

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

Civil Writ Petition No.11567 of 2017
Reserved on: 28.09.2018
Pronounced on : 17.10.2018.

Rajwinder Singh and another

... Petitioners

Versus

The Financial Commissioner, Punjab and others

... Respondents

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

Present : Mr. Charanpal Singh Bagri, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 27.09.2016 (Annexure P-1) of the Financial Commissioner, whereby the revision petition was dismissed by holding that *Naksha Bay* and *Jeem* showed that all shareholders had been allotted their due shares. The three *Taqs* were rectangular and had proportionate frontage on the *Rasta* and, therefore, rights of the petitioner had not been adversely affected and no purpose would be served by remanding the case to the Assistant Collector 1st Grade to afford an opportunity to him to be heard.

Resultantly, the orders approving the Mode of Partition dated 20.04.2015 on 09.07.2015 (Annexure P-2) and the subsequent partition order dated 05.01.2016 (Annexure P-3) and the final *Sanad Takseem* issued on 10/16.02.2016 (Annexure P-4) were, accordingly, upheld.

The primary argument which has been raised by the counsel for the petitioner that he was not served in the partition proceedings in which he was arrayed as respondent No.2, for the land measuring 38 kanal 14 marlas situated in village Suchi Pind, Hadbast No.215, Tehsil & District Jalandhar. The proceedings were initiated by respondents No.3 and 4, Manjit Kaur and Paramjit Singh, who are husband and wife. The brother of the petitioner No.1, namely, Gurinder Singh was also a party alongwith Satbir Singh who was arrayed as respondent No.2. The Mode of Partition had been prepared on 20.04.2015 and the brother of petitioner No.1, Gurinder Singh had submitted that he and his brother had no objection, if the partition is done by removing the possession, which was also a condition as per the approved mode of partition as per Clause-1. Resultantly, the same was approved on 09.07.2015 (Annexure P-2).

As per the zimni orders (Annexure P-3), the *Naksha Ara* was to be presented on 21.10.2015 and it was approved, accordingly, on 05.01.2016. The matter was transferred to the District Revenue Officer-cum-Assistant Collector, who was dealing with the Fast Track Court for NRIs, in which there was no appearance and, accordingly, the petitioners were proceeded against *ex parte*. The objections had been raised by the brother of the petitioner, Gurinder Singh. The same was, however, dismissed by approving *Naksha Ara* and *Naksha Erri*. The *Sanad Takseem* was ordered to be issued after the expiry of period of limitation, on 05.01.2016 and was also issued on 10.02.2016 (Annexure P-4). An appeal was also filed against the order of the approval of the *Nakshas* of

the claimant, which was dismissed on 09.03.2016. Thereafter, the revision petition was filed before the Financial Commissioner, leading to the passing of the impugned order.

A perusal of the site plan, which has now been placed on record as Annexure P-9 would also go on to show that the petitioner has given a consolidated chunk of land, which has been shown in Brown colour, whereas the land allotted to the private respondent Paramjit Singh had been shown in the Yellow colour and third chunk is shown in Blue colour is of Satbir Singh. All the three chunks as such had frontage on the main road and, therefore, it cannot be said that it had been adversely affected the petitioner No.1 and kept him at the back and away from the frontage.

The civil suit had also been filed against Paramjit Singh and Manjit Kaur by Davinder Singh, another brother of the present petitioner No.1 pertaining to the land, which was subject matter of partition. The private respondents as such had, purchased one kanal of land vide sale deed dated 31.12.2012 and 5 kanal 8 marlas vide sale deed dated 10.12.2013. The challenge as such has been raised on the ground that sale consideration had not been paid which was to the tune of ₹15,60,000/- and ₹52,65,000/-, respectively.

Thus, the cumulative facts would go on to show that the brother of the petitioner No.1 was duly representing him and well aware of the proceedings. The argument as such which has been raised regarding the non service is only to ensure that the private respondent do

not get benefit of the sale deeds executed by the brother to keep them out from possession and is not liable to be accepted, in the facts and circumstances. The partition is also in a manner which had protected the interest of one and all by giving frontage on the main road and, therefore, this Court is of the opinion that in view of the judgment of the Full Bench of this Court passed in '**Biru Vs. Suraj Bhan 1983 AIR (Punjab) 347**', wherein it has been held that service upon one of the co-sharer's is service on all, when they are closely related. 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 same principle would also be applicable upon the petitioner No.1. Resultantly, there is no merit in the present writ petition and the same is, accordingly, dismissed.

OCTOBER 17th, 2018
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No