

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1104 of 1987 (O&M)

Date of decision : 06.03.2018

Mohinder Singh and others

...Appellants

Versus

Charan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. J.S. Brar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit seeking declaration that the order passed by the Additional Director of Consolidation of Holdings Punjab, Chandigarh dated 03.11.1979 is illegal, ineffective, invalid and without jurisdiction.

Both the Courts below have recorded a finding that Chuhar Singh and some other persons had filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as 'the Act of 1948') for the same relief, which was dismissed by the Additional Director, Punjab, Chandigarh on 13.12.1978. Another application was filed by adding appellant No.1-Mohinder Singh as a petitioner. Chuhar Singh was also

applicant in the second application, which was allowed by the Additional Director, Punjab, Chandigarh.

Both the Courts below have further noticed that the consolidation of holdings took place in the village in the year 1953 and the Additional Director, Punjab, Chandigarh had no jurisdiction to entertain an application under Section 42 of the Act after a period of 26 years.

Learned counsel for the appellants has vehemently argued that the plaintiffs had filed a suit which was withdrawn on 15.02.1980. He has submitted that once the suit was withdrawn, second suit was not maintainable. A careful reading of the order passed on 15.02.1980 shows that the suit was withdrawn for the reasons given in the application. The defendant-appellants have not brought to the notice of the Court that what were the reasons when the suit was withdrawn. In absence of the reasons, it is not possible for this Court to hold that the second suit is barred under the provisions of Order 23 CPC.

Learned counsel for the appellants has further submitted that the plaintiffs-respondents also filed a writ petition for the same cause of action, which was dismissed on 16.04.1980. He submits that after the dismissal of the writ petition, the suit was not maintainable. The order passed by the High Court on 16.04.1980 is extracted as under:-

“In this petition, learned counsel for the petitioner wants to raise disputed questions of fact as to the existence of pahi etc., which cannot be gone into in writ jurisdiction. Moreover, it has been observed by the Additional Director in his order dated 3rd November, 1979, that the petitioner has also shown his willingness to give up his exclusive

claim on the said pahi, if he has suitably compensated for the loss in area. Thus, we find no force in this petition and the same is hereby dismissed.”

It is clear that the writ petition was dismissed on the ground that the disputed questions of facts are involved. Such decision cannot be said to be a decision on merits. Still further, as per Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, an application under Section 42 is maintainable within a period of six months from the date of the order against which it is filed. In the present case, the defendants-appellants were seeking amendment in the consolidation scheme. A reading of the order passed by the Additional Director, Punjab, Chandigarh does not show that the consolidation scheme was amended or modified. The Additional Director chose to just pass an order which has resulted into the modification of the consolidation scheme which has become final in the year 1953.

Learned counsel for the appellants has further submitted that the jurisdiction of the Civil Court is barred under Section 44 of the Act of 1948.

This Court has carefully considered the arguments, however, do not find any substance therein. Here is a case where the defendants-appellants except Mohinder Singh, initially moved an application before the Additional Director, Punjab, Chandigarh for the same relief, which was dismissed on 13.12.1978. Thereafter, a fresh application was moved by adding the applicant i.e. Mohinder Singh. Chuhar Singh, who was applicant in the original application was also one of the applicant. Now in

the year 1979, the Additional Director, Punjab, Chandigarh chose to pass an order which was contrary to the order dated 13.12.1978.

Both the Courts below have examined this aspect in detail and have found that the Additional Director, Punjab, Chandigarh had no power to review its own order passed on 13.12.1978. Merely because one of the applicant has changed, that would not confer the jurisdiction on the Additional Director, Punjab, Chandigarh to pass a different order.

In last, learned counsel for the appellants has submitted that the order passed by the Additional Director, Punjab, Chandigarh is a consent order.

In this respect, it is sufficient to note that the plaintiffs have been agitating this order from the very beginning. The plaintiff has specifically asserted that he has never given his consent.

Both the Courts have found that the order is without jurisdiction. Such being the position, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No