

**(1993) 09 P&H CK 0042**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 1587 of 1992

Rajesh and Another

APPELLANT

Vs

Smt. Bhateri

RESPONDENT

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**Date of Decision:** Sept. 13, 1993

**Acts Referred:**

- Punjab Land Revenue Act, 1887 - Section 111, 118(2)

**Citation:** (1993) 105 PLR 434

**Hon'ble Judges:** S.K. Jain, J

**Bench:** Single Bench

**Advocate:** Surya Kant, for the Appellant; Ramesh Dinri, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

S.K. Jain, J.

Pokhar s/o Lehri was the owner to the extent of 1/4th share in the agricultural land measuring 77 kanals 14 marlas, fully described in the plaint, situated in the area of village Madan Heri, Tehsil Hansi, Distt. Hisar as Per Jamabandi for the year 1982-83. Vide sale deed dated 28.6.1989, he sold his 1/4th share in favour of Rajesh and Gian sons of Surja for a sale consideration of Rs. 65,000/-. The said sale was pre-empted by Smt. Bhateri d/o Badhu s/o Lehri on the ground of being co-sharer in the joint khewat by filing civil suit 477 of 1989 instituted on 15.7.1989 against the vendees. It was after contest that the learned Additional Senior Sub Judge, Hansi decreed the suit of Plaintiff vide judgment and decree dated 17.12.1991.

2. Feeling aggrieved, the vendees preferred Civil Appeal No. 9-CA on 7.1.1992, which was dismissed by Additional District Judge, Hisar. It is that judgment and decree dated 10.6.1992 of the lower appellate Court which has been challenged in this Regular Second Appeal by the Vendees and which requires my examination for its sustainability.

3. I have seen the pleadings in the suit, the evidence adduced in the suit by the parties and the judgment of both the courts below. Before I proceed further, it is worth mentioning here that before the lower appellate court the vendees had moved an application for eluding additional evidence in order to prove that the suit land had been partitioned. That application was allowed. Thereupon the Vendees exhibited on record following documents :-

i) Copy of application Ex. DZ for partition of joint Khewat.

ii) Written statement filed in these proceedings Ex. DZ/1.

iii) Copy of mode or partition Ex. DZ/2

4. Learned lower appellate Court, after hearing the learned counsel for the parties on this point recorded a finding that on the basis of mode of partition Ex. DZ/2 it could not be said that the suit land was partitioned at the time of passing the decree.

5. There is no dispute with regard to the fact that Pokhar had sold 1/4th share in the joint Khata to the vendees whereupon they had become co-sharers in the joint Khewat.

6. Sole contention of the learned counsel for the appellant is that according to Ex. DZ/2 mode partition had been sanctioned on 8.1.1991 and, therefore, there a severance of status of the plaintiff, as co-sharer. The suit of the plaintiff, therefore, could not be decreed. In support of his argument, he has cited at the bar *Lala Ram v. The Financial Commissioner, Haryana* 1992 PXJ. 45.

7. In reply, the learned counsel for the respondent has argued that even with the sanction of the mode of partition there could be no severance of status, therefore, the plaintiff continued to be a co-sharer on all the three material dates and hence, the learned trial Court had decreed the suit and the learned lower appellate Court had dismissed the appeal of the defendant rightly.

I had given a thoughtful consideration to be rival contentions and have carefully gone through the above cited judgment.

8. The right to partition flows from the action of individual ownership of property. This right is one of the ordinary legal incidents of joint ownership. It is merely an arrangement whereby co-owners having an undivided interest in one or many properties taken by arrangement specific property in lieu of their share in all Section 111 of the Punjab Land Revenue Act (hereinafter referred to as "the Act") provides that any joint owners or a person having a decree for partition or any written acknowledgment of the right is competent to apply for partition. On receiving the application for partition, the Revenue Assistant will summon all the interested parties shareholders and legal heirs of the deceased shareholders according to the procedure prescribed by Section 20 of the Act. After the summoning is complete,

any of the co-sharer or co-sharers who have been joined as respondent may file an application for separating his share in the joint holding. A co-sharer can also file objections as mentioned in Section 112 of the Act. If the objection is regarding the question of title, the Revenue officer is at liberty to decide such question himself or direct the parties to get it decided from the civil court and stop the partition proceedings until such question of title is decided. If the Revenue Officer comes to the conclusion that there is no question of title involved, he will ask the Patwari to prepare the map of the land to be partitioned and share of the persons asking for partition, popularly known as Naksha Alaf. This Naksha Alaf contains the details of the possession of the co-sharer asking for partition, excess or less are cultivated by that co-sharer. On receipt of Naksha Alaf, the Revenue Officer shall ask the parties to file objections to it after disposing of those objections he will frame the mode of partition. Any of the parties to the partition proceedings can challenge the mode or partition decided by the Revenue Officer in appeal u/s 118(2) of the Act, If the mode of partition is not challenged, it becomes final. The Revenue Officer shall ask the Patwari to get the shares of the joint owners separated. According to the mode of partition, the Patwari prepares the map which is popularly called Naksha Be. Any party aggrieved against Naksha Be can challenge it in appeal on the ground that it was not prepared according to the mode of partition. When Naksha Be becomes final or is agreed to by the parties, it is deemed to be sanctioned. The order of Sanction is popularly known as Naksha Jeem. The Order is communicated to the Patwari, Kanungo and the parties, After the expiry of period of limitation, instrument of partition is drawn on the stamp paper by the Revenue Officer. It is to be specified therein as to from which harvest partition will be effective and till then the status is joint. The Revenue Officer puts the parties in possession according to the instrument of partition within three years from the date of its preparation.

9. Admittedly, in the instant case the partition proceedings are still at the stage of the proposed mode of partition (Ex. Dz/2). Any of the parties to the partition proceedings can challenge the mode of partition. This is to be decided by the Revenue Officer in appeal u/s 118 (2) of the Act and after it becomes final, Naksha Be will have to be prepared which is also challengeable in appeal after its sanction. When Naksha Be becomes final, Naksha Jeem will have to be prepared which order will be communicated to the Patwari, Kanungo and the parties. Then, the instrument of partition will have to be drawn on the stamp paper after the expiry of the period of limitation.

10. In the instance case, no instrument of partition has yet been drawn and, hence, there was no severance of status.

11. In holding the above view I am fortified by a Division Bench Judgments of this Court in [Pritam Singh Vs. Jaskaur Singh](#), .

12. Sequally, there is no merit in this appeal and the same is hereby dismissed. No costs.