

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1636 of 1988

Date of Decision: 17.7.2015

Sucha Singh and Another

... Appellant(s)

Versus

Naranjan Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: None for the appellant(s).

Ms. Ishrat Kaur Pannu, Advocate
for the respondents.

G.S.Sandhawalia, J. (Oral)

The present appeal has been filed against the findings of the Courts below whereby the suit for declaration and permanent injunction has been dismissed. The suit was filed on the ground that the suit land was joint and undivided and the order dated 22.3.1983 passed by the Assistant Collector 1st Grade, Nakodar and the order dated 28.3.1984 passed by the Collector, Nakodar were against the law and natural justice and against the mode of partition.

It is alleged that the plaintiffs and their two brothers (defendants No.1 & 2) had got four equal shares, while defendants No.3 to 7 had got 3292 shares. The plaintiffs had moved the application for partition of the land wherein the statement of the parties had been recorded and the mode of partition had been sanctioned. Thereafter, the final order was passed on 22.3.1983. It was further stated that the land was already partitioned by the private family partition and the plaintiffs

were allotted less area, though as per the value, there was no difference between chahi and barani land. The path had been carved out in the land allotted to the plaintiffs which had caused irreparable loss to them and defendant No. 2 had sold the land measuring 8 kanals in faovur of plaintiff No.1-Sucha Singh and defendant No.1-Naranjan Singh but it was kept in his share.

On being summoned, the defendants questioned the jurisdiction of the Civil Court under Section 158(2) of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the Act") with a plea that the order had become final in the appeal as no further appeal had been filed before the Commissioner and the application had been filed for delivery of possession and the Court of Assistant Collector Ist Grade, Nakodar had issued warrant of possession and the compensation was assessed and the plaintiffs had requested that they would surrender possession on 2.11.1984. The possession had been delivered on 9.11.1984 and the suit had become infructuous. The trial Court framed the following issues:-

- "1. Whether the order dated 22.3.83 of A.C. Ist Grade Nakodar and order dated 28.3.1984 passed by Collector are liable to be set aside? OPP*
- 2. Whether the plaintiff entitled to declaration and consequential relief of permanent injunction? OPP*
- 3. Whether the Civil Court has got no jurisdiction? OPP*
- 4. Whether the order of A.C. Ist Grade has been implemented and to what extent and to what effect?*

OPD

5. *Whether the suit is bad for non-joinder or misjoinder of necessary parties? OPD*

6. *Whether the plaintiffs are estopped to file the present suit by his act and conduct? OPD*

7. *Whether the land has not been properly described? OPD*

8. *Whether the suit has become infructuous? OPD*

9. *Relief.*

On application U/O 29 Rule 2 A one more addl.

Issue was framed:

1. *Whether the defendants disobeyed the temporary injunction, if so, to what effect?*

2. *Relief."*

Thereafter, the trial Court examined as many as three witnesses from the plaintiffs' side and six from the side of the defendants. The finding of fact was recorded that at the time of sanctioning the mode of partition, the statements of all the co-sharers were recorded including the plaintiffs. The plaintiffs had made statement that the land be partitioned keeping in view the valuation, which was fixed at the time of the operation of the consolidation of the holdings. No objection had been raised and accordingly the final partition was done in accordance with the mode of partition. The appeal was dismissed by the Collector and no appeal or revision was preferred against the said order. It was noticed that the plaintiffs had been given about three acres

of land and the said land was of more value and thus, their share was less. The suit had been filed only to keep more land than their share and accordingly issue No.1 was decided against the plaintiffs and it has been held that they were not entitled for declaration also.

On issue No.3, it was found that since the suit was based on title, the Civil Court had jurisdiction. It was further noticed under issues No.4 & 6 that the order of partition had been implemented except some land, which was in possession of the plaintiffs and they had made statement that they had delivered possession of the land after cutting of the crops of paddy and cotton in the month of October. Accordingly, it was held that the suit was not maintainable. Additional issues No.1 & 2 pertaining to order 39 Rule 2A CPC were decided against the plaintiffs on the ground that the defendants had not committed any disobedience. The suit was dismissed.

In appeal, the lower Appellate Court held that the grievances were outside the jurisdiction of the Civil Court which was barred under Clause (xvii) of Sub Section (2) of Section 158 of the Act and the Civil Court was not to exercise the jurisdiction over the claim for partition. It was noticed that no question of title had been raised and the plaintiffs had, themselves moved for partition of the joint khewat and could not raise the question after giving an undertaking and accepting the partition especially in view of the fact that the possession had already been delivered on 9.11.1984. It was further held that in any case, the remedy regarding the eight kanals of land, which Charan Singh had sold vide registered sale deed dated 2.1.1967, was that the plaintiffs could file suit

for possession and not to question the partition. The facts have been noticed in detail. The partition proceedings were the subject matter of challenge without any question to the procedure followed by the revenue Court. A specific bar is provided under the Act as noticed by the lower Appellate court also. In the absence of any procedural illegality by the revenue Court, the Civil Court would have no jurisdiction and admittedly the plaintiffs had a remedy to challenge the orders of the revenue Court, if they were aggrieved, before the Court of higher jurisdiction, namely the Commissioner. They could not change the form of grievance by resorting to the Civil Court in the absence of any plea that the revenue Court has no jurisdiction as such. This Court in ***Rai Jasbir Singh v. Balwant Singh and Others 2006(1) PLR 339*** has held to that effect. The relevant paragraphs of the said judgment read as under:-

“9. *The next contention raised by the learned counsel for the appellants is that the Civil Court had jurisdiction to entertain the ex parte order passed by the Revenue Officer.*

10. *This contention is also without any merit. Section 158 of the Act specifically excludes the jurisdiction of the Civil Courts in matters within the jurisdiction of the Revenue Officers. In order to challenge the order passed by the Assistant Collector, a provision for filing of appeals before the higher Revenue Authorities has been made in Section 13 of the Act. The plaintiffs without exhausting the remedies available to them under Section 13, approached the Civil Court to challenge the order passed by the Assistant*

Collector.”

In such situation, the findings recorded by the Courts below do not raise any question of law, much less a substantial question of law. Accordingly, there is no scope of interference in the present appeal and the same is dismissed.

(G.S.Sandhawalia)
Judge

July 17, 2015

“DK”