

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 25550 of 2015

Date of Decision: December 07, 2015

Harpreet Singh and others

... Petitioners

Versus

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. B.S.Sidhu, 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 19.08.2010 (Annexure P/2) passed by respondent no.3 – Collector-cum-Sub Divisional Magistrate, Sri Muktsar Sahib, order dated 11.10.2012 (Annexure P/3) passed by respondent no.2 – Commissioner, Ferozepur Division, Ferozepur and order dated 31.03.2015 (Annexure P/4) passed by respondent no.1 – Financial Commissioner (Revenue), Punjab.

Brief facts of the case are that respondent nos. 5 and 6 filed

to the effect that they are owner in possession of land to the extent of 1/6th share of land measuring 163 kanals 2 marlas as per jamabandi for the year 1988-89, situated in the revenue limits of Village Gulabewala on the basis of sale deed dated 29.05.1974 executed by Jarnail Singh @ Jagmail Singh, grandfather of the petitioners, in their favour. Said suit was decreed by learned Civil Judge (Senior Division), Sri Muktsar Sahib vide judgment dated 27.04.1994. Against the order dated 27.04.1994, predecessors-in-interests of the petitioners preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 24.02.1998. Thereafter, predecessors-in-interests of the petitioners filed a RSA No. 3425 of 1998 before this Court which is admitted and pending. On the basis of decrees under challenge in the said RSA, respondents no. 5 and 6 filed an application for partition of land before the Assistant Collector Ist Grade, Sri Muktsar Sahib, which has been dismissed vide order dated 01.06.2010 (Annexure P/1) on the ground that they can file fresh application after mutation is sanctioned. Against order (Annexure P/1), respondents no. 5 and 6 filed appeal before the Collector which has been allowed vide order dated 19.08.2010 (Annexure P/2). Aggrieved against order (Annexure P/2), predecessors-in-interest of the petitioners filed an appeal before the Commissioner, which has been dismissed vide order dated 11.10.2012 (Annexure P/3). Thereafter,

predecessors-in-interest of the petitioners preferred an ROR, which has also been dismissed by the Financial Commissioner vide order dated 31.03.2015 (Annexure P/4). Hence, instant writ petition.

I have heard learned counsel for the petitioners.

Learned counsel for the petitioners contends that question of title with respect to land in question is pending adjudication before this Court in RSA No. 3425 of 1998 filed by the predecessors-in-interest of the petitioners. Learned counsel further contends that authorities are required to decide the question of title with respect to property in question. It can either be decided by the revenue authority at its own or the authority direct that the same be got decided from the civil court.

I have considered the contentions raised by learned counsel for the petitioners and perused the record.

Admittedly, civil suit for declaration filed by respondents no. 5 and 6 to the effect that they are owner in possession of land to the extent of 1/6th share of land measuring 163 kanals 2 marlas has been decided by two Courts below. Respondents no. 5 and 6 have claimed their right on the basis of civil court decree. It is candidly admitted by the learned counsel for the petitioners that initially stay in RSA was granted by this Court, but subsequently it was vacated, but the RSA is pending before this Court. Respondents no. 5 and 6 are claiming possession by

way of partition from joint land and had been litigating for more than 40 years and could not even enjoy the fruit of their share in the land.

In view of above, I do not find any illegality or perversity in the orders passed by the revenue authorities for proceeding with the partition application.

Dismissed. However, it is made clear that if ultimately, the petitioners succeed in the aforesaid RSA, then the property in question shall be restituted to the petitioners in accordance with law.

December 07, 2015
vkd

[Paramjeet Singh]
Judge