(1982) 09 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3834 of 1974

Dharam Singh APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 29-09-1982

Acts Referred:

Citation : (1983) ILR (P&H) 290 : (1983) PLJ 210 : (1986) RRR 467

Hon'ble Judges : A.S.Bains, J

Advocate : S.C. Kapoor, Advocate., Advocates for appearing Parties

Judgement

A.S. Bains, J.

1. The petitioners Nos. 1 to 8 are the owners of agricultural land, bearing Khasra No. 93/1, 2, 3, 9 and 12, situate in the revenue estate of Balab, Tehsil and District Rohtak. Attar Singh, respondent No. 3 filed an application before the Assistant Collector II Grade, Rohtak, for the correction of the entries in the Khasra Girdawari pertaining to the land in dispute regarding Rabi 1971. This application for correction was dismissed on November 16, 1971. The appeal before the Collector also met the same fate and was dismissed on March 22, 1972. Revision before the Commissioner, Ambala Division, was filed and the Commissioner recommended to the Financial Commissioner for setting aside the order of the Assistant Collector and the Collector and the application for correction of the entry in the Khasra Girdawari was allowed. It is the order of the Financial Commissioner dated February 18, 1974 (Annexure P. 2) which is under challenge by the petitioners under Articles 226 and 227 of the Constitution of India. Reply has been filed by the private respondent No. 3.

2. Mr. Subhash Chander Kapoor, learned counsel for the petitioners, urged that respondent No. 2 had no jurisdiction in directing the correction in the Khasra Girdawari pertaining to Rabi 1971 as the Civil Court had decided the matter and had held that respondent No. 3 was not in possession after the death of Maya Ram, his father.

3. Mr. Ram Rang, learned counsel for Attar Singh, private respondent contended that the Civil Court decree is not binding on the parties as the Civil Court jurisdiction is barred under section 158 of the Punjab Land Revenue Act (hereinafter referred to as the Act) and that respondent No. 3 continued to be in possession after the death of Maya Ram. The argument of Mr. Ram Rang is misconceived. It is Attar Singh, respondent No. 3 who had gone to the Civil Court and not the petitioner. Civil Suit was filed on May 17, 1971 by respondent No. 3 Attar Singh and he impleaded his brother as proforma defendant and the finding of the Civil Court is that respondent No. 3 and his brother were never in possession after the death of their father Maya Ram who died 7/8 years prior to the institution of the suit. On appeal by Attar Singh the District Judge, Rohtak, also affirmed the finding of the lower court. Thus, the finding of the Civil Revenue Officer had no authority in law to hold that the possession of respondent No. 3 continued and to rectify the entry in the Khasra Girdawari regarding Rabi, 1971. It was respondent No. 3 who went to the Civil Court and not the petitioners. As observed earlier, the finding of the Civil Court is very clear and unambiguous. This finding was based on evidence led by the parties and after a full dressed hearing at the trial. Proceedings before the Revenue Officer is of summary nature only.

4. So far as the bearing of the Civil Court''s jurisdiction is concerned, section 158 of the Act creates specific bar in respect of the matters enunciated therein. But the opening words of this section are very significant, which are in the following terms :

"Except as otherwise provided by this Act........."

Section 45 of the same Act is in the following terms :

"45. If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a recordofrights or in an annual record he may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877 (VI of 1877)."

5. From the combined reading of these provisions it is plain that the bar of jurisdiction of Civil Court is subject to other provisions of the Act and under section 45 of the Act, an aggrieved party can file a suit under the Specific Relief Act to rectify the entry in the revenue record. Even the Assistant Collector and the Collector who are the officers for the determination of the fact, had found as a fact that respondent No. 3 did not remain in possession after the death of Maya Ram, his father and the application for correction was dismissed. Only the legal errors regarding the jurisdiction or material irregularity could be rectified by the Financial Commissioner. Be that as it may, since the matter is concluded by the Civil Court, the Financial Commissioner who was performing the duties of a Revenue Officer under the Act, could not sit over the findings of the Civil Court between the parties. The decision of the Civil Court is binding, in my view on the Revenue Officers.

6. For the reasons recorded, this petition is allowed and the impugned order Annexure P. 2 of the Financial Commissioner is set aside but there will be no order as to costs. Petition accepted.