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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : May 04, 2023

JAGIR SINGH

-Petitioner

V/S

THE DIRECTOR, EAST PUNJAB HOLDINGS & ORS. -Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Inderjit Sharma, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. R.K. Arya, Advocate
for the respondents No.2 and 3.

SURESHWAR THAKUR, J.(ORAL)

1. The present petitioner is an estate holder over land(s) comprised in Village Talibpur, H.B. No.652, Tehsil and District Gurdaspur. The land(s) concerned, as, occurring in the Mohal concerned, which were subjected to consolidation operations, and, the said consolidation operations terminated in the year 1992.

2. There is no wrangle amongst the contesting litigants, that the predecessor-in-interest of the parties, litigating before this Court, had executed a testamentary disposition on 18.07.1967. Furthermore, they also do not contest the fact, that the said executed testamentary disposition, thus was genuine. In addition, they further do not wrangle over the fact, that there was no invalidity in the attestation of the mutation of inheritance, as made in the year 1975, on the basis of the said testamentary disposition. Consequently, since all the above events occurred prior to the occurrence of consolidation operations, in the Mohal

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concerned, therefore all the legatees of deceased testator, one Tara Singh, were entitled to, on the demise of the said testator, seek pro-rata or proportionate allotments of tracts of land, to each of them, by the consolidation officer concerned, in the latter proceeding to draw a finalized consolidation scheme. Moreover, after the allotments being made, to each of the legatees of deceased testator Tara Singh, the records of rights were also required to be updated. The said updation of records was reiteratedly to occur in complete consonance with the drawing of the consolidation scheme, besides also the drawing of the consolidation scheme was to be complete tandem with the attestation of mutation, as, made in favour of all the successors-in-interest of deceased Tara Singh, who had executed in their favour, a valid testamentary disposition in respect of his estates.

3. It appears that since the present petitioner became not allotted land(s) in the consolidation scheme, whereas, his other brothers became allotted land(s), therefore it appears, that despite an uncontested testamentary disposition being made in their favour, by their common ancestor one Tara Singh, yet the petitioner becoming excluded from allotment(s) being made qua him, in the consolidation scheme, besides, his also becoming excluded from the records of rights, as became drawn subsequent to the completion of the consolidation proceedings.

4. Therefore, for undoing the above mistake, the present petitioner instituted Annexure P-2, before the consolidation officer concerned. However, the consolidation officer concerned thereons made a decision on 26.10.2016 (Annexure P-4), whereby, the above raised claim by the present petitioner was dismissed. The dismissal of Annexure P-2, through the drawing of Annexure P-4, has led the petitioner to motion this Court.

5. A reading of Annexure P-4 reveals, that the principal reason which

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prevailed upon the authority, who drew it, became rested on the premise, that the civil court concerned made a verdict of dismissal, on 21.02.2013, upon the suit instituted by the present petitioner/plaintiff therein, seeking the makings of a declaratory decree, besides the making of a decree of permanent prohibitory thus qua him.

6. The above assigned reason, does not appeal, to the judicial conscience of this Court, as the reading of the operative part of the verdict (supra) reveals, that the civil court concerned had made a declining decree, on the said suit, only on the premise, that there was an alternative remedy available to the petitioner, which became yet unavailed. Therefore, the said suit was not dismissed on the ground, that it was misconstituted, but on the plank, that yet the available statutory remedy yet remained unrecoursed.

7. Be that as it may, even the above ground, as taken by the learned civil court concerned, to draw verdict of dismissal upon the apposite civil suit, appears to have occurred from the plaintiff, may be innocuously suppressing the fact, from the learned civil court concerned, that prior to the institution of the civil suit, he had instituted Annexure P-2, before the consolidation authority concerned, inasmuch as, in the year 2011. Though, as a matter of fact, given the availment of the statutory remedy, at the instance of the petitioner, there was no necessity for the petitioner to yet access the civil court concerned, but yet the civil court concerned became accessed and thereupon a declining decree was made on the plaintiff's suit seeking the grantings to him, of, the relief of declaration as well as permanent prohibitory injunction.

8. Though the civil court concerned may have jurisdiction in respect of fallacious entries becoming made by the consolidation officer concerned, in pursuance to the completion of the consolidation operations. However yet the availment of the said remedy would not curtail the right of any of the aggrieved,

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to yet proceed to avail the remedy under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act of 1948'). The availment of the said remedy though is required to be made within a reasonable time, but yet when there are gross perversities and infirmities in the order as made by the consolidation officer, and/or, there are such absurdities or errors in the updation of records, as made in pursuance to completion of the consolidation operations, which but openly speak about validly made entries in the pre-consolidation records, rather becoming completely ignored. In the above event, the motion as laid before the consolidation officer under Section 42 of the Act of 1948, may be a well laid motion, given the said petition relating to correction being made of non-est and void entries. Therefore, thus the vice of delay, and, laches, if any, may be inconsequential.

9. Even there is no contest amongst the contesting litigants, that all the successors-in-interest of deceased Tara Singh, were beneficiaries under the bequest executed in their favour, by their common ancestor one Tara Singh. There is no also further contest amongst them, that the order of mutation as became attested in the year 1975, assigned co-equal rights in the estate of their common predecessor-in-interest (supra). Necessarily, when as above stated, since the above events occurred prior to the undertakings of consolidation operations in the Mohal concerned, therefore necessarily it was but imperative upon the consolidation officer concerned, to not only assign reverence to such pre-consolidation records of rights, but also, on completion of the consolidation proceedings, update the records of rights in consonance therewith.

10. The learned counsel for the petitioner argues, that the above has not happened, and, has not so happened, merely on the premise of a declining civil court decree being pronounced against the plaintiff therein. However, since for above reasons, the above declined relief to the plaintiff therein, in his civil suit,

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may not work as a handicap to the consolidation officer, thus for undoing the wrongs, if any, which are purportedly committed by the consolidation officer, in his failing to update the records of rights, but in consonance with the above pre-consolidation records. Moreover, since there is no detailed and elaborate discussion, in respect of the above, other than the one relating to a dismissal verdict being made, on the plaintiff’s suit, which for above reasons, may not be of utmost relevance. In sequel, after quashing the impugned order(s), the matter is remanded to the consolidation authority, who drew Annexure P-4, to after restoring the lis to its original number, redraw a speaking and lawful decision thereon, but within six months hereafter.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 04, 2023
devinder

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