

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21939 of 2015 (O&M)

Date of decision: 05.05.2017

Mange Ram

...Petitioner

vs.

The Financial Commissioner Revenue and others

...Respondents

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Arvind Rajotia, Advocate
for respondent Nos.6 to 9.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioner–Mange Ram, claiming to be son of Maru Ram, reflected from the memo of parties as son of Sultan Singh and adopted son of Maru Ram, had an audacity of setting up a claim, being adopted son of Maru Ram whereas in the civil suit bearing No.RBT-17-C of 2011 titled as “Mange Ram adopted son of Maru Ram v. Bhagwan and others” claiming declaration and permanent injunction, qua issue No.1 with regard to the fact that whether he is adopted son of Maru Ram or not, finding had been returned against the petitioner which has attained finality. The question arises is, can the grievance raised in the present writ petition sustain, the answer is in negative.

The facts as culled out from the writ petition reveals that Maru Ram was reflected as tenant in the land in dispute that is *gair marusi* from 1968-69. He died in the year 1995. The original land owners in 2000 vide Annexure P-1 (colly) sold the land to the private respondents No.6 to 9.

Mr. Vivek K. Thakur, learned counsel appearing on behalf of the petitioner submits that in the sale deed Maru Ram is reflected as *gair marusi* tenant. However, an application was moved for correction of khasra girdawari on 04.06.2007 and vide order dated 20.08.2007 (Annexure P-3) passed by the Assistant Collector Grade II, the khasra girdawari was ordered to be entered in favour of the vendees.

The aforementioned order was assailed before the Collector, who vide order dated 30.10.2012 dismissed the same. The aforementioned matter was taken up by the petitioner before the Commissioner, who vide order dated 03.06.2014 (Annexure P-5) remanded the matter back to the Assistant Collector Grade II. The aforementioned order was assailed before the Financial Commissioner in the revision petition. However, in the meantime, before the decision could be rendered in the aforementioned ROR, the Assistant Collector Grade II had again passed the order dated 20.01.2015 (Annexure R-2) in favour of the private respondents. Even the ROR has also been decided in favour of the private respondents vide order dated 02.07.2015 (Annexure P-6).

Mr. Vivek K. Thakur, learned counsel appearing on behalf of the petitioner submits that in fact Maru Ram had only daughter Rampiari and petitioner being son of Rampiari and maternal grandson of Maru Ram, thus, adopted by Maru Ram. Maru Ram being reflected as *gair marusi* tenant in the khasra girdawari, the remedy for the private respondents is to file suit for possession. The possession cannot be taken under the garb of correction of khasra girdawari as it amounts to take away valuable right of *gair marusi*, much less, no unauthorized occupant can be dispossessed except in due course of law. In support of his contention, he relies upon the

ratio decidendi culled out from the judgment of Hon'ble Supreme Court in **Rame Gowda (dead) by LRs Vs. M. Varadappa Naidu (dead) by LRs and another (2004) 1 SCC 769.**

Per contra, Mr. Arvind Rajotia, learned counsel appearing on behalf of respondent Nos.6 to 9 submits that petitioner has not come to the Court with clean hands, as the factum of suit as noticed by this Court was not disclosed in the entire writ petition, and therefore, the writ petition is liable to be dismissed with exemplary costs.

The judgment and decree dated 29.07.2013 (Annexure R-1) has attained finality, particularly, the issue of Mange Ram being adopted son of Maru Ram. In such eventuality, the petitioner cannot volte face and take up a plea of adopted grand son of Maru Ram. Even such ground cannot be decided and adjudicated upon in the writ petition, thus, there is gross misuse of process of Court.

He further submits that the order dated 20.01.2015 (Annexure R-2) has also not been challenged. In fact, Maru Ram was in ownership of some other land having khata No.3625/4626 and khewat No.72 and on demise of Maru Ram, the property has been transferred in favour of one daughter and many others. There is pedigree table but there is no reflection of the petitioner in the same. It is a complete case of fraud.

However, the aforementioned argument had been rebutted by referring to order dated 30.10.2012 (Annexure P-4) at page 39 wherein inheritance of Rampiari in respect of property owned by Maru Ram has been ordered to be recorded in the name of the petitioner.

I have heard learned counsel for the parties, appraised the paper book and of the view that the writ petition is wholly misconceived

and vitiated in law, thus, deserves dismissal.

In the absence of any decree or any documentary evidence, conforming to provisions of Section 50 of the Indian Evidence Act, the petitioner had rendered himself to be son of Sultan and adopted son of Maru Ram, though wrongly typed Madu Ram. The finding arrived at by the trial Court on issue No.1, which reads as under, reveals that the petitioner has miserably failed to prove that he is adopted son of Mange Ram:-

“...14. Plaintiff claiming himself to be adopted son of Maru had to prove his case. Proving the factum of adoption was on plaintiff but apart from mere pleadings that he was adopted by Maru, there is no evidence on record to support the same. Secondly, no witness had been examined to testify the said adoption. Also, in all the documents placed on record it can be seen that the name of the plaintiff is coming as Mange Ram son of Rampiari and Sultan Singh. Everywhere the name of father of the plaintiff is mentioned as Sultan Singh and not Maru. Had the plaintiff been an adopted son, there must have been some documentary evidence showing the same. It is strange that the plaintiff never made any efforts to get his father's name entered as Maru. Admittedly, the plaintiff has got his share through his mother Rampiari and not as son of Maru. Had he been an adopted son he should have got the share from his alleged father Maru and not through his mother Rampiari daughter of Maru. Even in the sale deed No.638 dated 11.07.2000 which is Ex.D1 there also the percentage of plaintiff is shown as Mange Ram son of Sultan Singh and his mother's name is mentioned as Rampiari. From all these documentary evidence, nowhere it comes to the picture that plaintiff is an adopted son of Maru.

15. As far as possession of plaintiff is concerned it cannot be said that the plaintiff is in possession because as per the entries in khasra girdawari i.e. Ex.D5 defendant Shri Bhagwan is shown and coming into possession. It is also strange that

plaintiff who claims to have inherited the tenancy rights after the death of his alleged father Maru did not know from whom and defendants No.1 to 4 purchased the suit land. It is clear that the defendant Nos.1 to 4 have purchased the land in question in which the plaintiff claim to be a tenant, however he denies of knowing who is actual owner of the land. If a person is claiming to be tenant he must have know under whose tenancy he is exercising his rights as a tenant. But in this case the plaintiff has pleaded ignorance regarding the actual owner of the suit land.

16. Hence, in view of above discussion, it is evident that plaintiff has failed to prove that he is adopted son of Maru. Hence, thereby this issue is decided against the plaintiff and in favour of defendants.”

The stand of the petitioner has been shifting. It appears to be an attempt to grab the land in question. Non disclosure of the decision in the civil court in the writ petition is itself an attempt to mislead this Court and it is in this aspect of the matter, this Court had issued notice of motion and granted status quo. The mutations in respect of ownership of land of Maru Ram i.e. some other land also do not reflect name of the petitioner as successor in interest, being son of Maru Ram. It is strange that same very person is claiming as grandson of Maru Ram. The order dated 20.01.2015 (Annexure R-2) has also not been challenged.

A cumulative reading of aforementioned observations and facts noticed above leads to irresistible conclusion that the petitioner has not approached this Court with clean hands. Such type of litigants who had not been fair and honest to the Lawyer in not disclosing the factum of suit deserves to be burdened with costs.

Resultantly, the writ petition is dismissed with costs of

as directed, liberty is granted to the petitioner to seek implementation of the order.

(AMIT RAWAL)
JUDGE

May 05, 2017
Pankaj*

Whether speaking/reasoned : Yes
Whether reportable : No