

2026.PHHC:065947



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

**CWP-5187-1999 (O&M)
Date of Decision: 29.04.2026**

Lekh Raj

..... Petitioner

Versus

Jai Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Surinder Gandhi, Advocate
for the petitioner.

Respondents No.1 to 6 – proceeded against *ex parte*.

Mr. Pankaj Mulwani, Sr. DAG, Haryana.

HARSH BUNGER J.

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India *inter alia* is for issuance of a writ in the nature of Certiorari for setting aside the order dated 04.02.1992 (Annexure P-1) passed by the learned Assistant Collector-I, Bhiwani; and also the order dated 23.10.1998 (Annexure P-4) passed by the learned Financial Commissioner, Haryana.

2. Briefly, the petitioner sought partition of joint land, wherein respondents No.1 to 6 appeared and submitted their objections. Thereafter, learned Assistant Collector, Bhiwani approved the Mode of Partition vide

order dated 04.02.1992 (Annexure P-1). The relevant extract of which reads as under:-

".....The mode of partition dated 10.09.90 are like this.

1. 2 Khewat of the land measuring 110 Kanals, 6 Marlas for the purpose of partition be prepared for one party and the second party.

2. Partition be made accordance with the possession.

3. The second party is in possession of Killa No.260/1,2,3,8,9,10, 234/24, the same land be attached with the second party. The lump sum be added from the possession of the other party. The tenant be added with the first party.

4. Kuras should be minimise. The path be also considered.

5. The partition will be made in the presence of Halka Girdawar and Patwari. The fees is settled and the same be paid. The file be presented after preparation of Map 'Kha'."

2.1 Feeling aggrieved against the aforesaid order dated 04.02.1992 (Annexure P-1), the present petitioner preferred an appeal before the learned Collector, Bhiwani, which came to be allowed vide order dated 31.03.1992 (Annexure P-2). The relevant extract of which reads as under:-

" - x - x - x -

After hearing both the parties and made the conclusion that the subordinate court had given the special number in the mode of partition is not accordance with law. The respondent had purchased the half share of the land from the appellant's brother Laxman Dass. The registered sale deed which was executed on 13.6.1976 in which only half share is mentioned of land i.e. 55 Kanals 3 Marlas. In the registered sale deed the special number is not mentioned. The appellant has filed the application for partition accordance with law. The appellant has mentioned the case law, I am fully agreed. I accepted the appeal of the appellant and set aside the order of the subordinate court dated 4.2.92 and remanded the case back to the subordinate

court. The subordinate court should have considered only the quality of the land while making the partition of the land. Equally distributed the land where the tenant is in possession of the land. The parties are directed to appear before the trial court on 28.4.92.

It is clearly mentioned that no new file be framed. Only the remand order be attached with the old file. The order is pronounced in the open court on 31.3.92."

2.2 Thereafter, respondents No.1 to 6 herein preferred an appeal before the learned Commissioner, Hisar Division, Hisar, which was dismissed vide order dated 18.02.1994 (Annexure P-3).

2.3 Still aggrieved, respondents No.1 to 6 preferred a revision petition (ROR No.330 of 1993-94), which has been allowed by the learned Financial commissioner vide order dated 23.10.1998 (Annexure P-4).

3. In the aforementioned circumstances, the present writ petition has been filed before this Court for seeking relief, as noticed hereinabove.

4. A perusal of the order sheets would reveal that vide order dated 27.02.2026 passed by this Court, respondents No.1 to 6 are proceeded against *ex parte*.

5. I have heard learned counsel for the petitioner as well as the learned State counsel and perused the paper book with their able assistance.

6. Apparently, the petitioner herein sought partition of the joint land, wherein Mode of Partition came to be approved vide order dated 04.02.1992 (Annexure P-1). A perusal of the said order dated 04.02.1992 would show that in the Mode of Partition, the learned Assistant Collector had virtually partitioned the area by recording that specific killa numbers be given to respondents in the partition application and that the tenants on the land be kept under the petitioner (Lekh Raj). However, on an appeal being

filed by respondents No.1 to 6, learned Collector vide order dated 31.03.1992 (Annexure P-2), set aside the order dated 04.02.1992 (Annexure P-1) and remanded the case to the learned Assistant Collector by observing that while making the partition, the quality of land be considered; and also that the land in possession of tenants should be equally distributed amongst the parties.

6.1 Learned Collector's order dated 31.03.1992 (Annexure P-2) has been further affirmed by the learned Commissioner, Hisar Division, Hisar vide order dated 18.02.1994 (Annexure P-3). However, learned Financial Commissioner vide order dated 23.10.1998 (Annexure P-4) set aside the order dated 18.02.1994 (Annexure P-3) passed by the learned Commissioner, Hisar Division, Hisar, by holding as under:-

“ - x - x - x - x -

The brief facts of the case are that the petitioner purchased 55 Kanals 3 Marlas of land from Laxman Dass brother of the respondent in 1979. It has been stated that the petitioner was actually put in possession of the land bearing Khasra Nos.280/1,2,3, 8,9,10 and 234/24 which was in cultivating possession of the vendor Laxman Dass. The Khasra Girdawaries and Jamabandi prove the possession of the petitioners. The only point raised by the petitioners before the Commissioner was that they had purchased ½ share of the land from the brother of the respondent and continuously been in its possession since then. The respondent on the other hand argued that since the tenancy was of the joint holding, therefore, in the event of partition the tenancy would also have to go jointly. This view had been taken by the Collector in appeal and has been upheld by the Commissioner.

I have gone through the record and heard both counsel and find in the registered sale deed dated 13.6.1978 that whereas it is true that specific Khasra Nos have not been mentioned as having been sold to the petitioners, it has been

clearly stated that they are mortgagees in possession. Moreover, there is nothing on record to indicate from when the land was given on tenancy. On the contrary, from the registered sale deed it is clear that the property was purchased free from all encumbrances. I, therefore, over rule the findings of the Commissioner, Hisar Division and Collector Bhiwani. The Assistant Collector Ist grade Bhiwani is directed to proceed with the partition proceedings and not to upset the existing possession of the petitioner unless there is a distinct difference in the quality of land which can not be attributed to any improvement been made upon it by the petitioner."

6.2 A perusal of the above extracted findings returned by the learned Financial Commissioner indicate that he has set aside the Commissioner's order by clearly recording that respondents No.1 to 6 herein had purchased 55 kanal 3 malra area from one Laxman Dass, who is none other but the brother of the present petitioner namely Lekh Raj. It has further been observed that respondents No.1 to 6 herein are in possession of land, which is reflected from the *Khasra Girdawaries* and *Jamabandies*. It has also been observed that in the registered sale deed dated 13.06.1978, although specific khasra numbers have not been mentioned but it was clearly mentioned therein that the property was being purchased, free from all encumbrances. Learned Financial Commissioner has further pointed out that it is not forthcoming as to when the land was given on tenancy. After considering the matter, learned Financial Commissioner had directed the learned Assistant Collector to proceed with the partition proceedings with the further direction for not upsetting the existing possession of the respondents No.1 to 6 unless there is a distinct difference in the quality of land, which cannot be attributed to any improvement been made upon it by respondents No.1 to 6 herein.

7. I have considered the aforesaid findings returned by the learned

Financial Commissioner and I see no reason to differ from the same.

8. Learned counsel for the petitioner has also failed to point out as to what prejudice would be caused to the petitioner if the partition is carried out by maintaining the possession, especially considering the categorical finding returned by the learned Financial Commissioner that in the *Jamabandies* as well as *Khasra Girdawaries*, the possession of respondents No.1 to 6 herein is reflected. The findings returned by learned Financial Commissioner have not been dislodged by referring to any material.

9. It is also noticeable that the instant writ petition was filed way back in the year 1999; however, there was no stay granted in this matter and writ petition was admitted on 12.07.2000. This Court had specifically asked from learned counsel for the petitioner as regards the status of the partition proceedings (as on date) as there was no stay in the present proceedings and a period of almost more than 25 years have lapsed. In response to the aforesaid query, learned counsel for the petitioner has submitted that he has no instruction in this regard.

10. Be that as it may, since I find no illegality or perversity in the order dated 23.10.1998 (Annexure P-4) passed by the learned Financial Commissioner, the present writ petition is dismissed.

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

29.04.2026
Pd

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No