

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 14.03.2011*
Judgment Delivered on: 21.03.2011

+ **RSA No. 121/05 & CM No. 6864/05**

SH. PRITAM SINGH**Appellant**

Through: Mr.B.S. Kharab, Advocate.

Versus

SH. DHARE & ORS.**Respondents**

Through: Mr. S.K. Rout and Mr. O.P. Kumar,
Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 23.10.04 which has endorsed the finding of the trial judge dated 01.2.89 whereby the suit filed by the plaintiff Sh. Pritam Singh seeking declaration to the effect that he is the absolute owner of 10 biswas of land (out of Qaime No. 253) and co-owner to the extent of half share (in Qaime No. 252/1 as also of Qaime no. 242) in Village Ujwa, Delhi had been dismissed. The relief of permanent injunction restraining the defendants from interfering in his possession had also been dismissed.

2. The case of the plaintiff is that his father, Sh. Daulat Ram and defendant nos. 1 and 2 were recorded owners of Khasra No. 800/103 measuring 2 Bhigas and 6 Biswas in Village Ujwa. The share of Daulat Ram was one half and that of defendant nos. 1 and 2 and Sh. Om Prakash was the other half. After the death of Daulat Ram, the plaintiff being his sole legal heir stood succeeded to the estate of his father. In 1972, Consolidation Proceedings under the East Punjab Holdings (Consolidation and Prevention Fragmentation Act, 1948 (hereinafter referred to as the Act) as extended to Delhi, started in Village Ujwa, Delhi. By amicable mutual arrangement, 10 biswas of land out of Khasra no. 800/103, adjoining the house of Daulat Ram fell to the share of the plaintiff; in lieu thereof one pucca residential house within the Lal Dora of Village Ujwa was given to the defendant nos. 1 & 2 and Sh. Om Prakash. Sh. Daulat Ram, the father of the plaintiff, had constructed a pucca house in the said 10 biswas of land. The remaining land in Khasra No. 800/103 measuring 1 bigha and 16 biswas remained in the joint possession and enjoyment of the ownership of the parties. It was contended that in lieu of the pre-consolidation proceedings, plaintiff was allotted 7 biswas and defendants were allotted 6 biswas in Qaime no. 252/1 was a part of Khasra no. 800/103. It was contended that in an earlier suit i.e. suit no. 20 (C)/1982, Sh. Pritam Singh Vs. Sh. Dhare & Ors,

defendant nos. 1 and 2 along with defendant no. 3, Smt. Dharam Kaur, had in their written statement admitted that Khasra no. 252/1 is a Qaime within a part of Village Ujwa. This Qaime land cannot be the subject matter of partition. The contention of the plaintiff is that he has also filed an application under Section 36 of the said Act before the Settlement Officer praying that the scheme of consolidation confirmed by him be varied and corrected and a subsequent scheme be prepared. The Settlement Officer on 11.04.1985 had rejected this application. Plaintiff had filed revision before the Financial Commissioner which was also dismissed on 31.03.86. The said orders are wrong and illegal. The defendants, on 2.06.1984, had tried to interfere with the possession of the plaintiff; present suit for declaration and injunction had accordingly been filed.

3. In the joint written statement of defendant nos. 1 to 7 and defendant no. 10, these facts were controverted. It was contended that this court has no jurisdiction to entertain this suit in view of the provisions of Section 44 of the said Act. The orders of the Settlement Officer which has been upheld by the Financial Commissioner cannot be assailed. Para 3 of the written statement had stated that the parties had arrived at a mutual settlement about 30 years ago. In Khasra No. 800/103 comprised of 2 bighas and 6 biswas, 23 biswas had been declared as Qaime; rest of the

land was divided into two parts and was allotted to the plaintiff and the defendants vide orders dated 29.09.1973 in suit no. 247 C.O. and since then the parties are in respective possession of their land. It was denied that the plaintiff was entitled to any relief. The orders of the Settlement Officer and the Financial Commissioner call for no interference.

4. The trial judge had framed two preliminary issues, they reads as follows:-

- "1. Whether this Court has jurisdiction to try this suit? OPP.*
- 2. Relief."*

The finding returned is as follows:-

7. It has been strenuously argued by Learned Counsel for the plaintiff that the order dated 31.3.1986 of the Learned Financial Commissioner is beyond his jurisdiction; for the question of title has been adjudicated vide this order. This cannot be done by the Revenue Authorities as they have no jurisdiction to adjudicate on the question of title of a land. He has further argued that when an authority is given power to do something under a statute, then it cannot transgress the limits imposed by the statutes. As far as this aspect of the Law is concerned I am in agreement with Learned Counsel for the plaintiff. An authority constituted under an Act cannot over step the limits imposed by the statute upon its jurisdiction. Nor it can violate the rules of natural justice etc. The Civil Courts can always step in to correct the jurisdictional errors. The present plaintiff can also get a declaration, as claimed, if such an error can be discerned in the order of Learned Financial Commissioner.

8. Learned Counsel for the plaintiff has filed a photo copy of the certified copy of the order of another Financial Commissioner to fortify his

arguments. In this order, it has been held that once an area is included in the list of reservation, it goes out of the purview of the consolidation proceedings, unless the reservation is varied or modified u/s 36 A or Section 42 of the Act. The allotment of reserve area to the exclusion of some of the co-shares is illegal and without jurisdiction. At the outset, I will like to make it clear that the above judgment is in no way binding upon me. It can be used at the most as the line of arguments on behalf of the plaintiff. The case of the plaintiff through out is that he is absolute owner of 10 biswas of land out of Qaimi No. 253 and co-owner of 7 biswas of land out of Qaimi No. 252/1. Learned counsel for the plaintiff has drawn my attention to the pass book consolidation wherein the plaintiff has been shown as in possession of 7 biswas of land out of Qaimi No. 252/1. The claim of the plaintiff is that he ought to have been allotted $\frac{1}{2}$ share of Qaimi No. 252/1/. Since, the allotment of the joint land involves a question of title, the authorities under the Act were not empowered to go into the same. I am, however, of the opinion that the allotment of the land does not in any way involves the question of title. Sections 19 to 21 of the Act provide and elaborate procedure for repartition of the land holdings. A procedure has been provided to call for the objections and to adjudicate upon them. Merely because the suit land was under joint ownership of the parties cannot be considered to be sufficient to make all the disputes arising in respect of the suit land as the disputes regarding title. The purposes behind the Act is to repartition the land holdings. Different owners and co-sharers of the land holdings are provided the alternative lands after the scheme is finalized. A question of title can be said to have arisen only when there is some dispute between the parties about the preconsolidation land holdings. No such dispute has been alleged by the plaintiff.

9. Even otherwise this Court cannot adjudicate the present suit because it will amount to upset in the entire scheme finalized under the Act. The plaintiff took resort to the jurisdiction of the authorities under the Act. Having been successful there, he has filed the present suit. But the same cannot be entertained because it will amount to t5reding into an arena which is specifically barred u/s 44 of the Act. Section 44 clearly bars a Civil

Court from entertaining any suit or application in respect of another matter which the authorities under the Act are empowered to do.

10. I, therefore, hold that this court has no jurisdiction to try this suit. The issue is accordingly decided against the plaintiff and in favour of the defendants."

This was endorsed in appeal by the first appellate court. The finding in the impugned judgment reads as under:-

*"The plaintiffs nowhere alleged that in the revenue record this 10 biswas of land was entered in name. In para 1 of the plaint he has admitted that in the revenue record Sh. Daulat Ram, father of the plaintiff and defendant no. 1 and 2 and Om Parkash were recorded as owner of khasra no. 800/103 etc. measuring 2 bighas 6 biswas in village Ujwa, Delhi. It is alleged that 10 biswas of land also is part of the joint holding. Therefore, it appears that the question of alleged title of the land of 10 biswas for which there is no documentary evidence is made by the appellant/plaintiff without any basis and its purpose was to thwart the consolidation proceedings conducted under the provisions of the Act. Further the question of title cannot be raised directly before the civil court in such like cases. In **Hatti Vs. Sunder Singh AIR 1971 SC 2371** it was held as under:*

".....Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an infirmity. On the contrary, section 186 envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction to the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights

under item 4 of Schedule I of the Act, that question will then be refereed by the question of title in order to claim Bhumidari right cannot directly approach the Civil Court.....”

In view of Hatti’s case (supra) the question of title with regard to the land to which Delhi Land Reforms Act and Delhi Land Revenue Act apply, cannot be raised directly before the Civil Court. The parties have first to approach the Revenue court and if in the opinion of the Revenue Court, any question of title arises, then issue can be framed by the Revenue Court and referred to Civil Court for decision. In the present case, the course is not adopted by the appellant/plaintiff.

The allotment of land by the Consolidation Officer under the provisions of the Act Consolidation of holding and Prevention of Fragmentation from the holdings are done by the Consolidation Officer under the provisions of the Act. The allotment of the land does not involve any question of title. It is done on the basis of the title of the parties as recorded in the revenue record. The appellant/plaintiff has submitted that the land measuring 2 bighas 6 biswas in khasra no. 800/103 etc in village Ujwa, Delhi was jointly held by plaintiff’s predecessor Sh. Daulat Ram and de3fendants no. 1 and 2 and Sh. Om Parkash. On this basis, the lands were allotted to the parties by the learned Consolidation Officer in accordance with the provisions of the Act. The consolidation proceedings cannot be upset by filing a civil suit as the same is barred u/s 44 of the Act. The plaintiff has moved an application before the Consolidation Officer concerned and thereafter filing the appeal before the Ld. Financial Commissioner the act of the Consolidation Officer in accordance with the Act cannot be questioned by the plaintiff in a Civil court. Such a course would be barred by Section 44 of the Act.”

5. This is a second appeal. It had been admitted and on 28th March, 2007, a substantial question of law was formulated, which reads as follows:-

“Whether the conciliation authorities had the jurisdiction to decide the question of title which arose between the parties in the suit in respect of

the qaime No. 253-252/1?"

6. On behalf of the appellant, it has been urged that the finding of the two courts below are perverse; jurisdiction of the civil court is not barred; what had to be adjudicated as is clear from the averments in the plaint related to the title of the suit land; question of title can well be gone into by the Civil court and the bar of Section 44 of the said Act is not attracted. It is urged that it is a fit case for remand. Reliance had been placed upon a judgment reported in Punjab and Haryana High Court Tara Singh Vs. Dalip Singh to substantiate this submission.

7. Arguments have been countered. Learned counsel for the respondent has placed reliance upon AIR 1971 SC 2320 Hatti Vs. Sunder Singh to support his submission that the jurisdiction of the civil court is barred to entertain a suit where the rights of a bhumidar are involved as is sn in the instant case. The impugned judgment calls for no interference.

8. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948 (hereinafter referred to as the 'Act') was an Act promulgated for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab; it is applicable to the Union Territory of Delhi. Chapter III deals with the Consolidation

of Holdings and draft scheme for consolidation is postulated under Section 19 of the said Act; it requires publication. Any person, effected or likely to be effected by such a scheme, has a right within 30 days of the publication of this scheme to file objections. Under Section 20 (3), the Settlement Officer shall, after dealing with the objections received by it, confirm the scheme with or without modifications, or refuse to confirm it. On confirmation of the scheme, the same shall be published in the prescribed manner, repartition thereof has to be effected in terms of Section 21. A person aggrieved by repartition may file written objections within 15 days of the publication by the Consolidation Officer. This section stipulates that the order of the Consolidation Officer can be appealed before the Settlement Officer within one month. A person aggrieved by the order of the Settlement Officer may file an appeal to the Chief Commissioner within a period of 60 days whose order shall then be final and shall not be called in question in any court.

Section 44 of the Act bars a Civil court from entertaining any suit or any application to obtain a decision or order in respect of any matter which the Chief Commissioner or any Officer, by this Act is empowered to determine, decide or dispose of. This is a non-obstante clause.

Section 46 of the said Act empowers the Chief Commissioner

by notification to make rules for carrying out the purposes of this Act.

The Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules, 1959 were promulgated thereafter.

Section 2 is the defining clause. Section 2 (3) defines "Kayami" to mean:-

"Kayami" means reservation of particular place of land on which some kind of structure exists prior to the date of notification under Section 14 of the Act and the cases which should be considered for regularisation under the Scheme of "Kayami" as a part of consolidation proceedings as enumerated in clause (1) of rule 6."

Under Rule 6(1)(A) Cases fit for regularization as "Kayami" shall be as under:-

(1) residential units constructed for self-occupation, on the individual's own holding, by a person who has resided in the village for a period of at least twenty years, and subject to the condition that the size of the plot does not exceed the area of half an acre (2 bighas and 8 biswas).

Vehement contention of the learned counsel for the appellant is that repartition of kayami land cannot take place; it is submitted that cases fit for regularization as kayami are those residential units which are constructed for self-occupation on plots not exceeding an area of 2 bighas and 8 biswas. It is pointed out that, in the instant case, the land under consideration was 13 biswas in Kayami no. 251 and 10 biswas in Kayami no. 253; being less than this figure, they could be regularized and thus could not be the subject matter of partition. The impugned judgment is illegal and

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is accordingly liable to be set aside.

9. The said Act and the object of its promulgation has been noted herein supra. It is a legislative scheme engrafted to prevent fragmentation of agricultural holdings. Before the draft scheme is published giving effect to the rights of all the portions, holders has to be gone into. This is clear from the provisions of Section 19 to 21 of the said Act. The order of the Consolidation Officer is subject to an appeal; thereafter in the hierarchical system, a person aggrieved by the order of the Consolidation Officer may address his grievances before the Settlement Officer; after the Settlement Officer, the Financial Officer may hear the appeal whose decisions shall thereafter be final and not be called in question in any court. He is the last appellate body. Section 44 of the Act bars the civil court from entertaining any suit or application to obtain a decision or an order which the Chief Commissioner /Financial Commissioner is empowered to decide or determine. Order of the Chief Commissioner shall be final.

10. The plaintiff by way of the present suit had sought a declaration and permanent injunction to the effect that he is the absolute owner of 10 biswas of land in Kayami no. 253; he is co-owner to the extent of half share in Kayami no. 252/1 and is in possession of 7 biswas of the said land; permanent injunction

seeking restraint against the defendants from interfering with his suit land has also been sought. Further averments in the plaint show that the plaintiff has recognized the fact that consolidation proceedings had taken place qua the suit land in the year 1972 whereby the distribution and re-distribution of the land in Village Ujwa, Delhi had been effected. The Consolidation Officer had passed an order on 04.11.82 against which an appeal had been filed by the plaintiff before the Settlement Officer. The order of the Settlement Officer was assailed before the Financial Commissioner. The Financial Commissioner had disposed of the appeal on 21.10.1985. His finding is as follows:-

“ From the records it is revealed that kila no. 254 is recorded in the name of some other person. The contention of the petitioner is that he should be allotted ½ share of kila number 254 to the extent of 7 biswas. I have carefully gone through the contents of the petition and under Section 42 of the Act. The petitioner is not clear as to what does he want whether he wants share to the extent of half in kila number 254 (0-7) or in kila number 252/1. In the body of the petition he raises a dispute about qaimi no. 252/1 whereas in the end he raises a dispute about Qaimi no. 254/1 . This is the contradictions in his story and as such it is difficult for me to adjudicate upon this matter. Since there is contradiction in the contentions of the petitioner himself, therefore the present revision petition being based on different standing deserves to be dismissed. The petitioner will be at liberty to seek his redress after clearing his mind as to what he has to seek a relief whether in respect of kila number 252/1 or 254, by filing fresh petition. Revision as such stands dismissed.

This order of the Financial Commissioner was again sought to be reviewed. The review petition had been dismissed on 31.3.86. The contention now urged before this court had been raised by the petitioner therein as well. Review Petition had been disposed of with the following observations:-

"The contention as raised by the learned counsel for the petitioner is two folded viz that since the petitioner and the respondents are owner of the Qaimi No. 252/1 to the extent of 13 biswas each therefore the name of the petitioner should be recorded to that extent and for the order of the Settlement Officer in rejecting the prayer of the petitioner is wrong since the provision of section 36 of the Act has not provided any limitation. In rebuttal Shri. Dhare stated that the petitioner has raised construction on his portion whereas the share on the Qaimi of the respondents is lying vacant. He said that the intention of the petitioner is to grab the share of the respondents and nothing else. After going through the averments of the parties I came to the conclusion that though the petitioner is one of the co-sharers in the Qaimi no. 252/1 which has come up out of khasra no. 800/103 measuring (2-06) yet his possession has been asserted to be on ½ share by the respondents. This contention of the respondent that the petitioner has raised constructions on his share has not been rebutted nor anything contrary to it said. It is also pointed out here that earlier the petitioner sought relief but his petition was dismissed since wrong khasra number was mentioned. Subsequently review of that order was sought but the review application was dismissed owing to its being not maintainable in law. During the course of arguments, Shri. Dhare also pointed out that the petitioner is also in possession out that the petitioner is also in possession of Qaimi No. 253 to the extent of 10 biswas. In his order the Settlement Officer (Consolidation) has held that the petitioner had no preferential claim since according to his own version he accepted the occupation to the extent of 10 biswas in Qaimi no. 253 whereas the respondent Dhare has had possession to the extent of 13 biswas which is

almost the same area as stated. Shri. Dhare said that both the Qaimi carved out of khasra Number 800/103 (2-6). He said on Qaimi No. 253, Pritam Singh, raised constructions while the other Qaimi No. 252/1 came to the share of the respondents. This letter part of the arguments remained un-rebutted by the petitioner. This being the position, I do not find any ground to accept the present revision and as such the same stands dismissed.

This was on 31.03.1986.

11. These same averments are now contained in the present plaint. Bar of Section 44 of the said Act clearly stood attracted. This had been rightly held by both the two courts below. The question of title was not in dispute; the grievance of the plaintiff/appellant was that the Kayami land which had admittedly been partitioned could not be the subject matter of a re-partition. The dispute raised by the plaintiff was not about his title prior to the consolidation; question of title was nowhere involved. This view had been endorsed in the impugned judgment as well.

12. Plaintiff having availed of all the remedies which were available to him under the said Act and having addressed the same grievances before the Settlement Officer and thereafter before the Financial Commissioner could not now relegate himself to a civil suit again. Judgment of Tara Singh (supra) does not come to his aid; dispute was not on the question of title. Question of title not being involved, the impugned judgment correctly noted that the

jurisdiction of the civil court is barred.

13. Substantial question of law is answered accordingly. There is no merit in appeal. Appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

MARCH 21, 2011

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