

C.W.P. No. 8881 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8881 of 2018

DATE OF DECISION:16.04.2018

Ram Singh

.....Petitioner

Versus

Financial Commissioner, Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. AS Salar, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 7.5.2014 (Annexure P-6) as well as order dated 3.4.2017 (Annexure P-7) passed by respondents No.1 and 2, respectively, whereby, the claim of the petitioner for change of Khasra Girdawari in his name has been rejected.

Briefly, the facts of the case as made out in present petition are that originally the land in dispute was owned by one Smt. Ajmer Kaur. The petitioner is asserting execution of a Will in his favour by said Ajmer Kaur. The mutation of inheritance of Ajmer Kaur was sanctioned in favour of Gurdev Kaur being her sister. Thereafter, the land was exchanged with the land of Gurpreet Singh. After the death of Ajmer Kaur, the petitioner came

in possession of the land in dispute, yet he filed a civil suit for declaration to the effect that he is owner in possession of the land in dispute on the basis of Will and the exchange deed is illegal and is not binding upon the petitioner. However, the suit filed by the petitioner was dismissed vide judgment dated 26.11.2011 on the ground that the prayer for possession has not been made. As per case of the petitioner, he was in possession of the land in dispute and there was no necessity to seek possession.

Aggrieved by said order, the petitioner filed an appeal, which was also dismissed vide order dated 16.2.2015. Thereafter, the petitioner approached this Court by way of filing R.S.A. No. 1361 of 2015, which is pending after issuance of notice of motion. The petitioner being in actual physical possession of the land in dispute filed an application for correction of Khasra Girdawari, which was dismissed by AC 2nd Grade (Naib Tehsildar) vide its order dated 17.10.2012 on the ground that civil case was pending. Aggrieved by said order, the petitioner filed an appeal before the Collector, which was allowed vide order dated 30.4.2013 and the case was remanded to Assistant Collector 2nd Grade (Naib Tehsildar) with a direction that petitioner be heard and given sufficient opportunity to produce the evidence in his favour and the application be decided after visiting the spot, on the basis of possession. Order dated 30.4.2013 was challenged by respondent No.3 by way of filing an appeal before the Commissioner, which was allowed vide order dated 7.5.2014. Thereafter, the petitioner challenged order dated 7.5.2014 by way of filing revision petition before the Financial Commissioner, , which was dismissed vide order dated 3.4.2017.

Orders dated 7.5.2014 and 3.4.2017 are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that application for correction of Khasra Girdawari has been rejected only on the ground that the civil Court had decided against the petitioner, whereas, the petitioner is in possession of land in dispute and the same can be verified by appointing Local Commissioner. Learned counsel further contends that Ajmer Kaur was living with the petitioner and his father and the petitioner was in possession over the land in dispute on the basis of Will. Neither Gurdev Kaur nor Gurpreet Singh were residents of village Bir Kalan and earlier Ajmer Kaur herself was recorded as owner and khud khast in the revenue record. The mutation was mechanically sanctioned by the revenue officials in the name of Gurdev Kaur. Learned counsel also contends that the possession of the petitioner has not been taken into consideration and the finding recorded by the Civil Court are based on jamabandi entires and the petitioner is entitled to get the Khasra Girdawari corrected.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned orders as well as other documents available on the file.

In the present case, the issue for consideration before this Court is as to whether a person, who is in actual possession of the land in dispute, is entitled to get Khasra Girdawari corrected in his name, when civil litigation is pending.

As per case of the petitioner, he is in possession of the land in dispute and filed an application for correction of Khasra Girdawari, which was rejected by AC 2nd Grade (Naib Tehsildar) vide its order dated 17.10.2012 on the ground that civil case was pending. Aggrieved by said order, the petitioner filed an appeal before the Collector, which was

allowed vide order dated 30.4.2013 and the case was remanded to Assistant Collector 2nd Grade (Naib Tehsildar) with a direction that petitioner be heard and given sufficient opportunity to produce the evidence in his favour and the application be decided after visiting the spot, on the basis of possession. Order dated 30.4.2013 was challenged by respondent No.3 by way of filing an appeal before the Commissioner, which was allowed vide order dated 7.5.2014. Thereafter, the petitioner challenged order dated 7.5.2014 by way of filing revision petition before the Financial Commissioner, which was dismissed vide order dated 3.4.2017 on the ground that the civil Court has clearly established that the petitioner is not in possession of land in dispute rather the exchange deed executed by Gurdev Kaur in favour of Gurpreet Singh has been duly proved on record and Gurpreet Singh was held in possession of land in dispute by the civil Court.

On perusal of the documents available on the file, it is clear that originally Ajmer Kaur was owner in possession of the land in dispute and mutation No. 6195 regarding her inheritance was sanctioned in favour of Gurdev Kaur. Thereafter Gurdev Kaur exchanged the land in dispute with Gurpreet Singh and mutation number 6203 was also sanctioned in this regard. Thereafter the entries were incorporated in the revenue record by showing Gurpreet Singh as owner in possession of the land in dispute. The petitioner filed civil suit before Additional Civil Judge, Senior Division, Sangrur, wherein, he had challenged the inheritance of Ajmer Kaur as well as exchange deed executed by Gurdev Kaur in favour of Gurpreet Singh. The civil Court dismissed the suit of the petitioner by holding that the petitioner was not in possession of land in dispute and rather the exchange

deed executed by Gurdev Kaur in favour of Gurpeet Singh has been duly proved on record. The onus was upon the petitioner to prove his possession but he failed to adduce any evidence. Aggrieved by said order, the petitioner filed an appeal, which was also dismissed vide order dated 16.2.2015 by holding that the petitioner failed to prove his possession over the land in dispute. The suit was filed for declaration without seeking further relief of possession and the rights of the parties have already been determined by the civil Court.

It is settled principle of law that once the status of the parties is finally determined by the civil Court, it will be binding and has the over-riding effect upon the revenue authorities. In the present case, the civil Court has already dismissed the suit filed by the petitioner and thereafter the appeal has also been dismissed. The RSA filed against both the judgments is pending after issuance of notice of motion. The application filed by the petitioner for correction of Khasra Girdawari has rightly been dismissed. The petitioner is claiming his right only on the basis of possession over the land in dispute but the fact that he is in possession, has not been proved by him. The question as to who is in possession of the suit property, is a question of fact. There is no evidence on record to prove that possession is with the petitioner. The rights of the property have already been determined by the civil Court and there is no interim order in the RSA, which is stated to be pending. The present petition is not maintainable as Civil Court decision is binding upon the revenue authorities. By recording the aforesaid findings, the application of the petitioner has rightly been dismissed and thereafter appeal as well as revision have also been dismissed.

In view of facts and law position as explained above, I find no

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merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

April 16, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes