

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.19183 of 2016
Date of Decision:10.05.2018

Satnam Singh and others

. Petitioners

Vs.

Commissioner Hisar Division Hisar and others

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Ajay Jain, Advocate,
for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 26.2.2013 passed by the Collector, Hisar by which they have been asked to deposit ₹94,585/- on account of stamp duty and ₹450/- towards registration fee and the order dated 12.7.2016 passed by the Commissioner, Hisar Division, Hisar by which the appeal filed by the petitioners against the order of the Collector has been dismissed.

In brief, one Hazur Singh son of Bir Singh executed a release deed in favour of the petitioners of his half share in the land comprised in Khewat No.1250, Khata No.1491 measuring 91 kanals 14 marlas situated at Village Bir, Tehsil and District Hisar on 29.6.2004 which was registered on 30.6.2004. On the same day, the Sub Registrar, Hisar made a reference to the Collector, Hisar for initiating action in terms of Section 47-A(2) of the Indian Stamp Act, 1899 [for short 'the Act']. After the receipt of reference, the Collector, Hisar asked the parties to appear before him and vide his order dated 26.2.2013 found the deficiency of ₹94,585/- towards stamp duty and ₹450/- towards registration fee which were directed to be deposited within a period of one month. The appeal filed by the petitioners before the Commissioner against the order of the Collector was dismissed on 12.7.2016.

Learned counsel for the petitioner has submitted that the Collector and the Commissioner have lost sight of the fact that the entire land measuring 91 kanal 14 marla was in possession of 3rd party and while relying upon the instructions dated 5.4.2001 has submitted that 1/3rd of the stamp duty is required to be paid if the property is under tenancy for a period of more than 12 years and less than 30 years. In this regard he has relied upon a decision of this Court rendered in the case of ***"Anil Kumar Goyal Vs. State of Haryana and others"*** 2011(3) RCR (Civil) 355.

In order to prove that the property in dispute was in possession of the 3rd party, the petitioners have placed on record jamabandis for the years 1986-87, 1991-92 and 1996-97.

Learned counsel for the respondents, however, has submitted that the lease or tenancy is a *sine qua non* that too should not be less than 12 years and more than 30 years whereas the petitioners have failed to prove that the property in question was either on lease or under tenancy of the 3rd party. It is submitted that in the jamabandis, placed on record by the petitioners, their predecessor-in-interest, namely Hazur Singh son of Bir Singh was shown to be the owner whereas Jagir Kaur wife of Jodh Singh is shown to be in possession as a cultivator but column No.9, in all the three jamabandis, is vacant in respect of the amount of rent paid. It is also submitted that there is no evidence on record that the land in dispute was on lease.

I have heard learned counsel for the parties and after perusal of the record am of the considered opinion that there is no merit in the arguments of learned counsel for the petitioners. The instructions, which are sought to be applied to this case, are totally inapplicable because the lease of a tenancy is a *sine qua non* that too should be more than 12 years and not less than 30 years whereas in the jamabandis it is nowhere mentioned in the Column of rent as to how much rent is being paid by the person who is in possession. However, there is a presumption of truth attached to the jamabandis in terms of Section 44 of the Punjab Land Revenue Act, 1887 which is though open to rebuttal but for that the petitioners were required to lead documentary evidence. In the absence of any evidence to the contrary, the entries in jamabandis, which are produced on record by the petitioners in respect of their case, are against the petitioners because the possession of Jagir Kaur is not recorded as a tenant or a lessee.

Thus, I am of the considered opinion that the instructions dated 5.4.2001 are not at all applicable in the present case in the absence of the fact of land being on tenancy or on lease with the person in possession.

No other point has been raised.

In view of the aforesaid discussion, I do not find any merit in the present case and the same is hereby dismissed.

10.05.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No