

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

**CWP No.4393 of 2014
Date of decision:20.01.2017**

Gurjit Singh

... Petitioner

Vs.

Financial Commissioner (Revenue), Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.D.Sharma, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. G.S.Saini, Advocate
for respondents No.6 to 9.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the impugned orders dated 10.06.2009 (Annexure P-7) passed by respondent No.2 and 06.08.2013 (Annexure P-8) passed by respondent No.1.

Mr. B.D.Sharma, learned counsel appearing on behalf of the petitioner submits that originally Gurdial Singh was the owner of the land measuring 653 kanals 18 marlas of land and out of the said land, Gurdial Singh had sold some land to third party. He has three sons namely Ajaib Singh, Balbir Singh, i.e., respondents No.5 and 6 and the petitioner namely, Gurjit Singh and daughter namely Gurnam Kaur.

He further submits that Gurdial Singh died on 06.01.1991 and

after his death, all the brothers alleged separate Wills of deceased Gurdial Singh in their favour. The family settlement was arrived at between the parties on 22.03.1991 (Annexure P-1). The Balbir Singh, applicant before the revenue authority along with Ajaib Singh filed a civil suit on 18.11.1991 seeking declaration to the effect that they are owners of the land in the following manner:

“A) plaintiff No.1 is owners of 115 Kls – 9 marlas bearing khewat no.1, khasra nos.1176/12-0, 1177/6-16, 1178/14-13, 1179/14-2, 1180/6-12, 1181/17-11, 1182/23-18, 1524/10-11, 1525/11-2, 1526/11-2, 1527/11-2, 1528/8-12, 1513Min/3-14, bounded as :

North : Gurjit Singh

South: Kartar Singh son of Khushal Singh

West :Balbir Singh

East: Kasai

And 1 kanal 14 marlas out of khasra no.1518 in which the house of the plaintiff no.1 is constructed, situated in the revenue estate of village Sandhwan, Tehsil and District Faridkot.

B) Balbir Singh, plaintiff no.2 in owner of 161 Kls, 12 marlas bearing khewat no.1, khasra nos.1374/12-18, 1375/11-11, 1376/7-13, 1377/13-2, 1378/16-18, 1379/16-18, 1507/9-4, 1508/22-4, 1509/16-0, 151/16-0, 1512/11-2, 1570/5-8 towards North adjoining to khasra no.1509 and 2 kanals 9 marlas out

of khasra no.1518 in which the house of plaintiff no.2 has been constructed, situated in the revenue estate of village Sandhwan, Tehsil and District Faridkot.”

The same was decreed on the basis of compromise, vide judgment and decree dated 10.02.1992. Thereafter, taking the benefit of non-incorporation of the decree in the revenue record, Balbir Singh predecessor-in-interest of respondents No.6 to 9 filed an application for partition of the land which was dismissed by the Assistant Collector Ist Grade on 19.02.2008. Balbir Singh filed appeal against the aforesaid order before the Collector Faridkot but the same was also dismissed, vide order dated 14.11.2008. The Commissioner accepted the revision of the Balbir Singh and remanded the matter back to Assistant Collector Ist Grade for its fresh decision. The first two authorities, vide Annexures P-5 and P-6, i.e., Assistant Collector and Collector dismissed the application for partition on the basis of land has already been partitioned. However, revisional authority, much less the Financial Commissioner allowed the revision petition, therefore, there was no occasion for remanding the matter back.

Per contra, Mr. G.S.Saini, learned counsel appearing on behalf of respondents No.6 to 9 submits that the order of remand is nothing but on the basis of the non-representation of the party. He has drawn the attention of this Court to paragraph 5 of the impugned order dated 10.06.2009, Annexure P-7, wherein, it has been mentioned that certain facts qua 1/5th share given by Gurdial Singh to his three sons, much less to Gurnam Kaur, have not been taken into consideration by the authorities below and thus,

prays for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that the judgment and decree is not in dispute which has attained finality. The parameters which are subject matter in the application filed for partition of the land have been considered and therefore, rightly so the Assistant Collector and Collector dismissed the application as quasi-judicial authorities cannot sit over the judgment and decree passed by the Civil Court, in essence, are bound by the same. There is concealment of fact by Balbir Singh qua judgment and decree. The aforementioned fact has not been taken into consideration by the revenue authorities and there is not even passing reference, therefore, there was non-application of mind and act of aggrandizement.

For the foregoing reasons, the impugned orders are set aside, particularly when there is a civil decree and Balbir Singh had taken the advantage of the entry in the revenue record as due to some reason there was non reflection of the judgment and decree in the same. Such an act on behalf of Balbir Singh is nothing but an act of aggrandizement.

Resultantly, the writ petition is allowed.

(AMIT RAWAL)
JUDGE

January 20, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No