

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****209****RSA-538-2014 (O&M)****Date of decision: 06.03.2026****Govind Ram and others****...Appellant(s)****Vs.****Man Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sudhir Aggarwal, Advocate with
Mr. Ishan Aggarwal, Advocate
for the appellants.

Mr. Adarsh Jain, Sr. Advocate with
Ms. Kamaldeep Kaur, Advocate
for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiffs;
whereby suit filed by the appellants seeking possession by way of
partition, has been dismissed by both the District Courts.

2. Brief facts of the case are that the plaintiffs had filed the
instant suit seeking decree of possession by way of partition of non-
agriculture land bearing Rect. No.14, Killa No. 23 (2-19), 22(5-17), Rect
No.19, Killa No.17 min (east north corner) (1-12) i.e. 26 Karam X 11 Karam
situated within the Revenue estate of village Atohan, Tehsil Palwal, District
Palwal (hereinafter referred to as the suit land). It was pleaded in the
plaint that plaintiffs have 1/2 share and defendants also have 1/2 share in
the suit land and the same is yet to be partitioned by metes and bounds.



Plaintiffs had previously filed Civil Suit No. 628 dated 07.11.2007 seeking a decree of permanent injunction restraining the defendants from raising any construction over any part of the suit land and not to change the nature of suit land. Despite that, defendant had succeeded in raising construction over the Rect. No. 14, Killa No. 22 and 23 and accordingly, the said suit came to be withdrawn by the plaintiff vide order dated 03.12.2007. It was further pleaded that in the said previous suit, Local Commissioner had been appointed to inspect the spot who had submitted his Report that there existed construction at their spot.

3. Thereafter, the plaintiffs had filed a petition for partition of the entire land measuring 137K 3M before the Assistant Collector II Grade, Palwal in which defendants had appeared and submitted their written statement mentioning therein that Killa No.22 and 23 of rect No.14/suit land and Killa No.17 of Rect No.19 (East North Corner) are no more agricultural land. Therefore, Revenue Court has no jurisdiction to entertain partition of the said khasra numbers. Accordingly, Tehsildar had excluded the suit land i.e. Killa No. 22 and 23 from partition and ordered partition of the remaining land between the parties as per their shares. It was further pleaded that the suit land is situated on the main road and is, therefore, many times more valuable than the remaining land. It was averred that defendants, during the pendency of the previous suit for permanent injunction, had raised construction over the suit land and had admitted that property was joint between the parties. Despite that, defendants had refused to partition the property. Plaintiffs had asked the



defendants to partition the property many times however, defendants had finally refused to do so on or about 28.09.2008. With these pleadings, present suit was filed on 22.11.2008.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Palwal had dismissed the suit of the plaintiffs vide judgment and decree dated 20.09.2012. The Civil Appeal filed by the plaintiffs was dismissed by the Additional District Judge, Palwal vide judgment and decree dated 10.10.2013. Hence, present second appeal by the plaintiffs.

5. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below have erred in law in holding that as the property in dispute is recorded in the Jamabandi for the year 2004-2005 as an agricultural land so the same falls within the purview of the land which is to be partitioned by the revenue authorities. It is submitted that although in the Jamabandi for the year 2004-2005 the land in question has been shown as agricultural land but the status of the land is to be seen on the day when the present suit was filed and on that day there was huge construction on the land which is to be partitioned. It is a settled principle of law that if the agricultural land had been converted from agricultural land to a residential constructed area in that situation the revenue officer was not entitled to partition the same as it had ceased to be agricultural land.

6. It is further submitted by learned counsel for the appellants that the learned Courts below have not appreciated the fact that before



filing of the present suit the appellants filed a suit for permanent injunction against the respondents and in that suit in the written statement which is placed on record as Ex. P2 in the present case, the respondents themselves admitted that the suit land which is mentioned in the present case is having construction raised by both the parties and the same was never under cultivation. In these circumstances now in the present suit the respondents cannot claim that the land in question has been included in the partition proceedings pending before the revenue authorities.

7. Learned counsel for the appellants further submits that the Courts below erred in holding that the land in question has been included in the partition petition filed before the revenue authorities and Naksha K i.e. Ex. D3 and mode of partition Ex.D4 was prepared in the presence of parties and the appellant had not challenged the same in appeal or revision. It is submitted that initially the land in question was included in the partition petition filed by the appellants but as the respondents raised the objection with regard to the land in question, vide order dated 24.09.2008 (Ex.P-9), the land in question was deleted from the land sought to be partitioned and that order was not challenged by the respondents.

8. It is further submitted by learned counsel for the appellants that it is pertinent to mention here that vide order dated 24.6.2010 Ex. D5 the Assistant Collector IInd Grade reviewed the order dated 24.9.2008 itself and treated the application for partition for the entire khewat of 137



Kanal 13 Marla and that too without raising any objection. It is submitted that once vide order Ex.P9 the land in question has been excluded from the partition proceedings pending before the revenue authorities there was no occasion for the revenue officer to include the same at a later stage. The order dated 24.6.2010 (Ex.D5) passed by the revenue officer is beyond its jurisdiction and same has been challenged by the appellants in appeal/revision.

9. It is submitted that therefore from the above submissions, it is clear that the appellants have been non-suited on the basis of surmises and conjectures and on the assumption of the Courts below that the land in question is to be partitioned by revenue authorities and the same has also been included in the partition petition. Learned counsel submits that as admitted by the defendants, as the land in question is a constructed area it is beyond the purview of the revenue authorities and only the civil Court has jurisdiction to partition the same as non-agricultural property. However, this fact has not been appreciated by learned Courts below.

10. It is accordingly prayed that the present Appeal be allowed; and impugned judgments and decrees passed by both the Courts below be set aside and the suit filed by the appellants be decreed.

11. *Per contra*, learned Senior Counsel for the respondents opposes submissions made on behalf of the appellants and submits that the present civil suit is not maintainable as the appellants themselves had filed application before the revenue authorities for partition of entire land measuring 137K 13M which included the present suit land situated in Killa



Nos. 22 and 23 of Rect. No. 14. It is submitted that therefore, it was incumbent upon the appellants to continue with the revenue proceedings in proper hierarchy and not to change the course midway by approaching civil courts for partition of part of the entire land measuring 137K 13M. It is contended that therefore, judgments and decrees of the learned District Courts suffer from no error and deserve to be upheld.

12. No other argument is raised on behalf of the parties. I have heard learned counsel, perused the case file in detail, and given my thoughtful consideration to the rival submissions of both the parties. I find merit in the submissions made by learned counsel for the appellants.

13. A perusal of the case file shows that the Appellants have been non-suited by learned Civil Judge (Senior Division), Palwal vide judgment and decree dated 20.09.2012 for the following reasons: -

“12. Application for partition dated 6.11.2007 Ex. D2 shows that the present plaintiffs had filed an application for partition of land measuring 137 Kanal 13 Marlas including the suit land. The instrument of partition Ex.D3 shows that the above said land measuring 137 Kanal 13 Marlas including the suit land has already been partitioned. Certified copy of order dated 24.6.2010 Ex.D5 shows that the miscellaneous application of the present plaintiffs was dismissed on the ground that Naksha Ka was in accordance with the application regarding the total land measuring 137 Kanal 13 Marlas and was also according to the Revenue record. Certified copy of order dated 9.7.2010 Ex.D4 shows that instrument of partition was ordered to be prepared on the seven points mentioned therein and the instrument of



partition Ex.D3 has already been prepared regarding land measuring 137 Kanal 13 Marlas as has already been discussed above."

14. Thus, the appellants have been non-suited primarily on two grounds: (a) that the plaintiffs had already sought partition of the entire land measuring 137K 13M (which includes the present suit land situated in Killa No. 22 and 23 in Rect. No.14) before the revenue authorities and, therefore, civil suit was not maintainable; and (b) that instrument of partition had already been prepared and therefore, partition had been finalized and therefore civil suit was not maintainable.

15. However, the above said reasonings of both the Courts below are wrought with inconsistencies and incorrect appreciation of the material, facts, and evidence on record. The first ground on which the plaintiffs are non-suited is that the application of the plaintiffs for partition of land measuring 137K 13M which is agricultural land, was already pending before the revenue authorities. However, in holding as above, learned Courts below have wholly ignored the order dated 24.09.2008 Ex.P9, whereby the Assistant Collector IInd Grade, Palwal had excluded the suit property i.e. killa nos. 23 and 22 from the partition of the remaining land measuring 137K 13M on joint submissions of the defendants as well as the plaintiffs. In the order dated 24.09.2008/Ex.P-9 (available at page 171 of the LCR), the learned Assistant Collector, Second Grade, Palwal has categorically recorded as follows: -



“File present Counsel for the petitioner in his objection submitted that if Kila No. 14/22, 23 & 19/17 is kept out of partition proceedings they will have no objection in partition they be permitted to leave these numbers. After perusing written statement and statement of petitioner I hereby permit to keep Kila No. 14/22 (5-17), 23 (2-19) & 19/17 (1-12) counsel for the petitioner is directed to file amended partition petition on 15.10.2008.”

16. From the perusal of the above, it is clear that the suit property has been excluded from the purview of revenue court proceedings in view of the written statement of the defendants and submissions of the appellants.

17. The second ground on which the appellants have been non-suited is that instrument of partition has been already prepared in respect of the suit property vide Ex.D3, which is the Naksha K. However, it is established position in law that instrument of partition is Sanad Taksim; and Naksha Be is the mode of partition. Partition i.e. severance of joint status of the parties takes place on the date when mode of partition i.e. naksha Be is finalized. In the present case, it is admitted fact on record that even the Naksha Be has not yet been prepared; and only naksha K Ex.D3 has been prepared. Thus, the observation of the learned Courts below to the effect that present suit is not maintainable as instrument of partition has already been prepared, is based on an incorrect factual premise.



18. It is also to be noted that the suit property i.e. Killa nos. 23 and 22 could, even otherwise not have been included in the revenue partition proceedings in view of the fact that there is construction raised on the said lands. Learned Courts below have wrongly held that Local Commissioner in the Report dated 13.11.2007 (Ex.P6) submitted by him qua the present suit land in the previous suit for permanent injunction, had recorded that there was only “..... *certain miscellaneous temporary construction on the spot.*” Learned First Appellate Court had accordingly held that the said temporary construction “*does not deviate the nature of the property from agricultural to non agricultural land.*”. The said findings of the learned First Appellate Court are based on a patent misreading of the Report dated 13.11.2007 Ex.P6 submitted by Local Commissioner in the previous suit; wherein Local Commissioner has categorically reported that “.....*Towards southern side for water drainage there is no wall. Towards the eastern side of the plot which is shown in the site plan the person present on the spot informed that letter ABCD which is shown in the site plan the construction is there on Kila No, 14/22 adjoining to Kila No. 22, Kila No. 23 is there on which old houses of Dal Chand, Amar Singh respondent are there which are double story and shown in site plan by letter CKLMN.*” Thus, from the Report of the Local Commissioner, it is established on record that there is old construction standing in the suit property comprising in killa nos. 22 and 23. However, this aspect of the matter has been totally ignored/misread by Courts below.



19. It is also admitted fact on record that while ignoring the order dated 24.09.2008 Ex.P9 passed by Assistant Collector II Grade Palwal; whereby suit property was excluded from the partition of the land measuring 137K 13M, a contrary mode of partition dated 07.09.2010 Ex.D4 (available at page 189 of the LCR) was prepared for the entire land measuring 137K 13M including the suit land situated in Killa No. 23 and 22; which Ex.D4 has been challenged by the appellants before the revenue authorities, which is still pending.

20. From the above, it is clear that the findings of the learned District Courts are based on absolute and complete mis-appreciation of the correct facts on record and are, therefore, not sustainable. The fact that defendants were raising construction upon the suit land is established from filing of the previous suit by the appellants seeking permanent injunction against the defendants restraining them from raising construction. The factum of construction on the spot is also proved from the Report of Local Commissioner Ex.P6, wherein it is clearly reported that old construction is existing upon the suit property. Clearly therefore, Killa No. 22 and 23 being non-agricultural land, cannot be partitioned in accordance with law by the revenue authorities. As such, learned Courts below were in error in non-suiting the appellants on the above said grounds.

21. In view of the above, present Regular Second Appeal is **allowed**; and impugned judgments and decrees passed by both the

learned Courts below are set aside and the suit filed by the appellants is decreed.

22. Pending applications, if any, stand disposed of.

06.03.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE