IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 18608 of 2016
Date of decision : November 8, 2017

Jagbir and another

.... Petitioners

Versus

Financial Commissioner, Revenue Department, Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vijay Kajla, Advocate
for the petitioners.

Mr. Ashok Muthreja, DAG., Haryana

Mr. Gulshan Arora, Advocate
for respondent No.4.

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RAKESH KUMAR JAIN, J (oral).

The petitioners have challenged the order dated 13.1.2016 passed by the Financial Commissioner by which the petitioner has been relegated to seek a declaration of his title from the civil court.

Counsel for the petitioner has submitted that Vijay Singh (since deceased), their predecessor-in-interest, was the owner of 1/8th share in the land measuring 478 Bighas 3 Biswas situated in village Suthani District Rewari. He field a civil suit bearing No.114 dated 18.4.1964 for joint possession against the Gam Panchayat-respondent No.4 as well as two other respondents(proprietors). The respondents were ex-parte in the said suit. Therefore, the court passed an ex-parte decree for joint possession of 1/10th share in favour of Vijay Singh. The exact language used by the court is as under:-

> *"I hereby pass an ex-parte decree for joint possession to the extent of 1/10th share in the land in suit, as per particulars given and described in the plaint, measuring 60 Bighas of land as prayed in the plaint. I further order that the relief claimed by the plaintiff for issue of a decree for permanent injunction as prayed in the plaint stands dismissed as there are no grounds for granting the said relief to the plaintiff. "*

The said decree was challenged by the Gram Panchayat under Order 9 Rule 13 of the CPC. The said application was dismissed on 2.8.1966. It is submitted by learned counsel for the petitioners that thereafter neither the decree dated 30.5.1964 nor the order dismissing the application of the Gram Panchayat for setting aside the decree were ever challenged by the Gram Panchayat. Thus, it attained finality. It is further submitted that thereafter Vijay Singh filed an application for partition of his 1/8th share from the land measuring 541 Kanal 4 Marla owned by the Gram Panchayat. It is alleged that the area was increased in Kanals and Marlas because of consolidation, otherwise, before consolidation the area was measured in Bighas and Biswas. In the partition he claimed 1/8th share and the order of partition was prepared regarding 1/8th share on 8.8.1969. The said order of partition was challenged by the Gram Panchayat before the Collector on the ground that the petitioners had only 1/10th share in view of the decree. The Collector, Rewari held that the petitioner has to get the question of title decided before proceeding with the partition application and also set aside the partition proceedings from the stage of filing the application. The order of the Collector was upheld by the Commissioner, Ambala on 7.4.1970 and the Financial Commissioner vide his order dated 12.1.1971. These orders were not challenged by the petitioners. In the meantime, the petitioners received notice under Section 9 of the Land Acquisition Act, 1894 (hereinafter called as 'the Act of 1894') which was issued by the Collector to the interested persons on the basis of revenue record allowing them to set up their claim before him for the land which was acquired. The award under Section 11 of the Act of 1894 was announced by the Collector and compensation qua the land of the petitioner was paid. The petitioners were not satisfied with the amount of compensation. They filed objections under Section 18 of Act of 1894 seeking reference to the Civil Court for re-deciding the amount of compensation. In the said reference, the petitioner alleged that they are owners of 1/8th share. Similarly the land of the Gram Panchayat was also acquired and it had also filed objections under Section 18 of the Act of 1894 in which they had claimed that they have land to the extent of 7/8th share. Thereafter the land of village Suthani was again acquired in the year 2006 and similar procedure was followed. Vijay Singh died on 13.3.2012. Thereafter his sons filed the application for partition of the remaining land on 1.5.2014 which was lying in joint khewat with the Panchayat. The application was contested by the Gram Panchayat by filing a reply in which it is alleged that Vijay Singh was having 1/8th share and 7/8th share was of the Gram Panchayat. The order dated 18.11.2016 was passed holding that res judicata does not apply to the partition proceedings. He was referring to the partition proceedings which has reached upto the court of Financial Commissioner. However, he directed the Gram Panchayat that if there is any question of title then it be got resolved from the civil court and place the same on record on the next date of hearing. If they failed to do so then proceedings of partition shall continue. The Gram Panchayat did not file any suit for the purpose of deciding the question of title. On 30.9.2014, the A.C. Ist Grade struck off the defence of the Gram Panchayat only on the ground that they did not comply with the direction of filing civil suit for deciding the question of title. Therefore, the A.C. Ist Grade prepared the mode of partition which was sanctioned. Naksha Bey was prepared on 18.11.2014 and Sanad Taksim was prepared on 23.12.2014 which was prepared on the stamp paper and possession was delivered to the parties on 22.5.2016 in terms of Section 123 of the Punjab Land Revenue Act, 1887. Thereafter the Gram Panchayat filed revision under Section 16 (1) of the Act before the Financial Commissioner in which the issue raised by them was regarding the title of the petitioner over the land in question. The Financial Commissioner has observed that if the order of the Sub Judge dated 30.5.1964 has attained finality regarding 60 Bighas of land about the ownership of petitioner i.e. 1/10th share then the same analogy applies to the order of Financial Commissioner dated 12.1.1971 in which he had directed the petitioner to obtain the order from the civil court regarding title. Thus, he was of the view that the A.C.Ist Grade has committed an error in his order dated 26.8.2014 by fixing a particular time for the purpose of the question of title to be decided and subsequently passing order of partition.

Learned counsel for the petitioner has submitted that the issue regarding the title of the petitioner has already been settled by the civil court vide decree dated 30.5.1964 which was though ex-parte at that time but the Panchayat had filed an application for setting aside the ex-parte decree which was dismissed after contest on 2.8.1966 and ultimately both the orders became final because the Panchayat did not contest further. The predecessor-in-interest of the petitioner Vijay Singh filed an application seeking partition of 60 Bighas which was his share in the joint khewat and that the application was not accepted by the revenue authorities on the ground that the question of title was involved. It is also not denied that the said order of the revenue authorities in those proceedings were not challenged. However, it is submitted that the land in question was acquired under the provisions of the Act of 1894, the Gram Panchayat admitted even in its objections filed under Section 18 of the Act of 1894 that it is the owner of 7/8th share of the land falling in the joint khewat out of total land and similarly the petitioners have filed the application. There was no contest to the objections which were referred by the Collector for the purpose of adjudication in which the petitioner had claimed themselves to be the owners of 1/8th share. It is submitted that the notice under Section 9 of the Act of 1894 is issued by the Collector on the basis of the revenue record.

Learned counsel for the petitioner has also referred to Jamabandi for the year 1951-52 in which Vijay Singh is recorded to be the owner of 1/8th share, Jamabandi for the year 1989-90 and similar is the entry in the Jamabandi for the year 2004-05. It is also submitted that the Gram Panchayat had raised issue regarding the question of title, therefore, the time was granted by the A. C. Ist Grade to the Gram Panchayat to get the matter settled from the civil court but they did not file any civil suit and thus by the subsequent order, the A. C. Ist Grade had to strike off the defence of the Gram Panchayat. It is thus submitted that there was no occasion for the Financial Commissioner, who has allowed the revision of the respondent-Gram Panchayat, on the ground that the petitioner had to get his ownership decided from the civil court, despite the fact that the decree dated 30.5.1964 is already in their favour.

On the other hand, learned counsel for respondent No.4-Gram Panchayat has vehemently argued that there is no error in the order of the Financial Commissioner because the petitioner has been recorded co-sharer to the extent of 1/6th share in the decree dated 30.5.1964 whereas in the revenue record it is reflected as 1/8th share. Therefore there is a confusion about the share of the petitioners. It is further submitted that the civil court had no jurisdiction to decide the question of title as the land belongs to shamlat deh for which a civil suit should have been filed in terms of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961. In support of his contention he has relied upon the decision of this Court in **Ranjit Singh and others Vs. State of Punjab and others 2012 (3) RCR (Civil) 238** in which this Court has held that the decree of the civil court would be without jurisdiction if it decides any question of title or interest in favour of any party in respect of the land vested or deemed to have been vested in shamlat deh. It is further submitted by him that the issue regarding the partition of the joint khewat at the instance of the predecessor-in-interest of the petitioners was decided upto the Financial Commissioner in which it was held that the petitioners have to obtain their title from the civil court, therefore, a similar application cannot be filed later on.

In respect of the argument of the learned counsel for respondent No.4 that civil court decree has to be ignored. Counsel for the petitioner has referred to the Jamabandi for the year 1951-52 (Annexure P-1) in which the land of shamlat deh is separately recorded and the land of the proprietor is separately recorded which has a separate khata but are part of the same khewat. Therefore, it is submitted that the predecessor-in-interest of the petitioner has filed the suit for declaring his joint possession with the Gram Panchayat.

I have heard learned counsel for the parties and perused the record with their able assistance.

The facts, narrated hereinabove are that the predecessor-in-interest of the petition, namely, Vijay Singh was a co-sharer to the extent of 1/8th share in the joint khewat with the Gram Panchayat. He filed a suit for joint possession. The suit was though ex-parte but it was to the extent of 1/10th share pertaining to 60 Bighas. The said decree has attained finality after having been un-successfully challenged by the Gram Panchayat by way of an application filed under Order 9 Rule 13 of the CPC by order dated 2.8.1966

Counsel for the petitioner has submitted that there is an error in the decree dated 30.5.1964 about the recording of share of the petitioner to the extent of 1/10th share otherwise their share is 1/8th. He has otherwise submitted that even if the share is recorded 1/10th but the question of share whether it is 1/8th or 1/10th does not survive when the civil court decree is specific that the petitioners are the owners to the extent of 60 Bighas. It is also his case that they are not claiming their rights in the property in question beyond 60 bighas. The revenue authorities had held that the petitioners have to get the title declared from the civil court in which no proceedings were taken by the predecessor-in-interest of the petitioner but the very fact after the acquisition of the land in question, that there was no objection from any quarter, much less the Panchayat for granting compensation to the petitioners to the extent of 1/8th share of the land. These circumstances are sufficient to hold that the petitioners are owners of the share which they have claimed. Otherwise the respondent Gram Panchayat would not have allowed the petitioner to take compensation of the land in question when it had filed objections before the Collector and even before the civil court under Section 18 of the Act of 1894. In the absence of any murmur in this regard at the instance of the Gram Panchayat the Court can presume that the Gram Panchayat had accepted the petitioners to be the owners of 1/8th share or to the extent of 60 Bighas of land in the joint khewat. Insofar as, the argument of the counsel for the respondent that since the land in question belongs to shamlat deh, therefore, declaration of title from the civil court had to be ignored is concerned, learned counsel for the petitioner has rightly pointed out from Jamabandi for the year 1950-51 (Annexure P-1) that the land in question has been separately recorded in the possession of the proprietors (co-sharers)) and the Gram Panchayat in separate Khatas but both the Khatas are in the same khewat. It has also been rightly held by the revenue authorities that the subsequent application for partition would not hit by res judi cata and it is also not the case of the respondent-Gram Panchayat as well. The only question which is raised before the Financial Commissioner was that the title of the petitioners should have been got declared from the civil court which cannot be accepted at this stage when much water has already flown thereafter in the shape of acquisition of land twice in the hands of the petitioner to the extent of their share. In view of the above discussion, I find force in the petition and the same is allowed and the order of the Financial Commissioner is hereby set aside.

(RAKESH KUMAR JAIN)
JUDGE

November 8, 2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No