

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

Sailesh Ranjan
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CWP-8279-2018 (O&M)
Date of decision: 08.10.2018

Paramjit & another

....Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr.S.N.Pillania, Advocate, for the petitioners.

G.S. SANDHAWALIA, J. (Oral)

CM-6511-CWP-2018

Application for placing on record the correct translated copy of Annexures P-3 & P-6, is allowed, in view of the averments made in the application, duly supported by an affidavit. Same are taken on record, subject to just exceptions. Office to append the same at appropriate place.

CM stands disposed of.

CWP-8279-2018

Present petition, filed under Articles 226/227 of the Constitution of India, is directed against the orders dated 16.11.2017 (Annexure P-10) passed by the Commissioner, who has upheld the proceedings whereby the Naksha Bey was drawn up on 13.07.2015 (Annexure P-7) and thereafter, Naksha Jim was prepared on 19.08.2015. Thereafter, the instrument of partition (Sanad Takseem) was also drawn up on 26.08.2015 (Annexure P-8).

Challenge has been raised basically on the ground that *ex parte* proceedings were initiated on 17.01.2013 (Annexure P-2) and thereafter, munadi was done on 06.08.2013 (Annexure P-5) which has been objected to

by counsel for the petitioners on the ground that the petitioners who were arrayed as respondents No.6 & 7 in the partition proceedings. The Commissioner had also noticed the fact that possession already stood changed and 4-5 crops had gone by, as the revision was itself filed after 812 days of the issuance of the Sanad Takseem. It was also noticed that the parties were closely related as Paramjit-petitioner No.1 is the grandson of Chand Singh and there was widow of Satbir son of Chand Singh who was a co-sharer but has not filed the petition. It was further noticed that there were two other brothers of Chand Singh and therefore, it was held that the delay was not properly explained, as such.

Counsel for the petitioner has tried to convince this Court on the basis of the site-plan (Annexure P-11) that possession has been disturbed, as such, but the proposed mode of partition has not been placed on record, on the basis of which possession has been disturbed.

A perusal of the site-plan would also go on to show that the argument that Rectangle No.91 Killa No.5(8-0), 6/1, 5-14, have been taken away and Rectangle No.84 Killa No.23/2, 24/1, has been given, adversely affects the petitioners, is to be noticed and rejected. A perusal of the site-plan would go on to show that the land has been consolidated and the petitioners' have been given the land shown in 'pink colour' along with Dharambir. The possession necessarily had to be disturbed to avoid fragmentation so that effective partition can be done and consolidation of the holdings could be done. The argument raised that the petitioners were not heard, is without any basis. The application for partition of 140

kanals 10 marlas was filed by one Mahinder. As noticed by the Financial Commissioner also, the parties are closely related being sons of Chand Singh and Raj Bala, widow of Satbir son of Chand Singh, was also arrayed as respondent No.4.

In similar circumstances, the right of co-sharers and the hearing to be given to them, was adjudicated upon by the Full Bench in **Biru Vs. Suraj Bhan 1983 AIR (Punjab) 347** under the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948. Accordingly, a question was posed before the Full Bench that when co-sharers who had joint and indivisible right, whether each one is to be impleaded and individually served and whether impleading one of the co-sharer would be adequate hearing given to all of the co-sharers, barring fraud or collusion on his part. Resultantly, the Full Bench answered the said question that an overly meticulous approach cannot be resorted to regarding the service of each one of the co-sharers. The result would only be creating in passable road-blocks in the achievement of the central purpose and object of the legislation and effective hearing given to one, would, in the eye of law, be a hearing given to each one which in law would suffice. The exception of-course was 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. Relevant portion of the judgment read 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 be 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 said view has been followed by the Division Bench in **Manju Devi & others Vs. Director, Consolidation, Haryana & others 2013 SCC OnLine P&H 16601**. Thus, where parties are closely related and adequately represented, service upon one limb of the family, as such, would be deemed to be service upon the other co-sharers. The party would have to show that there was fraud or collusion, as such, if service was not effected, which is not the case herein.

In such circumstances, it is apparent that no prejudice, as such, has been caused to the petitioners on account of the partition proceedings. Nothing was addressed on the fact that they had been given

less than their share, as such, on account of the partition proceedings. Therefore, the order of the Commissioner, dismissing the revision petition on the ground of limitation, in as much as the instrument of partition was prepared on 26.08.2015 but the revision petition was only instituted on 14.11.2017, as well as on merits, does not warrant interference by this Court under the extraordinary writ jurisdiction of the Constitution of India. In such circumstances, after such an inordinate delay, the revision petition was likely not to be entertained. Accordingly, in view of the above discussion, finding no merit in the present writ petition, the same is hereby dismissed in limine.

08.10.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No