

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-13854-2022 (O&M)
Reserved on: 01.07.2022
Pronounced on: 06.07.2022**

Satpal Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of impugned order dated 18.05.2022 passed by respondent No.3-Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt, vide which representation of the petitioners dated 10.10.2021 was rejected in pursuance to the directions given by this Court in CWP-4904-2022 vide order dated 12.05.2022.

On 30.06.2022, while issuing notice of motion, following order was passed: -

“...Learned senior counsel for the petitioners submits that disputed land, at one point of time, was owned by one Ami Singh, who died issueless and his wife Kalehri also died issueless on 19.09.1955. It is further submitted that Kalehri executed a Will in favour of her alleged adopted son Bhondu. The petitioners are sons/grandsons of Thakar Singh son of Bhondu and are owners of the land in dispute on the basis of Will dated 09.06.1917, which has been upheld by the Civil Court upto the Hon’ble Supreme Court. It is also submitted that initially, a suit was filed by the proprietary body of the village claiming a right over the property, as Kalehri died issueless and similarly, three suits were filed for redemption of the mortgage deed, which was allegedly created by Smt. Kalehri.

Learned senior counsel has referred to judgment of the Civil Court dated 14.08.1978, wherein issue No.7 with regard to Will was upheld in favour of Bhondu. He further referred to judgment of the lower appellate Court (Additional Sessions Judge, Ambala) dated 10.01.1980, wherein the findings recorded by the Civil Court with regard to aforesaid Will Ex.D3, were upheld by making the following observations: -

“...As such the principle of homogeneity was not applicable in the villages. It follows from it that the widow of Amit Singh namely Kalhari inherited full proprietary rights on the death of her husband as well as on the death of Hanso. There was absolutely no bar or responsibilities upon her to have any Will in favour of anybody she liked. In these circumstances, the Will made by Shrimati Kalhari Ex.D3, conferred all rights upon Bhondu which could acquire under Will. On his death, the rights were acquired by Thakur Singh and the present defendant-respondents have stepped into the shoes of Thakur Singh. For those reasons, I uphold the conclusion arrived at by the learned trial Court, though for different reasons.”

It is further submitted that later on, four Regular Second Appeals were filed, which were decided together by this Court vide order dated 13.09.2006 and while upholding the Will in favour of Bhondu, the appeals were dismissed. The operative part of the judgment passed in RSAs reads as under: -

“...In the absence of any other heir, the reversionary right in the estate of Ami Singh could not be claimed by anyone. Therefore, Kalahari, wife of Amit Singh, would

succeed as owner of the estate of her husband. The plaintiffs cannot claim any interest in the estate of deceased Amit Singh as he cannot be said to have died issueless and without any heir as Bhondu is the legal heir under a valid Will. Thus, as an owner, Kalahari was competent to execute the Will in favour of Bhondu. Thus, in respect of first substantial question of law, it is held that Kalahari would succeed as complete owner of the estate of her husband.

In respect of second substantial question of law, it may be seen that in Riwayat-i-am Exhibit P-5, the question which is sought to be answered is that if a person who dies without any issue and any Will (emphasis supplied), then who will succeed to his estate i.e. government or Patti or Taraf or Shamlat deh etc., or proprietors. The answer recorded is that the first right is of the proprietors of the Tholla, Patti and Shamlat deh in which the deceased has died. The proprietors of the same Gotar and the community of which the deceased reside in Tholla, Patti or Shamlat deh will succeed in the first instance. If there is anybody from the Gotar, then it goes to the community. The State has no right in the presence

of people of the Gotra and the community. In the judgment reported as Badaman and others Vs. Net Ram alias Lali and others, 57 Punjab 1914, it was found that the general rule is that in the event of a proprietor dying without heirs, his estate ordinarily escheats to Government. When the plaintiffs claim a declaratory decree of right to succeed to the property of the deceased, they are bound to show that this general rule does not apply to their case. In the present case, Riwayat-i-am mentioned above is of no assistance to the appellants as the deceased has died leaving behind his widow who is absolute owner of the property in the absence of any reversioners. Thus, in respect of second substantial question of law, it is held that the plaintiffs cannot succeed to the estate of deceased Bhondhu or Kalahari as she had died after the execution of a valid Will.

Thus, in view of my findings on substantial questions of law, I do not find any merit in the present appeal which is dismissed.”

Learned senior counsel has also submitted that later on, SLP (Civil) No.8072/2007 filed against the judgment dated 13.09.2006 was also dismissed on 16.05.2007. It is next

submitted that grievance of the petitioners is that despite the verdict given by the Civil Court, which is upheld upto the Hon'ble Supreme Court, the revenue authorities are not sanctioning the mutation, therefore, they filed CWP-4904-2022, in which the Deputy Commissioner, Ambala was directed to appear before the Coordinate Bench and on 12.05.2022, respondent No.2-Deputy Commissioner, Ambala gave an undertaking that representation of the petitioners will be decided by passing a speaking order. Accordingly, the impugned order dated 18.05.2022 has been passed by the Assistant Collector 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. rejecting representation of the petitioners.

It is further submitted that in total disgrace to judgment of the Civil Court, which is upheld upto the Hon'ble Supreme Court, Assistant Collector 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. recorded his own finding that when the mutation application was given by Thakar Singh, same was objected by certain proprietors of the village and mutations were sanctioned in favour of proprietary body i.e. Malkan Jailkardeon 10.04.1961 and 02.02.1962, therefore, once these mutations were incorporated in the revenue record, same can only be set aside in terms of Section 45 of Punjab Land Revenue

Act in a suit for declaration of right under the Specific Relief Act with regard to correction in the entry in the record.

On the face of it, the observations made in the impugned order are not only incorrect, but amount to contemptuous approach adopted by the Assistant Collector 2nd Grade-cum-Naib Tehsildar, as it is apparent from the record of civil litigation that the declaration has already been given in favour of predecessor of Bhondu that Kalehri had executed a valid Will on 09.06.1917 and he was succeeded by Thakar Singh, who is predecessor of the petitioners...”

In pursuance of the aforesaid order, Mr. Yashwant Singh, Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt is present in the Court and on his instructions, learned State counsel submits that the impugned order rejecting the claim of the petitioners for non-sanctioning of mutation is based on two reasons: -

- (a) When the mutation No.543 pertaining to Village Khuda and mutation No.735 pertaining to Village Manglai were sanctioned in the year 1967, Thakur Singh gave an application for sanctioning the mutation on the basis of Will dated 09.06.1917, but it is mentioned in those proceedings that Thakur Singh stated that he has no objection, if the mutations are entered in the name of Malkan Jailkarde. Since Bhondu died before Smt.

Kalheri, lower appellate Court/Additional Sessions Judge, Ambala held that adoption of Bhondu by Kalheri is not proved.

- (b) There is no declaratory decree in terms of Section 45 of Punjab Land Revenue Act, setting aside aforesaid two mutations dated 10.04.1961 and 02.02.1962, therefore, mutations cannot be sanctioned on the basis of judgment and decree referred to above.

Learned State counsel further submits that Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt do not want to file an affidavit to this effect, as the same is already mentioned in the impugned order.

In reply, learned senior counsel for the petitioners, in support of his arguments, has relied upon a judgment of this Court in **Sube Singh Vs. Financial Commissioner, Revenue, Haryana, 2001 (4) RCR (Civil) 766**, to submit that it has been held by the Division Bench that the approach adopted by the revenue authorities ignoring the decree of Civil Court, merely because a subsequent suit is pending, is erroneous, as the revenue authorities have to sanction the mutation on the basis of Civil Court decree.

Learned senior counsel has further relied upon another judgment of Division Bench of this Court in **Bachan Singh and others Vs. Financial Commissioner, Appeal (I), Punjab and others, 2008 (3) RCR (Civil) 887**, wherein a similar view has been taken that the order passed by the Civil Court is binding on the revenue authorities and there is no requirement of a

formal direction for incorporating the verdict of the Civil Court in the revenue record by sanctioning the mutation.

Learned senior counsel has also relied upon judgment in **Baljit Singh Vs. Financial Commissioner, Animal Husbandry, Punjab, Chandigarh and others, 2012 (2) RCR (Civil) 384**, wherein this Court has held that where under Section 34 of Punjab Land Revenue Act, mutation of inheritance is sanctioned ignoring the Civil Court decree, a revenue officer has no jurisdiction to disregard the judgment and decree passed by the Civil Court.

Learned senior counsel has next relied upon judgment in **Rajesh Kumar Vs. Financial Commissioner and others, 2009 (11) RCR (Civil) 316**, wherein this Court held that the mutations according to decree of the Court are to be given effect, even if an appeal is pending against the decree and the revenue authorities are not bound to wait for order of the Court.

It is argued that in this case, both the proprietary body as well as private individuals, who were contesting against the petitioners, lost their cases upto the Hon'ble Supreme Court, therefore, on all counts, Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt has erroneously ignored the Civil Court decree, as upheld upto the Hon'ble Supreme Court. It is further submitted that the ground taken by Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt is that earlier mutations sanctioned in the year 1961-62 were already put up as defence before the Civil Court and once

the Will dated 09.06.1917 in favour of Bhondu was upheld, those two mutations No.543 and 735 lose their sanctity. It is also argued that during the aforesaid mutation proceedings, it is recorded that Thakur Singh made some concession, also stands tested by the Civil Court and this ground was never upheld by the Civil Court.

The next ground taken by Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt that no specific suit for declaration under Section 45 of Punjab Land Revenue Act has been filed challenging the mutations and for setting aside the same, is totally illogical and illegal, as once the decree has been passed, in which predecessor of the petitioners Bhondu was held to be owner of the land by way of Will dated 09.06.1917, it amounts to declaration regarding their title over the land in dispute.

After hearing learned counsel for the parties, I find merit in the present writ petition. None of the reasons given in the impugned order dated 18.05.2022 passed by Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt are sustainable in the eyes of law, in view of the observations made above.

Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt has daringly ignored the judgment of the Civil Court, holding the Will dated 09.06.1917 to be a valid Will in favour of predecessor of the petitioners and this finding is upheld upto the Hon'ble Supreme Court. Therefore, it is duty of revenue officials to incorporate the decree in the

revenue record in letter and spirit and the impugned order dismissing the application for entering the mutations, cannot be upheld in any manner. Though this Court finds that the impugned order has been passed to violate the mandate of the decree, however, instead of initiating contempt proceedings, one opportunity is granted to Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt to pass a fresh order, strictly in compliance of the decree dated 14.08.1978, as upheld upto the Hon’ble Supreme Court of India.

Accordingly, this petition is allowed and the impugned order dated 18.05.2022 is set aside and Naib Tehsildar-cum-Assistant Collector 2nd Grade, Ambala Cantt is directed to sanction the mutations in terms of the Civil Court decree dated 14.08.1978 in letter and spirit, within a period of 15 days from the date of receipt of certified copy of this order.

[ARVIND SINGH SANGWAN]
JUDGE

06.07.2022
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No