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(2012) 07 P&H CK 0272

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20336 of 2010

Parveen Kaur and others — APPELLANT

Vs

The Financial Commissioner (Co-operation), Punjab, Chandigarh and others — RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:
Punjab Land Revenue Act, 1887 — Section 34

Citation : (2012) 07 P&H CK 0272

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : R.S. Chauhan, for the Appellant; Kavita Arora, AAG, Punjab for the State and Mr. Pawan Kumar with Mr. Sadiq Ali Khan, Advocate for respondent Nos. 4 to 9, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—On 6.6.2000, respondent No. 4 filed an application seeking correction of Khasra Girdawari of the land in dispute 1997 from Sauni 1997 to Hari 2000. This application was consigned to record and thereafter was never pursued. After about two months on 2.9.2000, respondent No. 4 filed another application, seeking the same correction, which was dismissed. This order was also not challenged and attained finality. Later, another attempt is made by filing another application on 31.5.2001. Same was also rejected, followed by yet another application, which was permitted to be withdrawn with liberty to file a fresh. Respondent No. 4 then filed application on 22.10.2001, which was opposed by the the petitioner, as the matter was pending before a Civil Court, where the status-quo order was passed. Assistant Collector adjourned this application sine-die till the decision of the Civil Court. Respondent No. 4 then appealed against this order and the Collector remanded the case to the Assistant Collector, directing him to carry out correction of girdawari entries for the period subsequent to jamabandi for the year 2001-02 after visiting the spot. Plea is that this order is totally contrary to the order passed by Civil Court and without

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jurisdiction, besides being contrary to the ratio of law laid down by this Court. The petitioner accordingly filed an appeal against this order before the Commissioner, which was dismissed on 29.4.2005 by passing a non-speaking order. Thus, the petitioner was forced to approach the Financial Commissioner, who has also upheld the order of remand. The petitioner now has filed the present writ petition to challenge these orders.

2. In view of the stand taken by the respective parties, a limited issue arises for consideration in this case. As per counsel for the petitioner, Financial Commissioner has committed a substantial error of law by holding that pendency of the civil suit is not relevant for the purpose of correcting khasra girdawari. To the contrary, counsel for respondent No. 4 would submit that the revenue authorities are bound and under obligation to correct the khasra girdawari as per the position on ground, as it is meant to reflects the details of the party in possession. He has relied upon Section 34 of the Punjab Land Revenue Act, 1887 in this regard.

3. In support of his submission, counsel for the petitioner has placed reliance on various judgements to urge that when the matter is pending before a Civil Court, the revenue authorities should hold their hands by directing any change as they can not pass any order contrary to the order passed by the Civil Court. Reference is made to Ram Harakh (Dead) by Lrs. Vs. Hamid Ahmed Khan (Dead) by Lrs. and Others, In this case, issue relating to legal prohibition on the part of the revenue authorities to effect an entry in the revenue record during the pendency of civil proceedings arose before the Court. In the case before the Hon''ble Supreme Court, entry was made, while the parties were litigating before the competent Civil Court. The plea in this case also was that there is no legal prohibition for revenue authorities functioning under the Act against effecting such an entry pending dispute between parties before a Civil Court. Plea further was that they could act under the Land Revenue Act and the Land Record Manual and that they were not bound to stay their hands only because some litigation was pending between the parties, if they were not injuncted by the Court from doing so. This contention apparently did not impress the Hon''ble Supreme Court, as can be seen from the following observations made in this regard:

This contention does not advance the case of the appellant. May be, there may not be any statutory prohibition for these authorities. Still the nature of entry effected by them will have to be decided on the touch stone of common sense and on the broad probabilities of the case. The plaintiffs had already filed suits as on 14.10.1947 against the appellants and when the said suit was pending, it would be doing violence to common sense to presume that they would not contest such an entry being made in favour of the appellants, pending litigation concerning their right of the very same land.

4. On this basis, the Hon''ble Supreme Court found such entries to have been made surreptitiously.

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5. Reference is also made to the case of Gurnam Singh and others Vs. Jagjit Singh, 1972 PLJ 211 in this regard. As held in this case, where Civil Court grants temporary injunction over the suit land in dispute, the khasra girdawari entries corrected on the application of a party, would not be appropriate. It is viewed that once the disputes have arisen between the parties, the controversy can not be allowed to be transferred for decision to the revenue authorities. If any orders for correction of entries in khasra girdawaris have been made by these authorities, they would hardly be relevant in the civil proceedings and the evidence adduced by the parties in connection with prayer of correction of entries in khasra girdawari shall have to be assessed independently by the Civil Court. Similar is the view expressed by this Court in Samma Singh Vs. Kapur Singh, 1996 PLJ 599.

6. In view of the law laid down by this Court and referred to above, the submissions made by counsel for the petitioner apparently would carry weight. Senior counsel appearing for respondent Nos. 4 to 9 has only made reference to the provisions of Section 34 of the Punjab Land Revenue Act, 1887 to urge that the revenue authorities are under bounden duty to reflect the khasra girdawaris as per the possession and this could not be so denied simply because of pendency of civil suit. This submission certainly would not be in line of the law laid down by this Court. It is not disputed before me that the respondents had filed a civil suit seeking declaration, where it has been held that Surjit Kaur, the vendor of the petitioner was owner in possession of the suit property and no restrain order could be passed in case any alienation was made by Surjit Kaur. Since both the parties were claiming possession, the status-quo order was directed to be maintained in the civil suit. Any entry made during the pendency of this civil proceedings, as held by the Courts, would not be appropriate. It is not a case where civil suit is merely pending. There is an order of status-quo passed and the parties can not be allowed to change this position in any manner, which may ultimately have an effect on their rights to the pending civil suit. The observation of the Hon''ble Supreme Court can here be relevantly referred that such like issue has to be decided on touch stone of common sense and broad probabilities of the case and when the civil suit is pending, appropriately entries ought not be changed, especially so when this issue is contested.

7. An additional factor in this case, which can not escape notice is that the respondents have made repeated attempts to seek change of Khasra Girdawaris and more than one applications filed by them were declined or not pursued. The effect of these orders have also not been properly examined by the revenue authorities while passing the impugned order.

8. Accordingly, I am of the view that the orders passed by the revenue authorities to remand the case to the Assistant Collector can not be sustained and are set-aside. The order passed by the Assistant Collector, adjourning the application sine-die, to be taken up after the decision of the civil suit is restored. The writ petition is accordingly allowed.

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