

## Fateh Ram v. State of Haryana, 2019 PLRonline 3304

### PUNJAB AND HARYANA HIGH COURT

*Augustine George Masih, J.*

#### Fateh Ram v. State of Haryana

Civil Writ Petition No.7514 of 2019

18.03.2019

**Punjab Land Revenue Act, 1887 (17 of 1887) S. 117 - Objection that all the khewats apart from the ones, which were the subject matter of the partition proceedings, should have been clubbed together for determination for partition - Plea cannot be accepted as admittedly the co-sharers in these khewats are different and since the co-sharers are different, the khewats which were sought to be included by the petitioners in the objections for a consolidated partition proceedings, cannot be permitted to be included as it is a settled principle of law that with the consent by all the co-sharers only, different khewats where co-sharers are not common, can be clubbed together for joint partition - Merely because some of the co-sharers are common would not be a ground for clubbing up the khewats where all the co-sharers are not common.**

*Mr. Abhilaksh Grover, for the petitioners.*

**AUGUSTINE GEORGE MASIH, J. (ORAL)** - Petitioners have approached this Court challenging the order dated 16.11.2018 (Annexure P-11) passed by the Financial Commissioner, Revenue, Haryana, order dated 19.07.2016 (Annexure P-10) passed by the Commissioner, Gurgaon Division, Gurgaon, and the order dated 25.07.2014 (Annexure P-9) passed by the Assistant Collector Ist Grade, Hodal, District Palwal, whereby the objections filed by the petitioners were dismissed and the sanad taksim of the same date was issued, which order has been upheld upto the Financial Commissioner.

2. It is the contention of learned counsel for the petitioners that the petitioners although initially did not file any objection when naksha 'A' was prepared but at the stage of issuance of naksha 'B', objections were filed which were not accepted by the Assistant Collector Ist Grade. He contends that three objections were filed by the petitioners. The first objection was that the share of the petitioners has been wrongly determined in the partition application and in naksha 'B'. The second objection was with regard to the fact that there was a title dispute between the parties before the Civil Court because of which the revenue authorities should have refrained from proceeding with the matter till a decision in the Civil Court or should have determined the share/title of the parties and then proceeded to pass an order and the third objection, which was raised, was that there were some other khewats also, which had to be clubbed up together with the partition of the khewats, which were sought to be made in the application and the objections which were raised were not rightly considered and decided. He contends that the Assistant Collector Ist Grade, Hodal,

proceeded to reject all objections which order has been upheld upto the Financial Commissioner. His contention is that the objections should have been taken into consideration and decided by the authorities in a proper manner keeping in view the legal position and as per Section 117 of the Punjab Revenue Act, 1887.

3. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the impugned orders as well as the documents placed on record.

4. The first contention with regard to the objections i.e. the share of the petitioners has wrongly been determined, cannot be said to be acceptable at this stage when the mode of partition was determined leading to preparation of the maps and finalisation of the partition has attained finality. Further, the revenue authorities have looked into these aspects and have rejected the plea. This Court also finds no merit in this argument as the counsel has not been able to specifically point out the prejudice caused to the petitioners. It may be added here that the revenue authorities have held that the petitioners are in possession of excess land than their share.

5. As regards the second objection of the counsel for the petitioners that the pendency of the civil suit should have led to the postponement of the proceedings in the partition proceedings or the authorities should have proceeded to decide the same prima facie on the basis of the records, the same also does not hold the field in the light of the fact that the civil suit which was preferred by the petitioners has resulted in dismissal thereof, although it has been stated by the counsel for the petitioners that the said civil suit was withdrawn because of certain technical objections and a fresh suit has been filed but the fact remains that till date there is no determination by the Civil Court with regard to the title of the properties.

6. The third objection which has been raised by the counsel for the petitioners is that all the khewats apart from the ones, which were the subject matter of the partition proceedings, should have been clubbed together for determination for partition, the said plea cannot be accepted as admittedly the co-sharers in these khewats are different and since the co-sharers are different, the khewats which were sought to be included by the petitioners in the objections for a consolidated partition proceedings, cannot be permitted to be included as it is a settled principle of law that with the consent by all the co-sharers only, different khewats where co-sharers are not common, can be clubbed together for joint partition. Merely because some of the co-sharers are common would not be a ground for clubbing up the khewats where all the co-sharers are not common.

7. In view of the findings as recorded by the Courts below and the impugned orders passed by the revenue authorities being in accordance with law do not call for any interference by this Court.

8. The writ petition being devoid of merit stands dismissed.

9. Learned counsel for the petitioners, at this stage, submits that the passing of the present order may not adversely affect the claim of the petitioners before the Civil Court in the

freshly filed civil suit after withdrawal of the earlier suit.

10. This apprehension of the counsel for the petitioners is misplaced as nothing has been said by this Court with regard to the title of the respective parties.

March 18th, 2019