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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3934-2023
Date of decision : 27.02.2023

Santosh

...Petitioner

Versus

The Financial Commissioner-cum-Secretary to Government, Department of Revenue and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vimal Kumar Gupta, Advocate for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana
for respondent Nos.1 to 3.

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VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 18.10.2021 (Annexure P-9) passed by respondent No.1.

The brief facts of the present case are that Kamla Devi i.e., mother of Raj Kumar (deceased husband of the present petitioner) and of respondent No.4-Sushma had died on 28.04.2016. Respondent No.4-Sushma, on the basis of registered Will dated 13.12.2012 executed in her favour by her mother, had got mutation No.12630 entered in her favour. The present petitioner had objected to the said mutation and thus, the same being contested, was referred to the Assistant Collector, Ist Grade, Pataudi. The Assistant Collector, Ist Grade, vide its order dated 26.08.2016, had sanctioned mutation No.12630 in favour of respondent No.4-Sushma being the beneficiary of registered Will No.230 dated 13.12.2012. In the said order, it was observed by the Assistant Collector, Ist Grade that the Revenue Officer is required to enter the mutation on the basis of registered documents and not go into the intricate question of law which is to be decided by the Civil Court. The husband of the petitioner namely Raj Kumar had filed an appeal against the said order and the Commissioner, vide its order dated 18.01.2018 (Annexure P-6) had allowed the said appeal. It was observed by the Commissioner that from a perusal of the registered Will in question, it was not clear as to why the testator had deprived the husband of the petitioner of the property and had thus, found the said registered Will to be doubtful. Thereafter, respondent No.4 had filed revision petition before the Financial Commissioner, Haryana, Chandigarh which was allowed by the Financial Commissioner vide its order dated 18.10.2021 (Annexure P-9). The Financial Commissioner, had observed that a civil suit had been filed by the husband of the petitioner for declaration and an application under Order 39 Rules 1 and 2 read with Section 151 of CPC was moved in the said suit by the husband of the petitioner and the same was dismissed and the appeal filed against the same was withdrawn vide order dated 27.08.2018 and thereafter, even the main suit was also withdrawn. The Financial Commissioner had also considered the fact that while dismissing the said application filed under Order 39 Rules 1 and 2 CPC, the Civil Court had observed that there was no prima facie case made out in favour of husband of the petitioner. It was also observed that in the registered Will, it had been specifically mentioned that the Executant was happy with the services of respondent No.4-Sushma, who was her daughter, with whom she was living and had specifically excluded the husband of the present petitioner from the said registered Will. On the basis of the said aspect and other aspects, the order passed by the Commissioner was set aside and the order passed by the Assistant Collector, Ist Grade was upheld and thus, the mutation entered in favour of respondent No.4-Sushma, on the basis of the said registered Will, was upheld. Aggrieved by the order of the Financial Commissioner, the present writ petition has been filed by the petitioner.

Learned counsel for the petitioner has submitted that the Commissioner, while allowing the appeal filed by the husband of the petitioner had rightly observed that a perusal of the copy of the Will, would show that nothing had been mentioned therein to explain as to why the testator was depriving the husband of the petitioner of the property and had further rightly observed that in case, the Will appears to be doubtful, the Revenue Officer is not bound to accept the registered Will. It is further submitted that the said order is legal and in accordance with law and the order of the Financial Commissioner, setting aside the same, is illegal and deserves to be set aside.

This Court has heard learned counsel for the petitioner and has perused the paper book.

The Division Bench of this Court in the case titled as ***Jagjit Singh Vs. Divisional Commissioner, Patiala and others*** reported as ***2012***

(13) RCR (Civil) 96, had held as under:-

> *"The present writ petition has been placed before us on a reference made by learned Single Judge of this Court on 14.03.2012 referring the following question for the opinion of this Bench:*
>
> > *"Whether the mutation of inheritance can be kept in abeyance specifically when the mutation does not confer any title and is entered only with a view to update the revenue record?*
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> *Xxx xxx*
>
> *xxx xxx*
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> *21. xxx xxx. A revenue officer discharges administrative functions when he up dates the revenue record by sanction of the mutation as such revenue officer is only a book-keeper or a chronicler of events taking place from day-to-day.*
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> *22. As held in Sham Kaur's case (supra), it is open to a party to carry disputes straightway to the Civil Court for final determination instead of "waste his time before the revenue set-up". Still further, it has been held that the Revenue Officer is supposed to make only a summary inquiry, which only satisfies him as to the entry that he would make in the record-of-rights in accordance with the provisions of Section 37 of the Act. Any direction of a Revenue Officer in terms of sub-section (3) of Section 36 of the Act is subject to any decree or order, which may be subsequently passed by any Court of competent jurisdiction. Such summary inquiry does not have any trappings of the judicial proceedings and cannot be called quasi judicial proceedings.*
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> *23. The fact that the power of the Revenue Officer while sanctioning mutation is an administrative function gets support from the fact that Chapter IX of the Act dealing with the partition of the land empowers a Revenue Officer to determine the question of title as though he was such a 'Court'. If the*

Revenue Officer acts as a 'Court' under the provisions of Punjab Tenancy Act, 1887, such Revenue Officer discharges quasi judicial functions, but if he acts as a 'Court' under clause (b) of Section 117(2) of the Act, the Revenue Officer would be acting as a 'Civil Court'. Therefore, the same Act in respect of partition empowers the Revenue Officer to act as a 'Court', but on the other hand, the exercise of powers by a Revenue Officer in respect of determination of disputes under Section 36 of the Act, is only an administrative function. In view of the Division Bench Judgment of this court in Sham Kaur's case (supra), with which we are not only bound but are in respectful agreement with, we hold that the revenue officer while sanctioning mutation is discharging purely administrative functions and not that of a quasi judicial authority possessing some of the trappings of a court.

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27. xxx xxx. Since the proceedings are summary in nature and in exercise of administrative functions, therefore, such proceedings do not create or extinguish any right or title in the land. The right or title in the property is to be decided by the Civil Court. Therefore, this Court in exercise of writ jurisdiction does not interfere with the orders sanctioning mutation, as such process does not involve any adjudicatory process of resolution of disputes amongst the parties and that any decision arrived at in the mutation proceedings does not determine the rights or interest of the parties.

28. With the said observations, the question of law is answered that the mutation proceedings cannot be kept in abeyance during the pendency of the dispute before the Civil Court. The revenue officers are duty bound in terms of the statute to enter mutations in exercise of their administrative functions.

> *29. With the question of law answered, the writ petition be listed before the Single Bench for further proceedings."*

A perusal of the abovesaid judgment would show that it has been specifically observed by the Division Bench of this Court that since, the mutation proceedings are summary in nature and are in exercise of administrative functions, therefore, such proceedings do not create or extinguish any right or title in the land and the right or title in the property is to be decided by the Civil Court. Thus, in exercise of writ jurisdiction, the High Court does not interfere with the orders sanctioning mutation, since, the process does not involve any adjudicatory process of resolution of disputes amongst the parties and any decision arrived at in the mutation proceedings does not determine the rights or interest of the parties. It is further observed therein that a Revenue Officer discharges administrative functions when he updates the revenue record by sanction of the mutation and as such, is only a book-keeper or a chronicler of events taking place from day-to-day and the Revenue Officer is supposed to make only a summary inquiry for the purpose of satisfying himself as to the entry he would make in the revenue record. The question of law referred to the said Division Bench as to "*whether the mutation of inheritance can be kept in abeyance specifically when the mutation does not confer any title and is entered only with a view to update the revenue record*?" was answered with the observation that "*the mutation proceedings cannot be kept in abeyance during the pendency of the dispute before the Civil Court. The revenue officers are duty bound in terms of the statute to enter mutations in exercise of their administrative functions.*"

A Single Bench of this Court in case titled as ***Gurdish Singh and another Vs. Financial Commissioner, Revenue, Punjab and others*** reported as ***2009(30) RCR (Civil) 176***, had held as under:-

> *"xxx xxx*
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> *2. xxx xxx. After the death of Gurnam Singh, respondents No.5 to 7 applied for sanction of mutation of property in their favour on the basis of Will dated 9.4.1997 (Annexure-P.1). According to the petitioners the said Will was never executed by Gurnam Singh and the Patwari Halqa wrongly entered mutations No.2836 and 2837 with respect to the estate of Gurnam Singh on the basis of the said Will dated 9.4.1997 (Annexure-P.1). The petitioners raised objections against the entering of mutations on the basis of the Will (Annexure-P.1) and the mutations were declared contested. These were sent by the Assistant Collector 2nd Grade, Raikot to the Assistant Collector Ist Grade, Raikot (respondent No.4) for decision. The Assistant Collector Ist Grade Raikot (respondent No.4) vide order dated 30.11.1998 (Annexure-P.2) held that the Will propounded by respondents No.5 to 7 was surrounded with suspicious circumstances. Accordingly, the mutation of the estate of Gurnam Singh was sanctioned on the basis of natural inheritance in favour of the petitioners and respondents No.5 to 7 as also Rajinder Kaur (since deceased) in equal shares. Respondents No.5 to 7 aggrieved against the said order of the Assistant Collector Ist Grade, Raikot (respondent No.4) filed an appeal before the Collector, Ludhiana (respondent No.2) who vide order dated 28.5.1999 (Annexure-P.3) accepted the same and ordered that the mutations No.2836 and 2837 be sanctioned as per registered Will dated 9.4.1997 (Annexure-P.1). The petitioners aggrieved against the said order of the District Collector (respondent No.2) filed a revision petition before the Divisional Commissioner, Patiala Division, Patiala*

(respondent No.3) who vide order dated 30.9.2002 (Annexure-P.4) dismissed the same. Thereafter, the petitioners filed a revision petition before the Financial Commissioner, Punjab (respondent No.1) who also vide order dated 26.9.2007 (Annexure-P.5) dismissed the same. Aggrieved against the same the petitioners have filed the present petition.

3. Learned counsel for the petitioners has submitted that the Will (Annexure-P.1) propounded by respondents No.5 to 7 is surrounded with suspicious circumstances as their mother Smt. Rajinder Kaur had fabricated the same. It is submitted that the petitioners have filed a civil suit challenging the validity of the Will dated 9.4.1997 (Annexure-P.1) and the mutation proceedings are liable to be kept in abeyance till the disposal of the said suit.

4. In response, learned counsel appearing for respondents No.5 to 7 has contended that a writ petition is not maintainable and the person aggrieved against the entry in the revenue record may approach the civil Court in terms of Section 45 of the Punjab Land Revenue Act, 1887 (`Act' – for short).

5. I have given my thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the records. The dispute in the present case relates to the estate of Gurnam Singh who died on 14.1.1998. He had two wives, namely, Gulwant Kaur who died in the year 1965. Gurnam Singh from his fist wife Gulwant Kaur had two children, namely, Gurdish Singh (petitioner No.1) and Simerpal Kaur (petitioner No.2). Second wife of Gurnam Singh was Rajinder Kaur and she had died during the pendency of the litigation before the Courts below. From Rajinder Kaur, Gurnam Singh had Balaur Singh (respondent No.5), Sukhbir Singh (respondent No.6) and Kamaljit Kaur (respondent No.7). Respondents No.5 to 7 have propounded a Will dated 9.4.1997 (Annexure-P.1) stated to have been *executed by Gurnam Singh during his life time. The said Will has been challenged by the petitioners. The petitioners claim succession to estate of Gurnam Singh by natural succession whereas respondents No.5 to 7 claim the same on the basis of the Will dated 9.4.1997 (Annexure-P.1). It is not in dispute that the said Will is subject matter of consideration before the civil Court. The civil Court in fact is the proper forum for adjudication as regards the validity of the Will. This Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India is not to embark upon an inquiry and determine whether the Will (Annexure-P.1) is genuine or otherwise. The Will is to be proved in accordance with the provisions of Section 63 of the Indian Succession Act, 1925. A will is to be proved by examining the marginal witnesses, the scribe and the propounder etc. as the case may be. This exercise is not to be carried out by this Court in exercise of its supervisory writ jurisdiction. The recording of witnesses and their cross-examination is to be conducted by the civil Court. Section 45 of the Act envisages that if any person considers himself aggrieved as to any right of which he is in possession by any entry in record of rights or any annual record he may institute a suit for declaration of his right under Chapter-VI of the Specific Relief Act, 1877 (now Specific Relief Act,1963). Xxx xxx*

Xxx xxx

6. xxxx xxx. Therefore, no interference of this Court is called for in exercise of its extra-ordinary jurisdiction and mutation entries in the revenue record are to be done in accordance with the adjudication of the civil Court.

7. The question as to whether the mutation is liable to be kept in abeyance till the decision of the civil Court is also not tenable. Mutation proceedings are not liable to be stayed as land as entered is also subject to land revenue. The Revenue

> *Officer is to conduct mutation proceedings on the facts available before him and not wait for the decision of the civil Court. As and when a declaration is given against a particular mutation or the rights of the parties are otherwise determined in respect of the lands or properties, which are subject matter of litigation the findings and conclusions reached at by the civil Court are to be given effect to and implemented in the revenue records. In case a person is aggrieved against an entry in the revenue record and apprehends infringement of his rights on the basis of an entry of mutation in the revenue records, he has to seek his remedy in a civil Court and enforce his right by way of an application seeking ad interim injunction or stay.*
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> *8. Accordingly, there is no merit in this petition and the same is dismissed. It is, however, made clear that nothing observed herein shall be construed as an expression of opinion on the merits of the case and the civil Court before whom the case is pending shall decide the case independently and in accordance with law on the basis of pleadings, documents and evidence as adduced before it and uninfluenced by this order."*

A perusal of the above judgment would show that in the said case, mutations were sanctioned in favour of respondent Nos.5 to 7 therein, on the basis of a registered Will and, thereafter, the same were declared to be contested on the objections raised by the other party (petitioners therein) and the Assistant Collector, Ist Grade had held that the Will propounded in the said case was surrounded by suspicious circumstances and had accordingly, sanctioned the mutation on the basis of natural inheritance in favour of the petitioners therein, however, on further appeal, the said order was set aside and it was ordered that the mutations be sanctioned on the basis of registered Will, which order was upheld upto the Court of the

Financial Commissioner. When the matter came up before the High Court, at the instance of the persons who were claiming that the registered Will was suspicious, the Coordinate Bench of this Court had dismissed the said writ petition by observing that the question as to whether the Will is genuine or not, is not to be determined by the High Court in exercise of its supervisory writ jurisdiction inasmuch as, the recording of witnesses and their cross-examination is to be conducted by the Civil Court and Section 45 of the Punjab Land Revenue Act (which is para materia Section 45 of the Haryana Land Revenue Act, 1887) envisages that if any person considers himself aggrieved as to any right of which he is in possession by any entry in record of rights or any annual record, then he may institute a suit for declaration of his right under Chapter-VI of the Specific Relief Act, 1877.

In the present case also, the mutation has been sanctioned in favour of respondent No.4, on the basis of a registered Will and same has been done in pursuance of the Administrative functions to be performed by the Revenue Officials and thus, the order of the Assistant Collector, Ist Grade, sanctioning the mutation on the basis of registered Will and also the order passed by the Financial Commissioner upholding the order passed by the Assistant Collector, Ist Grade, thereby sanctioning the mutation on the basis of registered Will, cannot be stated to be illegal or against law so as to call for interference by this Court in exercise of its writ jurisdiction. It would also be relevant to note that in the said circumstances, the appropriate remedy for the present petitioner/widow of Raj Kumar was to file a civil suit for declaration, challenging the registered Will. In the present case, it is apparent from the impugned orders, and has gone undisputed before this

Court that the civil suit for declaration was filed by the husband of the petitioner with respect to the estate in question and in the said suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was also filed and consequential relief of permanent injunction was also sought and the same was dismissed by the Civil Judge, Pataudi on 21.10.2016 and the appeal filed therefrom was withdrawn by the husband of the petitioner vide order dated 27.08.2018. Even, the main suit for declaration had been withdrawn vide order dated 06.03.2019. The said facts are also apparent from a bare reading of the order of the Financial Commissioner dated 18.10.2021. The husband of the petitioner, through whom the present petitioner is claiming relief, had thus, availed his remedy before the Civil Court and had not succeeded before the Civil Court.

The argument of learned counsel for the petitioner to the effect that the order of the Commissioner observing that from the registered Will, it is not clear as to why the testator had deprived the husband of the petitioner i.e. Raj Kumar of the property and thus, on the basis of the said reasoning, the order passed by the Financial Commissioner and the Assistant Collector, Ist Grade, should be set aside, is completely misconceived and deserves to be rejected on the following grounds:-

1. A perusal of the Will, which has been annexed by the petitioner as Annexure P-1 in the present Civil Writ Petition, would show that it has been specifically mentioned in the said registered Will by the Testator, Kamla Devi (owner of the property in question) that she is disowning her son i.e. husband of the present petitioner from all her property and has further specifically stated that he has no right in the

said property and that it is her daughter i.e., respondent No.4-Sushma who is serving her and who is also giving her medicines when she needs the same and that she is happy with the services rendered by her daughter and that she is executing the said registered Will in favour of her daughter, out of her own free will. Thus, the observations made by the Commissioner are perverse.

2. It is a matter of settled law that mutation has to be carried out on the basis of a registered document/registered Will and any person challenging such registered document/registered Will, is required to institute a civil suit as it is the Civil Court, which after considering the entire evidence and material on record and also the evidence produced by both the witnesses, can opine on the genuineness/legality of the registered document/registered Will.

3. In view of the judgments passed by the Division Bench of this Court in ***Jagjit Singh's*** case (Supra) as well as ***Gurdish Singh and another's*** case (Supra), it is apparent that the function performed by the revenue authorities pertaining to entering/sanctioning of mutations is only an administrative function and does not create or extinguish any right or title in the land and the right or title in the property is to be decided by the Civil Court and the said process does not involve any adjudicatory process of resolution of disputes amongst the parties and thus, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, is not to interfere in such matters.

4. The civil suit filed for declaration by the predecessor-in-interest of the

petitioner (her husband) has been withdrawn vide order dated 06.03.2012 and thus, no relief has been granted by the Civil Court to the predecessor-in-interest of the petitioner.

Accordingly, finding no merits in the present Civil Writ Petition, the same is dismissed.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

27.02.2023 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**