

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

**Civil Writ Petition No.6415 of 2017 (O&M)
Decided on : 10.08.2018**

Vidyanand

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present : Mr. Abhishek Yadav, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana
for respondents No.1 to 4.

Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate for respondent No.5.

G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Article 226/227 of the Constitution of India the challenge is to the order dated 25.05.2007 (Annexure P-1), whereby the Assistant Collector 1st Grade noticed that no objections had been filed by respondents No.1 to 18 in the partition proceedings. The petitioner alongwith his brothers Ram Sharan and Bhagmal, two sisters Rupa and Champa and his mother Munni were arrayed as respondents No.1 to 6 in the partition proceedings and had accepted the Mode of Partition.

The appeal was filed against the said order including the order dated 24.03.2008 (Annexure P-3) and 12.09.2008 (Annexure P-4), which were passed subsequently when the case was fixed for calling of *Naksha Jeem* and the same was rejected on the ground that *Sanad Takseem* already stood issued, by the Collector on 31.05.2010 (Annexure P-5), which is also subject matter of challenge.

The Commissioner, however, interfered and had remanded the case back to Assistant Collector 1st Grade, Kosli, as provisions of Section 20 of Punjab Land Revenue Act, 1887 which had not been complied with.

Basti Ram who had initiated the partition proceedings filed the revision before the Financial Commissioner, who has set aside the said order by noticing that nobody has filed objections and *Sanad Takseem* had been issued on 12.09.2008.

The argument, thus, raised that the petitioner was not heard as such is without any basis. The Full Bench of this Court in '**Biru Vs. Suraj Bhan 1983 AIR (Punjab) 347**' 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.”

In such circumstances, the petitioner being closely related was well aware of the proceedings and had chosen not to associate himself at that point of time. Once the *Sanand Takseem* had been issued, the Commissioner had no such power to set aside the order and the Financial Commissioner has rightly interfered with the same.

Resultantly, there is no merit in the present petition and same is, accordingly, dismissed.

AUGUST 10, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No