

116. 2023:PHHC:157761
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7406-2023
Date of decision: 08.12.2023

Shamsher and others ... Petitioners

Versus

Sadhu Ram and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. R.S. Budhwar, Advocate, for the petitioners.

GURBIR SINGH, J.

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 15.07.2023 (Annexure P-7) passed by learned Additional District Judge, Jind vide which the appeal filed the petitioners-plaintiffs against the order dated 09.09.2021 (Annexure P-5) passed by learned Civil Judge (Junior Division), Narwana has been dismissed.

2. The brief facts, as culled out from the petition, are that the petitioners-plaintiffs (hereinafter called, “plaintiffs”) filed a suit for declaration and permanent injunction against respondent No.1-defendant (hereinafter called, “defendant”) to the effect that (i) order dated 27.05.2014 sanctioning Naksha Be; (ii) Naksha Be dated 22.04.2014; (iii) Naksha Zim dated 27.06.2014; (iv) order dated 03.07.2014 issuing Sanad Taksim; (v) Sanad Taksim dated 03.07.2014 passed by Assistant Collector IInd Grade, Narwana (Tehsildar, Narwana) in partition case No.3 titled as “*Sadhu Ram*

Versus Ram Kishan etc.” decided on 03.07.2014; (vi) Kabza Karwahi dated 25.04.2015; (vii) mutation No.6648 and subsequent revenue record on the basis of said partition orders are illegal, null and void and are liable to be set aside. It was averred that Shankar was the son of Ram Saran and Ramji Lal was the son of Ram Rikh and they were members of same family. Dalipa, Ram Kishan, Ram Sarup and Sadhu Ram were the sons of Shankar. Sadhu Ram was taken in adoption by Ramji Lal and thereafter, Sadhu Ram left all his rights towards the family of Shankar. Smt. Bhagwani was the widow of Shankar and after her death, her share was to be inherited by her three sons, namely, Dalipa, Ram Kishan, Ram Sarup, but inadvertently, her share was also got mutated in favour of Sadhu Ram-defendant. Thereafter, a family settlement was entered into between them in the year 2001 and vide release deed No.370, dated 28.06.2001, Sadhu Ram got transferred ownership of 51 kanals of land in favour of his three brothers. Since there was a dispute with respect to said release deed, both the parties i.e. Sadhu Ram and his three brothers filed suits against each other, which were decreed and appeals were also filed. As per oral family settlement, all the four brothers i.e. Sadhu Ram, Dalipa, Ram Kishan and Ram Sarup received equal share of land measuring 110 kanals 6 marlas each and so Sadhu Ram got transferred 51 kanals of land in favour of his three brothers i.e. Dalipa, Ram Kishan and Ram Sarup. After the death of Ram Sarup, his share was inherited by his four sons and daughters. Lateron, daughters got mutated their respective shares in favour of all four sons of Ram Sarup. Since, Pirthi did not participate in the suit, he was arrayed as proforma respondent. As per jamabandi for the year 2011-12, LRs of Ram Sarup i.e the plaintiffs herein, were shown as owners of 107

kanals 13 marlas of land but defendant-Sadhu Ram got mutated some share out of said land in his name vide mutation No.6648. Defendant-Sadhu Ram without informing the plaintiffs in collusion with revenue officials filed an application for partition of agricultural land comprised in khewat/khata No.796/1009 total measuring 107 kanals 13 marlas. As per jamabandi for the year 2012-13, Ramrati etc. (LRs of Ram Sarup) have been shown owners of 107 kanals 13 marlas of land separately in khewat No.796, khata No.1009 whereas Sadhu Ram was shown owner of 110 kanals 6 marlas of land in khewat No.795//758, khata No.1008.

3. The defendant contested the suit pleading that after his adoption by Ramji Lal, he severed all his relations with his biological family and remained with the adopted parents. He acquired 28 acres of land from his adoptive father Ramji Lal. After the death of his biological mother, $\frac{1}{4}$ share i.e. 14 kanals of land was mutated in his name. But when he came to know about this mutation, he transferred said land amongst his three brothers vide release deed, but his brothers fraudulently got transferred 51 kanals from his share instead of 14 kanals. When the defendant came to know about this fraud, he challenged the release deed vide Civil Suit No.193 of 24.05.2002 and his brothers also filed Civil Suit No.59 of 07.03.2005 and vide judgment and decree dated 27.08.2007, the suit filed by the defendant was decreed in his favour and it was held that defendant had received 14 kanals of land vide mutation No.4980, dated 31.02.1995 and the plaintiffs fraudulently got transferred 37 kanals excess land. Appeal was also preferred by the plaintiffs, but it was dismissed. The defendant moved three applications before the Assistant Collector IInd Grade, Uchana, and vide Sanad Taksim dated

07.07.2014, land was partitioned and kabza karwahi dated 25.04.2015 was carried out at the spot in accordance with Sanad Taksim in the presence of plaintiff No.1 and other interested persons. At that time, the plaintiff never raised any objection and hence, they have no right to challenge the partition proceedings and mutation No.6648.

4. Learned counsel for the petitioners-plaintiffs contends that the impugned partition orders and subsequent revenue entries made on that basis, are illegal, null and void and liable to be set aside. Before passing partition orders, no summons or munadi was effected upon them. The defendant did not seek execution of judgment and decree dated 27.08.2007. The defendant got conducted partition proceedings in connivance with concerned department officials. Earlier the predecessors-in-interest of plaintiffs were in possession of land in dispute and now they are in possession and defendant was never handed over the possession and the alleged kabza karwahi was only a paper transaction. It is further submitted that they came to know about the partition proceedings only on 18.09.2020 when respondent No.1-defendant shown them the documents and thereafter, they filed suit.

5. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

6. The petitioners-plaintiffs have challenged the mutation No.6648 and also contended that the partition proceedings were conducted in their absence. Whereas said mutation was sanctioned on the basis of judgment and decree dated 27.08.2007, which was though challenged in appeal by them, but it was dismissed and hence, said judgment and decree attained finality.

The plaintiffs did not produce any evidence that said mutation was wrong.

Though plaintiffs were served but they refused summons. They were also served through munadi. Kabza karwahi was conducted as per Sanad Taksim in the presence of four persons including lamberdar and chowkidar of the village. There is nothing on record that the plaintiffs are in possession of land in dispute. The plaintiffs have prima facie failed to prove that partition proceedings are illegal. Moreover, the partition proceedings were conducted in 2015 and the suit was filed in 2020, which is time barred. The courts below have rightly held so and I do not differ with them. No ground for interference is made out and the civil revision stands dismissed accordingly.

(GURBIR SINGH)
JUDGE

December 08, 2023

sanjeev

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