

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

Civil Writ Petition No.10798 of 2011

Jagjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

Civil Writ Petition No.17711 of 2011

Gurmeet Singh

... Petitioner

Versus

The Financial Commissioner (Revenue), Punjab and others

... Respondents

Reserved on: 06.08.2018

Pronounced on : 17.08.2018

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. S.S. Sidhu, Advocate for the petitioner
in CWP No.10798 of 2011.

Mr. R.K. Girdhar, Advocate for the petitioner
in CWP No.17711 of 2011 and
for respondent No.52 in CWP No.10798 of 2011.

Mr. P.S. Bajwa, Addl. AG, Punjab.

Mr. J.S. Brar, Advocate for respondents No.5, 25 to 27
in CWP No.10798 of 2011.

Mr. Raj Karan Singh, Advocate for
Mr. Namit Gautam, Advocate for respondents No.29 and 30
in CWP No.10798 of 2011.

G.S. Sandhawalia, J.

Challenge in the present two writ petitions i.e.

CWP Nos.10798 and 17711 of 2011 filed under Article 226/227 of the

Constitution of India are by Jagjit Singh and Gurmeet Singh who are brothers.

Petitioners impugn the orders passed by the Revenue Authorities, whereby the Collector rejected their appeal against the order dated 19.08.2008 (Annexure P-1) on the ground that Mode of Partition had not been challenged by any other party and the certificate of partition had been issued vide order dated 22.10.2009 (Annexure P-2) Vide Rapat No.789 dated 22.07.2009 the proceeding of entry in the mutation had also been initiated as possession had been taken. The proceedings of partition having, thus, been completed, it was held that the appeal was not maintainable.

The said order was upheld by the Commissioner on 27.05.2010 (Annexure P-4), which has further been confirmed by the Financial Commissioner on 09.11.2010 (Annexure P-5), which orders are also under challenge in the present writ petitions.

A perusal of the said orders would go on to show that *Sanad Takseem* had been issued and the possession of the land had been transferred vide Rapat No.789 dated 22.07.2009. Resultantly, it was held that the jurisdiction of the Financial Commissioner could only have been invoked.

Mr. Sidhu has vehemently submitted that Jagjit Singh had been arrayed in the partition proceedings as Jugraj Singh and, therefore, prejudice has been caused as no notice had been issued to the shareholders and there was no service of notice. Resultantly, he had been

proceeded against *ex parte* and in such circumstances the orders are not justified.

Respondents on the other hand had clarified that the petitioner's father Balbir Singh was also a party and Lal Singh was father of Balbir Singh and, therefore, petitioners be directed to amend the writ petitions. It was submitted that merely because there was a typographical mistake, the petitioners could not get any benefit that Jagjit Singh was not impleaded as he has been impleaded as Jugraj Singh. The father had appeared before the Assistant Collector 1st Grade and factum of his appearance had been incorporated in the order of said authority. The petitioners had been served through *Munadi*, but they did not appear in spite of service. Jaswinder Kaur wife of Gurditta Singh son of Balbir Singh, Palwinder Singh, Kulwinder Singh and Rajwinder Singh all sons of Gurditta Singh son of Balbir Singh and Lal Singh along with sons of Gurditta Singh also had been arrayed and their presence had been duly marked. It is, accordingly, submitted that proceedings have been watched by the family members before the Assistant Collector 1st Grade.

Reference has been made to Rapat No.550 dated 17.04.2006 (Annexure R-1) to this effect that *Munadi* was done in the village. The answering respondents No.29 and 30 are stated to have purchased the land measuring 27 kanals 15 marlas from Rajwinder Singh grandson of Balbir Singh and Smt.Mukhtiar Kaur wife of Balbir Singh and corrections were done in the *Khasra Girdawari* in their favour on 06.07.2006 (Annexure R-2). Resultantly, dismissal of the writ petitions

was sought.

The above said facts, thus, would go on to show that petitioners had been arrayed along with other family members. Balvir Singh had been arrayed as respondent No.1 and respondents No.4 to 8 and 10 had also put in appearance before the Assistant Collector 1st Grade. The family was, thus, well aware of the partition proceedings and cannot take any benefit of the fact that Jagjit Singh was wrongly mentioned as Jugraj Singh. It was always open to them to get the said fact clarified by filing application, but they had chose to let the proceedings continue. Once the Mode of Partition had been approved on 28.02.2008 in the presence of the family members and objections had been rejected by Assistant Collector 1st Grade, then an appeal was filed after a period of six months and all the family members got together, which was not maintainable and rightly dismissed. In such circumstances, the Financial Commissioner has also given the stamp of approval upon the proceedings below. It has also been brought to the notice of this Court that even possession has changed hands on 27.07.2009 in pursuance of the order dated 28.02.2008.

The Full Bench of this Court in '**Biru Vs. Suraj Bhan 1983 AIR (Punjab) 347** in consolidation proceedings has held that once co-sharers as such have been heard and in view of the close relationship of parties, all joint owners are not required to be served with notices. The relevant portion of the said judgment reads as under:-

“11. Lastly the concept of representation of the whole

*estate by one or some out of the many legal representatives has not only been generally accepted but finally sanctified in **Harihar Prasad Singh v. Balmiki Prasad Singh**, AIR 1975 SC 733. Therein it has been held that even where only some of the legal representatives of the deceased were brought of the record, they would represent the whole estate and the other legal representatives as well, and the judgment would be binding on all in the absence of any fraud or collusion or on the ground of very special circumstances, showing that indeed the trial had not been fair or real against the absent heir at all or where there was a special case which was not and could not be tried in the proceedings. The rule deducible from the observations of the final Court appears to be that where the interest is common and identical, then one of such persons having such common and identical interest may well represent the others and also bind them. However, the inarticulate premise of this well settled rule is that there should be absence of a fraud or collusion and a fair and real trial of the issue. If the aggrieved party can establish that in fact the proceedings were vitiated by fraud or collusion or that there was no fair or real trial at all, then alone the representation concept can be ousted and the decision can be held to be not binding.*

12. From the aforesaid larger conspectus of the wide ranging jurisprudential principle that where there is identity and jointness of interest then any one of such persons might well represent the others and also bind them, it seems manifest that this principle would be equally, if not more strongly, attracted in the proceedings under the Consolidation Act as well. As has been noticed earlier, this statute is a piece of progressive Agrarian legislation with some urgency of object to be achieved and not a has been picturesquely said a mere slow motion picture. In view of the fact that consolidation proceedings all over the State may affect millions of right-holders of land and because of interminable litigation and clash of interest, it would be beyond the realm of practicability to demand the impleading of each individual or joint co-sharer to every proceeding. Ever more doctrinaire may be the demand of not only impleading each such

co-sharer but effectively serving each of them and securing their representation. An overly meticulous approach to the problem imbued with overly legal formalism may ultimately nullify or frustrate the laudable objects of the statute itself. It was pointed out on behalf of the respondents that if a hypertechnical view was to be taken then the absence of either impleading one of the co-sharers or the inadvertent failure of service of any one of them may render the whole action beyond the provisions of the Act. Once that is so, such an action may well attract the jurisdiction of the civil courts, which with their tardy process would hamstring the very purpose of expeditious compulsory consolidation of wasteful and uneconomic land-holdings. Similarly, it was rightly pointed out that not one but most of the proceedings under the Act involved a chain-reaction affecting a larger number of joint right-holders and to insist upon the impleading and service of each one of the co-sharers would in effect the creating impassable road-blocks in the achievement of the central purpose and object of the legislation. A plausible and particular example given was that of the alignment of village paths which is the larger conspectus may involve not only all the right-holders of a village estate but even all the resident therein. To insist that each one of the joint or individual right-holders must for such a purpose be both impleaded and served would be a counsel of perfection impossible of practical achievement. I am, therefore, of the view that the sound principle of effective representation by a co-sharer where his interests are common and identical with others, is doubly attracted and applicable to proceedings under the Consolidation Act.

13. From the above, it inevitably follows that it is neither within the letter nor spirit of Sections 21 and 42 of the Act that every co-sharer must be mandatorily impleaded in proceedings thereunder. Indeed, as has been highlighted earlier, the Act itself does not enjoin any such legal formality. However, this should not preclude a petitioner in a particular case to pin-point a right-holder who is to be adversely affected and therefore, impleading him as party in the application. On practical considerations this would in fact be apt but a failure to do so does not in any way

affect the validity or the legality of the proceedings. By virtue of the proviso to Section 42 of the Act and the large principle of affording an opportunity to show cause to call persons adversely affected in quasi-judicial proceedings it is always necessary to afford them a hearing when action against them is envisaged. In the consolidation proceedings, therefore, in cases of co-sharers where their interests are joint and identical then an effective hearing given to one would, in the eye of law, be a hearing given to all, which in law would suffice. This salutary principle is, of course, subject to the rule that where such a hearing is vitiated by fraud or collusion or the absence of any fair and real trial of the issue, then such a hearing would not be binding upon the other co-sharers.”

The effort to continue to litigate is, thus, only an attempt to delay and prolong the partition proceedings, even though the parties have already been put in possession now of other portions of land and to put the clock back by an decade would not be in the interest of the co-sharers, who would further improved upon the land in their possession.

In such circumstances, no case is made out for interference in the extra-ordinary jurisdiction by this Court under Article 226/227 of the Constitution of India. The present writ petitions are, accordingly, dismissed.

AUGUST 17, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No