

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

**Civil Writ Petition No.1020 of 2014
Date of Decision: November 30, 2016**

Ishwar Singh & Ors.

...Petitioners

Versus

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vivek Khatri, Advocate,
for the petitioners.

Mr.Sandeep S.Mann, Sr.DAG, Haryana.

Ms.Anju Arora, Advocate,
for respondent Nos.5 & 6.

RAMESHWAR SINGH MALIK, J.(Oral)

Present writ petition is directed against the order dated 22.08.2013 (Annexure P-6) passed by the Financial Commissioner, Haryana, whereby he set aside the orders dated 26.08.2009 passed by the Commissioner at Annexure P-5 and the order dated 25.01.2008 passed by the Collector, Yamunanagar at Annexure P-4 (wrongly typed in the impugned order as dated 20.03.2008 passed by the Assistant Collector IInd Grade), in a case of mutation.

Notice of motion was issued and sanction of mutation, if any, was ordered to be subject to decision of the present writ petition.

Contesting respondent Nos.5 and 6 filed their written statement whereas, a short reply was filed on behalf of official respondent Nos.2 to 4. Thereafter, writ petition was admitted for

regular hearing, vide order dated 26.02.2015. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

It is not in dispute that Lehna Ram was the owner in possession of the suit land. He suffered a collusive decree dated 18.05.1996 (Annexure P-1) in favour of his four sons from his second wife. Said civil court decree was challenged by his remaining two sons from his first wife. Said suit for declaration came to be decreed by the learned Court of competent jurisdiction vide its judgment and decree dated 17.01.2005 (Annexure P-2). Feeling aggrieved defendants who were four sons of Lehna Ram from his second wife and Lehna Ram himself, filed their first appeal which was partly allowed by learned Additional District Judge, Jagadhri, vide his judgment and decree dated 15.06.2006 (Annexure P-3). Operative part of the judgment dated 15.06.2006 (wrongly typed at page No.82 of the paper book as 14.06.2006), which deserves to be noticed here, reads as under:-

“In view of the foregoing discussion, the finding of learned trial court under issue No.1 that plaintiffs are joint owners in possession of 1/6th share out of the total land measuring 19 kanals 10 marlas cannot be sustained, therefore, the same is set aside. However, I do not find any illegality or infirmity in the findings of the learned trial court recorded on other issues. Consequently, the appeal is partly accepted leaving the parties to bear their own costs. Resultantly, the suit of the plaintiffs shall stand decreed to the effect that the judgment and decree dated 18.05.1996 suffered by defendant No.5 in favour of defendant Nos.1 to

4 and mutation No.403 dated 19.03.1996 are illegal, null, void and not binding upon the rights of the plaintiffs. However, it is clarified that the plaintiffs are entitled to joint possession and enjoyment of the suit land which is joint Hindu family property, being coparceners and they would be entitled to get their share in the suit land as found at the time of partition. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

It has gone undisputed before this Court that in compliance of the above said judgment and decree passed by learned Additional District Judge, mutation came to be sanctioned by Assistant Collector IInd Grade, vide his order dated 15.11.2006. In the interregnum, Lehna Ram died. Present petitioners challenged the order dated 15.11.2006 passed by Assistant Collector IInd Grade, Sadhaura, before the Collector, Yamunanagar, who accepted their appeal rightly holding that after the death of Lehna Ram, the total land owned by him shall devolve upon his legal heirs. Collector passed the appellate order dated 25.01.2008 (Annexure P-4). Private respondent Nos.5 and 6 filed their appeal before the Commissioner, Ambala Division, Ambala, who dismissed the same vide his order dated 26.08.2009 (Annexure P-5). Respondent Nos.5 and 6 filed their revision petition before the Financial Commissioner which was allowed, vide impugned order dated 22.08.2013 (Annexure P-6). Hence this petition.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that as per the true import of the above said civil court

decree dated 15.06.2006 (Annexure P-3), which has attained finality between the parties, the total land owned by late Sh.Lehna Ram was to be first mutated in favour of Lehna Ram alone. It also goes without saying that after the death of Lehna Ram, his estate would be inherited by all of his legal heirs as per their share. That's what was rightly ordered by the Collector while passing his order dated 25.01.2008 (Annexure P-4) and it was rightly upheld by learned Commissioner, vide his order dated 26.08.2009 (Annexure P-5). However, learned Financial Commissioner fell in serious error of law, while setting aside the above said factually correct and legally justified orders passed by the Collector as well as the Commissioner because of which the impugned order dated 22.08.2013 (Annexure P-6) cannot be sustained.

Once the private respondent Nos.5 and 6 felt satisfied with the appellate judgment and decree dated 15.06.2006 (Annexure P-3) passed by learned Additional District Judge, Jagadhri, both the parties to the litigation as well as the revenue authorities would be bound by the said decree. True import of the appellate decree (Annexure P-3) was rightly appreciated by the Collector in his order dated 25.01.2008 (Annexure P-4) which was rightly upheld by the Commissioner as well vide his order dated 26.08.2009 (Annexure P-5).

At this stage, the judgment cited by learned counsel for respondent Nos.5 and 6 in **Tasveer Paul Kaur vs. Sukhmahinder Singh & Ors.** 2009(3) RCR (Civil) 601, needs to be referred, to be

fair to learned counsel for the private respondents. However, the contention raised by learned counsel for respondent Nos.5 and 6 placing reliance on the judgment of this Court in ***Tasveer Paul Kaur's*** case (supra) has been found wholly misplaced and the same is only to be noted to be rejected. It is so said because the facts in ***Tasveer Paul Kaur's*** case (supra) were entirely different. Right of the daughters of late Sh.Lehna Ram under the Hindu Succession Act had never been in dispute. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Further, sometimes difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao & Anr. vs. State of Tamil Nadu & Ors.**, 2002 (3) SCC 533.

Having said that, this Court feels no hesitation to conclude that the judgment relied upon by learned counsel for private respondent Nos.5 and 6 in ***Tasveer Paul Kaur's*** case (supra) is of no help to the private respondents, being clearly distinguishable on facts.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned order passed by learned Financial Commissioner has been found suffering from patent illegality and perversity, the same cannot be upheld.

Accordingly, impugned order dated 22.08.2013 (Annexure P-6) is hereby set aside. Consequently, the order dated 26.08.2009 passed by learned Commissioner Ambala Division, Ambala and the order dated 25.01.2008 passed by the Collector, Yamunanagar, at Annexure P-4 are restored.

Should there be any confusion, it is clarified that competent revenue authority shall enter and sanction the mutation qua the total land owned by late Sh.Lehna Ram, in the name of Lehna Ram alone, at the first instance. However, since Sh.Lehna Ram has died, his estate would be succeeded by all of his legal heirs in equal shares and the mutation shall be sanctioned, accordingly.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands allowed, however, with no order as to costs.

November 30, 2016
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(RAMESHWAR SINGH MALIK)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>