

Before S.S. Saron, J.

GURDISH SINGH AND ANOTHER,—Petitioners

versus

**THE FINANCIAL COMMISSIONER, REVENUE, PUNJAB,
AND OTHERS,—Respondents**

C.W.P. No. 1321 of 2008

9th November, 2009

Constitution of India, 1950—Art. 226—Land Revenue Act, 1887—S. 45—Indian Succession Act, 1925—S. 63—Dispute regarding estate of a deceased who had two wives—Assistant Collector sanctioning mutation on basis of natural inheritance in favour of all legal heirs in equal shares—Children from second wife propounding a registered Will executed by deceased in their favour—Collector accepting appeal and ordering sanction of mutation as per registered Will—Divisional Commissioner and Financial Commissioner dismissing revision petitions filed by petitioners—Validity of Will—Civil Court proper forum for adjudication—High Court has no jurisdiction to determine genuineness of a Will which is to be proved by examining marginal witnesses, scribe and propounder etc.—No interference—Petition dismissed.

Held, that respondents No. 5 to 7 have propounded a Will dated 9th April, 1997 stated to have been executed by Gurnam Singh during his life time. The said Will has been challenged by the petitioners. The petitioners claim succession to estate of Gurnam Singh by natural succession whereas respondents No. 5 to 7 claim the same on the basis of the Will dated 9th April, 1997. It is not in dispute that the said Will is subject matter of consideration before the Civil Court. The Civil Court in fact is the proper forum for adjudication as regards the validity of the Will. This Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India is not to embark upon an inquiry and determine whether the Will is genuine or otherwise. The Will is to be proved in accordance with the provisions of Section 63 of the Indian Succession Act, 1925. A will is to be proved by examining the marginal witnesses, the scribe

and the propounder etc. as the case may be. This exercise is not to be carried out by this Court in exercise of its supervisory writ jurisdiction. The recording of witnesses and their cross-examination is to be conducted by the Civil Court. Section 45 of the Act envisages that if any person considers himself aggrieved as to any right of which he is in possession by any entry in record of rights or any annual record he may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877 (now Specific Relief Act, 1963). Therefore, the petitioners already having availed the appropriate remedy the question as regards the orders passed by the revenue Courts are not to be considered and gone into by this Court.

(Para 5)

Further held, that mutation proceedings before the revenue authorities are summary in nature and they do not, in any manner, determine the rights or title of the parties. An entry of mutation in the revenue records neither creates nor extinguish title to the property nor has it any presumptive value of title. Such entries are for fiscal purpose and for collecting land revenue. The question as to title based on a Will or by natural succession is to be decided by the Civil Court on the basis of material on record and the evidence that has been led. It is for the propounder of the Will to establish its genuinences and by dispelling all the suspicious circumstances. It is the decree of the Civil Court, which is to be given effect to and mutation entered on its basis. Therefore, no interference of this Court is called for in exercise of its extra-ordinary jurisdiction and mutation entries in the revenue record are to be done in accordance with the adjudication of the Civil Court.

(Para 6)

Surinder Singh Walia, Advocate *for the petitioner*:

H.S. Gill, Deputy Advocate General, Punjab *for respondents No. 1 to 4*.

Ishwar Lal, Advocate *for respondents No. 5 to 7*.

S.S. SARON, J.

(1) This petition has been filed by the petitioners Gurdish Singh and Simerpal Kaur, son and daughter respectively of Gurnam Singh seeking quashing of the order 26th September, 2007 (Annexure P-5) passed by the Financial Commissioner, Revenue, Punjab (respondent No. 1), the order dated 30th September, 2002 (Annexure P-4) passed by the Collector-cum-Additional Deputy Commissioner, Ludhiana (respondent No. 2), the order

dated 28th May, 1999 (Annexure P-3) passed by the Divisional Commissioner, Patiala Division, Patiala (respondent No. 3) *vide* which the order dated 30th November, 1998 (Annexure P-2) passed by the Assistant Collector Ist Grade, Raikot, District Ludhiana (respondent No. 4) has been set aside and in pursuance of which the mutation of inheritance of the estate of Gurnam Singh was sanctioned in favour of his natural heirs. A further prayer has been made for restoration of the said order dated 30th November, 1998 (Annexure P-2).

(2) The dispute relates to the estate of Gurnam Singh son of Gajjan Singh, who was owner of agricultural land and other properties situated in Village Siloani, Tehsil Raikot, District Ludhiana. He had married twice and from his first wife Gulwant Kaur, who died in 1965, the petitioners Gurdish Singh and Simerpal Kaur were born. From the second wife of Gurnam Singh, namely, Rajinder Kaur; Balaur Singh (respondent No. 5), Sukhbir Sing (respondent No. 6) and Kamaljit Kaur (respondent No. 7) were born. The second wife Rajinder Kaur died during the pendency of the litigation between the parties. Gurnam Singh died on 14th January, 1998. After the death of Gurnam Singh, respondents No. 5 to 7 applied for sanction of mutation of property in their favour on the basis of Will dated 9th April, 1997 (Annexure P-1). According to the petitioners the said Will was never executed by Gurnam Singh and the Patwari Halqa wrongly entered mutations No. 2836 and 2837 with respect to the estate of Gurnam Singh on the basis of the said Will dated 9th April, 1997 (Annexure P-1). The petitioners raised objections against the entering of mutations on the basis of the Will (Annexure P-1) and the mutations were declared contested. These were sent by the Assistant Collector 2nd Grade, Raikot to the Assistant Collector Ist Grade, Raikot (respondent No. 4) for decision. The Assistant Collector Ist Grade Raikot (respondent No. 4) *vide* order dated 30th November, 1998 (Annexure P-2) held that the Will propounded by respondents No. 5 to 7 was surrounded with suspicious circumstances. Accordingly, the mutation of the estate of Gurnam Singh was sanctioned on the basis of natural inheritance in favour of the petitioners and respondents No. 5 to 7 as also Rajinder Kaur (since deceased) in equal shares. Respondents No. 5 to 7 aggrieved against the said order of the Assistant Collector Ist Grade, Raikot (respondent No. 4) filed an appeal before the Collector, Ludhiana (respondent No. 2) who *vide* order dated 28th May, 1999 (Annexure P-5) accepted the same and ordered that the mutations No. 2836 and 2837 be sanctioned

as per registered Will dated 9th April, 1997 (Annexure P-1). The petitioners aggrieved against the said order of the District Collector (respondent No. 2) filed a revision petition before the Divisional Commissioner, Patiala Division, Patiala (respondent No. 3) who *vide* order dated 30th September, 2002 (Annexure P-4) dismissed the same. Thereafter, the petitioners filed a revision petition before the Financial Commissioner, Punjab (respondent No. 1) who also *vide* order dated 26th September, 2007 (Annexure P-5) dismissed the same. Aggrieved against the same the petitioners have filed the present petition.

(3) Learned counsel for the petitioners has submitted that the Will (Annexure P-1) propounded by respondents No. 5 to 7 is surrounded with suspicious circumstances as their mother Smt. Rajinder Kaur had fabricated the same. It is submitted that the petitioner have filed a civil suit challenging the validity of the Will dated 9th April, 1997 (Annexure P-1) and the mutation proceedings are liable to be kept in abeyance till the disposal of the said suit.

(4) In response, learned counsel appearing for respondents No. 5 to 7 has contended that a writ petition is not maintainable and the person aggrieved against the entry in the revenue record may approach the Civil Court in terms of Section 45 of the Punjab Land Revenue Act, 1887 ('Act'—for short).

(5) I have given my thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the records. The dispute in the present case relates to the estate of Gurnam Singh who died on 14th January, 1998. He had two wives, namely, Gulwant Kaur who died in the year 1965. Gurnam Singh from his first wife Gulwant Kaur had two children, namely, Gurdish Singh (petitioner No. 1) and Simerpal Kaur (petitioner No. 2). Second wife of Gurnam Singh was Rajinder Kaur and she had died during the pendency of the litigation before the Courts below. From Rajinder Kaur, Gurnam Singh and Balaur Singh (respondent No. 5), Sukhbir Singh (respondent No. 6) and Kamaljit Kaur (respondent No. 7). Respondents No. 5 to 7 have propounded a Will dated 9th April, 1997 (Annexure P-1) stated to have been executed by Gurnam Singh during his life time. The said Will has been challenged by the petitioners. The petitioners claim succession to estate of Gurnam Singh by natural succession whereas respondents No. 5 to 7 claim the same on

the basis of the Will dated 9th April, 1997 (Annexure P-1). It is not in dispute that the said Will is subject matter of consideration before the civil Court. The civil Court in fact is the proper forum for adjudication as regards the validity of the Will. This Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India is not to embark upon an inquiry and determine whether the Will (Annexure P-1) is genuine or otherwise. The Will is to be proved in accordance with the provisions of Section 63 of the Indian Succession Act, 1925. A will is to be proved by examining the marginal witnesses, the scribe and the propounder etc. as the case may be. This exercise is not to be carried out by this Court in exercise of its supervisory writ jurisdiction. The recording of witnesses and their cross-examination is to be conducted by the civil Court. Section 45 of the Act envisages that if any person considers himself aggrieved as to any right of which he is in possession by any entry in record of rights or any annual record he may institute a suit for declaration of his right under Chapter-VI of the Specific Relief Act, 1877 (now Specific Relief Act, 1963). Therefore, the petitioners already having availed the appropriate remedy the question as regards the orders passed by the revenue Courts are not to be considered and gone into by this Court.

(6) Even otherwise, it is well known that mutation proceedings before the revenue authorities are summary in nature and they do not, in any manner, determine the rights or title of the parties. An entry of mutation in the revenue records neither creates nor extinguish title to the property nor has it any presumptive value of title. Such entries are for fiscal purpose and for collecting land revenue. The question as to title based on a Will or by natural succession is to be decided by the civil Court on the basis of material on record and the evidence that has been led. It is for the propounder of the Will to establish its genuineness and by dispelling all the suspicious circumstances. It is the decree of the civil Court, which is to be given effect to and mutation entered on its basis. Therefore, no interference of this Court is called for in exercise of its extra-ordinary jurisdiction and mutation entries in the revenue record are to be done in accordance with the adjudication of the civil Court.

(7) The question as to whether the mutation is liable to be kept in abeyance till the decision of the civil Court is also not tenable. Mutation proceedings are not liable to be stayed as land as entered is also subject

to land revenue. The Revenue Officer is to conduct mutation proceedings on the facts available before him and not wait for the decision of the civil Court. As and when a declaration is given against a particular mutation or the rights of the parties are otherwise determined in respect of the lands or properties, which are subject matter of litigation the findings and conclusions reached at by the civil Court are to be given effect to and implemented in the revenue records. In case a person is aggrieved against an entry in the revenue record and apprehends infringement of his rights on the basis of an entry of mutation in the revenue records, he has to seek his remedy in a civil Court and enforce his right by way of an application seeking ad interim injunction or stay.

(8) Accordingly, there is no merit in this petition and the same is dismissed. It is, however, made clear that nothing observed herein shall be construed as an expression of opinion on the merits of the case and the civil Court before whom the case is pending shall decide the case independently and in accordance with law on the basis of pleadings, documents and evidence as adduced before it and uninfluenced by this order.

R.N.R.