

2024:PHHC:124936



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

CWP-24213-2024 (O&M)
Date of decision :20.09.2024

RAM MEHAR SINGH PHOUGAT AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vijay Pal, Advocate
for the petitioners.

Mr. Randhir Singh, Addl. A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 14.06.2024 (Annexure P-10) passed by the learned Commissioner, Rohtak Division, Rohtak.

A further prayer has been made for issuance of writ in the nature of *mandamus* for directing the official respondents to sanction the mutation No.6763 of Village Rithal, Phougat, as per the mortgage deed dated 24.01.1922 (Annexure P-1) and judgment and decree dated 08.02.2006 (Annexure P-2).

2. Briefly, the petitioners claim that the land in question comprised in Khewat No.367/335 situate at Village Rithal, Phougat, was

owned by S/Sh. Nanha son of Roopan and Niadar son of Hansa, who mortgaged a share in the said property to Shri Chand son of Hardayal and Tokh Ram, Jug Lal sons of Kandh Ram, vide registered mortgage deed dated 04.05.1909. It is stated that the afore-said property was again mortgaged in favour of Tokh Ram, Bhagmal, Gorkha, Jug Lal, Shish Ram son of Kandh Ram, Bijey Singh son of Jai Lal, Shri Chand son of Hardayal, Rizak Ram son of Shri Chand, vide mortgage deed dated 15.08.1917. It is further stated that the afore-said property was mortgaged for the third time to Tokh Ram, Bhagmal, Jug Lal, Shish Ram (4 equal shares) and Jage Ram (01 share), Bijey Singh, Rattan Singh sons of Jai Lal (01 share), Rizak Ram son of Shri Chand (02 shares), vide registered mortgage deed dated 24.01.1922.

2.1 The present petitioners claim to be the legal heirs and descendants of the original mortgagees.

2.2 It appears that the legal heirs of the original mortgagors, filed a petition before the learned Collector, Rohtak, for re-deeming the property in question, which was allowed vide order dated 24.04.1998. Petitioners state that when the afore-said legal heirs of the mortgagors tried to take possession of the afore-said land, the present petitioners and the private respondents along with others filed a Civil Suit No.382 of 1998, which was decreed vide judgment and decree dated 08.02.2006 (Annexure P-2), whereby the Collector's order dated 24.04.1998 was held to be illegal, void and without jurisdiction. Petitioners claim that the afore-said judgment and decree dated 08.02.2006 (Annexure P-2) had attained finality as the same was never challenged any further.

2.3 It transpires that in the year 2016, a mutation No.6763 was entered by the concerned patwari by specifying the shares of various

share-holders. However, the petitioners submitted an application before the learned Collector, Rohtak on 03.04.2017 to sanction the mutation as per the judgment and decree dated 08.02.2006 (Annexure P-2). On the other hand, the private respondents submitted their objections to the application submitted by the petitioners, claiming specified shares in the afore-said property.

2.4 It appears that the learned Assistant Collector Ist Grade, Rohtak, vide its order dated 14.03.2018 (Annexure P-6), rejected the objections of the private respondents and ordered sanctioning of mutation on the basis of decree dated 08.02.2006 (Annexure P-2).

2.5 The order dated 14.03.2018 (Annexure P-6) was challenged by the private respondents by filing an appeal before the learned Collector, Rohtak, which was dismissed vide order dated 09.02.2022 (Annexure P-8).

2.6 Feeling aggrieved, the private respondents preferred a Revision Petition No.405 before the learned Commissioner, Rohtak, which came to be partly allowed vide order dated 14.06.2024 (Annexure P-10) by setting aside the order dated 14.03.2018 and 09.02.2022 (Annexures P-6 and P-8, respectively) and the matter has been remanded with the direction to enter and sanction the mutation as per the shares of the private respondents (petitioners in Revision No.405) and in compliance of judgment dated 08.02.2006 (Annexure P-2).

2.7 In the afore-mentioned circumstances, the writ petitioners have preferred the present petition before this Court, for the relief/s, as noticed here-in-above.

3. The only submission made on behalf of the petitioners is that the mutation be sanctioned as per the mortgage deed dated 24.01.1922 (Annexure P-1) and judgment and decree dated 08.02.2006 (Annexure P-2).

4. Heard.

5. In the present case, mutation No.6763 of Village Rithal Phougat, Tehsil and District Rohtak, was entered on the basis of judgment/decreed dated 08.02.2006 (Annexure P-2). The relevant extract of the decree dated 08.02.2006 (Annexure P-2) reads as under :-

“Claim for:- A decree for declaration declaring the order dated 24.4.98 passed by Collector Rohtak be declared to be void, illegal and without jurisdiction and nonest and the plaintiffs be granted a decree for declaration declaring them (plaintiffs) to be owners of the suit land comprised in khewat no.367/335 Khatoni no.408 Rect. and Killas No.13/24/1(0-15), 115/6/2(1-16), 7/2(1-16), 115/8/2(1-16), 13(8-0), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 23(8-0), 24/1(7-4), 25/1(7-2) kitte 13 total measuring 76 Kanals 9 Marlas situated in the revenue estate of village Rithal Phogat, Teh. and Distt. Rohtak and further a decree for permanent injunction may kindly be passed in favour of the plaintiffs and against defendants restraining the defendants from dispossessing the plaintiff from the land comprised in khewat no.238/434 khasra no.4409 to 4428 and 591 total measuring 16 Bighas 7 Biswas Pukhta forcibly or on the basis of order dated 24.1.98 passed by Collector Rohtak and suit of the plaintiffs for declaration and permanent injunction kindly be passed decreed in respect of the suit land stated in para no.1 as detailed above and the defendants be restrained from taking possession of the land in question.

Plaint presented on:- 20.5.98.

This suit is coming on this day for final disposal before me (Fakhru Ddin, HCS, Civil Judge (Jr. Divn.) Rohtak in the presence of Sh. B.S. Kataria, Advocate for the plaintiffs and Sh. V.S. Rathee, Advocate for the defendants.

It is ordered that the suit of the plaintiffs is hereby decreed with costs. A decree for declaration to succeeds the effect that order of Collector dated 24.4.98 is null and void being without jurisdiction and not binding on the rights of the plaintiffs and plaintiffs have become owner in possession of the suit property with afflux of time is hereby passed. Consequently, a decree of permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiffs over the disputed property is also passed.”

6. Concededly, the petitioners submitted an application dated 03.04.2017 (Annexure P-4) to the learned Collector, Rohtak for sanctioning of mutation, the relevant extract thereof reads as under :-

“1. That order dated 08.02.2006 passed by the learned civil court in favour of the applicants. In that order, the applicants have been declared owners of the land to the extent of 76 kanal 9 marla. This land is situated in the area of Village Rithal Phogat, District Rohtak.

2. That at that time, the applicants had given an application to the Patwari to enter the mutation on the basis of above said order in favour of the applicants. The patwari had given assurance that this order will be entered into the revenue record. At the assurance given by the Patwari, we became satisfied.

3. That about one week back, we came to know that this order has not been mentioned in the revenue record. The mutation as per the order has not been entered on our name.

It is, therefore, requested that keeping in view the order dated 08.02.2006 passed by the learned Civil Court, mutation may kindly be sanctioned in our favour.”

7. The private respondents submitted their objections, *inter alia*, on the plea that the share of deceased Ram Chander son of Tokh Ram, has been wrongly mentioned in the Revenue Record.

8. As noticed above, the Assistant Collector ordered sanctioning of mutation on the basis of decree dated 08.02.2006 (Annexure P-2) and the same was upheld by the learned Collector as well. However, the learned Commissioner, Rohtak vide impugned order dated 14.06.2024 (Annexure P-10) partly allowed the revision filed by the private respondents and remanded the matter with the direction to enter and sanction mutation as per the shares of the private respondents and in compliance of judgment dated 08.02.2006. The relevant extract of order dated 14.06.2024 (Annexure P-10) reads as under :-

“Therefore, the present revision petition is hereby partially accepted. The order dated 09.02.2022 passed by the learned Collector as well as the order dated 14.03.2018 passed by Assistant Collector 1st Grade cum Sub Division Officer, Civil Rohtak are hereby set aside. The case file is hereby remanded back with the direction to enter and to sanction the mutation as per the shares of the petitioners and in compliance of the judgment dated 08.02.2006 passed by the learned Civil Court.”

9. A perusal of the decree would show that the shares of the mortgagors have not been specified therein and the said fact is not denied by the learned counsel appearing for the petitioners.

10. In this view of the matter, I do not find any illegality or perversity in the order passed by the learned Commissioner, whereby the matter has been remanded with the direction to enter and sanction the mutation as per the shares of the private respondents and in compliance of the judgment and decree dated 08.02.2006 (Annexure P-2). It goes without

saying that the concerned Revenue Officer shall carefully enter and sanction the mutation after determining the shares of all the parties as per entitlements and in compliance of the judgment and decree dated 08.02.2006 (Annexure P-2). The petitioners would be at liberty to put forth their claim as regards their shares and also the shares of other stakeholders, before the concerned Revenue Officer, in accordance with law.

11. In view of the above, I do not find any merit in the present petition and the same is accordingly dismissed, however with the afore-said observations.

12. All pending applications (if any) shall also stand closed.

Septmeber 20, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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