(2015) 11 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 5247 of 2014

Kirpal Singh and Others		APPELLANT
	Vs	
Financial Commissioner (Revenue) Punjab and Others		RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 3(1), 3(2), 34, 36, 38

Citation : (2016) 181 PLR 131 : (2016) 1 RCR(Civil) 623

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Abhishek Singla, Advocate, for the Appellant; V. Ramswaroop, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—Bahal Singh, predecessor-in-interest of the present petitioners, filed a suit for possession by way of pre-emption against Mokham Singh, husband of respondent No. 5, on 20.04.1965 in respect of the land measuring 63 Kanal 01 Marla, situated in the revenue estate of village Jhandakalan. A compromise was effected between the parties on 28.05.1965 by which Mokham Singh surrendered possession of land measuring 23 Kanal 10 Marlas, comprised in Killa Nos. 160/1 (1-18), 2 (7-19) and 3 (7-11) in favour of Bahal Singh in lieu of Rs. 5,000/- and statement of both the parties to that effect was recorded by the Civil Court. The learned Civil Judge, Mansa decreed the suit of Bahal Singh in terms of the compromise to the extent of 23 Kanal 10 Marlas on 21.06.1965. The petitioners filed an application to the Assistant Collector 1st Grade (Sub Divisional Magistrate), Sardulgarh on 21.12.2004 for sanctioning of mutation on the basis of decree dated 21.06.1965. The Halqa Patwari recorded the entry of the decree dated 21.06.1965 in the register and forwarded it to the Halqa Kanoongo on 04.01.2005, who further compared the document on 22.01.2005. In the meanwhile, the private respondents raised certain objections, as a result thereof, the Assistant Collector 2nd Grade (Tehsildar) declared the mutation as contested on 24.01.2005 and directed the parties to appear before the learned Assistant Collector 1st Grade on 18.02.2005. Both the parties were given opportunities to lead evidence and then the mutation No. 7724 was sanctioned in favour of the petitioners vide order dated 28.04.2005 by the Assistant Collector 1st Grade, in which it was categorically observed that the decree dated 21.06.1965 had become final because no appeal was preferred against it. However, the Collector, Mansa allowed the appeal of respondent No. 5 and set aside the order dated 28.04.2005, by which mutation was sanctioned, on the ground that 10 jamabandis have been recorded after the decree dated 21.06.1965 and the present petitioners have also filed a civil suit on 17.05.2004 which is still pending. The petitioners challenged that order of the Collector by way of an appeal before the Divisional Commissioner which was dismissed on 26.03.2008 in which it was additionally observed that the suit for declaration filed by the petitioners before the Court of Additional Civil Judge (Senior Division), Sardulgarh has been dismissed in default on 08.08.2006. The petitioners then filed a revision petition before the Financial Commissioner (Revenue), Punjab which was also dismissed on the ground that various jamabandis have been prepared without referring to the decree dated 21.06.1965 and the suit for declaration under Section 45 of the Punjab Land Revenue Act, 1887, filed by the petitioners was dismissed in default and even their application for restoration was dismissed, therefore, the mutation cannot be sanctioned.

2. The petitioners have thus filed this petition to challenge the orders passed by the Collector, Commissioner and the Financial Commissioner respectively and has prayed for restoration of the order dated 28.04.2005 passed by the Assistant Collector 1st Grade whereby mutation No. 7724 on the basis of decree dated 21.06.1965 has been sanctioned.

3. After notice, the respondents have filed their respective replies. Respondent No. 5 has urged that the suit filed by the petitioners under Section 45 of the Act was dismissed for non-prosecution on 08.08.2006. Application filed for recalling of that order was dismissed on 16.08.2011 and Civil Revision No. 3201 of 2012 was disposed of by this Court on 28.05.2015 on the ground that the revision was incompetent as the petitioners had the right to file appeal under Order 43 of the Code of Civil Procedure, 1908.

4. Counsel for the petitioners has argued that there is no limitation provided under the Act for entering mutation on the basis of Civil Court decree and has relied upon a judgment of this Court in the case of Mehar Singh v. State of Punjab and others, 2011(1) Land. L.R. 580.

5. On the other hand, counsel for the respondents much-less respondent No. 5 has argued that the petitioners have already lost in the Civil Suit filed under Section 45 of the Act as the same has been dismissed for non-prosecution and has not been restored, therefore, sanctioning of mutation after the expiry of 40 years has rightly been rejected by the revenue authorities, setting aside the

order of the Assistant Collector 1st Grade.

6. I have heard learned counsel for the parties and examined the available record.

7. There is no dispute that husband of respondent No. 5 had suffered a compromise decree in favour of the petitioners, which has attained finality as it was not challenged. According to the said decree dated 21.06.1965, Mokham Singh, husband of respondent No. 5, who was a defendant in that suit, had surrendered possession of the land measuring 23 Kanal 10 Marlas comprised in Killa Nos. 160/1 (1-18), 2 (7-19) and 3 (7-11) in lieu of Rs. 5,000/- taken from the plaintiff Bahal Singh, predecessor-in-interest of the petitioners.

8. Now the question arises as to whether the petitioners could have filed an application to the Assistant Collector 2nd Grade for sanctioning of mutation on the basis of acquisition of their rights in the aforesaid property by way of a Civil Court decree and whether there is any limitation provided under the statute for the purpose of making such an application?

9. In order to search the answer to the aforesaid questions, it would be relevant to refer to Sections 34, 38 and 39 of the Act, which are reproduced here-as-under:--

"34. Making of that part of the annual record which relates to land-owners, assignee of revenue and occupancy tenants:-- (1) Any person acquiring, by inheritance, purchase, mortgage, or otherwise, any right in an estate as a land-owner, assignee of land-revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.

(2) If the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

(3) The patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2), and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which a report should have been made to him under one or other of those sub-sections and has not been so made.

(4) A Revenue-officer shall from time to time inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwari and entry made in that register and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired.

(5) Such an entry shall be made by the insertion in that record of description of the right acquired and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be

correct."

"38. Mutation fees: -(1) The State Government may fix a scale of fees for all or any classes of entries in any record or register under this Chapter and for copies of any such entries.

(2) A fee in respect of any entry shall be payable by the person in whose favour the entry is made."

"39. Penalty for neglect to report acquisition of any right referred to in section:-- Any person neglecting to make the report required by section 34 within three months from the date of his acquisition of a right referred to in that section shall be liable, at the discretion of the Collector, to a fine not exceeding five times the amount of the fee which would have been payable according to the scale fixed under the last foregoing section if the acquisition of the right had been reported immediately after its accrual."

10. As per the Scheme of the Act, any person who acquires any right in an estate, which is also defined under Section 3(1) of the Act, as a land owner, which is defined under Section 3(2) of the Act, is required to report his acquisition of the right to the Patwari of the estate. The Patwari, as soon as possible, shall have to enter in his register of mutations every report made to him and shall also make an entry therein respecting the acquisition of any such right which he has reason to believe to have taken place. The Revenue Officer, from time to time, shall have to inquire into the correctness of all entries in the register of mutations and into all such acquisitions. In case of any dispute between the parties, the procedure provided under Section 36 of the Act has to be followed. Section 38 of the Act provides that the State Government may fix a scale of fees for all or any classes of entries in any record or register for copies of any such entries and the fee has to be paid by the person in whose favour the entry has been made. Section 39 of the Act further provides that if any person neglects to make the report required by Section 34 of the Act within three months from the date of his acquisition of a right referred to in that section, in that case he shall be liable, at the discretion of the Collector, to a fine not exceeding five times the amount of the fee which would have been payable according to the scale fixed under Section 38 of the Act.

11. Thus, from a plain reading of the provisions of the Chapter providing procedure for making records, starting from Section 34 to Section 39 of the Act, it is clear that the person who acquires a right in the property is obliged to report his acquisition of right to the Halqa Patwari, as provided under Section 34 of the Act, within three months of such an acquisition of his right, otherwise he would only be penalized by the Collector and the penalty would be not more than five times of the amount of the fee as prescribed under Section 38 of the Act which has to be paid by the person seeking an entry in the register of mutation of the acquisition of his right but there is no provision that after acquisition of right, mutation cannot be sanctioned.

12. According to Clause 7.4 of the Punjab Land Records Manual, which contains general instructions in regard to the mutations, the mutation register consists of a counterfoil and a foil. The counterfoil, which is known as Parat Patwar, is the Patwari''s copy of the register and the foil, which is known as Parat Sarkar, is sent to the Tehsil to be filled with the jamabandi. The Patwari is required to make his entries in column 1 to 13 of the counterfoil but he should not make any entry in column 15 as he would write his report in the foil (Parat Sarkar) briefly explaining the change, the names of the persons on whose information the entry is based and require the lambardar concerned to attest the entry by seal or signature. Similar is the provision in Clause 376 of the Punjab Land Administration Manual.

13. In Mehar Singh''s case (supra), relied upon by the petitioners, this Court has held that an application for entering a mutation on the basis of a Civil Court decree, particularly where the decree is declaratory, cannot be refused on the ground of delay because such an application cannot be equated with execution of a decree. It is further observed that a revenue entry neither confer nor divest a party of its title to property and a revenue officer cannot refuse to enter a mutation where the declaratory decree sets at rest proprietary and/or possessory rights of parties.

14. While concurring with the view expressed in the aforesaid Mehar Singh''s case (supra), I am of the considered opinion that the orders passed by the revenue authorities, setting aside the order of the Assistant Collector 1st Grade dated 28.04.2005 sanctioning the mutation on the basis of the decree passed in favour of the predecessor-in-interest of the petitioners only on the ground that the application has been moved after the delay of 40 years and that various jamabandis have been prepared without referring to that decree dated 21.06.1965, are patently illegal and erroneous because the acquisition of right of the petitioners by virtue of Civil Court decree, that too based upon a compromise and which had attained finality, cannot be ignored for the purpose of making an entry in the annual record much-less the revenue record, which can be triggered only after a mutation is sanctioned in favour of the petitioners and the land in their acquisition stood transferred in their favour but for its entry in the revenue record.

15. Thus, in view of the aforesaid discussion, the present writ petition is hereby allowed, impugned orders of the revenue authorities are quashed and order of the Assistant Collector 1st Grade dated 28.04.2005 is restored/maintained.

16. No costs.