

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

CWP-22155-2023

Reserved on: 04.10.2023

Date of Decision : October 07, 2023

RAJ KUMAR

...Petitioner

V/S

STATE OF HARYANA AND OTHERS

...Respondents

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

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

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition a challenge is made to Annexure P-21. Annexure P-21 has been drawn by the Commissioner Division Rohtak, Rohtak, through his exercising the powers vested in him, under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”).
2. Uncontrovertedly the predecessor-in-interest of the present petitioner, was the successful auction purchaser of lands, thus owned by the Central Government. The land (supra), is comprised in Khasra No.9157/2010.
3. The parties are not disputing the validity of the issuance of sale certificate bearing No.2900, dated 25.02.1983, vis-a-vis, the predecessor-in-interest of the present petitioner.

4. The consolidation operations in the *Mohal* concerned, became concluded in the year 1971, but the sale certificate (supra), became issued subsequent thereto, inasmuch as, it became issued, on 25.02.1983. Therefore, the consolidation officer omitted to distribute, but in terms of the sale certificate, thus issued subsequent to the conclusion of the consolidation operations of the *Mohal* concerned, rather lands to the predecessor-in-interest of the present petitioner. The Authority constituted under Section 42 of the Act of 1948, became well empowered to, in the event of the Consolidation Officer, in the finalized consolidation scheme, earlier omitting to reverse the sale certificate (supra), despite the same becoming adduced, before him, who may if there was no dispute vis-a-vis the authenticity of the sale certificate (supra), to construe the slighting of sale certificate (supra), by the Consolidation Officer concerned, to be a typographical error, and, may have through the jurisdiction vested, under Section 42 of the Act of 1948 thus taken to undo or cure the said typographical error or a sheer inadvertence, thus through his making an order of remand to the Consolidation Officer, for thereby ensuring that the entitlement of the predecessor-in-interest of the present petitioner, in the estate concerned, rather is not untenably overlooked.

5. However, as stated (supra), since the sale certificate was issued subsequent to the conclusion of consolidation operations, thus in the *Mohal* concerned. Therefore, the jurisdiction vested under Section 42 of the Act of 1948, in the Commissioner concerned, rather was not exercisable, as the said sale certificate, was never in existence at the relevant time nor when thereby it could be adduced by the concerned, before the Consolidation Officer concerned, nor also in the said sale certificate becoming purportedly overlooked, thus there was any occasion for thereby any clerical error

becoming committed by the Consolidation Officer concerned, for thus its becoming cured or remedied thus through a petition, becoming cast under Section 42 of the Act of 1948.

6. Therefore, the declining order as made through the drawing of Annexure P-21 rather was a validly made order.

7. If the sale certificate did have an aura of validity, thereby the empowered Revenue Officer concerned, other than the officers, in the Consolidation department concerned, thus could be motioned, thus for an order attesting mutation in terms of the sale certificate becoming recorded, and, also corresponding entries being made in the jamabandis.

8. It appears that the said motion was not drawn at the instance of the petitioner rather the petitioner resorted to an untenable remedy, which resulted in the drawing of the impugned order, which for reasons (supra), is both apt and legally sound.

9. Moreover, even if the effect of the above, is that, though allotment(s) have been made to the estate holders concerned, in the consolidation scheme, which became prepared prior to the issuance of sale certificate (supra), and, which may ultimately effect, the entitlements as ensuing to the petitioner, from the sale certificate concerned. Consequently, the estate holders concerned, who in derogation of the right, title and interest of the custodian department, rather became allotted lands by the Consolidation Officer concerned, but were required to be sued in a suit for possession, so that thereby a decree of possession, is rendered, whereby possession of the suit lands as held by the estate holders concerned, thus is delivered to the present petitioner, who is admittedly, the lawful owner thereof.

10. Though, the said civil suit became filed at the instance of the predecessor-in-interest of the present petitioner, and, also as revealed by Annexure P-9 qua a decree of possession becoming rendered vis-a-vis the plaintiff. However, Annexure P-9 became reversed through Annexure P-10, and, in a verdict rendered upon Regular Second Appeal bearing No.227-2017, thus the judgment and decree of reversal, as became passed by the learned Appellate Court concerned, vis-a-vis the apposite judgment and decree, whereby the suit for possession of the predecessor-in-interest of the present petitioner, thus became decreed, but became upheld.

11. It appears on a reading of the judgment of the learned first Appellate Court, which reversed the judgment and decree as passed vis-a-vis the plaintiff in Civil Suit No.RBT-129 of 1999, became founded, upon the premise, that the estate holders concerned, when became allotted the suit lands and also assumed possession thereof, rather becoming unimpleaded in the array of defendants.

12. Since only on the above score the plaintiff's suit for possession has been dismissed. Therefore, when for attracting the principle of res judicata, thus barring the institution of a subsequent suit, anchored upon similar relief and/or similar causes of action, it is also required, that in the earlier suit, all the litigants are similar to the ones in the subsequent suit. However, when though, there may be similarity of causes of action and reliefs *inter-se* the suit (supra), and, may be in the subsequent suit which may become instituted at the instance of the present petitioner, thus for seeking restoration of possession to him of the suit lands, from the defendants, who have assumed possession thereof, in pursuance to allotments being made qua them, by the Consolidation Officer concerned, and, who were not arrayed as party-defendants, in the earlier suit bearing

No.RBT-129 of 1999. Therefore, *prima-facie* the earlier judgment was not inter partes, those party-defendants who may in the subsequent suit, thus become impleaded, as such, as party-defendants.

13. In consequence, when the underlying principle, for attracting the principle of res judicata against the institution of a subsequent suit, is also apart from, similarity of causes of action, and reliefs, thus in the earlier drawn verdict, qua therein, the parties being similar to the ones, as proposed to be added in the subsequent suit, whereas, in case a subsequent suit, is instituted against those defendants, who were not arrayed as party-defendants in the earlier suit, thereby *prima-facie* there would be but the above marked dis-similarity of parties in the earlier suit, and, may be thus of party-defendants in the subsequent suit.

14. In sequitur *prima-facie* to the subsequently instituted suit for possession, wherein, the arrayed defendants rather became not arrayed in the earlier suit, thus to the said subsequent suit, the principle of constructive res judicata may *prima-facie* be not fully applicable.

FINAL ORDER

15. In aftermath, there is no merit in the instant petition, and, the same is dismissed and, the impugned order of 24.04.2023 (Annexure P-21) is hereby affirmed. However, liberty is reserved to the petitioner to institute a fresh suit arraying therein as party-defendants, those defendants who are in possession of the lands in respect whereof, the undisputed sale certificate is issued. However, it is clarified that the above made observations are only tentative in nature, and, may not at all prejudice or influence, the learned trial Judge concerned, to draw a conclusion, that the subsequent suit for possession, if becomes instituted, thus arraying therein as party-defendants, those persons who are in possession of the suit lands, thereby the said

subsequent suit does or does not attract thereto rather the principle of constructive res judicata, as becomes purportedly engendered from the earlier verdict of dismissal as become made by this Court while dismissing RSA No.227-2017.

(SURESHWAR THAKUR)
JUDGE

7.10.2023

Ithlesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No

(KULDEEP TIWARI)
JUDGE