

(2009) 08 P&H CK 0263
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 13391 of 2009

Bharpur Singh

APPELLANT

Vs

Financial Commissioner (Animal Husbandry), Punjab and ors.

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2009) 4 RCR(Civil) 676

Hon'ble Judges : S.S.Saron, J

Advocate : Mr. Manish Kumar Singla, Advocate.For the Caveator-Respondents-5 to 11, Mr. Sherry K Singla, Advocate., Advocates for appearing Parties

Judgement

S.S. Saron, J.—Heard counsel for the parties.

2. The petitioner seeks quashing of orders dated 29.4.2009 (P7) passed by the Financial Commissioner (respondent1), dated 5.10.1999 (P5) passed by the Commissioner, Patiala Division, Patiala (respondent2) and dated 30.6.1995 (P2) passed by the Assistant Collector Ist Grade Sangrur (respondent4) in terms of which mutation of succession of Surjit Singh who died on 12.6.1994 has been sanctioned in favour of respondents5 to 11 on the basis of natural succession by ignoring the registered Will dated 12/13.5.1994 (P1) in favour of the petitioner.

3. The dispute in the present case relates to the estate of Surjit Singh who died on 12.6.1994. The petitioner is the nephew of said Surjit Singh and claimed right to succeed to his estate on the basis of a registered Will dated 12/13.5.1994 (P1). The respondents5 to 11 claimed succession on the basis of natural succession. The Assistant Collector Ist Grade (DOGR) Sangrur, vide order dated 30.6.1995, held that the Will was a suspicious one and whenever the Will seemed to be suspicious, the revenue officer should not act upon the same. Accordingly, the mutation was sanctioned on the basis of natural succession. The petitioner, aggrieved against the said decision, filed an appeal and the District Collector vide order dated 15.12.1995 (P3) allowed the appeal. It was held that the Will was a genuine one and accordingly the mutation was sanctioned in favour of the petitioner on the basis of the Will. The private respondents filed

appeal (P4) before the Commissioner which has been allowed vide order dated 5.10.1999 (P5). The Will, it was held, was surrounded with suspicious circumstances which the propounder had failed to dispel. The petitioner, aggrieved against the order of the Commissioner, Patiala Division, Patiala, filed a revision petition (P6) before the Financial Commissioner who, vide order dated 29.4.2009 (P7) has dismissed the same. Aggrieved against the same, the petitioner has filed the present petition.

4. Learned counsel for the petitioner has contended that the Financial Commissioner has failed to take into consideration the various contentions raised with regard to the genuineness of the Will which are mentioned in the revision petition (P6). Therefore, it is submitted that the order passed by the Financial Commissioner is a nonspeaking order and is liable to be set aside.

5. In response, learned counsel for the Caveatorrespondents⁵ to 11 has submitted that the Will is surrounded with suspicious circumstances inasmuch as there is no mention of the heirs of the deceased Surjit Singh and no reason has been given for excluding them. Besides, the handwriting expert produced by the petitioner has been able to decipher only one thumb impression out of four that are there on the Will.

6. After giving my thoughtful consideration to the matter, it may be noticed that mutation proceedings before the revenue authorities are summary in nature and they do not determine the rights of the parties. An entry of mutation in the revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are primarily for fiscal purposes and collecting land revenue. The question as to title based on a Will or otherwise is to be decided by a civil Court on the basis of evidence that is led. This Court, in exercise of its writ jurisdiction under Articles 226/227 of the Constitution of India, is not to embark upon an inquiry so as to ascertain whether the Will (P1) that has been propounded by the petitioner, is a genuine one or not, for that is the domain of the civil Court. The Will is to be proved by the propounder and he is to dispel all the suspicious circumstances as per the settled law. Therefore, no interference in exercise of the extraordinary writ jurisdiction of this Court is called for and the petitioner is liable to be relegated to the remedy of claiming and establishing his rights before the civil Court.

7. Learned counsel for the petitioner has, however, submitted that the since the mutation has been sanctioned in favour of respondents⁵ to 11, they would in all probability alienate the land and in this manner, the petitioner would be deprived of his right to the land and third party interests would be created.

8. In this regard, it may be noticed that this aspect is also to be considered by the civil Court as to whether any stay regarding alienation or other stay is to be granted or not. However, in order to protect the rights of the parties, it would be just and expedient if the respondents⁵ to 11 do not make any alienation of the land on the basis of mutation sanctioned in their favour till the matter is

considered by the civil Court in the suit which the learned counsel for the petitioner states would be filed by the petitioner along with an application for temporary injunction within a month of the receipt of a copy of this order.

9. In the circumstances, the writ petition is disposed of and the petitioner is relegated to the remedy of filing a civil suit, which it is stated by the learned counsel for the petitioner, will be filed within one month from the receipt of a copy of the order. However, while relegating the petitioner to the remedy of filing a civil suit, the respondents⁵ to 11 shall not alienate or transfer or create any encumbrance on the land, the mutation of which on the basis of succession of Surjit Singh has been sanctioned in their favour, for a period of one month from the receipt of a copy of the order provided that the suit is filed by the petitioner within the said period along with an application for stay. In case it is so filed, the respondents⁵ to 11 shall not alienate or transfer or create any encumbrance on the suit land till the application for temporary injunction is decided by the civil Court which shall be decided within a period of one month after the filing of the suit.

It is made clear that nothing observed herein above shall be construed as an expression of opinion on the merits of the case and the civil Court shall decide the case independently in accordance with law on the basis of pleadings, documents and material as adduced before it and uninfluenced by this order.