

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

105

**CM-4139-CWP-2019 &
CM-4263-CWP-2019 &
CWP-8408-2018**

Date of Decision: 27.03.2019

AIMRON BATH

...PETITIONER

VS.

FINANCIAL COMMISSIONER REVENUE PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. V.K.Sandhir, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

CM-4139-CWP-2019

C.M. is allowed subject to just exceptions. Filing of certified copy of civil suit (Annexure P-12) and copy of order dated 30.11.2011 (Annexure P-13) is dispensed with.

CM-4263-CWP-2019

C.M. is allowed subject to just exceptions. Copy of civil suit (Annexure P-12) and copy of order dated 30.11.2011 (Annexure P-13) are taken on record.

CWP-8408-2018

This writ petition has been filed praying for writ of certiorari for setting aside the orders dated 13.07.2010 (Annexure P-4) passed by the Assistant Collector Grade-I, Amritsar, whereby ex-parte Mutation No. 2756

has been sanctioned in favour of Smt. Harjinder Kaur wife of Malkiat Singh and Smt. Narsinder Kaur wife of S. Pritam Singh and mother of Late Sh. Malkiat Singh without issuing notice to the petitioner who, according to him, was adopted through registered adoption deed dated 16.03.2007 (Annexure P-1) by Late Sh. Malkiat Singh and Harjinder Kaur -respondent No. 5 and, therefore, being the first degree heir was required to be heard as he is entitled to 1/3rd share of the property in question, order dated 10.06.2011 (Annexure P-6) passed by the Collector-cum-Sub-Divisional Magistrate, Amritsar-I-respondent No. 3 dismissing the appeal of the petitioner, order dated 20.03.2015 (Annexure P-8) passed by the Commissioner, Jalandhar Division, Jalandhar dismissing the revision petition preferred by the petitioner as also the order dated 17.01.2018 (Annexure P-10) passed by the Financial Commissioner Revenue, Punjab, whereby ROR No. 547 of 2015 preferred by the petitioner stands dismissed, cannot sustain.

2. The case of the petitioner is that he was adopted by way of registered adoption deed dated 16.03.2007 (Annexure P-1) by Late Sh. Malkiat Singh son of Pritam Singh and Harjinder Kaur wife of Malkiat Singh-respondent No. 5 as they did not have any child from their marriage after a lapse of more than 6 years. Malkiat Singh, father of the petitioner, unfortunately died on 23.04.2010. Harjinder Kaur-respondent No. 5 filed an application dated 17.05.2010 for mutation misrepresenting to the revenue authorities that she along with Smt. Narinder Kaur wife of S. Pritam Singh, was the only legal heirs of deceased Malkiat Singh totally concealing the factum of adoption of the petitioner as also the adoption deed dated 16.03.2007. On the basis of the application, Mutation No. 2756 dated

13.07.2010 (Annexure P-4) was sanctioned in favour of respondents No. 5 and 6 to the extent of half share each by the Assitant Collector Grade-I, Amritsar.

3. This ex-parte mutation sanctioned in favour of respondents No. 5 and 6 was challenged by the petitioner by filing an appeal before the Collector-cum-Sub Divisional Magistrate, Amritsar-I-respondent No. 3, who dismissed the appeal vide order dated 10.06.2011 (Annexure P-6) on the ground that the alleged adoption deed dated 16.03.2007 has been denied by respondent No. 5-Harjinder Kaur. The petitioner has filed a suit for declaration to the effect that the petitioner is owner in possession to the extent of 1/3rd share of the land which is the subject matter of mutation on the basis of the adoption deed and since the matter is subjudice and no proof has been led by the petitioner with regard to the validity of the adoption deed as also with regard to the maintainability of the appeal through S. Pritam Singh, his grandfather, and that the decision in this regard, which is pending consideration before the Civil Court, would be applicable to the mutation as well.

4. Challenge by the petitioner to the mutation by way of revision petition stood dismissed by the Commissioner, Jalandhar Division, Jalandhar vide order dated 20.03.2015 (Annexure P-8) holding therein that till date, there was no civil Court verdict in favour of the petitioner with regard to the authenticity of the adoption deed, execution whereof has been specifically denied by respondent No. 5-Harjinder Kaur, who has further alleged that it was a forged, fabricated and false document. Liberty was also granted to the petitioner to avail of the remedy in the civil Court of competent jurisdiction. Further revision petition preferred by the petitioner

has also been dismissed by the Financial Commissioner upholding the orders, which have been passed by the authorities below by coming to a conclusion that there is nothing on the record indicating that the revision petition would be maintainable through Pritam Singh, who is neither the natural guardian nor a duly appointed guardian of minor through a competent Court of jurisdiction and further that there was no proof with regard to the validity of the adoption deed.

5. It is the contention of the learned counsel for the petitioner that in the light of the registered adoption deed dated 16.03.2007, the revenue authorities were bound to take the same into consideration prior to issuing the mutation dated 13.07.2010 (Annexure P-4) in favour of respondents No. 5 and 6. Since it was a registered document, the revenue authorities have no option but to treat it as an authenticated document unless proved otherwise. He contends that even if the factum of the adoption deed having been executed by Late Sh. Malkiat Singh and Harjinder Kaur-respondent No. 5 was not brought to the notice of the Assistant Collector Grade-I, Amritsar prior to the sanction of mutation but the Appellate Authority was bound to take that into consideration in the appeal, which had been preferred by the petitioner and should have set aside the mutation which had been sanctioned without impleading the petitioner as a party. He is an affected person being a Class-I heir because of the registered adoption deed dated 16.03.2007 (Annexure P-1). The procedure, as was required to be followed under the Punjab Land Revenue Act, has not been followed and adhered to as all interested parties are required to be issued notice and given an opportunity of hearing before sanctioning mutation. He, thus, contends that the said aspect having not been taken into consideration by the Appellate Authority

and thereafter, both the revisional authorities, the orders, as impugned by the petitioner, cannot sustain and deserve to be set aside including Mutation No. 2756 dated 13.07.2010 (Annexure P-4).

6. During the course of hearing, on 07.01.2019, a direction was issued to the counsel for the petitioner to place on record the civil suit, reply thereto and the orders passed therein. In compliance of the said order, counsel for the petitioner has placed on record a copy of the civil suit (Annexure P-12) and a copy of order dated 30.11.2011 (Annexure P-13) passed by the Civil Judge (Junior Division) Amritsar through CM No. 4263 of 2019.

7. A perusal of the civil suit (Annexure P-12) would show that suit for declaration to the effect that the plaintiff is owner in possession to the extent of 1/3rd share of the land which is the subject matter of the mutation with a consequential relief of permanent injunction restraining respondents No. 5 and 6, who were impleaded as defendants, from selling, alienating and/or transferring the land more than their 1/3rd share each and specific khasra numbers in any manner of the suit land, was filed on 28.08.2010.

8. It would not be out of way to mention here that Mutation No. 2756 stood sanctioned on 13.07.2010 (Annexure P-4) by the Assistant Collector, Grade-I, Amritsar, against which an appeal was preferred by the petitioner before the Collector-cum-Sub Divisional Magistrate, Amritsar-I on 28.08.2010. The said civil suit was, therefore, pending consideration when the appeal of the petitioner was decided on 10.06.2011 (Annexure P-6) observing therein that the decision, which shall be made by the Civil Court, shall be applicable to the mutation while dismissing the appeal apart

from the ground that the petitioner has not been able to produce any proof in Court relating to the adoption deed in question or that, how the appeal filed through S. Pritam Singh as the guardian of the petitioner was maintainable when admittedly S. Pritam Singh is not a natural guardian of the petitioner nor has he been appointed as a guardian to the minor by any competent Court.

9. That apart, the civil suit which was preferred by the petitioner, was dismissed in default under Order 9 Rule 8 CPC for non-appearance of the plaintiff on 30.11.2011 (Annexure P-13) by the Civil Judge (Junior Division) Amritsar, which factum was not disclosed before the Commissioner, Jalandhar Division, Jalandhar, wherein a revision petition was filed and the same was decided on 20.03.2015 (Annexure P-8). Similar will be the position as far as the order dated 17.01.2018 (Annexure P-10) passed by the Financial Commissioner Revenue, Punjab, is concerned.

10. In the light of the dismissal of the civil suit in default for non-appearance of the plaintiff vide order dated 30.11.2011 (Annexure P-13) by the Civil Judge (Junior Division), Amritsar, the claim, as has been put forth by the petitioner, cannot be accepted especially in the light of the admission made by the counsel for the petitioner that after the order dated 30.11.2011 (P-13), no steps have been taken by the petitioner for restoration of the said civil suit. Till date, there is no order passed by the competent Court holding that the adoption deed dated 16.03.2007 is an authentic document or that it was executed by Late S. Malkiat Singh son of Pritam Singh and Harjinder Kaur wife of Malkiat Singh-respondent No. 5.

11. The impugned orders, therefore, as passed by the Revenue Courts, in the given facts and circumstances, cannot be faulted with and the

same are in accordance with law which do not call for any interference by this Court in the present writ petition.

In view of the above, the writ petition stands dismissed being devoid of merit.

March 27, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No