

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

**RSA No.8 of 2021 (O&M)
Reserved on : 17.02.2021
Pronounced on : 10.03.2021**

Dilbag

... Appellant

Versus

Patram and others

... Respondents

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

Present: Mr. V.K. Jindal, Senior Advocate
with Mr. Akshay Kumar Jindal, Advocate for the appellant.

(The proceedings have been conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J.

The plaintiff-appellant being unsuccessful in both the Courts below in his suit for declaration has filed the present regular second appeal, challenging the order of the Revenue Court dated 15.09.2006 passed by the Assistant Collector IInd Grade, Bhiwani, wherein ex parte proceedings had been initiated against him and his application for setting aside the same was dismissed on 15.12.2008.

2. Challenge has also been made to the preparation of Naksha 'Kha' and the order dated 29.01.2009 (Annexure A-1), whereby he was allowed to join the proceedings from that stage by the Collector, Bhiwani. Thereafter, order dated 24.04.2009 (Annexure A-5), whereby his objections were rejected by the Assistant Collector IInd Grade, Bhiwani and the order of the Financial Commissioner dated 17.07.2009 (Annexure A-8) which had affirmed the decision of the Collector, allowing him to join proceedings,

were all also subject matter of challenge in the civil suit.

3. Counsel for the appellant has vehemently submitted that the Courts below were not justified by allowing the revenue authorities to proceed against the appellant in his absence and only permitting to join the proceedings at a belated stage as such and, therefore, challenge has been made to the order of the Courts below by holding out that Civil Court had failed to set aside the proceedings of the revenue authorities, though it was competent to do so. The appellant was serving in the Army as such and, therefore, had not been properly served and his rights were affected as such by not allowing him to join the partition proceedings.

4. The facts would show that the civil suit was instituted on 11.09.2014 after the Financial Commissioner had dismissed two revisions; one filed by the appellant and other had been filed by Balbir @ Inder, brother of the appellant. The appellant not being satisfied with the said order at that point of time chose not to file any writ petition against the said order, but had chosen to invoke the jurisdiction of the Civil Court.

5. A perusal of the partition proceedings which were initiated by respondents No.1 to 7 would go on to show that apart from the appellant his brother Balbir @ Inder was also arrayed as respondent. Their sister Suman was also one of the respondents alongwith them. The service upon him was allegedly not effected on account of the fact that he was serving in the Army and, therefore, he was proceeded against ex parte on 15.09.2006. His application for setting aside the same was

dismissed on 15.12.2008 against which he had approached the Collector, Bhiwani. The Collector noticed that the registered letter had been sent and, thereafter, proclamation was done in the village and the partition proceedings had been initiated. It was further noticed that there were three other registered letters and the report was that the appellant refused to accept. Resultantly, his application was partly allowed to the extent that he would be allowed to join the proceedings at the then present stage i.e. Naksha 'Kha'.

6. Not being satisfied with the said order, the appellant had as such filed an appeal before the Commissioner, Hisar Division. His brother Balbir @ Inder had also joined the proceedings taking the plea that he was a minor and that he be granted time to file objections. The Commissioner noticed that on 28.02.2008, amendment of Naksha 'Kha' had been allowed and Revision No.6386 of 2008 had been filed before the Commissioner and amendment was made in the said Naksha 'Kha'. As per the consent statement of both the parties, the Assistant Collector 2nd Grade, Bhiwani, had been ordered to make amendments. It was noticed that proclamation proceedings had been conducted on account of the return of the registered letter and, therefore, service had been effected, as per the provisions of Section 20 of the Punjab Land Revenue Act. Resultantly, his appeal as such was dismissed by the Commissioner on 17.07.2009, which order has now been placed on record as Annexure A-8. As noticed, he was unsuccessful before the Financial Commissioner, who had dismissed the appeal on 18.03.2014 (Annexure

A-2).

7. Vide judgment dated 27.08.2018, the Civil Court while taking into consideration the statement of the appellant, who was the only witness, came to the conclusion that there was a hierarchy of appeals from the Assistant Collector 2nd Grade to Financial Commissioner, under the Punjab Land Revenue Act, 1887, for adjudication of matters pertaining to the partition of land. It was held that the objections had already been dismissed by the Assistant Collector 2nd Grade and *Sanad Takshim* had been prepared and, thus, it rejected the case of the plaintiff/appellant for declaration.

8. The Appellate Court, as such, before whom the plea taken was that the brother of the plaintiff namely Balbir @ Inder stays with his sister defendant No.12, who was major and had wrongly been shown as minor. The same was met by the lower Appellate Court by noticing that the respondents had placed on record Ex.D1, which was a suit filed by the brother of the appellant namely Balbir Singh @ Inder Singh on 03.06.2010. The said suit had been dismissed on 17.09.2014 (Ex.D2) in default, just after the filing of the present suit on 11.09.2014. In the said suit, the present appellant had also been impleaded as proforma defendant No.14 and, therefore, it was held that on the day of the institution of the present suit, earlier suit was pending and plaintiff did not disclose this fact in his plaint. In addition to that the Appellate Court noticed that the final partition by way of *Sanad Takshim* had been done on 01.09.2009 (Annexure A-7) and the suit had only been filed on 09.09.2014 after more

than 5 years.

9. Thus, it is apparent that the appellant and his brother have been effectively trying to stall the partition proceedings in one form or the other, which were initiated way-back in which they had been proceeded against ex parte on 15.09.2006.

10. The Full Bench of this Court in '**Biru Vs. Suraj Bhan**', 1983 AIR (Punjab) 347 has held in consolidation proceedings that service upon one co-share is effective service upon the others and the only exceptions would be fraud or collusion. The relevant para 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.”

11. In the present case, it is the pleaded case of the appellant that his brother was a major and, therefore, it is apparent that the family members as such were aware of the partition proceedings, which were initiated. The appellant and his brother just want to challenge them separately in different manners, One challenge was initiated before the Revenue Court, where on being unsuccessful, civil suit was filed by Balbir @ Inder on 03.06.2010 which was got dismissed in default after 4 years of institution on 17.09.2014. Thereafter, instead of challenging the order of the Financial Commissioner before this Court by way of filing the writ petition, the civil suit was filed by the appellant after 5 years when final partition had been done.

12. This Court in the case of '**Rai Jasbir Singh Vs. Balwant Singh and others'** 2006 (1) PLR 339, has held that in the absence of any fraud or mis-representation, an ex parte order passed by the Revenue Court on the bare plea of service not being effected, cannot be set aside and the plaintiffs approaching the Civil Court to challenge the order passed by Revenue Court, without exhausting the remedies available to them, was held not to be tenable.

13. The said view was followed by this Court in '**Sucha Singh and another Vs. Naranjan Singh and others'**, 2015 (4) RCR (Civil) 978, wherein it was held that specific provision for filing of an appeal before the higher Revenue Authorities had been made in Section 13 of

the Punjab Land Revenue Act, 1887. In the absence of any illegality in the order of the Revenue Court, the Civil Court had no jurisdiction and they could always approach the Commissioner against the orders of the Collector and, resultantly the appeal was dismissed on the ground that it was not raising any substantial question of law.

14. Herein also, the issue is the same as the appeal had been filed to get set aside the ex parte proceedings initiated on 15.09.2006. Having exhausted his remedy of appeal before the Commissioner, who had partly allowed him to join the proceedings and, thereafter, having been gone to the Commissioner on 17.07.2009 unsuccessfully and after losing out before the Financial Commissioner, the appellant cannot be permitted to change tracks and shift the venue of jurisdiction to the Civil Court. If he was aggrieved, he could have filed the writ petition before this Court. Even otherwise, the conduct of the appellant has already been noticed that he and his brother as such have been trying to stall the partition proceedings for the last more than a decade. Therefore, this Court is of the opinion that no further indulgence is liable to be granted to such litigants by entertaining the present appeal.

15. Resultantly, in the absence of any substantial question of law being raised, the present appeal is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

10.03.2021

Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No