
(1991) 04 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : ROR No. 218 of 1989-90

Prita, Jit Singh and ors.

APPELLANT

Vs

Amro daughter of Munshi and ors.

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Citation : (1991) 2 CurLJ 151 : (1991) PLJ 790 : (1992) 1 RRR 358 : (1991) 2 RRR 15

Hon'ble Judges : Amrik Singh Pooni;IAS;FC, J

Judgement

A.S. Pooni, I.A.S., F.C.

1. This is a revision petition under Section 16 of the Punjab and Land Revenue Act against the order dated 6.12.1989 of Commissioner, Patiala Division, whereby she upheld the order of Collector, Kharar dated 2011989 and that of ACI, Kharar dated 1281987 rejecting an application for partition of land situated in village Chhoti Barri Nangal, on the ground that the land vested in the Gram Panchayat and was, therefore, not liable to be partitioned. Prita etc. have challenged the finding. Vide order dated 24.7.1990, a notice of these proceedings was given to Director of Panchayats for watching the interests of the village Panchayat. Shri S.S. Rana is representing the Gram Panchayat.

2. Arguments of Shri R.K. Chhokar, counsel for the petitioners and Shri S.S. Rana, counsel for the respondents were heard 5.3.1991. The learned counsel for the petitioner drew my attention to mutation No. 497 which transferred the ownership of the land in dispute from the Gram Panchayat to the proprietors of the village. His contention is that the lower revenue officers had no authority to question the validity of the mutation in partition proceedings. The learned counsel, relying on the ruling 1966PLJ 19, has argued that if the entry in the revenue record reads as Shamlat Deh, Hasab Rasad Raqba Khewat as in the present case, the same would be subject to partition. to same effect are the provisions of the Customary Law as given in Retigan's Digest. The contention of the learned counsel is that the land in dispute should be considered as the

ownership of the proprietors of the village and cannot be deemed to be Shamlat Deh. The learned counsel has further contended that the land in dispute is a hilly area to which the provisions of the Punjab Village Common Lands (Regulation) Act do not apply. Further, even the village Panchayat has raised no objection to the partition of the land. The orders of the subordinate revenue officers are, therefore, liable to be set aside. The learned counsel for the respondents on the other hand contends that the entries in the revenue record contain the entry Shamlat Deh, Hasab Rasad Raqba Khewat insofar as column of Cultivation. Clearly, therefore, the land is Shamlat Deh and is meant for common purposes like grazing etc. and cannot, therefore, be utilised by any person for his exclusive benefit by getting it partitioned.

3. I have considered the pleas of the parties and have gone through the record of the case. Insofar as entries in the revenue record are concerned, there is no dispute regarding the same. In the ownership column of Jamabandi, the entry reads as Shamlat Deh, Hassab Raqba Khewat while the entry in the cultivation column reads as Maqbooja Malkan Deh. Insofar as ruling 1966 PLJ19 is concerned, it is not specifically applicable to the facts of this case. This ruling only clarifies the meaning of the term Hasab Rasad Raqba Khewat which in the case of a village in which there is no fluctuation of revenue assessment means "according to the revenue assessed on the holding", and in other cases means "according to the area of the holding or a division in the portion of the area." In my considered opinion, the main fact in issue in the present case is not the meaning of the term Hasab Rasad Raqba Khewat but the interpretation of the term, "Shamlat Deh" occurring in the ownership column of the Jamabandi. What is pertinent is to see as to how this entry has come into the revenue record. A clear finding has been given by the ACI that after consolidation of holdings in the village, the land in dispute was entered in the record of rights as ownership of the Gram Panchayat. A change of entry to "Shamlat Deh, Hasab Rasad Raqba Khewat" was made only subsequently through mutation No. 497 although this mutation did not indicate at all the order under which the change was made. The new entry introduces two terms which are prima facie contradictory. Shamlat Deh has been described in the Punjab Village Common Lands (Regulation) Act, as land described in the revenue records as Shamlat Deh. It excluded village abadi but includes lands used or reserved for the benefit of the village community or for common purposes of the village. The concept of "Shamlat Deh" which is the exclusive property of right owners of the village to the exclusion of the rest of the village community is, to say the least, extraordinary. The mere existence of the expression Hasab Raqba Khewat in the ownership column of Jamabandi, therefore, does not, in my considered opinion, imply that the nature of land is to be changed to something other than Shamlat Deh.

4. The ACI has also given a finding that the Wezabulurj of the village for the year 1961-62 clearly states that the Shamlat land in the village has been transferred to the village Panchayat and the whatever income is derived from the Pahar area of the village shall be spent for the common good of the village. It would imply,

therefore, that even if the argument of the learned counsel for the petitioners that the provisions of the Village Common Lands (Regulation) Act are not applicable in the instant case is accepted, it still does not give to petitioners a right of partition which would be contrary to the provisions included in the Wazabulurj.

5. The Revenue Officers in partition proceedings are required to proceed with the partition of property only in such cases where the title of the parties is clear. In case, there is any doubt about it they should reject the application for partition leaving the parties to get the question of title settled before seeking partition. In the present case, the title of the petitioners is not both on the basis of customary law as well as on the basis of the entries in the revenue record. As already stated Wazabulurj of the village contains a provision which bars partition of the land. Further, the use of the term Shamlat Deh in the ownership column of the revenue record would again imply that the land is meant for the common good of the village community. Under these circumstances, the revenue officers have, in my opinion, rightly refused to proceed with the partition. If the petitioners have claims to the contrary, they should establish the same through a competent Court before seeking partitions. I see no grounds for interfering with the finding of the subordinate revenue officers. The revision petition is dismissed.

Announced.