

Before Alok Singh, J.

SHAMSHER SINGH,—Petitioner

versus

**COMMISSIONER, PATIALA DIVISION, PATIALA
AND OTHERS,—Respondents**

CWP No. 16338 of 2011

2nd September, 2011

Constitution of India - Art.226/227 - Punjab Land Revenue Act, - S. 36 - Petitioner challenged orders of revenue Officers arising out of mutation proceedings - Civil suit between the parties on the question of title pending - Mutation does not confer title - Whether mutation proceedings should continue when civil suit regarding title pending - Appropriate to keep mutation proceedings in abeyance till the decision of title in civil suit - No interference in writ jurisdiction - Matter in the domain of a civil Court.

Held, That having perused judgments cited hereinbefore and Section 36 of the Punjab Land Revenue Act, I have no hesitation to hold that mutation proceedings are summary proceedings in the nature of fiscal inquiries instituted in the interest of the State for the purpose of recovery of the land revenue and to update the revenue record. Any observation, finding or decision in the mutation proceeding shall not be res judicata and shall have no adverse effect in a regular suit involving question of title and possession. If civil suit, involving question of title is already pending, then sanctioning of the mutation should be kept in abeyance in view of the Division Bench judgment of this Court in the case of Jagtar Singh. If mutation is uncontested one then revenue officer is duty bound to carry out the mutation at the earliest and should not keep it pending for long period. However, if mutation is contested and disputed by the parties claiming their respective titles, revenue officer should direct the parties to approach the Civil Court to establish their respective titles and meanwhile revenue officer

should not proceed with the mutation and should wait for the outcome of the decision in the civil suit. Revenue Officer is duty bound to carry out mutation and entries in the revenue record as per the ultimate decision in the civil suit between the parties.

(Para 14)

Further held, That this Court is pained to observe that parties are advised and misled to contest mutation before different revenue authorities up to the level of Financial Commissioner and this Court and thereafter to approach civil Court de novo to get their title decided. It not only amounts to multiplicity of the litigation, but also results in financial loss and loss of mental peace to the litigants. Therefore, in the opinion of this Court, if mutation is opposed or contested by the parties claiming their respective title or inheritance, parties should be left to approach the Civil Court to get their title decided and mutation proceedings should be kept in abeyance awaiting decision in civil suit.

(Para 17)

R.K. Shukla, Advocate, *for the petitioner.*

ALOK SINGH, J. (ORAL)

(1) Petitioner has invoked the writ jurisdiction of this Court assailing the orders dated 16.11.2010, 26.9.2007 and 30.3.2007 passed by respondents No.1, 2 and 3, respectively, arising out of the mutation proceedings.

(2) Petitioner is claiming himself natural heir of Mohinder Singh being his son while private respondents are claiming inheritance on the basis of alleged registered 'Will'.

(3) Undisputedly, as on day no land revenue is assessed or is being recovered in the States of Punjab and Haryana.

(4) Learned counsel for the petitioner has stated that civil suit between the parties is already pending involving the question of inheritance of the estate of Mohinder Singh.

(5) Privy Council in **(Thakur) Nirman Singh and others versus Thakur Lal Rudra Partap Narain Singh and others (1)**, has held as under:-

“It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.”

(6) Hon’ble Apex Court in the case of **Smt. Sawarni versus Smt. Inder Kaur (2)** and **Balwant Singh and another versus Daulat Singh (3)** has held that mutation entries do not convey or extinguish any title. Those entries are relevant only for the purpose of collection of land revenue.

(7) Hon’ble Apex Court in the case of **Suraj Bhan versus Financial Commissioner (4)** has held that mutation entries are relevant for fiscal purpose and substantive rights and title and of ownership of contesting claimants can be decided only by competent Court in an appropriate proceeding.

(8) Hon’ble Apex Court in the matter of **Rajinder Singh versus State of Jammu and Kashmir and others (5)**, has ruled that mutation entry in revenue record confers no title on the property. It has further been observed by the Apex Court that party aggrieved by the orders passed in mutation proceedings, can always redress his grievance by way of filing suit for title.

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- (1) A.I.R.1926 Privy Council-100
 - (2) 1996(7) JT 580 (SC)
 - (3) 1997 (Supp.) Civil Court Cases 262 (SC)
 - (4) 2007(6) SCC 186
 - (5) 2008(9) SCC 368

(9) This Court in the case of **Makhan Singh and another versus Achhar Singh and others (6)**, **Dhian Singh versus Sheela Devi (7)** has held that mutation does not confer any title. Mutation is only for fiscal purpose to complete the record.

(10) Allahabad High Court in the cases of **State of U.P. versus Board of Revenue and others (8)**, **Kunj Behari versus Board of Revenue (9)** and **Ishu versus State of U.P. (10)** has held that mutation proceedings do not decide right of the parties, therefore, the parties are at liberty to approach the Court to decide title, hence, writ jurisdiction arising out of the mutation proceedings, is barred by alternative remedy.

(11) Himachal Pradesh High Court in the case of **Mohammad Iqbal versus Government of India and Ors. (11)** has held that mutation does not confer any title on a person, in whose favour it is so attested and parties are at liberty to approach the appropriate Court to get their respective titles decided.

(12) Learned Financial Commissioner, Punjab, in the case of **Jasbir Kaur versus Harbhajan Singh (12)** has observed as under: -

“It is a settled law that mutation proceeding being summary in nature, the Revenue Officer is not supposed to go into the indicate question of law. It is also a settled law that in case of unregistered Will where any doubt arises, the Revenue Officer is to sanction mutation as per natural succession and the party beneficiary of an unregistered Will is required to go to the Court of competent jurisdiction for getting the legality of Will certified.”

(13) Learned Single Judge of this Court in the case of **Sewa Singh and others versus Union of India and others (13)**, while placing reliance

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- (6) 2000(3) PLR 65
 - (7) 2008(1) RCR (Civil) 792
 - (8) 1993(2) Allahabad Weekly Cases 932 (MANU/UP/0831/1993)
 - (9) 2001(1) A.W.C. 613 (MANU/UP/0110/2001)
 - (10) 2003(1) A.W.C. 774 (MANU/UP/0019/2003)
 - (11) 1997 (Suppl.) Civil Court Cases 445 (HP)
 - (12) 2007(1) RCR (Civil) 596
 - (13) 2007(3) PLR 211

on the judgment of Privy Counsel in the case of (Thakur) Nirman Singh (supra) and Apex Court in the case of Smt. Sawarni (supra) has held as under: -

“It is well settled that the revenue entries are not the documents of title. The revenue entries are maintained for fiscal purposes only.”

Division Bench of this Court in the case of **Harjit Kaur versus Kartar Kaur (14)**, has held as under: -

“.....as per established law, mutation does not confer title on any of the parties and the same is entered only with a view to update the revenue records. The intricate questions regarding validity of the Will and as to whether property was ancestral, in hands of the deceased, are not to be gone into by the revenue officials, while entering mutation. No case is made out for interference. However, the petitioner, if so advised, may agitate for his right before the competent civil Court.”

Another Division Bench of this Court in the case of **Jagtar Singh versus State of Punjab (15)**, has held as under: -

“.....as the matter has already been pending before the civil Court, wherein the validity of the Wills are under challenge, therefore, the sanctioning of the mutation be kept in abeyance. It is further ordered that the petitioners as well as respondent Nos. 4 to 6 shall not alienate the suit property involved in inheritance. The Civil Court shall decide the matter expeditiously.”

Section 36 of the Punjab Land Revenue Act reads as under: -

“36. Determination of disputes. - (1) *If during the making, revision or preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register or mutations, a Revenue-officer may of his own*

(14) 2007(3) PLR 572

(15) 2007(4) PLR 638

motion, or on the application of any party interested but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.

- (2) *If in any such dispute the Revenue-officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by summary inquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof, and that an entry in accordance with that order be made in the record of register.*
- (3) *A direction of a Revenue-officer under subsection (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.”*

(14) Having perused judgments cited hereinbefore and Section 36 of the Punjab Land Revenue Act, I have no hesitation to hold that mutation proceedings are summary proceedings in the nature of fiscal inquiries instituted in the interest of the State for the purpose of recovery of the land revenue and to update the revenue record. Any observation, finding or decision in the mutation proceeding shall not be res judicata and shall have no adverse effect in a regular suit involving question of title and possession. Learned Financial Commissioner in the case of Jabir Kaur (supra) was right in observing that revenue officer is not supposed to go into the indicate question of law, facts about the inheritance of the estate of the deceased. Judgment of the Financial Commissioner in the case of Jasbir Kaur (supra) stands approved in view of the Division Bench Judgment of this Court in the case of Harjit Kaur (supra). If civil suit, involving question of title is already pending, then sanctioning of the mutation should be kept in abeyance in view of the Division Bench judgment of this Court in the case of Jagtar Singh (supra). If mutation is uncontested one then revenue officer is duty bound to carry out the mutation at the earliest and should not keep it pending for long period. However, if mutation is contested and disputed by the parties claiming their respective titles, revenue officer should direct the parties to approach the civil Court to establish their respective titles and meanwhile revenue officer should not proceed with the mutation and should

wait for the outcome of the decision in the civil suit. Revenue Officer is duty bound to carry out mutation and entries in the revenue record as per the ultimate decision in the civil suit between the parties.

(15) It has come to the notice of this Court that even if civil suit involving question of title and inheritance is pending, authorities are proceeding with the mutation cases and litigants are being advised and misled to file appeals and revisions before the higher revenue authorities while mutation order by the revenue authorities shall be of no avail in view of the pendency of the civil suit and ultimately mutation is to be carried out as per the ultimate decision in the pending civil suit. This is the classical example of multiplicity of the litigation.

(16) Now-a-days several measures are being taken to provide low cost and speedy justice to the litigants.

(17) This Court is pained to observe that parties are advised and misled to contest mutation before different revenue authorities upto the level of Financial Commissioner and this Court and thereafter to approach civil Court *de novo* to get their title decided. It not only amounts to multiplicity of the litigation, but also results in financial loss and loss of mental peace to the litigants. Therefore, in the opinion of this Court, if mutation is opposed or contested by the parties claiming their respective title or inheritance, parties should be left to approach the Civil Court to get their title decided and mutation proceedings should be kept in abeyance awaiting decision in civil suit. After abolition of land revenue in the States of Punjab and Haryana nothing is to be recovered so even for fiscal purpose no mutation is required to be carried out if mutation is disputed/contested by the respective parties claiming their respective title. Mutation must be carried out strictly as per the ultimate judgment/decreed in the suit. Meanwhile entry should be made to the effect that mutation is contested between such and such and shall be carried out as per the final judgment by civil Court so that prospective buyer cannot be cheated and misled by any of the party, on the basis of mutation.

(18) Writ petition arising out of summary proceedings of mutation should ordinarily be not entertained and parties should be left to get their respective title decided in a suit for declaration.

(19) In view of the pendency of the civil suit involving question of title and inheritance, I am not inclined to invoke my writ jurisdiction against the impugned orders passed in mutation proceedings. Civil suit shall be decided without being prejudiced from any observation/finding/decision passed in the mutation proceedings.

(20) The only apprehension raised by the learned counsel for the petitioner is that during the pendency of the civil suit, respondents may create third party interest on the basis of impugned mutation in their favour.

(21) The apprehension is mis-conceived. Any third party interest created during the pendency of the civil suit involving the question of title shall be hit by principle of lis pendens and can be taken care of by the civil court hearing the suit.

(22) Petition stands disposed of accordingly.

P.S. Bajwa

Before K. Kannan, J.

VIJAY SINGH,—Petitioner

versus

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

CWP No. 11074 of 1990

05th April, 2011

Constitution of India, 1950 -Art.226/227 - Haryana Ceiling of Land Holdings Act, 1972 - Financial Commissioner reversed the order - Financial Commissioner's power in revision cannot be indefinitely exercised beyond a reasonable time - Petition allowed.

Held, That the State took the order in suo mottu revision after the Collector had earlier passed the order holding that there was no surplus and the property retained by the petitioner as owner fall within the permissible extent of land. This order was passed on 23.5.1980. The Financial