109

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 19814 of 2020
Date of Decision: November 23, 2020

Jarnail Singh

......Petitioner

versus

Financial Commissioner Revenue Punjab, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Mohit Vashishat, Advocate
for the petitioner

<u>Sudhir Mittal, J. (Oral)</u>

The petitioner has challenged the order dated 14.05.2020 passed by learned Divisional Commissioner, Patiala Division, Patiala (Annexure P-1) as well as order dated 28.10.2020 passed by learned Financial Commissioner Revenue, Punjab, Chandigarh (Annexure P-4) by way of this writ petition.

The petitioner is one of the heirs of deceased Harbhajan Kaur who died on 13.09.2016. He approached the revenue authorities for sanction of mutation of estate of Harbhajan Kaur on the basis of Will dated 02.07.2016. The mutation was contested by the private respondents who set up Will dated 02.06.2016. Learned Assistant Collector 1st Grade declared the proceedings to be contested mutation proceedings and directed the parties to lead their evidence. Thereafter, vide order dated 02.07.2018, he sanctioned mutation on the basis of natural succession, although the evidence on record established the due execution of the Will dated 02.06.2016 set up the private respondents. The respondents challenged order dated 02.07.2018 by way of an appeal which was dismissed by the Collector vide order dated 25.02.2019. This order was challenged by way of a revision petition before the learned Divisional Commissioner, Patiala Division, Patiala, who accepted the same vide order dated 14.05.2020. Revision filed by the petitioner has been dismissed vide order dated 28.10.2020. Learned Commissioner as well as the Financial Commissioner have found that Will dated 02.06.2016 stood proved in view of the oral evidence on record as well as the evidence of the handwriting Expert. The thumb impression of deceased Harbhajan Kaur had been examined by the Expert, who opined that the thumb impression of deceased Harbajan Kaur on the Will dated 02.06.2016 matches her standard thumb impression whereas that on Will dated 02.07.2016, does not match.

Learned counsel for the petitioner submits that the private respondent filed a suit during the pendency of the mutation proceedings. Thus, they could have sought a declaration regarding the Will in their favour before the Civil Court. Reliance has been placed upon judgment dated 02.09.2011 passed in CWP No. 16338 of 2011 titled as ***Shamsher Singh vs. Commissioner Patiala Division and others.***

Mr. Vikas Mehsempuri, Advocate, who is appearing on Caveat for the private respondents submits that jurisdiction of the revenue authorities was invoked by the petitioner himself and, thus, he can not be permitted to argue that the validity of the Will should have been left for decision of the Civil Court. The parties have led their respective evidence and the same has been examined by the authorities. Learned Commissioner as well as the Financial Commissioner have returned a concurrent finding of fact that the Will dated 02.06.2016 is a valid document and there is no perversity in the said finding. Thus, the writ petition deserves dismissal. He further argues that a civil suit was filed by his clients during the pendency of the mutation proceedings but the said suit was for injunction only as they feared forcible dispossession. No declaration of title was sought in the civil suit and, thus, the revenue authorities had no occasion to stay the proceedings to await the decision of the civil Court.

It is not in dispute that the petitioner invoked the jurisdiction of the revenue authorities after the death of Harbhajan Kaur under Section 36 of the Punjab Land Revenue Act, 1887. The revenue authorities are entitled to decide the disputes regarding mutation, thus, it can not be said that the mutation proceedings were without jurisdiction. Since the petitioner himself invoked the jurisdiction of the revenue authorities, he can not now turn around and argue that the revenue authorities should have stayed their hands and should have directed the parties to get the issue of validity of respective Wills decided by the Civil Court.

Reliance upon ***Shamsher Singh (supra)*** is misplaced. The said judgment holds that since civil suit involving question of title and inheritance was pending between the parties it would have been prudent for the revenue authorities to await the decision of the civil Court rather than deciding the question of title themselves. It does not hold that contested mutation proceedings cannot be decided by the revenue authorities. Moreover, no civil suit was pending between the parties when mutation proceedings were initiated. The respondents filed a suit for injunction during the pendency of mutation proceedings as they apprehended forcible dispossession.

Learned Divisional Commissioner as well as learned Financial Commissioner have recorded findings of fact on the basis of evidence on record. No attempt has been made by learned counsel for the petitioner to show that the said findings are perverse. Thus, I find no ground to issue a writ in the nature of certiorari.

The writ petition is dismissed.

November 23, 2020 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No