



123 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ESA-13-2019 (O&M)
Date of decision : 29.04.2025**

Rahish and another

...Appellants

Vs.

Ash Mohd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goel, Advocate
 Mr. Manoj Sharma, Advocate
 for the appellants.

 Mr. Amit Jain, Advocate
 for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. This execution second appeal has been filed by third party objectors to assail the correctness of concurrent orders passed by the Courts below while dismissing their objection petition.

2. Originally, the proceedings for partition of the property was filed before the Court of the Assistant Collector 1st Grade, Punhana. In the aforesaid proceedings, *naksha jeem* was prepared in the year 1989 and final instrument of partition was drawn on 17.05.1989. Against the order passed by the Revenue Authorities while sanctioning mode of partition, the proceedings were pending, which came to be decided by the Financial Commissioner on 01.10.1997. Guldin and others filed a writ petition, which was disposed of vide the following order:-

"Be that as it may, the fact remains that the order of



the Collector and Commissioner in my view are based on the revenue record which shows that the fathers of the petitioners namely Juma, Khakhi and Ramzan have been recorded as co-sharers. It was incumbent upon the authorities to include their names but the Financial Commissioner has gone on a different tangent by holding that once the factum of partition proceedings was known to the petitioners they should have joined the proceedings themselves is not a correct approach. Resultantly the order is not maintainable and is set aside subject to the condition that in case the final proceedings have culminated into mode of partition, the order of Financial Commissioner would survive, otherwise the petitioners would also have an opportunity to challenge the mode of partition in accordance with law. In case the mode of partition is not done, the remedy of the petitioners is to file a civil suit as there is no limitation to challenge the aforementioned finding based upon the title.

Petition stands disposed of accordingly."

3. Since the instrument of partition was already prepared in the year 1989, hence, the order passed by the Financial Commissioner was upheld by granting liberty to file Civil Suit, which is stated to be pending.
4. Ash Mohd. and Moj Khan filed a suit for grant of decree of permanent injunction with regard to the property, which fell to their share in the partition proceedings. The suit was filed against Guldin, Haroon, Sahid, Imami, Mamman, Fattu and Babu. The suit was decreed on 23.04.2013. Defendant No.1-Guldin filed an application to set aside the *ex parte* judgment and decree, which was also dismissed on 15.02.2017.
5. Subsequently, the decree-holders filed an execution petition under



Order 21 Rule 32 of the Code of Civil Procedure,1908, complaining infringement of the decree. Rahish and Jamil, the appellants, filed objections. The Executing Court appointed a Local Commissioner (Senior Revenue official), who reported that Guldin has encroached upon the partition. Thus, the Executing Court dismissed the objection petition. This finding of fact was affirmed by the First Appellate Court.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith requisitioned record.

7. Learned counsel representing the appellants submits that the order passed by the Financial Commissioner on 01.10.1997 was set aside and the suit filed by the plaintiffs is pending. He further submits that the appellants filed third party objections, which were required to be decided like a suit.

7. *Per contra*, learned counsel representing the respondents submits that the appellants are not in possession of the property and they are indulging in proxy litigation on behalf of Judgment Debtor-Guldin, who is in illegal possession.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. It is evident that in CWP-10480-1999, the Court set aside the order of the Financial Commissioner, subject to the condition that instrument of partition has not been prepared. In fact, there is an inadvertent error in the order dated 25.05.2017 because mode of partition was prepared in the beginning, whereas, instrument of partition was the final order in the partition



proceedings.

10. In this case, as the instrument of partition was prepared on 19.05.1989, hence, this Court did not set aside either the Financial Commissioner's order or instrument of partition. Moreover, the plaintiffs have filed a suit, in which, no injunction has been granted in their favour. Furthermore, the appellants are not proved to be in possession of the property. It is the Judgment Debtor-Guldin, who is proved to be in possession of the property. The decree passed by the competent authority is required to be honoured.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.

12. Hence, the appeal is dismissed.

13. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

29.04.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No