

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 18843 of 2015

Date of Decision: September 08, 2015

Rafiq and another

... Petitioners

Versus

*Additional Chief Secretary-cum-Financial Commissioner,
Revenue, Haryana and another*

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Dinesh Ghai, Advocate,
for the petitioners.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 14.10.1998 (Annexure P/2) passed by respondent no.2 – Custodian General, Haryana, order dated 11.09.2013 (Annexure P/10) passed by respondent no.1 – Additional Chief Secretary-cum-Financial Commissioner, Revenue, Haryana.

I have heard learned counsel for the petitioners and perused the paper-book.

Earlier, the petitioners filed C.W.P. No. 5470 of 2014 before this Court, which was dismissed as withdrawn vide order dated

“Learned counsel for the petitioners has realized that revenue record annexed with the writ petition is deficient. There is also no document indicating that father of petitioners was owner of the property in dispute prior to the partition of country and he had not migrated to Pakistan, rather migrated to Uttar Pradesh and always remained in India.

At this stage, learned counsel for the petitioners wants to withdraw the instant writ petition with liberty to file afresh after annexing the relevant documents.

Dismissed as withdrawn with aforesaid liberty, subject to costs of Rs. 2,000/- to be deposited with State Legal Services Authority, Haryana.”

Same very orders have been impugned in the present writ petition. At the outset, learned counsel for the petitioners was put a question to tell the date when the property in question was declared as evacuee property and when first time, the petitioners claimed their right after the dust of partition had settled. There is no specific averment even in the writ petition in this regard. Rather, learned counsel has relied upon an order dated 14.10.1998 (Annexure P/2) to submit that revision petition was filed on 25.09.1997 under Section 27 of the Administration of Evacuee Property Act.

There is not an iota of evidence, specifically in the shape of

pedigree table to indicate that petitioners are descendants of the owner of

property and also to indicate whether the original owners of the property had migrated to Pakistan or remained in India or migrated to Uttar Pradesh. Learned counsel for the petitioners is not even answering the specific questions put to him. The pleadings are deficient in the relevant facts leaving aside the revenue record to substantiate their claim.

In the case of **Poonam vs. Sumit Tanwar, 2010(2) RCR (Civil) 551**, the Hon'ble Supreme Court has held as under:-

“10. In the instant case, the Family Court, Delhi has passed an order strictly in accordance with law asking the parties to wait for statutory period of six months to file the second motion in the case. In such a fact-situation, it is not permissible to suggest that the aforesaid order has violated or infringed any of the fundamental rights or any legal right of the parties. Therefore, we are not able to understand as under what circumstances, the writ is maintainable. The learned counsel appearing for the petitioner is not able to explain under what circumstances, the petition has been filed and as to whether such a petition is maintainable or whether relief of dissolution of marriage could be sought by the parties directly from this Court in a case, wherein the marriage had taken place only a year and three months ago. The counsel was not able even to explain that even if the Court considers to issue the writ, to whom it would be issued as the only parties in the case are wife and husband, who are seeking the divorce by consent. The learned counsel is not able to enlighten the Court as to whether the

Family Court could be impleaded in this petition. He expressed his inability to answer any question.

11. In **Thakur Sukhpal Singh Vs. Thakur Kalyan Singh & Anr.**, AIR 1963 SC 146, this Court has held that in absence of proper assistance to the Court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless the lawyer renders the proper assistance to the Court, the Court is not able to decide the case. It is not for the Court itself to decide the controversy. The counsel cannot just raise the issues in his petition and leave it to the Court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the Court itself to find out what the points for determination can be and then proceed to give a decision on those points.

12. While deciding the said case, this Court placed reliance upon the judgment of Privy Council in **Mst. Fakrunisa & Ors. Vs. Moulvi Izarus Sadik & Ors.**, AIR 1921 PC 55 wherein it had been observed as under:-

"In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged."

13. In **The Bar Council of Maharashtra Vs. M. V. Dabholkar & Ors.** AIR 1976 SC 242, this Court had

observed as under :-

"Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice - social justice.....Law is no trade, briefs no merchandise."

14. In T.C. Mathai & Anr. Vs. District & Sessions Judge, Thiruvananthapuram AIR 1999 SC 1385, this Court observed:

"The work in a Court of law is a serious and responsible function. The primary duty of a.....court is to administer.....justice. Any lax or wayward approach, if adopted; towards the issues involved in the case, can cause serious consequences for the parties concerned.....In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the Court gets proper assistance from both sides..... Efficacies discharge of judicial process very often depends upon the valuable services rendered by the legal profession"

15. In D.P. Chadha Vs. Triyugi Narain Mishra & Ors., AIR 2001 (1) S.C.T. 338 : AIR 2001 SC 457, this Court has observed as under:-

".....Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the Court, as they are called ---- and rightly, the counsel have an overall obligation of assisting the Courts in a just and proper manner in the just and proper administration of justice."

16. Thus, in view of the above, law can be summarised to the effect that, in case, the counsel for the party is not able to render any assistance, the Court may decline to entertain the petition.

17. There is another aspect of the matter. In case, petitioner's counsel is not able to raise a factual or legal issue, though such a point may have a good merit, the Court should not decide the same as the opposite counsel does not "have a fair opportunity to answer the line of reasoning adopted" in this behalf. Such a judgment may be violative of principles of natural justice. (vide **New Delhi Municipal Committee vs. State of Punjab 1997(2) R.C.R. (Civil) 199 : AIR 1997 SC 2847**).

18. While dealing with a similar issue, this Court in *Re: Sanjiv Datta (1995) 3 SCC 619* observed as under:-

"Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service

they render both to the litigant-public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings -- many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system..... The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society." (emphasis added)

19. In **Vijay Dhanji Chaudhary Vs. Suhas Jayant Natawadkar (2010) 1 SCC 166**, this Court has taken note of the ongoing rampant unethical practice by some of the Advocates-on-Record, duly enrolled under the provisions of the Supreme Court Rules, 1966, as many special leave petitions are being filed by them being merely as name-

lenders, without having, or taking any responsibility for the case. As a result of prevalence of such a practice, in such cases, the Advocates-on-Record do not appear when matters are listed before the Court, nor do they take any interest or responsibility for processing or conducting the case. They also play no role in preparation of the petitions, nor ensure that requirements of Rules are fulfilled and defects are cured. If role of an Advocate-on-Record is merely to lend his name for filing cases without being responsible for conduct of a case, the very purpose of having the system of Advocates-on-Record would get defected.

In the said case, this Court did not merely dismiss the petition for not rendering any assistance by the appearing counsel in absence of the Advocate-on-Record, rather issued notice to the Supreme Court Bar Association and the Advocates-on-Record's Association asking for suggestions for improving the system and to compel such mere name-lending Advocates-on-Record to serve the purpose for which they have been enrolled. The matter is to come for further consideration after those Associations submit their suggestions for observance and strict adherence to the Rules, as is evident from the proceedings in that case dated 30.11.2009, 08.03.2010, 15.03.2010 and 18.03.2010.”

In view of above, no ground for interference is made out.

Dismissed.