

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

(223)

LPA-1500-2016

Decided on: 07.02.2023

Darshan Singh and others

....Appellant(s)

Versus

State of Punjab and others

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Rahul Sharma, Advocate for the appellants.

Ms. Deepali Puri, Addl.AG, Punjab.

Mr. P.S. Chahal, Advocate for

Mr. G.S. Nagra, Advocate for respondent Nos.11 & 12.

G.S. Sandhawalia, J. (Oral)

Challenge in the present Letters Patent Appeal is to the order of the learned Single Judge, whereby CWP No.14724 of 2016 was dismissed on 21.07.2016 leaving the writ petitioners to seek their remedy by way of execution before the Executing Court on account of the fact that the claim was based on a Civil Court decree dated 18.07.1984 (Annexure P-1), which is stated to have attained finality upto the Apex Court.

2. Counsel for the appellant has contended that the appellants herein were defendants before the Civil Court and, therefore, the relegation to the said forum would stand in their way and execution application could not be filed. It is submitted that since the prayer as such was for sanctioning of the mutation in favour of the writ petitioners being

co-owner of the land in question, the claim had been made.

3. Counsel for respondent Nos.11 & 12 has argued that similarly situated persons had also filed an application before the revenue authorities while placing reliance upon Annexure P-5, wherein a reply has been filed by the second party namely Jagir Singh in an application filed by one Sakattar Singh, the first party. Therein also implementation of the said judgment dated 18.07.1984 was prayed for as per the shares of the shareholders mentioned in the decree. It is further pointed out that on the said application an order was also passed on 22.12.2015 (Annexure P-6) by the Assistant Collector.

4. The claim of the writ petitioners as such was misconceived in the writ petition that legal notice dated 29.02.2016 (Annexure P-9) should be decided, which has led to the case arriving at the present stalemate. It was always open to the writ petitioners to approach the revenue authorities for the relief claimed under Section 36 of the Punjab Land Revenue Act, 1887 (for short '1887 Act'), which reads as under:-

“36. Determination of disputes: -(1) If during the making, revision or preparation of any record or in the course of any inquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue-officer may, of his own motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.

(2) If any such dispute the Revenue-officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that person be put in possession thereof, and that an entry in accordance with that order be made in the record or register.

(3) A direction of a Revenue-officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.”

5. Thus, there was an alternative and efficacious remedy available which the counsel for the respondents does not deny and does not oppose also. In such circumstances, the relegation as such to the Executing Court is not justified in the facts and circumstances, rather the writ petitioners should have been relegated to the statutory remedy which is available under the 1887 Act.

6. During the period the proceedings have been pending, a large number of persons have also expired and legal heirs are not brought on record. In such circumstances, it would be appropriate if an application is filed before the concerned revenue authority for the said benefit, so that it can issue notice to all the concerned for which the relief can be claimed.

7. Resultantly, the present appeal is partly allowed by dismissing the writ petition as it was not maintainable, in view of the above facts and circumstances and by holding that it will be open to the appellants as such to approach the revenue authorities for consideration of their claims. The order of the learned Single Judge dated 21.07.2016, accordingly, shall not stand in their way. The appeal is partly allowed to that extent.

(G.S. SANDHAWALIA)
JUDGE

(RITU TAGORE)
JUDGE

07.02.2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No