

Sadhus or Well of Mahantawala" etc.

4. that there is ample evidence to establish the pedigree tables as Khandan Sadh Udasin and Patti Sadh Udasin.

5. that there is no evidence that this was a Sikh Institution from its inception till today or the Sikhs had any say in the matter of appointment of Mahants.

6. Significantly, there is no evidence of there being a regular Granthi in the Institution there existed even a Nishan Sahib. There was no further evidence that the Sikh religious ceremonies were ever held or there is Katha or Parvachan in a congregation.

7. that it is established from the evidence that Guru Granth Sahib, though was kept, did not have a fixed place for its Parkash and the versions on the placement of Guru Granth Sahib is contradictory.

8. that even a single worshipper out of the original 57 applicants, ever turned up to support the cause of the appellant.

9. that there was clear evidence that there was Gola Sahib, Murti of Baba Siri Chand, Smadhs of earlier Mahants and other objects of worship like photographs etc. and Guru Granth Sahib was only kept as a book of reverence.

10. that Baba Siri Chand, who was the son of the first Sikh Guru, was an Udasi and Udasi Sect grew up parallel with the Sikh religion.

11. It is further established that all through, the Institution continued as an Udasi Institution.

45. We are, therefore, convinced that the appeal filed has no merits and must be dismissed with costs. It is accordingly dismissed with costs.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: S.S. Saron, J.

Civil Writ Petition No. 5734 of 2008

Decided on: 04.08.2009

Rajesh Kumar

Petitioner

Versus

Financial Commissioner and Others

Respondents

For the Petitioner: Mr. S.K. Singla, Advocate.

For the Respondents: Mr. H.S. Gill, DAG, Punjab and Mr. Vikas Mehsempuri, Advocate.

A. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation – Civil Court Decree – Pendency of appeal against decree -- Effect of -- Revenue Officer has no option but to follow a decree of the Civil Court and give effect to it, while sanctioning mutation -- As and when declaration contrary to Civil Court decree is given by the appellate or revisional order of a higher Court, the mutations according to the

decree of the higher Court are to be given effect to -- In any case, the revenue officers are normally not to wait for a higher Court to give its decision.

After giving my thoughtful consideration to the matter, it may be noticed that the dispute relates to the inheritance of Parkash Chand (deceased) who died on 16.1.1995. At the time of his death, he was survived by his mother Parmeshwari Devi and his wife Phullan Wati (respondent No.5). Sunita Garg @ Sumita Garg (respondent No.6) claims to be an adopted daughter of Parkash Chand (deceased). The mutation has been sanctioned by the revenue authorities on the premise that respondent No.6 Sunita Garg @ Sumita Garg is an adopted daughter of Parkash Chand (deceased). It may, however, be noticed that in terms of the judgment and decree dated 24.4.2004 (Annexure P6) passed by the learned Civil Judge (Junior Division), Malerkotla, Sunita Garg @ Sumita Garg (respondent No.6) has not been held to be an adopted daughter of Parkash Chand (deceased). The revenue authorities as is well-known are bound by the findings recorded by the Civil Court. The revenue authorities are not to question the propriety of a decree or order of a Civil Court. They are not to ascertain whether the judgment of a Civil Court is right or wrong. The matters and issues decided by a Civil Court are not to be re-opened by the revenue authorities by entertaining fresh evidence. A Revenue Officer in fact has no option but to follow a decree of the Civil Court and give effect to it while sanctioning mutation. As and when a declaration contrary to that recorded in a particular mutation on the basis of a civil Court decree is given on the basis of an appellate or revisional order of a higher Court, the mutations according to the decree of the higher Court are to be given effect to. In any case, the revenue officers are normally not to wait for a higher Court to give its decision. Mutation of a property in the revenue records are for fiscal purposes for maintaining the records. A mutation as recorded of a property in the revenue records does not create or extinguish title and is subject to the Civil Court decree that is ultimately passed.

(Para 5)

B. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation -- Effect of -- Mutation of a property in the revenue records are for fiscal purposes for maintaining the records -- Mutation as recorded of a property in the revenue records does not create or extinguish title and is subject to the Civil Court decree that is ultimately passed.

(Para 5)

C. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 34 – Mutation – Civil Court decree -- Revenue Authorities – Power of -- Revenue authorities as is well-known are bound by the findings recorded by the Civil Court – Revenue authorities are not to question the propriety of a decree or order of a Civil Court, they are not to ascertain whether the judgment of a Civil Court is right or wrong -- Matters and issues decided by a Civil Court are not to be re-opened by the revenue authorities by entertaining fresh evidence.

(Para 5)

D. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 13, 16, 34 – Constitution of India, Article 226, 227 -- Mutation – Appeal – Revision – Writ Petition -- Locus Standi -- Writ challenging the mutation of succession sanctioned by the Revenue authorities of property relating to deceased “A” – “B” is Mother of “A”, who also died -- Petitioner claims a right to the property of “A” through “B”, on the basis of a registered Will of “B”– Held, it cannot be said that the petitioner does not have the locus

standi to file the writ petition.

As regards the locus standi of the petitioner who has filed the present appeal, it may be noticed that the petitioner claims a right to the property of Parkash Chand through Parmeshwari Devi who has since died. Parmeshwari Devi was the mother of the deceased Parkash Chand. The latter pre-deceased his mother Parmeshwari Devi and, therefore, she also succeeded to the estate of her son Parkash Chand. The petitioner claims that he is entitled to succeed to the estate of Parmeshwari Devi on the basis of a registered Will dated 26.11.1996 executed by her in his favour. The petitioner, it is stated, is the son of Brij Lal who was a brother of Parmeshwari Devi. The validity of the said Will of Parmeshwari Devi is pending consideration before the Civil Court. The present case does not relate to dispute of inheritance of Parmeshwari Devi. Therefore, no finding is liable to be given as to who is entitled to succeed to the estate of Parmeshwari Devi. In any case it cannot be said that the petitioner does not have the locus standi to file the writ petition.

(Para 7)

JUDGMENT

S.S. SARON, J.-- The present petition has been filed under Articles 226 and 227 of the Constitution of India seeking quashing of the order dated 19.12.2007 (Annexure P4) passed by the learned Financial Commissioner, Punjab (Appeals-II), Chandigarh (respondent No.1), order dated 21.8.2007 (Annexure P3) passed by the Commissioner, Patiala Division, Patiala (respondent No.2), order dated 15.12.1997 (Annexure P2) passed by the Collector, Sangrur (respondent No.3) and order dated 12.6.1996 (Annexure P1) passed by the Assistant Collector, 1st Grade, Malerkotla (respondent No.4) whereby mutation No.20665 regarding inheritance of Parkash Chand (deceased) has been sanctioned in equal shares to the extent of 1/3rd share each between Parmeshwari Devi mother of the deceased, Phullan Wati (respondent No.5) wife of the deceased and Sunita Garg @ Sumita Garg (respondent No.6) adopted daughter of the deceased.

2. The facts of the case are that Parkash Chand died on 16.1.1995. The Halqa Patwari while entering the mutation in addition to Parmeshwari Devi – mother of the deceased and Phullan Wati (respondent No.5) wife of the deceased also entered the name of Sunita Garg @ Sumita Garg adopted daughter of the deceased. The grievance of the petitioner is that in a suit filed by Sunita Garg @ Sumita Garg (respondent No.6), the Civil Judge (Junior Division), Malerkotla vide judgment dated 24.4.2004 (Annexure P6) has held that the plaintiff -Sunita Garg @ Sumita Garg was never held to be an adopted daughter of Parkash Chand. A reference was made to an earlier judgment in which the then Additional District Judge, Sangrur had also held that Sunita Garg @ Sumita Garg was not the adopted daughter of Parkash Chand (deceased).

3. Learned counsel appearing for the petitioner contends that revenue authorities are bound by the orders and judgments of the Civil Court and mutation is liable to be sanctioned on the basis of the Civil Court judgment dated 24.4.2004 (Annexure P6).

4. In response, learned counsel for respondents No.5 and 6 has submitted that against the judgment and decree dated 24.4.2004 (Annexure P6), Civil Appeal No.44 dated 28.5.2004 has been filed which is pending before the

learned Additional District Judge, Sangrur. Therefore, it is submitted that the Civil Court decree has no force. It is also submitted that Rajesh Kumar who has filed the present petition has no locus standi to file the same.

5. After giving my thoughtful consideration to the matter, it may be noticed that the dispute relates to the inheritance of Parkash Chand (deceased) who died on 16.1.1995. At the time of his death, he was survived by his mother Parmeshwari Devi and his wife Phullan Wati (respondent No.5). Sunita Garg @ Sumita Garg (respondent No.6) claims to be an adopted daughter of Parkash Chand (deceased). The mutation has been sanctioned by the revenue authorities on the premise that respondent No.6 Sunita Garg @ Sumita Garg is an adopted daughter of Parkash Chand (deceased). It may, however, be noticed that in terms of the judgment and decree dated 24.4.2004 (Annexure P6) passed by the learned Civil Judge (Junior Division), Malerkotla, Sunita Garg @ Sumita Garg (respondent No.6) has not been held to be an adopted daughter of Parkash Chand (deceased). The revenue authorities as is well-known are bound by the findings recorded by the Civil Court. The revenue authorities are not to question the propriety of a decree or order of a Civil Court. They are not to ascertain whether the judgment of a Civil Court is right or wrong. The matters and issues decided by a Civil Court are not to be re-opened by the revenue authorities by entertaining fresh evidence. A Revenue Officer in fact has no option but to follow a decree of the Civil Court and give effect to it while sanctioning mutation. As and when a declaration contrary to that recorded in a particular mutation on the basis of a civil Court decree is given on the basis of an appellate or revisional order of a higher Court, the mutations according to the decree of the higher Court are to be given effect to. In any case, the revenue officers are normally not to wait for a higher Court to give its decision. Mutation of a property in the revenue records are for fiscal purposes for maintaining the records. A mutation as recorded of a property in the revenue records does not create or extinguish title and is subject to the Civil Court decree that is ultimately passed.

6. The mutation of the estate of Parkash Chand (deceased) is, therefore, liable to be sanctioned on the basis of the Civil Court judgment and decree dated 24.4.2004 in favour of Parmeshwari Devi mother of the deceased and Phullan Wati (respondent No.5) wife of the deceased in equal shares. However, in case the appeal filed by Sunita Garg @ Sumita Garg (respondent No.6) against the judgment and decree dated 24.4.2004 succeeds, mutation would be entered in her name as well on the basis of decree that may be passed in the appeal.

7. As regards the locus standi of the petitioner who has filed the present appeal, it may be noticed that the petitioner claims a right to the property of Parkash Chand through Parmeshwari Devi who has since died. Parmeshwari Devi was the mother of the deceased Parkash Chand. The latter pre-deceased his mother Parmeshwari Devi and, therefore, she also succeeded to the estate of her son Parkash Chand. The petitioner claims that he is entitled to succeed to the estate of Parmeshwari Devi on the basis of a registered Will dated 26.11.1996 executed by her in his favour. The petitioner, it is stated, is the son of Brij Lal who was a brother of Parmeshwari Devi. The validity of the said Will of Parmeshwari Devi is pending consideration before the Civil Court. The present case does not relate to dispute of inheritance of Parmeshwari Devi.

Therefore, no finding is liable to be given as to who is entitled to succeed to the estate of Parmeshwari Devi. In any case it cannot be said that the petitioner does not have the locus standi to file the writ petition.

8. In the circumstances, the impugned orders are quashed and the civil writ petition is disposed of by directing that the mutation of the estate of Parkash Chand (deceased) be entered in the name of Parmeshwari Devi mother of the deceased and Phullan Wati (respondent No.5) wife of the deceased in equal shares. However, in case the appeal filed by Sunita Garg @ Sumita Garg (respondent No.6) against the judgment and decree dated 24.4.2004 is accepted, the mutation would be changed accordingly.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: M.M. Kumar and Jora Singh, J.J.

Civil Writ Petition No. 15416 of 2007

Decided on: 07.11.2008

Smt. Hira Devi

Petitioner

Versus

State of Punjab and others

Respondents

For the Petitioner: Mr. Iqbal Singh Rangpuri, Advocate.

For the Respondents: Mr. Gurminder Singh, Advocate.

Punjab Regional and Town Planning and Development Act, 1995 (11 of 1995), Section 43, 45, 46 – Unauthorised construction -- Cancellation/ Resumption of flat -- Power of resumption/cancellation of plots, houses and commercial sites etc. should be exercised only as a last resort – Administrative order does not reflect taking of any prohibitive steps to stop the unauthorized construction or any effective steps of removing the same as per the power given in allotment letter – For a long period of over 10 years no steps were taken to implement the cancellation order, only step taken was an eviction notice sent u/s 46 (1) of the Act -- Unauthorized construction has already been removed – Resumption order as well as eviction notice set aside.

It has been repeatedly held by the Courts that the power of resumption/cancellation of plots, houses and commercial sites etc. should be exercised only as a last resort. A Full Bench of this Court in the case of Ram Puri v. Chief Commissioner, Chandigarh, AIR 1981 P&H 301, has categorically laid down that the power of resumption is ultimate civil sanction and must, therefore, be used as a weapon of last resort. Inevitably it should be used with great caution and circumspection because in a sense the individualistic property rights have to give way to larger public purpose of planned and regulated urbanisation (See paras 86 & 87 of the judgment).

The view taken by the Full Bench of this Court in Ram Puri's case (supra) has been approved by Hon'ble the Supreme Court in the case of Teri Oat Estates (P) Ltd. v. U.T. Chandigarh, (2004) 2 SCC 130. Hon'ble the Supreme Court discussed the doctrine of proportionality in its historical perspective (paras 40 to 53) and referred to various facets of the aforementioned doctrine. It has been held that the Court has to see that the legislature and the administrative authority maintain a proper balance between the adverse effects, which the legislation or the administrative order may have on the rights,