

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.8284 of 2014
Date of Decision: March 24, 2017

Manjit Kaur & others

...Petitioners

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Namit Gautam, Advocate,
for the petitioners.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

AMIT RAWAL, J. (Oral)

As per office report dated 4.11.2016, respondent No.5 died and respondent No.6 was served. Learned counsel for the petitioners submits that respondent No.6 is the son of respondent No.5 and he is the only legal heir. Despite that, no one has put in appearance. The factum of service of respondent No.6 is also evident from the report dated 17.12.2014. Respondent Nos.7 to 9 are proforma. They are adopted daughters of Charanjit Singh. It appears that the private respondents are not interesting in contesting the petition.

The petitioners have challenged the order dated 14.1.2014 (Annexure P-7) rendered by the Financial Commissioner, whereby the review petition bearing No.27 of 2013 in ROR No.882 of 2005, has been dismissed, order dated 7.5.2010 (Annexure P-5), whereby ROR No.882 of 2005 filed by the petitioners has been dismissed, order dated 6.6.2016

(Annexure P-3) of the Commissioner dismissing the appeal of the petitioners and as well as the order dated 5.4.2005 (Annexure P-2) rendered by the Additional Deputy Commissioner-cum-Collector, Jalandhar, whereby the appeal filed by respondent Nos.5 and 6 against the order dated 12.12.2003 passed by the Assistant Collector Ist Grade, Phillaur, was allowed.

Mr.Namit Gautam, learned counsel for the petitioners submits that the dispute between the parties to the lis is with regard to the Will dated 8.8.1998 executed by Charanjit Singh in favour of the petitioners and mutation bearing No.2077 of Village Kaptalon, Tehsil Phillaur, District Jalandhar was entered by the Patwari. Subsequently AC Grade-II, Phillaur referred the matter to the AC Grade-I being a disputed mutation. The AC Grade-I, vide order dated 3.8.2000, sanctioned the mutation in favour of the natural heirs of the deceased on the basis of the natural succession. Against the aforementioned order, appeal was preferred before the Collector, who, vide order dated 31.1.2002, remanded the matter back. On the basis of the remand, AC Grade-I, vide order dated 12.12.2003, sanctioned the mutation in favour of petitioner Nos.2 and 3, i.e., sons of Charanjit Singh in equal shares on the basis of the Will dated 8.8.1998. The aggrieved persons, i.e., respondent Nos.5 and 6, who are claiming to be the wife and child of Charanjit Singh, challenged the order before the Collector on the premise that Charanjit Singh had married respondent No.5. The Collector vide impugned order dated 5.4.2005 set-aside the order of the AC Grade-I. The appeal before the Commissioner and the revision before the Financial Commissioner, much less the review at the behest of the petitioners did not yield any result. However, during the interregnum, respondent Nos.5 and 6

had instituted a civil suit bearing No.320 of 2004 seeking declaration. Widow and the son of Charanjit Singh did not challenge the aforementioned Will and in view of the preponderance of the evidence, the trial Court dismissed the suit vide judgment and decree dated 23.10.2007. Appeal preferred there against also met with the same fate vide judgment and decree dated 7.4.2011. Regular Second Appeal bearing No.3463 of 2011 filed before this Court vide Annexure P-10 was also dismissed on 4.2.2014.

He further submits that petitioner Nos.2 and 3 are the only sons of Charanjit Singh and, therefore, mutation could not have been passed in favour of all the persons, i.e., petitioner Nos.2 and 3 and respondent Nos.5 and 6 and 7 to 9 on the basis of the natural succession. No doubt, the judgments and decrees of both the Courts below were on the record of the revenue courts, but the Regular Second Appeal had been dismissed a month thereafter, i.e., in 2014. In view of the aforementioned fact, he submits that once respondent Nos.5 and 6 had not been successful in getting the declaration vis-a-vis the status of widow and child, the Will, which has remained un-rebutted and un-assailed, is to be accepted and, therefore, the mutation on the basis of the Will as ordered by the AC Grade-I vide order dated 12.12.2003 (Annexure P-1) is liable to be restored by setting aside the order.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the facts noticed above have gone un-rebutted as there is no contest on behalf of the private respondents despite being served and the fact that they have lost in all the courts as noticed above, i.e., in the trial Court, revenue court and in this Court, in essence they have not been able to get the declaration qua the valid marriage with

Charanjit Singh being widow and son. In the absence of the same, the Will which has remained un-challenged and un-rebutted, has to be accepted and, therefore, succession would not be by way of natural succession. The orders of the Collector, Commissioner and the Financial Commissioner dismissing the revisions/appeal and the review are hereby set-aside and that of the AC Grade-I Annexure P-1 is ordered to be restored.

Writ petition stands allowed.

March 24, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No