Ish Pal Vs State of Haryana and Others

CWP. No. 19383 of 2011

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Advocate: Vikram Singh, for the Appellant; Partap Singh, Addl. A.G. Haryana and Mr. V.K. Jindal, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J.

In short, one Budhu S/o. Baljit Singh, resident of village Arainpura, Tehsil Gharaunda, District Karnal was owner in

possession of land falling in village Arainpura and Gianpura, Tehsil Gharaunda, District Karnal. Budhu had two brothers, namely, Telu Ram and

Bhagwana. Budhu died on 4.1.2002 as a bachelor. After his death, mutation of inheritance No. 2099 of Village Arainpura and mutation No. 1863

of Village Gianpura were entered in favour of his brothers Telu Ram and Bhagwana. Vineet, grand-son of Bhagwana, through his mother contested

the mutation on the basis of unregistered Will dated 24.7.1999 purported to have been executed by Budhu in his favour. Accordingly, Assistant

Collector IInd Grade referred the mutation as contested to Assistant Collector Ist Grade/DRO, Karnal, who sanctioned the contested mutation

No. 2099 in favour of Vineet/respondent No. 5. The petitioner, who happened to be the son of Telu Ram, challenged the order of Assistant

Collector, Ist Grade by way of appeal, which was allowed by the Collector, Karnal on 4.6.2003. Respondent No. 5 challenged that order before

the Commissioner who maintained the order of the Assistant Collector, Ist Grade vide his order dated 22.12.2006 and his order was further

maintained by the Financial Commissioner vide his order dated 28.1.2008. Learned counsel for the petitioner has submitted that respondent No. 1

had erred in relying upon the unregistered Will which was allegedly executed on 24.7.1999 after the suit for declaration, about the ownership

based upon family settlement and adoption deed i.e. ''Godnama'' dated 5.6.1998, filed by respondent No. 5 against Budhu was dismissed on

23.1.1999. It is also submitted that once Godnama was available, there was no necessity to execute the Will and that the Will was scribed at

Karnal though scribe was available at Gharaunda as well. As a matter of fact, he had taken the objections, highlighted by the Collector, while

deciding the appeal in his favour on 6.8.2013 and has prayed for restoring the order of the collector and setting aside all other orders passed by

the Assistant Collector Ist Grade, Commissioner and Financial Commissioner. It is also submitted that once suit filed by the petitioner for

declaration of his ownership rights based on family settlement and Godnama has been dismissed, there was hardly any occasion for Budhu to

execute the unregistered Will in favour of respondent No. 5 and since the Will is unregistered, respondent No. 5 should have got a declaration

about the validity of the Will from the Civil Court and until then the mutation proceedings should have been kept in abeyance.

2. On the other hand, learned counsel for the respondents has submitted that Budhu (since deceased) wanted to give his property to his grand-

son/respondent No. 5, therefore, he had first executed a family settlement and adoption deed i.e. Godnama on 5.6.1998. Respondent No. 5 filed

civil suit No. 233/98 for declaration of ownership on the basis of family settlement and relied upon the adoption deed in which Budhu had

appeared and filed his written statement admitting the facts stated in the plaint. Not only that, a compromise Exhibit C-1, was also placed on

record but the Civil Court was of the view that the suit property cannot be transferred in the name of respondent No. 5 at the instance of Budhu

without payment of Stamp fee. The said suit was dismissed on 23.1.1999, thereafter Budhu executed the Will on 24.1.1999 as he wanted to give

his property to his grand-son/respondent No. 5. The attesting witnesses of the Will namely, Rajesh Singh and Isham Singh have recorded their

statements before the Assistant Collector Ist Grade, where the mutation was contested. It is also submitted that the circumstance of Will having

been scribed at Karnal despite the availability of scribe at Gharaunda is not a suspicious circumstance and lastly it is argued that if the petitioner is

doubting the genuineness of the Will, he should have filed the civil suit himself for declaring it to be illegal and invalid but no civil suit has been filed

by the petitioner so far whereas the mutation proceedings are of summary nature, for fiscal purpose and does not confer any title.

3. I have heard learned counsel for the parties and perused the record.

4. According to Section 34 of the Punjab Land Revenue Act, 1887 [for short ''the Act''], any person, who acquires, any right in an estate as a

land-owner, assignee of land-revenue or tenant having a right of occupancy by way of inheritance, purchase, mortgage, or otherwise has to inform

the acquisition of his right to the patwari of the estate, who would enter the acquisition of such right in the register of mutation and the revenue

officer would inquire from time to time about the correctness of register of mutations and about all such acquisitions of such rights and make such

order as he thinks fit with respect to the entry in the annual record of the right required. In case, there is no contest to the acquisition of right by a

party who has reported the acquisition of that right to the Halqa Patwari, the mutation shall be sanctioned by the Assistant Collector IInd Grade

but in case the acquisition of right is challenged, the Assistant Collector IInd Grade has to refer the mutation proceedings to the Assistant Collector

Ist Grade, in terms of Section 36 of the Act who would decide about the right of the parties for the purpose of entering mutation in the revenue

record.

5. After the death of Budhu, his brothers, namely, Telu and Bhagwana claimed inheritance to his property because Budhu died issueless and the

entry in the register of mutation was made by the Halqa Patwari for sanctioning his mutation which was contested by respondent No. 5 on the

basis of the unregistered Will in his favour. That issue has been decided by the Assistant Collector, Ist Grade, observing as under -

Arguments of both the counsel has been heard and record has been perused. In this way, Will O2 dated 24.7.1999 was written after civil case and

as per law, the Will may be registered or unregistered and as per Section 63 of the Indian Succession Act, 1925, two witnesses should be there on

the Will and as per Section 68 of the Indian Evidence Act, 1872, to prove the Will, at least statement of one witness, who is on the Will be

recorded. In this way, in the present case two witnesses of the Will for giving evidence examined and as per the cross examination got done by

Advocate of Telu, Will and Godnama have been prepared after the death of Budhu and there is no thumb mark of Budhu. In this regard, no proof

has been produced from the side of Telu that on the Will and Godnama, there is no thumb mark of Budhu. In the Will Exhibit O2, there is mention

of Civil case and in para No. 4 of the reply Exhibit O4, it is stated by Budhu that after his death, Vinit will be the owner of his property. From the

Ration Card Exhibit O6, it is proved that Budhu never lived with Telu. In this way, the Will has been proved before me and the civil suit, which

was rejected that was done on the basis that there is no entitlement of Vinit over the property of Budhu during his life time and Exhibit O5, Budhu

and Vinit have written that they do not want to pursue with the suit, therefore, the suit be rejected and Telu admitted in his statement that when he

made application for entering the mutation at that time Harpal was not asked and the application was given after the death of Budhu within three

days. Therefore, while entering the mutation, the will and Godnama was not produced. I have come to this conclusion that the Will dated

24.7.1999 is correct and the Will was got written by Budhu after the rejection of the civil case and thumb marked in the presence of the witnesses

and the ruling aforesaid, which has been produced by the Advocate of Objector that is not applicable in this case and I allow the objections and

order to reject the mutation Moja Arayepura and also order to enter the mutation of the property of Budhu as per the Will dated 24.7.1999, which

is on the file. Case file be sent to the Assistant Collector, IInd Class, Gharaunda for further proceedings.

6. However, the order of the Assistant Collector Ist Grade has been reversed by the Collector, on the grounds pressed by the petitioner before

this Court, alleging that after the dismissal of the suit for declaration to claim right over the property of the Budhu, on the basis of a family settlement

based upon the adoption deed, the Will could not have been executed by Budhu in favour of respondent No. 5 and there was no occasion to

scribe the Will at Karnal when Budhu was the resident of Gharaunda and the scribe and Registration facilities were available there. However, the

order of the Collector has been reversed by the Commissioner and the Financial Commissioner. As a matter of fact, it appears that Budhu always

wanted to give his property to his grandson/respondent No. 5 because he executed Godnama on 5.6.1998. Respondent No. 5 filed suit for

declaration. Budhu appeared and filed the admitting written statement. A compromise was also placed on record as Ex. C-1 duly thumb-marked

by Budhu in which it was alleged that he had taken respondent No. 5 in adoption but civil court dismissed the suit on the ground that the property

was sought to be transferred without paying the stamp fee to the State and in the compromise no date, time and place etc. have been mentioned

about the family settlement. Once the suit was not decreed on the technical issues on 23.1.1999, the unregistered Will was executed in favour of

respondent No. 5 and Budhu died on 4.1.2002 after more than 2 years thereafter. In order to prove the genuineness of the Will both the attesting

witnesses were produced, duly noticed by Assistant Collector Ist Grade in his order.

7. In view of the aforesaid facts and circumstances of the case, I am of the view that order of the Collector, asking respondent No. 5 to file civil

suit and keeping the mutation in abeyance till then has rightly been set aside by the Higher Courts, restoring the order of the Assistant Collector Ist

Grade because the Will apparently was not surrounding by any suspicious circumstances, as in the summary proceedings, after recording the

statements of both the attesting witnesses, giving due opportunity to the petitioner''s counsel to cross-examine, it has been found that the Will was

duly executed by Budhu without any coercion and undue influence. No doubt that had the unregistered Will been surrounded by any suspicious

circumstances, inasmuch as the attesting witnesses were not produced and the intention of the testator was not clear to bequeath his property to his

grandson/respondent No. 5, the Collector could have been right in asking the parties to get their title declare from the civil court but in the present

circumstances, I do not find any error in the impugned orders. The petitioner has so far not even challenged the unregistered Will in favour of

respondent No. 5 before the civil Court. In view thereof, I do not find any merit in the present writ petition and the same is hereby dismissed.