IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.22301 of 2018
Date of Decision:12.09.2018

Jasvir Singh through his power of attorney Harbhajan Singh
...Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others
...Respondents

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

Present: Mr. Paramjit Rajput, Advocate
for the petitioner.

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G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India challenging the order dated 19.01.2018 (Annexure P-6) whereby the revision petition filed against the partition proceedings and the instrument of partition dated 07.04.2015 (Annexure P-3) has been dismissed. The reasoning given by the Financial Commissioner in the impugned order was that the proclamation had been made in the village on 01.12.2014 and the possession of the parties had been kept intact and the Taks had to be completed by making the increase and decrease in the land area in question.

Counsel for the petitioner has vehemently argued that the petitioner was residing abroad and therefore, no effort was made to effect service upon him and therefore, he had been condemned unheard. Similarly it is submitted that the petitioner was respondent No.2 in the

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petition bearing No.24/T/2014 which was pertaining to khewat No.82/79, Khatoni No.159 measuring 11 marlas which should not have been clubbed with the other khewats and the mode of partition was prepared on 06.01.2015 (Annexure P-1) after the proceedings had been initiated in July, 2014 by the private respondent namely Amrik Singh, respondent No.3.

It is to be noticed that the petitioner was arrayed as respondent No.2 along with his brother Darbara Singh and therefore, the argument which has been raised that he was not aware and as residing in Canada is without any basis. Once his brother was present in the partition proceedings, the pendency of the proceedings was known to him. Reference can be made to the judgment of Full Bench passed in ***Biru Vs. Suraj Bhan, 1983 AIR (Punjab) 347***, wherein it has been held 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 sanctioned in Harihar Prasad Singh and others v. Balmiki Prasad Singh and others, AIR 1975 Supreme Court 733. Therein it has been held that even where only some of the legal representatives of the deceased were brought on 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 or such persons having such common and identical*

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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 as has been picturesquely said a mere slow motion picture. In view of the fact that consolidation proceedings all over the State may effect millions of rightholders of land and because of interminable litigation and clash of interest it would be beyond the realm if practicability to demand the impleading of each individual or joint co-sharer to every proceedings. 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

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jurisdiction of the Civil Courts, which with their tardy process would hamstring the very purpose of expeditious compulsory consolidation of wasteful and uneconomic landholdings. Similarly, it was rightly pointed out that not one but most of the proceedings under the Act involved a chain reaction affecting a large number of joint rightholders and to insist upon the impleading and service of each one of the co-sharers would in effect be creating in passable roadblocks 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 in the larger conspectus may involve not only all the rightholders of a village estate but even all the residents therein. To insist that each one of the joint or individual rightholders must for such a purpose be both impleaded and served would be a counsel of perfection impossible 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 rightholder who is to be adversely affected and therefore, impleading him as a 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 larger principle of affording an opportunity to show cause to call persons adversely affected in quasi-*

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> *judicial proceedings 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."*

It is also pertinent to notice that the petitioner is only owner of 2 marlas of land and consolidated area of all the four khewats would come to 131 kanals 6 marlas. Even otherwise Financial Commissioner has noticed that the eventually khewat No.77 and khewat No.80 were not incorporated in the final built up area and there was a common taur. Shareholders of khewat No.80 had also sold their share and vendee had stepped into the shoes of common holders and therefore, vendee could not be taken as different co-sharer.

It was also noticed that proclamation had been made at the address of the petitioner and other family members were also present on the first date of hearing, i.e., on 01.12.2014. The spot inspection had also been made by the Assistant Collector and a compromise as such had taken place and after that the mode of partition had been prepared on 27.05.2015. It was on this basis the final instrument of partition had been prepared on 07.04.2015 (Annexure P-3). The same was also not challenged within a reasonable period and the revision petition was filed before the Financial Commissioner, Punjab only on 20.09.2016 (Annexure P-4).

Thus, it is apparent that the petitioner has only been put into

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the saddle for rocking the boat of partition whereby the valuable interest of other shareholders is involved and by taking the plea that he has not been served. But the fact remains that his close family member had been duly served and was well aware of the proceeding and therefore, the argument as such raised does not cut much ice with this Court. Resultantly, finding no merit in the present writ petition, the same is dismissed in limine.

(G.S. SANDHAWALIA)
12.09.2018 **JUDGE**
pvd

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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