

(2006) 07 P&H CK 0150
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6582 of 2004

Balbir Singh and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 06-07-2006

Acts Referred:

Citation : (2006) 4 ICC 90 : (2006) 3 LLR 76 : (2006) 4 RCR(Civil) 312

Hon'ble Judges : Ashutosh Mohunta, J and P.S.Patwalia, J

Advocate : G.S. Gandhi, Advocate.C.M. Munjal, Sr. Addl. A.G., Punjab For the Respondents Nos. 2 to 4, R.S. Ghuman, Advocate., Advocates for appearing Parties

Judgement

P.S. Patwalia, J.

1. Briefly the facts leading to the filing of the present writ petition are that respondents 2 to 4 filed four applications seeking partition of the land in dispute in this writ petition before the Tehsildar, Nawanshahar. The Tehsildar after inspecting the spot and hearing objections of the applicants as also the petitioners proposed the mode of partition keeping the possession of the parties intact. This order was challenged by the petitioners in appeal before the Collector, which was, however, dismissed on 30.3.1999. Thereafter the petitioners approached the Commissioner, Jalandhar Division by way of a revision petition. In the proceedings before the Commissioner in revision, it transpired that earlier when the petitioners had raised a dispute with the respondents regarding partition of the land in question, a compromise had been effected by the Panchayat on 7.2.1998 which bore the signatures of the petitioners. The Commissioner showed the compromise to the petitioners who accepted their thumb impressions on the same. Accordingly, the Commissioner dismissed the revision with the following observations :

"From the above it is very clear that both the parties purchased different shares of land jointly vide one sale deed about 20 years back and keeping in view the compromise of that time they came into possession of the respective shares and

constructed rooms, installed electric motors. It will not be appropriate to disturb that and partition the land. Tehsildar has himself after inspecting the spot and consulting respectables of the village came to the conclusion that the partition may be made keeping in view the possession. I fully agree with the mode of partition because possession is continuing for the last about 20 years on the basis of compromise and in 1998, there was a Panchayati Compromise between the parties and it will be inappropriate to go against that. Revision petition is dismissed. Tehsildar to proceed further regarding partition of land."

The petitioners then approached the Financial Commissioner, Cooperation, Punjab by a further revision petition. The said revision was also dismissed by the Financial Commissioner, Cooperation with the following observations :

"4. I have heard the learned counsel for the parties. The learned counsel for the petitioner has drawn my attention to the order of the learned Commissioner under review which indicates that there is a compromise dated 7.2.1998 between the parties, which has been accepted by them but the same is not being acted upon at site. The learned counsel for the respondents does not have any objection to this, since according to him, the agreement fully stands implemented.

5. In view of the above facts, the revision petition is dismissed with the direction to the revenue authorities that the compromise dated 7.2.1998 between the parties should be got implemented in case, some minor dislocation is involved which is not anticipated in the MOP that could also be done so that the compromise is fully implemented."

2. A reading of the order passed by the Financial Commissioner extracted above shows that the same was passed on the basis of the statement made by learned counsel for the petitioners who drew the attention of the Financial Commissioner to the compromise dated 7.2.1998 between the parties and said that the same was not being acted upon at the site. To this since learned counsel for the respondents did not have any objection, a direction was given by the Financial Commissioner, Cooperation to implement the said agreement and in case some minor dislocation was necessary, the same should be done so that the compromise is fully acted upon.

3. It is against these orders passed by the authorities below that the present writ petition has been filed.

4. Learned counsel for the petitioners firstly argued that the statement attributed to the petitioners in paragraph 4 of the order passed by the Financial Commissioner was never made by him. This contention of learned counsel for the petitioners has been vehemently refuted by learned counsel for the respondents. Learned counsel for the respondents contends that the statement as recorded in the order of the Financial Commissioner was made by learned counsel for the petitioners and proceedings in the order have been correctly recorded.

5. We are of the opinion that it is a settled principle of law that the Courts are bound to accept the statements recorded in the judgments and orders as to what transpired in Courts. If any party thinks that some statement is wrongly recorded, it is incumbent upon the party while the matter is fresh in the mind of the Judges to call the attention of those very Judges who have made the orders to the fact that a statement attributed to them is not correctly recorded. For this proposition of law, we are fortified by a judgment of the Hon"ble Supreme Court in State of Maharashtra v. Ramdas Shrinivas Nayak and another, AIR 1982 SC 1249. The following observations are relevant :

"The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statement at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there....."

6. In the present case, the order was passed by the Financial Commissioner in February, 2004. It has not been pointed out that any steps were taken to immediately point out to the same officer who passed the order that the statement recorded therein was not correct. We are, therefore, of the opinion that since the order of the Financial Commissioner has in fact been passed on the basis of the statement made by counsel for the petitioners and accepted by the counsel for the respondents, it is virtually an agreed order and, therefore, no interference is called for in the same.

7. There is yet another aspect of the matter. It is undeniable position that the petitioners in this writ petition had entered into a compromise with the respondents before the Panchayat as to how the property should be partitioned. The compromise was entered into after the Tehsildar inspected the spot amongst the respectables of the village and came to the conclusion that the partition may be made keeping in view the possession. The petitioners have never challenged the said compromise. On this ground also, we are of the opinion that no interference is called for in the orders passed by the authorities impugned in this writ petition.

For the reasons stated above, the writ petition is, therefore, dismissed.