

(2000) 08 P&H CK 0238

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12512 of 1998

Arjan Singh (deceased) through
LRs.

APPELLANT

Vs

The Financial Commissioner,
Appeal-II, Punjab

RESPONDENT

Date of Decision: Aug. 1, 2000

Acts Referred:

- Punjab Land Revenue Act, 1887 - Section 111, 112, 113, 114, 115

Citation: (2001) 1 CivCC 645

Hon'ble Judges: K.S. Garewal, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: Mr. R.S. Chauhan, for the Appellant; Mr. M.C. Berry, D.A.G, Mr. O.P. Goyal and Mr. Bhuwan Luthra, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

Has the Financial Commissioner erred in accepting the claim of respondents No. 2 to 4 that the family property had been partitioned through a family settlement ? This is the short question. A few facts.

2. Santu had four sons - Arjan Singh, Sadhu Singh, Sarwan Singh and Mukhtiar Singh. The first of these viz. Arjan Singh filed a petition in or about the year 1981 for partition of the land measuring 149 kanals 19 marlas. The remaining three brothers raised an objection. They pointed out that the land had already been partitioned through a family settlement. The Assistant Collectpr declined to proceed with the petition for partition. He directed Arjan Singh to approach the Civil Court. He did. Civil Suit No. 537 of 1982 was insti- tuted on May 13, 1982. The trial Court framed various issues including :

(1) Whether a family partition took place between the parties regarding the land in dispute and 32 kanals 8 marlas of land as described in para No. 1 of the written statement had fallen to the share of the plaintiff ? OPD

(2) If issue No. 1 is not proved, whether the plaintiff is joint owner of the land in dispute ? OPP.

3. After considering of the matter the trial Court re-corded the following conclusion in para 15 of its judgment :

"After the plaintiff admitted in his cross-examination that an oral partition took place between them about 18-19 years back, the onus shifted upon him to prove that the land in dispute still continued to be held by them jointly. He has not been able to produce any such evidence which may inspire this Court that this land is being held by them jointly. The defendants have been able to produce evidence to the effect that they are exclusively holding separate portions, the khasra numbers of which they have deposed in their examinations as owners since the time of partition and that evidence has found favour with this court.This partition was always relied upon and acted upon..... the partitionin which separate and different portions of the land in dispute, plots and houses fall to their shares. In this partition 32 kanals 8 marlas of land had fallen to the share of the plaintiff."

4. As a result of the above, issue No. 1 was decided against Arjan Singh, the present petitioner (now represented through his Legal Representatives). Issue No. 2 was found to be redundant. Arjan Singh appealed. The Additional District Judge, Ludhiana, dismissed this appeal vide judgment dated November 4, 1985. The decree passed by the Civil Court was thereafter challenged before the High Court and the Apex Court. The Regular Second Appeal and the SLP were, admittedly, dismissed. Thus, the finding of the trial Court that there was an oral partition and that it had been acted upon became final.

5. In the meantime, the matter was placed before the Assistant Collector, Ist Grade, Khanna. Vide his order dated June 30, 1986 he sanctioned the mutation of the land in favour of the four brothers in accordance with the findings of the Civil Court. Aggrieved by the order, Arjan Singh, the present petitioner, filed an appeal. The Collector accepted the appeal and remanded the case to the Assistant Collector. Respondents No. 2 to 4 appealed against the order of the Collector. The Commissioner dismissed the appeal. They filed a revision petition before the Financial Commissioner. The revision petition having been accepted, the order of the Assistant Collector, Ist Grade, was upheld. Aggrieved by this order, Arjan Singh, the petitioner, approached this court through the present writ petition. On account of his death, the legal representatives were brought on record.

6. The petitioners pray that the order passed by the Financial Commissioner and the Assistant Collector, Ist Grade, copies of which have been produced as Annexures P6 and P3 respectively, be set aside.

7. The respondents contest this claim. They have filed a detailed written statement controverting the averments made by the petitioners.

8. Learned counsel or the parties have been heard. Mr. Chauhan, learned Counsel for the petitioners, has contended that the Civil Court had recorded a positive finding that despite the family partition the property was shown as joint in the revenue record. That being so the family partition had not become final. Thus, no direction for entering mutation in respect of specific khasra numbers could have been given by the Assistant Collector or the Financial Commissioner. The claim made on behalf of the petitioners has been controverted by Mr. O.P. Goyal, learned Counsel for the contesting respondents and Mr. M.C. Berry, learned Deputy Advocate General, Punjab.

9. The findings recorded by the Civil Court have been noticed above. A perusal of the portion as quoted clearly shows that even Arjan Singh, the predecessor-in-interest of the present petitioners, had admitted that an oral partition had taken place. The Court had found that the oral partition had been actually acted upon. Each one of the co-sharers was in possession of specific area. Arjan Singh himself had got 32 kanals and 8 marlas of land and he was in exclusive possession thereof. This finding between the parties had attained finality as even the SLP filed by Arjan Singh before the Apex Court had been dismissed. This having happened, it cannot be said that the land was still joint merely because it was so shown in the revenue record. In fact, the Civil Court had even noticed this fact and observed as under :

"Simply because the parties are still recorded as joint owners in the revenue documents is no ground for coming to the conclusion that they are still holding the land jointly and no partition has taken place among them so far."

10. In view of the above categorical finding, the first contention raised by the learned Counsel for the petitioners cannot be sustained.

11. Admittedly the family partition had taken place in or about the year 1960. Since then the parties have remained in exclusive possession of their respective shares of the land. Now it is too late in the day to interfere with it. The Assistant Collector and the Financial Commissioner have merely recognised the existing position which was in strict conformity with the findings recorded by the Civil Court. They have not erred in doing so.

12. Mr. Chauhan points out that the Collector and the Commissioner had not agreed with the view taken by the Assistant Collector. It is, undoubtedly, so. However, the view taken by the Collector and the Commissioner was clearly contrary to the above mentioned categorical findings recorded by the Civil Court. Thus, the Financial Commissioner had rightly inter-vened to rectify the mistake. In a refreshingly detailed order, the officer has dealt with each aspect of the matter.

13. No other point has been raised.

14. In view of the above, we hold that the impugned orders passed by the Financial Commissioner and the Assistant Collector are in strict conformity with not only the factual position but also the findings recorded by the Civi 1 Court. Thus, these call for no interference.

15. Resultantly, the petition is dismissed. However, since the dispute is amongst close relations, there will be no order as to costs.

16. Petition dismissed.