

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :18/01/2021

Order passed on :08/02/2021

WP227 No. 5169 of 2008

- Phoolsai, S/o Late Majhiyain, aged about 55 years, Resident of Gram Binkara, Thana Lakhanpur, Tahsil Lakhanpur, District Surguja (C.G.)

---- Petitioner

Versus

1. Chhatarsai, S/o Prem Sai, aged about 63 years, Resident of Gram Binkara, Thana Lakhanpur, Tahsil Lakhanpur, District Surguja (C.G.)
2. Jagjit, S/o Prem Sai, aged about 58 years, Resident of Gram Binkara, Thana Lakhanpur, Tahsil Lakhanpur, District Surguja (C.G.)
3. Jagsai, S/o Prem Sai, aged about 51 years, Resident of Gram Binkara, Thana Lakhanpur, Tahsil Lakhanpur, District Surguja (C.G.)
4. Board of Revenue Chhattisgarh, Bilaspur through its President.

---- Respondents

For Petitioner –Shri Vivek Sharma, Advocate on behalf of Shri Ashish Shrivastava, Advocate.

For State/Respondent No.4 – Shri B.P. Banjare, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

08-02-2021

1. This petition under Article 227 of the Constitution of India has been brought for quashment of order dated 29-07-2008 passed by respondent No.4.
2. The case in brief, is this, that Budhara was owner of the disputed property admeasuring 21.11 acres situated in Gram Binkara, Patwari Halka No.62, Revenue Nirikshak Mandal Lakhanpur, Tahsil Ambikapur, District Surguja. Budhara had two sons Majhiyain and Prem Sai. Prem Sai is father of the private respondents (respondents No.1 to 3). Budhara made a family settlement and gave 16.93 acres of the property to Prem Sai, who thereafter started living separately. After the death of Budhara names of Majhiyain, Prem Sai and Budgi, widow of Budhara were entered in the revenue records. Majhiyain and Prem Sai were in peaceful possession of respective shares which were earlier allotted to them in family settlement. The petitioner is the son of Majhiyain who came in possession of share of Majhiyain after his death.

Respective shares were mutated in the names of Majhiyain and Prem Sai by Tahsildar, Ambikapur vide order dated 02-06-1972. The order dated 02-06-1972 of Tahsildar for mutation was challenged by the private respondents by filing a revision petition in the year 1999 which has been decided by the order dated 31-08-2000 and the revision was dismissed. Another revision was preferred before the Commissioner, Bilaspur Division which was decided by the order dated 22-05-2001 and dismissed. The private respondents then preferred another revision before the respondent No.4 which was decided by the order dated 07-11-2007 and dismissed. The private respondents then again filed a review petition which has been decided by the impugned order which was allowed. The previous orders were set aside and direction was issued to initiate proceeding for partition between the parties.

3. It is submitted that although the power of review is available to respondent No.4, but the same could have been exercised only within the parameters of Order 47 Rule 1 of the CPC. No ground was available to the respondent No.4 for making a review under Order 47 Rule 1 of the CPC. Therefore, the impugned order passed is perverse and illegal. Therefore, it is prayed that the impugned order be set aside.

4. In reply filed in this petition by the private respondents they opposed and submitted that no error has been committed by learned Board of Revenue in passing the impugned order. The impugned order has been passed in accordance with law. Hence, the impugned order is not assailable. However, no appearance was given on behalf of the private respondents on the date of hearing.

5. Considered on the submissions and perused the documents.

6. On perusal of the orders of Revenue Courts and the impugned order facts of the case appears to be this, that plot no.22 admeasuring 21.11 acre was entered in the revenue records in the name of Budhara. After his death the

names of his two sons namely Prem Sai and Majhiyain and widowed wife of Budhara - Budgi were entered in to the revenue records. Subsequent to the death of Budgi, the mutation was again done and name of only Majhiyain is found mentioned in the revenue records. At present the only name of the petitioner is recorded in the revenue records with respect to the disputed property, which has been claimed by the respondents. The petitioner had contested this claim stating that Prem Sai had received separate property in partition. This statement was again countered by the private respondents that the land in plot no.26 measuring 16.93 acres was self acquired property of Prem Sai. The Court of Addl. Collector accepted the version of the petitioner Phoolsai that the private respondents have received their share in partition by family settlement and the revision petition was dismissed. The same view was adopted by the Commissioner in passing the order dated 22-05-2001. The revision petition before the respondent No.4/Revenue Board was firstly decided on 07-11-2007 and dismissed. The review petition that was filed by the private respondents has been decided by the impugned order is subject to scrutiny in this order. The powers of reviewing that are available to the revenue Court are provided under Section 51 of the Chhattisgarh Land Revenue Code, 1959 (in short 'the Code 1959'), which is as follows:-

“51. Review of orders. – (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit :

Provided that –

- (i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor,

he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;

- (i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;
 - (ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;
 - (iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.
- (2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).
- (3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.
- (4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority.”

7. Sub-section 2 of Section 51 of the Code, 1959 clearly provides that No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure. Order 47 Rule 1 of the CPC provides that any order passed by a Court can be reviewed on the ground of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the party thereunder for review or that could not be produced by him within time before the order was passed or on the ground of some mistake or error apparent on the face of record, or for any other sufficient reason.

8. On perusal of the impugned order and minute perusal of the impugned order, it is found that there is no such ground made out by the respondents in

their review petition and neither any such ground is mentioned in the impugned order before allowing the review petition. Hence, the impugned order suffers from infirmity, which appears to be unsustainable. Therefore, the present petition is allowed and the impugned order passed by respondent No.4 is hereby quashed.

9. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge