
(2009) 10 P&H CK 0091
In the Punjab And Haryana At Chandigarh

Inder Singh

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 16

Citation : (2010) 158 PLR 92 : (2010) 1 RCR(Civil) 324

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

Bench : Single Bench

Judgement

S.S. Saron, J.—The grievance of the petitioner is with respect to the Khasra Girdawri entries made in the revenue records for the period from Kharif 2006 onwards in respect of land measuring 5 Kanals 7 Marias comprised in Rectangle No. 266, Khasra No. 11 in Village Kalayat, District Kaithal.

2. According to the petitioner the said land was mortgaged with possession with the petitioner vide registered mortgage deed dated 29.5.1959 and since then the petitioner is in continuous possession of the same. It is submitted that the entries in favour of Chander Bhan (respondent No. 5) have been made only on the basis of spot inspection carried out by the Assistant Collector, II Grade Kalayat on 25.7.2007 (Annexure-P.8). Learned Counsel contends that from the inspection that was carried out it was found that buffaloes of the petitioner were tied. However, it is mentioned that the same had been tied a day or two earlier and before that the buffaloes of Chander Bhan (respondent No. 5) had been tied and his garbage and cow dung etc. was also lying on this land. Therefore, it is submitted that the revenue authorities have gravely erred in passing the impugned orders.

3. After giving my thoughtful consideration to the matter, it may be noticed that the claim of the petitioner of being in possession of the land in question is based on the registered mortgage deed dated 29.5.1959. The same has not been placed on record of the present case. Besides, it is not shown whether the stand on the basis of the same was taken before the Assistant Collector II Grade,

Kalayat when the order dated 2.8.2007 (Annexure-P. 1) was passed whereby the Khasra Girdawri entries were ordered to be made in favour of Chander Bhan (respondent No. 5). The Assistant Collector II Grade held that Chander Bhan (respondent No. 5) was in possession of the land as "Gair Marusi Billa Lagan" by way of donation. Chander Bhan (respondent No. 5) had been donated the land by Balbir Singh son of Kishan Singh resident of Pinjupura as Chander Bhan (respondent No. 5) is their "Kul Purohit". In appeal Inder Singh (petitioner) did take the stand that the land was mortgaged with the petitioner vide mortgage deed dated 29.5.1959. The said land in fact had been sold to Balbir Singh etc. by the mortgagor who donated it to Chander Bhan (respondent No. 5). The learned Collector, Kaithal in his order dated 27.3.2008 (Annexure-P.2) observed that inspection of the land in dispute had been made twice and on both occasions Chander Bhan (respondent No. 5) was found in cultivating possession. The petitioner then filed a revision petition u/s 16 of the Punjab Land Revenue Act; 1887 ("Act" - for short) before the Commissioner, Ambala Division, Ambala who vide order dated 15.10.2008 (Annexure-P.3) also noticed that the Assistant Collector II Grade inspected the spot of the land in dispute with the consent of both the parties and in the presence of respectable persons. As per spot inspection, the possession and cultivation of Chander Bhan (respondent No. 5) had been proved. It was observed that the petitioner had failed to produce any evidence before the said Court and also before the Collector. The petitioner then filed a revision petition (Annexure-P.4) before the Financial Commissioner which has been dismissed vide impugned order dated 17.3.2009 (Annexure-P.5). It was observed that the petitioner has not stated any new fact and when asked as to why in his revision petition he did not mention about the filing of the civil suit and withdrawal of the same he had no answer.

4. In the facts and circumstances of the present case the question as to who is in possession of the land is a disputed question of fact which would require the leading of evidence. The claim of the petitioner that the land is under mortgage with him in pursuance of mortgage deed dated 29.5.1959 would require to be proved by leading evidence and producing the mortgage deed on record and also by referring to the recitals contained therein. The proceedings for correcting Khasra Girdawaris are summary in nature and in case a person is aggrieved against the revenue entries he has a remedy of filing a civil suit for declaration u/s 45 of the Act. Therefore, keeping in view the disputed nature of facts as also the question regarding the foundation of the claim of the petitioner being in possession of the land in question on the basis of registered mortgage deed dated 29.5.1959 is liable to be proved. Therefore, it would be inappropriate to embark upon an inquiry with respect to disputed questions of fact and it would be just and expedient if the same is examined by the Civil Court. Accordingly, the civil writ petition is dismissed. However, in case the petitioner is aggrieved against the orders correcting the Khasra Girdawri entries in favour of Chander Bhan (respondent No. 5) he may seek his remedy in accordance with law by filing a civil suit in terms of Section 45 of the Act. It is made clear that nothing

stated herein shall be construed as an expression of opinion with respect to the civil suit that may be filed by the petitioner.