :-

“6. I have heard the arguments advanced by the counsels of both parties and also perused the record and orders of the lower court. In this case Jagdeep Singh filed application for partition of land measuring 56 Kanals 6 Marlas situated in the revenue estate of village Bahmnian, Tehsil Shahkot, District Jalandhar has been allowed. The Tehsildar-cum-Assistant Collector 1st Grade, Shahkot vide its order dated 19.03.2021 has passed the order of final partition and issued the Sanad Takseem on 23.09.2021. The petitioner being aggrieved by this has filed the present revision petition before this Court. After perusal of the facts and the record of the lower court, the present revision petition has been filed primarily on the ground that no effective service has effected upon the petitioners as per the procedure laid down in the section 20 of the Punjab Land Revenue Act, 1887. The counsel for the petitioners has raised the specific objections that the Tehsildar-cum-Assistant Collector 1st Grade, Shahkot has not followed the procedure as laid down in the Section 20 of the Punjab Land Revenue Act, 1887 and no

efforts were made to serve the petitioner no. 1 as well as petitioner no. 2 who were living in Australia since 2010. In this regard the counsel for the petitioners has not attached or failed to produce any document to prove that the procedure as laid down in the act has not been followed by the Assistant Collector 1st Grade, Shahkot. That after perusal of the record shows that in the year 2005 the petitioner no. 2 i.e. Jagroop Singh has executed a General Power of Attorney in favour of the petitioner no. 1 i.e. Sukhdev Singh and authorized the petitioner no. 1 to represent on behalf of him in all types of cases related to his properties/estate. The Petitioners also filed Civil Suit 149/2022 in the court of Civil Judge (Junior Division), Nakodar for seeking the declaration against the order of final partition dated 19.03.2021 passed by the Tehsildar-cum-Assistant Collector 1st Grade, Shahkot, which is also under challenge in the present revision petition. The said civil suit was filed by both the petitioners in which the Sukhdev Singh i.e. Petitioner no. 1 is appearing as an attorney of Jagroop Singh i.e. Petitioner no. 1. The Sukhdev Singh is the resident of the same village where the partition proceedings were carried out. In the partition proceedings when the notices were issued to the parties, the service report of the Sukhdev Singh was that he refused to receive the summons, which shows that the petitioners were well aware of the proceedings and intentionally evade appearing in the partition proceedings. Now the arguments raised that petitioners were not aware of the partition proceedings cannot be accepted, since they themselves refused to receive the summons, which is considered to be as a valid mode of service. Therefore, despite the valid service, the petitioners did not appear in the partition proceedings, the Assistant Collector 1st Grade, Shahkot has rightly proceeded them against ex-parte. In this regard the law is well settled by the Hon'ble High Court in cases of refusal of service and held in

the case of “Davinder Singh and others versus Financial Commissioner (Appeals) Punjab, Chandigarh and others that “Refusal to receive summons amounts to valid service”. The order of final partition is also challenged by the present two petitioners only and the rest of the respondents have neither challenged the proceedings nor have they raised any grievance with regard to the orders passed in the partition proceedings. Therefore, the present revision petition has no merit and is liable to be dismissed.

7. Resultantly, the present revision petition hereby is dismissed. Copy of this order be communicated to the courts below and record of the lower courts also be returned back. After making compliance file be consigned to the record room.”

7. Learned counsel for petitioners has failed to dislodge the observations and findings returned by learned Financial Commissioner. The finding returned by learned Financial Commissioner that the petitioner was duly served and refused to accept the summons appears to be correct and, therefore, the said argument raised on behalf of petitioners is hereby rejected.

8. As regards the other contention raised on behalf of petitioners that the partition proceedings are contrary to the mode of partition as the possession of the petitioners over Rect. No. 34, Killa No. 2/2, 3/1 has been disturbed, in this regard, learned counsel for petitioners was called upon to place on record copy of Khasra Girdawari to substantiate his claim that the petitioners were in actual possession of the aforesaid killa numbers.

9. Learned counsel for petitioners has placed on record copy of Khasra Girdawari by way of CM-129-CWP-2025, however, a perusal of

Killa No. 2/2, 3/1 is shown to be jointly possessed by all the co-sharers. In this view of the matter, it cannot be held that the possession of the petitioners over the aforesaid Rect. No. 34, Killa No. 2/2, 3/1 has been disturbed. Even otherwise in partition proceedings, some changes in possession of the parties, in order to carry out equitable partition, is inevitable.

10. I have gone through the site plan (Annexure P-3) in relation to Naksha 'Erri' (Annexure P-5) and from a perusal thereof, it is apparent that the petitioners have been allocated a compact/contiguous block of land, comprised in Rect. No. 65, Killa No. 7/2, 14 and 17, which falls on the passage. The manner in which the partition is carried out appears to be fair, equitable and justified. Learned counsel for petitioners has also failed to point out as to what prejudice has been caused to the petitioners by the manner in which the partition has been finally carried out.

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

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

(HARSH BUNGER)
JUDGE

15.01.2025
sjks

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