IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(103)

CWP-21554-2021
Date of decision: - 15.03.2023

Jagjit Singh (since deceased) through LR Mandeep Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Himanshu Puri, Advocate
for Mr. Sherry K. Singla, Advocate, for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab
for respondents No.1 to 4.

****

VIKAS BAHL, J. (ORAL)

Present writ petition has been filed under Articles 226/227 of Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 06.01.2016 (Annexure P-5) passed by respondent No.1; order dated 20.02.2014 (Annexure P-4) passed by respondent No.2 in review application under Section 15 of the Punjab Land Revenue Act 1881; order dated 20.06.2011 (Annexure P-3) passed by respondent No.2; order dated 28.06.2010 (Annexure P-2) passed by respondent No.3; and order dated 10.03.2009 (Annexure P-1) passed by respondent No.4.

2. Brief facts of the present case are that Ishar Singh son of Nihal Singh died on 24.10.1989, leaving behind his widow Surjit Kaur, predecessor interest of respondent Nos.7 and 8 as his only natural heir.

The said Ishar Singh had died issueless. The present petitioner was claiming the estate of Ishar Singh on the basis of an unregistered Will dated 19.11.1988 in his favour and respondents No.5 and 6 i.e., Harbhajan Singh and Bant Singh were claiming the estate of Ishar Singh on the basis of a registered Will dated 24.10.1989. The said Surjit Kaur, who was the wife of the deceased, was claiming inheritance on the basis of natural succession. After the matter was remanded on two occasions, the Assistant Collector 1st Grade, Ludhiana, vide order dated 10.03.2009 (Annexure P-1) sanctioned the mutation of the estate of deceased Ishar Singh on the basis of natural succession in favour of Surjit Kaur, widow of Ishar Singh. The Assistant Collector 1st Grade, Ludhiana had taken note of the fact that the present petitioner had filed a declaratory suit before the Civil Court showing his claim on the basis of an unregistered Will dated 19.11.1998 and the said suit was withdrawn on 14.02.1996 and thus, the matter was not persued by the petitioner with respect to the unregistered Will before the Civil Court. Aggrieved against the order passed by the Assistant Collector 1st Grade Ludhiana, the present petitioner filed an appeal before the Commissioner, Patiala Division, Patiala and the said appeal was dismissed, vide order dated 20.06.2011 (Annexure P-3). It is relevant to note that respondents No.5 and 6 did not further challenge the order passed by the Assistant Collector 1st Grade, Ludhiana, sanctioning the mutation in favour of Surjit Kaur on the basis of natural succession. The Divisional Commissioner, Patiala Division, Patiala, in his order dated 20.06.2011 had observed that the civil suit filed by the petitioner on the basis of the unregistered Will had been withdrawn and once the same has been done, he is estopped from claiming the right on the basis of the said unregistered Will. It was also observed that the unregistered Will dated 19.11.1988 seemed to be a forged and fabricated document as the same had not been proved on record as per law and there were several discrepancies in the statement of the witnesses of the said suit. It was also observed that a perusal of the Will would show that the same was anti-dated. The petitioner filed a review before the Divisional Commissioner, Patiala Division, Patiala and the said review application was also dismissed vide order dated 20.02.2014 (Annexure P-4). In the said order, it was observed that the mutation of inheritance of Ishar Singh had been rightly sanctioned on the basis of natural succession in favour of his wife and there was no illegality in the same. The petitioner still being dissatisfied, had filed a revision petition before the Financial Commissioner, Punjab, which was also dismissed vide order dated 06.01.2016 (Annexure P-5) and thereafter, has filed the present writ petition challenging the orders of the Assistant Collector 1st Grade, Ludhiana; Collector, Ludhiana; Divisional Commissioner, Patiala Division, Patiala; and the Financial Commissioner, Punjab. The present writ petition has been filed in the year 2021 i.e., after a delay of more than five year from the date of passing of the order of the Financial Commissioner, Punjab, dated 06.01.2016 (Annexure P-5).

3. Learned counsel for the petitioner has submitted that deceased Ishar Singh had left an unregistered Will dated 19.11.1988 in his favour and the authorities should have entered the mutation in favour

of the present petitioner on the basis of the said unregistered Will. It is further stated that the impugned orders passed by the authorities are illegal and against law and deserve to be set aside and the present writ petition deserves to be allowed.

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

5. 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?*
>
> *Xxx xxx*
>
> *xxx xxx*
>
> *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.*
>
> *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.

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

24. 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.

Xxx xxx

xxx xxx

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. Further a perusal of the above-said judgment of the Division Bench would show that, it was observed in para 22 that in "***The State of Punjab v. Sham Kaur etc.",*** ***reported as (1973) 1 ILR (Punjab) 650,*** it has been held that, 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" and that 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.

6. 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*
>
> *5. xxx xxx 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."*

A perusal of the above judgment would show that it has been observed that a civil Court is the proper forum for adjudication as regards the validity of a Will is concerned and that a Writ Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India in proceeding emanating from mutation proceedings is not to embark upon an inquiry and determine whether a Will is genuine or otherwise and the recording of witnesses and their cross-examination is to be conducted by the civil Court and the mutation entries in the revenue record are to be done in accordance with the adjudication of the civil Court.

7. In the present case, it is not in dispute that Ishar Singh son of Nihal Singh had died issueless on 24.10.1989 and was survived by his widow Surjit Kaur. The present petitioner was claiming his right on the basis of an unregistered Will dated 19.11.1988 and the petitioner had filed a civil suit claiming his right in the estate of said Ishar Singh on the basis of the said unregistered Will and the said civil suit had been withdrawn. The Divisional Commissioner in his order dated 20.02.2014 (Annexure P-4) had observed that in view of the withdrawal of the civil suit, the petitioner is estopped from claiming the right on the basis of said alleged unregistered Will. The Assistant Collector 1st Grade, Ludhiana had sanctioned the mutation of the deceased Ishar Singh in favour of Surjit Kaur on the basis of natural inheritance as said Surjit Kaur was the widow of Ishar Singh. The said order has been upheld by the Collector, Ludhiana vide order dated 28.06.2010 (Annexure P-2) and also by the Divisional Commissioner, Patiala Division, Patiala, vide order dated 20.06.2011 (Annexure P-3). The review application filed by the petitioner was dismissed by the Divisional Commissioner, Patiala Division, Patiala vide

order dated 20.02.2014 (Annexure P-4) and further the revision petition filed by the petitioner was dismissed by the Financial Commissioner, Punjab, vide order dated 06.01.2016 (Annexure P-5). All the revenue authorities have rightly come to the conclusion that the mutation was to be sanctioned on the basis of natural inheritance and it was for the petitioner to establish his claim on the basis of the alleged unregistered Will before the Civil Court and once, the petitioner had filed the said civil suit and had withdrawn the same, then, the petitioner, who was not admittedly a natural heir of the said Ishar Singh, was estopped from raising any claim on the basis of the unregistered Will before the revenue authorities. The finding of the revenue authorities in the impugned orders is legal and in accordance with law and accordingly, do not call for any interference by this Court.

8. Moreover, the present petitioner has chosen to approach this Court in the year 2021 i.e., after a delay of more than five years from the passing of the order dated 06.01.2016, vide which the revision petition filed by the petitioner was dismissed by the Financial Commissioner, Punjab. Thus, on both the aspects, i.e., of delay and latches as well as on merits, the present petition deserves to be dismissed.

9. Accordingly, the present petition is dismissed and the impugned orders are upheld.

(VIKAS BAHL)
JUDGE

March 15, 2023
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes