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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16047-2024 (O/M)
Date of decision : 05.08.2024

Sewa Singh ...... Petitioner

Versus

State of Punjab and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Pritpal Singh Miglani, Advocate
for the petitioner.

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HARSH BUNGER, J.

CM-12003-CWP-2024

This is an application for placing on record copy of application for condonation of delay, filed before the Court of learned Financial Commissioner (Appeals), Punjab as Annexure P-8.

For the reasons mentioned in application, same is allowed and copy of application for condonation of delay, filed before the Court of learned Financial Commissioner (Appeals), Punjab, is taken on record as Annexure P-8, subject to all just exceptions.

Application is accordingly disposed of.

Main case

1. Petitioner (Sewa Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking a writ in the nature of certiorari for setting aside of order dated 10.04.2024 (Annexure P-6),

passed by respondent No. 2-Financial Commissioner (Appeals), Punjab, whereby the revision petition filed by the petitioner alongwith an application, seeking condonation of delay, has been dismissed.

2. Briefly, Shri Parkash Singh son of Shri Gurdas Singh was the real brother of the petitioner and respondents No. 7 to 11 herein. Said Shri Parkash Singh was married and was having one daughter (Kulwinder Kaur). The wife and daughter of aforesaid Shri Parkash Singh are stated to have died prior to demise of Shri Parkash Singh. It is apposite to note here that said Shri Parkash Singh's daughter, namely, Kulwinder Kaur had two children, namely, Tirath Singh son of Paramjit Singh and Kanmeet Kaur alias Kiran daughter of Paramjit Singh (respondents No. 5 and 6 herein). Praksh Singh is stated to have expired on 06.06.2017.

2.1 On the demise of Shri Parkash Singh, the brothers of the present petitioner i.e. respondents No. 7 to 11 herein, filed an application before the revenue authorities for sanctioning the mutation in their favour as well as the petitioner herein, on the basis of an unregistered Will dated 05.06.2017 (Annexure P-1). Consequently, mutation No. 1866 of village Kotlasuda (Hadbast No. 152) and mutation No. 2320 of village Kang Sahib Rai (Hadbast No 151), both villages falling within Tehsil Nakodar, District Jalandhar; were entered in the revenue records.

2.2 It transpires that respondents No. 5 and 6 herein i.e. Tirath Singh and Kanmeet Kaur also submitted an application before the revenue authorities for sanctioning of mutation regarding estate of late Shri Parkash Singh in their favour by way of natural succession.

2.3 The aforesaid mutations No. 1866 and 2320 of village Kotlasuda and village Kang Sahib Rai, respectively, were declared as contested and the case was forwarded to the learned Assistant Collector 1st Grade, Nakodar, who vide two separate orders dated 25.07.2019 (Annexure P-2, Colly.), sanctioned the aforesaid mutations regarding inheritance of late Parkash Singh in favour of respondents No. 5 and 6 herein.

2.4 Feeling aggrieved against the aforesaid orders dated 25.07.2019 (Annexure P-2, Colly.), the brothers of present petitioner i.e. respondents No. 7 to 11 filed two separate appeals before the learned Additional Deputy Commissioner-cum-Collector, Jalandhar, however, both the said appeals were dismissed, vide a common order dated 09.12.2019 (Annexure P-3).

2.5 It is apposite to note here that the petitioner did not challenge the orders dated 25.07.2019 (Annexure P-2, Colly.). Even in the appeals filed by the brothers of the petitioner i.e. respondents No. 7 to 11, the petitioner was impleaded as a party respondent No. 3 and he was proceeded against ex-parte.

2.6 It appears that the petitioner filed a revision petition (ROR-8/2024) before the learned Financial Commissioner (Appeals), Punjab, alongwith an application, seeking condonation of delay of 1472 days in filing the revision petition. The petitioner sought condonation of delay in filing the revision petition on the plea that the petitioner was abroad and he came to India in the month of January, 2023 and when he went to the office of revenue department, he came to know regarding the mutation proceedings and also learnt that his real brothers had filed an appeal before the learned Collector, Jalandhar, which was also dismissed on 09.12.2019. Petitioner claims that his brothers did not inform him regarding the aforesaid proceedings, which came to his knowledge only in the month of March, 2023 and thereafter, he had to return back abroad, however, he gave a power of attorney to his nephew Avtar Singh son of Rawal Singh, to pursue his case. It was stated that accordingly, the attorney of the petitioner filed the revision petition before the learned Financial Commissioner, wherein a delay of 1472 days had occurred.

2.7 The aforesaid revision petition (ROR-8/2024) came to be dismissed by the learned Financial Commissioner (Appeals), Punjab, on the ground of delay and maintainability, vide its order dated 10.04.2024 (Annexure P-6).

3. In the aforementioned circumstances, the petitioner has filed the present writ petition before this Court, for the relief (s) as noticed above.

4. Learned counsel for the petitioner submits that the learned Financial Commissioner (Appeals), Punjab, has erred in law and facts in passing the impugned order dated 10.04.2024 (Annexure P-6) and has wrongly dismissed the revision petition on the ground of delay and maintainability. It is contended that the matter pertains to mutation of inheritance of late Shri Parkash Singh (brother of the petitioner) and the Will propounded by the petitioner and his brothers, was required to be proved in the Court, however, the authorities below have not given them any opportunity to lead evidence. It is submitted that recording of evidence in the case of mutation on the basis of Will is mandatory and all the parties are required to be given due opportunity to lead evidence to prove their case, however, the said procedure has not been followed by the revenue authorities below. It is further submitted that the revenue authorities were required to enter the mutation on the basis of the Will propounded by the petitioner and his brothers, however, no such action was taken. With the aforesaid submissions, learned counsel for petitioner prayed that the impugned order be

set aside and appropriate orders be passed for sanctioning the mutation in favour of the petitioner and his brothers on the basis of unregistered Will propounded by them.

5. I have heard learned counsel for petitioner and perused the paperbook with his able assistance.

6. Here it would be apposite to refer to Section 36 of the Punjab Land Revenue Act, 1887, 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 enquiry 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 or 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 in 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 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.*

6.1 The Division Bench of this Court in the case titled as ***Jagjit Singh v. Divisional Commissioner, Patiala and others,*** reported as 2012 (13)

RCR (Civil) 96, took note of above extracted Section 36 of 1887 Act and 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*
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> *21. …………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. …………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."

6.2 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.

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

"5. ....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)………

6. …………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."

6.4 In ***Dev Raj Singh v. State of Punjab, 2010 (2) RCR (Civil) 357***; a co-ordinate Bench of this Court had held as under:-

"*4. After giving my thoughtful consideration to the matter and perusing the record, it may be noticed that the case relates to sanction of mutation on the basis of natural succession or registered Will which requires the appreciation and consideration of evidence. This Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India is not to go into the veracity of the evidence and reach a conclusion as to whether the Will set up by the petitioners is duly proved or whether the mutation was liable to be sanctioned on the basis of natural succession. Sanction of mutation as is well known does not determine the rights or title to the property. These are entered only for*

> *fiscal purpose of updating the record for the purpose of ascertaining the land revenue payable. Besides, mutation proceedings are summary in nature and technicalities of law which extinguish or confer some right on a party is not to be gone into. The question as regards the validity of the Will are to be determined and gone into in a duly instituted civil suit. Therefore, if mutation has sanctioned in favour of Sajjan Singh (respondent No. 6) the same does not by itself determine any question of right and title. The mutation proceedings having no judicial character and the only object being to update the revenue record the mere fact that mutation has been sanctioned in favour of respondent No. 6, does not vest title in him. The rights, question of title and validity of Will are to be determined by the regular civil Courts after evidence has been led in support or otherwise of the Will that is set-up by the petitioners. Accordingly, the petitioners are relegated to the remedy of civil suit and the writ petition is clearly not maintainable.*
>
> *5. Accordingly, the writ petition filed by the petitioners is dismissed. However, this would not preclude the petitioners to avail their civil remedy by filing a duly instituted suit…"*

6.5 A perusal of the above judgment(s) would show 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. After giving my thoughtful consideration to the matter and perusing the record, it may be noticed that the case relates to sanction of mutation. Petitioner herein claims to agitate his claim on the basis of an alleged Will executed by Late Sh. Parkash Singh whereas respondents No. 5 and 6 claimed inheritance on the basis of natural succession. This Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India is not to go into the veracity of the evidence and reach a conclusion as to whether the Will set up by the petitioner is duly proved or whether the mutation was liable to be sanctioned on the basis of natural succession.

8. It is well settled that sanction of mutation does not determine the rights or title to the property. These are entered only for fiscal purpose of updating the record for the purpose of ascertaining the land revenue payable. Besides, mutation proceedings are summary in nature and technicalities of law which extinguish or confer some right on a party is not to be gone into.

9. The question as regards the validity of the Will are to be determined and gone into in a duly instituted civil suit. The mutation proceedings having no judicial character and the only object is to update the revenue record. The rights, question of title and validity of Will are to be determined by the regular civil Courts after evidence has been led in support or otherwise of the alleged Will, that is set-up by the petitioner and his brothers.

10. In view of the above discussion, the instant writ petition filed by the petitioner is dismissed. However, this would not preclude the petitioner to avail his civil remedy by filing a duly instituted suit, in accordance with law.

11. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

05.08.2024
sjks

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