

Before Augustine George Masih & Sandeep Moudgil, JJ.

STATE OF HARYANA AND OTHERS—Appellants

versus

SATPAL SINGH AND OTHERS—Respondents

LPA No. 600 of 2022

July 20, 2022

Constitution of India, 1950—Art. 226—Letters Patent—Clause X—Indian Succession Act, 1925—S. 105—Specific Relief Act—Chap. VI—Punjab Land Revenue Act, 1887—Ss. 13 and 45—One Ami Singh, Caste Rajput, was owner in possession of agricultural land at Patti Madhani at Village Khuda Kalan and Village Manghlai in Patti Khuda, Tehsil and District Ambala besides land in Village Starheri—He died issueless—His wife Smt. Kalehri inherited the property—Claim of private respondents—They are grandchildren of Bhondu, adopted son of Ami Singh and Smt. Kalehri—During life time of Smt. Kalehri, she executed a Will in favour of her adopted son Bhondu and died issueless—Private respondents being successors of Bhondu—sought declaration as owners of the property—Suit for proprietary possession being Pattidars of same Gotra dismissed—Upheld upto Supreme Court—Since Smt. Kalehri predeceased Bhondu, mutation sanctioned in favour of Malkan Jaikarde. If legatee does not survive the testator, the legacy cannot take effect, but shall lapse—Mutation not challenged—Private respondents withdrew suit with permission to file appropriate case, but statutory remedy not availed—Short cut by private respondents—Filed writ petition without impleading persons in whose favour mutation sanctioned and without even availing statutory remedy—Appealable order of Assistant Collector, 2nd Grade set aside by Single Bench—Intra Court Appeal allowed—Judgment of Single Bench set aside.

Held, that on the basis of the said valid Will, the claim which has been projected by the petitioners, on consideration by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. vide order dated 18.05.2022, has been rejected on the ground that it has come on record that Mutation No. 543 of Village Khuda Kalan and Mutation No. 735 of Village Manglai have already been decided and sanctioned. The said mutation application preferred by Thakur Singh son of

Bhondu led to the mutation to be sanctioned in the name of Malkan Jaikarde, which was recorded by the Assistant Collector, 2nd Grade, Ambala Cantt. in his order dated 10.04.1961, that according to the statement of Thakur Singh, his father Bhondu, in whose favour the Will has been executed by Smt. Kalehri, had died prior to her, meaning thereby that no estate would delve on him. The mutation, therefore, was sanctioned in favour of Malkan Jaikarde.

Reliance was also placed upon Section 105 of the Indian Succession Act, 1925 to substantiate the issue that if the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of residue of the testator's property, unless the Will intended that it should go to some other person, which was not so in the Will dated 09.06.1917. This order dated 10.04.1961 of the Revenue Officer entering mutation in favour of Malkan Jaikarde has not been challenged by any person and the same continues.

A suit was preferred by the respondents with a prayer that names of Malkan Jaikarde and Patti Madhani may be ordered to be deleted from the column of ownership and the names of the plaintiffs be entered in the column on the basis of the Will dated 09.06.1917 but the same was withdrawn with permission to file an appropriate case. Reference and reliance was placed upon Section 45 of the Punjab Land Revenue Act, where a suit could be instituted for declaration by a person who considers himself aggrieved as to any right of which he is in the possession by an entry in a record of rights or in the annual record, under Chapter VI of the Specific Relief Act, 1877. The civil suit having been preferred for the said purpose having been dismissed as withdrawn and the statutory remedy of declaration of the right having not been availed of, that Mutation No. 543 of Village KhudaKalan and Mutation No. 735 of Village Manglai sanctioned on 10.04.1961 and 02.02.1962 respectively still holding the field and entries existing without any challenge thereto, did not entitle the petitioners for the claim, as made in the representation.

(Para 5)

Further held, that apart from this, Mutation No. 543 pertaining to Village KhudaKalan sanctioned on 10.04.1961 and Mutation No. 735 of Village Manglai dated 02.02.1962, where the Revenue Officer had sanctioned mutation in the name of Malkan Jaikarde, which has been duly incorporated in the revenue record of rights and the revenue entries exist till date with there being no challenge to them, the mutation, as has been sought to be sanctioned in favour of the private

respondents through their representation, which was ordered to be decided by this Court vide directions dated 12.05.2022 in CWP No. 4904 of 2022, has been rightly rejected.

Further, the impugned order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. is appealable under Section 13 of the Punjab Land Revenue Act, 1887, which alternative effective remedy being available to the private respondents, has not been availed by them.

(Para 19)

Further held, that a short cut is being sought to be invoked by the respondents through the writ petition, which was preferred by them, to avoid proper adjudication by the appropriate authority and giving opportunity to the parties, in whose favour the mutations have been sanctioned. It may be added here that the parties in whose favour mutations have been entered in the revenue records are not party to the writ petition. This exercise on the part of the private respondents appears to be an effort on their part to misuse the process of Court, which itself is a good ground for rejecting the writ petition of the private respondents as preferred by them.

(Para 20)

Further held that, in view of the above, we accept the present appeal and set aside the judgment passed by the learned Single Judge by upholding the order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt.

(Para 23)

Ankur Mittal, Additional Advocate General, Haryana, with Saurabh Mago, Assistant Advocate General, Haryana, *for the appellants.*

Ashish Aggarwal, Sr. Advocate, with Mukul Aggarwal, Advocate, for the caveator-respondents.

AUGUSTINE GEORGE MASIH, J.

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C.M. is allowed subject to just exceptions. Filing of certified and typed copies of Civil Writ Petition, Annexures, CM applications and other pleadings filed before the learned Single Judge, judgment dated 06.07.2022 passed by the learned Single Judge are dispensed with.

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(1) Challenge in this appeal is to the judgment dated 06.07.2022 passed by the learned Single Judge, whereby order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt, vide which representation of the private respondents dated 10.10.2021 (Annexure P-14) was rejected in pursuance to the directions issued by this Court in CWP No. 4904 of 2022 vide order dated 12.05.2022, stands allowed by quashing the impugned order.

(2) It is the contention of the learned counsel for the appellants that the learned Single Judge has, while passing the impugned judgment, misread the judgment of the Supreme Court of India dated 16.05.2007 (Annexure P-8) upholding the judgment and decree passed by the Civil Court dated 14.08.1978 (Annexure P-2), which was preferred by some of the proprietors of the village, who were Rajput by caste and Chauhan by *Gotra* of Village Khuda Kalan, Tehsil and District Ambala, claiming themselves to be entitled to inherit the estate of one Ami Singh Rajput Chauhan, who died without leaving any male or female issue, which suit also included a claim for possession as his widow Smt. Kalehri died on 19.09.1955 issueless with there being no other collateral left and, therefore, as per the custom, they being *pattidars* of the same *Gotra* were entitled to succeed to his estate, which suit had been dismissed and the private respondents being in possession of the land and claiming themselves to be the successors of Ami Singh being grandsons of Bhondu who was adopted son of Ami Singh and that Kalehri had executed a Will in his favour. As a matter of fact, the private respondents had, through the representation dated 10.10.2021 (Annexure P-14), sought sanction of mutation in their favour in pursuance to the judgment and decree dated 14.08.1978 (Annexure P-2) passed by the Civil Court in their favour.

(3) Briefly, the facts are that one Ami Singh, who was son of Dhum Singh, Caste Rajput, resident of Khuda Kalan, Tehsil and District Ambala, was the owner in possession of the agricultural land situated at Patti Madhani at Village Khuda Kalan and Village Manghlai in Patti Khuda, Tehsil and District Ambala besides the land in Village Slarheri apart from the immovable property including residential house. Ami Singh died issueless. His wife Smt. Kalehri inherited the property. As per the claim of the private respondents, they are grandchildren of Bhondu who was the adopted son of Ami Singh and Kalehri. During the life time of Kalehri, she executed a Will dated

09.06.1917 in favour of her adopted son Bhondu. She died issueless on 19.09.1955. They being the successors of Bhondu, in the light of the Will dated 09.06.1917 executed by Kalehri, need to be declared as owners of the property.

(4) The said suit was preferred by the proprietary body of the village, as has been pointed out above, which was dismissed by the trial Court and the said order was upheld up to the Supreme Court along with the findings recorded therein. According to those findings, Will dated 09.06.1917 was found to be executed by Kalehri in accordance with law. Apart from this, what was held was that the proprietary body and the persons, who had preferred the civil suit, were not entitled to the possession of the land.

(5) On the basis of the said valid Will, the claim which has been projected by the petitioners, on consideration by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. vide order dated 18.05.2022, has been rejected on the ground that it has come on record that Mutation No.543 of Village Khuda Kalan and Mutation No. 735 of Village Manglai have already been decided and sanctioned. The said mutation application preferred by Thakur Singh son of Bhondu led to the mutation to be sanctioned in the name of *Malkan Jaikarde*, which was recorded by the Assistant Collector, 2nd Grade, Ambala Cantt. in his order dated 10.04.1961, that according to the statement of Thakur Singh, his father Bhondu, in whose favour the Will has been executed by Smt. Kalehri, had died prior to her, meaning thereby that no estate would delve on him. The mutation, therefore, was sanctioned in favour of *Malkan Jaikarde*.

Reliance was also placed upon Section 105 of the Indian Succession Act, 1925 to substantiate the issue that if the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of residue of the testator's property, unless the Will intended that it should go to some other person, which was not so in the Will dated 09.06.1917. This order dated 10.04.1961 of the Revenue Officer entering mutation in favour of *Malkan Jaikarde* has not been challenged by any person and the same continues.

A suit was preferred by the respondents with a prayer that names of *Malkan Jaikarde* and *Patti Madhani* may be ordered to be deleted from the column of ownership and the names of the plaintiffs be entered in the column on the basis of the Will dated 09.06.1917 but the same was withdrawn with permission to file an appropriate case. Reference and reliance was placed upon Section 45 of the Punjab Land

Revenue Act, where a suit could be instituted for declaration by a person who considers himself aggrieved as to any right of which he is in the possession by an entry in a record of rights or in the annual record, under Chapter VI of the Specific Relief Act, 1877. The civil suit having been preferred for the said purpose having been dismissed as withdrawn and the statutory remedy of declaration of the right having not been availed of, that Mutation No. 543 of Village Khuda Kalan and Mutation No. 735 of Village Manglai sanctioned on 10.04.1961 and 02.02.1962 respectively still holding the field and entries existing without any challenge thereto, did not entitle the petitioners for the claim, as made in the representation.

(6) This order dated 18.05.2022 has been challenged in the writ petition, which has been set aside by the learned Single Judge by holding that the revenue authorities are bound by the Civil Court decree and they cannot ignore the Civil Court decree. There is no jurisdiction to disregard the judgment and decree passed by the Civil Court and, therefore, the impugned order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt, is illegal and set aside with a direction to the said authority to sanction the mutations in terms of the Civil Court decree dated 14.08.1978 in letter and spirit within a period of 15 days from the date of receipt of certified copy of the order dated 06.07.2022 passed by the learned Single Judge.

(7) Learned counsel for the appellants contends that the learned Single Judge has misdirected himself while proceeding on the assumption as if a suit for decree of declaration has been issued in favour of the private respondents by way of a decree dated 14.08.1978 passed by the Civil Court. As a matter of fact, the suit was preferred for possession of the land by the proprietors of village, which was dismissed and the said order was upheld up to the Supreme Court vide order dated 16.05.2007 (Annexure P-8). What was held therein was limited to the extent of the Will dated 09.06.1917 executed by Smt. Kalehri in favour of Bhondu and that she was competent to execute the same as she inherited the property of her husband Ami Singh. The aspect with regard to Bhondu having predeceased Kalehri and, therefore, the effect of the Will dated 09.06.1917 having extinguished in the light of the provisions of Section 105 of the India Succession Act, 1925, has not been taken note of or considered by the Civil Court. The private respondents would, therefore, not be entitled to the mutation, as has been prayed for.

(8) The judgments, on which reliance has been placed by the learned Single Judge, as were cited by the counsel for the private respondents, would not be applicable to the case in hand as in all those cases, it has been observed that the Civil Court decree would be binding upon the revenue authorities and they have no jurisdiction or authority to question the same. However, in the present case, till date, no suit for declaration has been preferred by the private respondents or their predecessors relating to the ownership of the land nor has any Court declared them owners as such.

(9) It is further contention of the learned counsel for the appellants that Mutation No. 543 of Village Khuda Kalan and Mutation No. 735 of Village Manglai had already been decided and sanctioned on 10.04.1961 and 02.02.1962 respectively by the Revenue Officer in the name of *Malkan Jaikarde*, which mutations had already been incorporated in the revenue record of rights which entry still exists and there has been no challenge thereto till date and thus, the mutation, as claimed by the private respondents, has rightly been rejected by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. Referring to Section 13 of the Punjab Land Revenue Act, 1887, which provides for an appeal, which is an alternative efficacious remedy available against the order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt, counsel contends that the remedy of appeal has not been availed of by the private respondents and, therefore, the Court should not have exercised its powers under Article 226 of the Constitution.

(10) Counsel has further placed reliance upon Section 45 of the Punjab Land Revenue Act, according to which, a suit for declaratory decree can be preferred by a person if he considers himself aggrieved to any right, of which he is in possession by an entry in the record-of-rights or in an annual record leaving him the claim to be put forth under Chapter VI of the Specific Relief Act, 1877, which remedy has also not been availed of by the private respondents. Prayer, on this basis, has been made by the learned counsel for the appellants for setting aside the judgment passed by the learned Single Judge and upholding the order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt.

(11) Learned senior counsel for the private respondents has supported the judgment passed by the learned Single Judge by contending that once a Will, which was executed in favour of Bhondu, the predecessor- in-interest of the private respondents, has been held to

be a valid one, the private respondents would be entitled to the said land as owners-in- possession and, therefore, mutation need to be sanctioned in their favour. He, however, could not dispute the fact and the findings that Bhondu was not adopted son of Ami Singh and Kalehri and, therefore, did not have any right of succession on the basis of the claim of adoption. The right would flow thereof from the Will, which was executed by Smt. Kalahri.

(12) Apart from that, learned senior counsel has placed reliance upon various judgments passed by this Court i.e. *Sube Singh versus Financial Commissioner Revenue, Haryana*¹, *Bachan Singh and others versus Financial Commissioner, Appeal (I), Punjab and others*², *Baljit Singh versus Financial Commissioner, Animal Husbandry, Punjab, Chandigarh and others*³, *Rajesh Kumar versus Financial Commissioner and others*⁴ and *Jagjit Singh versus Divisional Commissioner, Patiala and others*⁵. On the basis of these judgments, learned senior counsel for the private respondents has contended that where the Civil Court has passed a decree, the revenue authorities can neither ignore the same nor can they refuse to give effect thereto. A contrary finding can also not be given by the revenue authorities to that of the Civil Court. To conclude, it is stated by him that the revenue authorities are bound by the Civil Court decree and, therefore, have to enter a mutation on the basis of the said findings. Prayer has, thus, been made for upholding the order passed by the learned Single Judge.

(13) Having considered the submissions made by the learned counsel for the parties and on going through the pleadings as also the judgment passed by the Civil Court in a suit, which has been preferred by the proprietors of the village, who claim themselves to be Rajput by caste and Chauhan by *Gotra* and, therefore, entitled to succession, which was dismissed, we are of the considered view that the judgment passed by the learned Single Judge is not sustainable and deserves to be set aside by upholding the order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt.

¹ 2001 (4) R.C.R. (Civil) 766

² 2008 (3) R.C.R. (Civil) 887

³ 2012 (2) R.C.R. (Civil) 384

⁴ 2009 (11) R.C.R. (Civil) 316

⁵ 2012 (13) R.C.R. (Civil) 96

(14) The facts, as have been narrated above, need no repetition as they are undisputed, we would, therefore, straight-away move on to the judgment, which has been passed by the learned Single Judge.

(15) The rights, which are claimed by the private respondents, are based on the assumption that the Will dated 09.06.1917 executed by Kalehri in favour of Bhondu, the predecessor-in-interest of the private respondents, having been upheld by the Civil Court would entitle them to be declared as successors to her property leading to the mutation being sanctioned in their favour. Suffice it to say that the suit was for possession, which was preferred by some of the residents of the village claiming themselves to be the rightful successors as per the culture and custom prevalent as they also belong to Rajput Caste and Chauhan *Gotra*. This claim was based upon the fact that Ami Singh died intestate with no children. According to the Civil Court decree, his wife Kalehri inherited the property. She executed a Will dated 09.06.1917 in favour of Bhondu. That Will, which was executed in favour of Bhondu, was found to be a valid one. Apart from that, there was nothing which would declare the successors of Bhondu to be the rightful owners of the property as it is not in dispute that Bhondu predeceased Kalehri.

(16) As per Section 105 of the Indian Succession Act, 1925, which deals with the lapse of legacy if the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form a part of residue of the testator's property except for a rider i.e. unless it appears by the Will that the testator intended that it should go to some other person. Admittedly, it is not provided in the Will dated 09.06.1917 of Kalehri that she intended the legacy to go to some other person except for Bhondu. The property of Kalehri was to delve on Bhondu alone as per this Will.

(17) Another finding, which has been recorded by the Civil Court, is that Bhondu was not the adopted son of Ami Singh and Kalehri, which finding has been upheld up to the Supreme Court. The rights, if any, would have delved upon the private respondents on the basis of the Civil Court decree, had Bhondu survived Kalehri. Since he died earlier, the Will did not come into effect and, therefore, any rights, which were available under the Will, extinguished with the death of Bhondu during the life time of Kalehri. Obviously, the private respondents did not have any right on the basis of the said Will. Since Bhondu has been found to be not the adopted son of Ami Singh and Kalehri, the private respondents would not have any right of succession

as well to the land in question.

(18) Another aspect, which also persuade us to take a different view from that of the learned Single Judge, is that no suit for declaration has been preferred by the private respondents and there is no such declaration issued by any Court declaring them to be the owners of the property in question. Their claim is based upon an assumption of executed valid Will dated 09.06.1917, which, as held above, does not confer any right on them as Bhondu predeceased Kalehri, the executant of the Will.

(19) Apart from this, Mutation No. 543 pertaining to Village Khuda Kalan sanctioned on 10.04.1961 and Mutation No. 735 of Village Manglai dated 02.02.1962, where the Revenue Officer had sanctioned mutation in the name of *Malkan Jaikarde*, which has been duly incorporated in the revenue record of rights and the revenue entries exist till date with there being no challenge to them, the mutation, as has been sought to be sanctioned in favour of the private respondents through their representation, which was ordered to be decided by this Court vide directions dated 12.05.2022 in CWP No. 4904 of 2022, has been rightly rejected.

Further, the impugned order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt. is appealable under Section 13 of the Punjab Land Revenue Act, 1887, which alternative effective remedy being available to the private respondents, has not been availed by them.

(20) A short cut is being sought to be invoked by the respondents through the writ petition, which was preferred by them, to avoid proper adjudication by the appropriate authority and giving opportunity to the parties, in whose favour the mutations have been sanctioned. It may be added here that the parties in whose favour mutations have been entered in the revenue records are not party to the writ petition. This exercise on the part of the private respondents appears to be an effort on their part to misuse the process of Court, which itself is a good ground for rejecting the writ petition of the private respondents as preferred by them.

(21) The Civil Suit preferred by the private respondents for deleting from the column of ownership names of *Malkan Jaikarde* and *Patti Madhani* and entering their names in the ownership column in the revenue records on the basis of the Will and Civil Court decree was withdrawn with permission to file appropriate case renders them not

entitled to the claim made in the representation.

(22) The judgments, on which reliance has been placed by the learned senior counsel for the private respondents, all relate to cases where the declaration has been issued by the Civil Courts regarding the petitioners being the owners of the property in question. It is in that context that the observations have come that the revenue authorities cannot ignore the decree of the Civil Court and had no jurisdiction to disregard the judgment.

(23) In view of the above, we accept the present appeal and set aside the judgment passed by the learned Single Judge by upholding the order dated 18.05.2022 (Annexure P-16) passed by the Assistant Collector, 2nd Grade-cum-Naib Tehsildar, Ambala Cantt.

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(24) In view of the disposal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

Shubreet Kaur