

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-11153-1995

Reserved on: 22.02.2024

Pronounced on: 29.02.2024

JIT KAUR

.....Petitioner

Versus

DIRECTOR, CONSOLIDATION HOLDINGS, PUNJAB AND ORS.
....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Sunil Chadha, Senior Advocate with
Ms. Devyani Sharma, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Ish Puneet Singh, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. The instant petition is directed against Annexure P-4, whereby in a petition bearing No. 59 of 1993, filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948'), the Director Consolidation of Holdings, Punjab, Jalandhar, proceeded to make the hereinafter extracted order of remand vis-a-vis the consolidation authorities concerned.

“I have considered the arguments of both sides and checked the record. The petitioner has been given excess area in A- Block and less area in B & C blocks. The contention of the respondents is that this variation is within limit, but the ld.counsel for the petitioner has drawn

my attention to para of the scheme pertaining to mortgage rights (Murthani Hakook), in which it has been mentioned that the mortgagee is to be given land of the same 'grade' which he was holding prior to consolidation. To my mind, grade means quality of land. The petitioner has not been given land of the same quality. The consolidation authorities have not followed the scheme strictly. I, therefore, accept the petition and send the case to the Consolidation Officer, Jalandhar for the allotment of land to the petitioner according to the quality of the land which he held prior to consolidation.”

2. The present petitioner, who became impleaded as one of the respondents in the petition (supra), thus becomes aggrieved therefrom. Resultantly thereby, she has constituted the instant writ petition whereby, she makes a challenge to Annexure P-4.

3. Prior to the making of the impugned order, one Sohan Singh, petitioner in the petition (supra), had instituted a petition bearing No.3/93, wherein, grounds similar to the one, as became raised, in the petition, whereon Annexure P-4, became rendered, thus became raised therein.

4. As unfolded by the hereinafter extracted order (Annexure P-2), as became made thereon, it is crystal clear that the said petition became withdrawn but without liberty being assigned to the petitioner to re-institute the said petition.

“ The ld. Counsel for the petitioner should be allowed to withdraw the petition.

Keeping in view the statement of the counsel for the petitioner, the petition is dismissed as withdrawn.”

5. Therefore, in terms of the relevant provisions as embodied in Order 23 Sub Rule (3) of the CPC, provisions whereof become

extracted hereinafter, thereby unless the withdrawal of the suit, was with assigning of liberty to the petitioner to institute a fresh suit/petition, rather on reasons founded on the hereafter statutory premise(s).

- (1) That the suit must fail by reason of some formal defect.
- (2) That there are sufficient grounds for allowing the plaintiff to re-institute a fresh suit for the subject matter of the suit or part of a claim, thereupon, in terms of Sub Rule (4) of Order 23 CPC, a statutory estoppel becomes galvanized against the petitioner-plainfiff, against his re-instituting a fresh suit/petition, in respect of the subject matter as carried in the petition/suit, which he thus but without the leave of the Court founded upon the reasons spelt, in Sub Rule (3), rather chooses to simpliciter withdraw or abandon the claims raised therein.

Order XXIII

[1. *Withdrawal of suit or abandonment of part of claim-*

- (1) xxxxxx xxxxxx
- (2) xxxxxx xxxxxx

- (3) *Where the Court is satisfied,—*
 - (a) *that a suit must fail by reason of some formal defect, or*
 - (b) *that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*
- (4) *Where the plaintiff—*
 - (a) *abandons any suit or part of claim under sub-rule (1),*
or
 - (b) *withdraws from a suit or part of a claim without the*

permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) xxxxx xxxxx.....”

6. Since evidently a reading of the above extracted order (Annexure P-2), as made on the earlier petition, thus with a similar cause of action, and/or with a similar subject matter, whereons, Annexure P-4, became rendered, besides with the parties in the former and latter suit/petition being almost similar, thereby, though it appears that the said simpliciter withdrawal of suit, but without liberty to the petitioner to re-institute the same, thus estopped him to file a subsequent suit/petition.

7. Since the petition (supra), became constituted under Section 42 of the 'Consolidation Act, 1948'. Therefore, when the said special statute does not embody any special procedure regulating the trial to be made on a motion made thereunders before the contemplated therein statutory authorities nor also through any specific statutory provision becoming embodied therein, there is an able ouster of the provisions of CPC. Resultantly thereby, the provisions of CPC, do regulate the procedure relating to the makings of trials, upon, a petition or a suit laid before the authorities contemplated under the 'Consolidation Act, 1948'.

8. Moreover, also when the procedure relating to the mode of proof of documents adduced before the statutory authorities concerned, is not specifically embodied in any specific provision, as carried in special statute (supra), besides when the provisions of the Evidence

Evidence Act are applicable vis-a-vis the mode of proof qua the documentary evidence, as become adduced before the statutory authorities contemplated under the 'Consolidation Act, 1948'.

9. In consequence, the provisions of CPC, as also the provisions of Evidence Act, respectively regulate the procedure relating to the trial to be made upon a petition or suit, as, constituted before the authorities contemplated under the 'Consolidation Act, 1948', besides regulate the procedure relating to the mode of proof of documentary evidence as is adduced before such authorities.

10. Furthermore thereby, it has to be tested whether in the wake of Annexure P-2, making the above echoings whether therebys the subsequent petition or a suit, whereons, the impugned Annexure P-4, became rendered, thus was barred by the above extracted apposite provisions, as embodied in Order 23 Sub Rule (3) and (4) of the CPC.

11. Though reading of the above extracted order, reveals that rather within the ambit of Order 23 Sub Rule (3) CPC, there is no reason made in the said order, whereby the earlier petition became dismissed as withdrawn, nor also any satisfaction became thus recorded by the authority concerned, qua the earlier petition bearing No. 3 of 1993, is to fail by reason of some formal defect besides also when there is no further recorded satisfaction therein, that but for sufficient reasons, rather liberty is to be assigned to the petitioner to re-institute a fresh suit, thus for the same subject matter.

12. Consequently, therebys, the mandate of Sub Rule (4) of Rule 23 of the CPC, precluded the said Sohan Singh plaintiff in the earlier and the latter motions, to re-institute the subsequent motion,

embodying similar causes of action or related to similar lands.

13. The parties in the former and subsequent suit are almost similar, except the present petitioner Jit Kaur and one Raj Kumari wd/o Madan Mohan r/o village Farid Sarai becoming impleaded in the subsequent suit, whereas, the afore remaining un-impleaded in the previous suit.

14. Consequently, therebys the counsel for the respondents submits, that when for applying the mandate of the statutory provisions carried in Sub Rule (4) of Order 23 CPC, there was an imperative requirement of parties in both the petitions/suits rather being similar. Therefore, he contends that the mandate of Sub Rule (4) of Rule 23 CPC, is not applicable so as to bar Sohan Singh to re-institute a fresh suit/petition, despite his earlier withdrawing a petition/suit, but with a similar thereto cause of action and despite the earlier suit being a simpliciter withdrawal thus without leave in terms of Sub Rule (3) of Order 23 CPC rather being granted to him.

15. However, for the reasons to be assigned hereinafter, the above argument is merit-less and is liable to be rejected.

16. The reason for rejecting the said argument is founded upon the premise, that even if the parties who became not arrayed in the earlier petition, and though became arrayed in the subsequent petition, yet the said defect was curable through an application under Order 1 Rule 10 CPC becoming instituted within the earlier petition, and/or, if the said remedy was not availed, yet one Sohan Singh was required to seek the leave of the statutory authority, since the said is a formal defect, and, is required to be cured. Resultantly therebys satisfaction

rather within the ambit of Sub Rule (3) of Order 23 CPC, vis-a-vis qua on account of the said formal defect, the espoused liberty for re-instituting a fresh suit, being accordable to one Sohan Singh. However, even the said satisfaction was not recorded in Annexure P-2, thereby, irrespective of some of the respondents, in the subsequent petition, remaining not arrayed in the previous petition, yet one Sohan Singh became precluded to in terms of Sub Rule (4) of Order 23 CPC, from his re-instituting a fresh suit, but thus subsequent to the above extracted order Annexure P-2, being made.

17. In sequel, for the above reasons, since the above suit/petition, whereons, the impugned order became passed, was barred by the above statutory estopping principle, thereupon, the impugned order is rendered vitiated, and, is required to be quashed and set aside.

18. Even otherwise, as but is apparent on a reading of Annexure P-1, which embodies an order passed, on an interim application cast under Order 39 Rule 1 and 2 read with 151 CPC filed within civil suit No. 27 of 27.01.1993, wherebys, the espoused therein relief relating to the respondents-defendants therein, one of whom is one Sohan Singh, thus being restrained from interfering with the peaceful possession of the present petitioner-plaintiff in the suit/application (supra), rather over the disputed lands. Resultantly, in the wake of Annexure P-1, becoming passed in the year 1993, thereby, unless it was shown by cogent evidence to be annulled, thereby it acquired binding and conclusive force and with a further sequel that, the order of remand, as comprised in Annexure P-4, rather untenably unsettling the equities as became tenably settled through Annexure P-1.

this Court in case titled as '*Parkash Singh and Others Vs. Joint Development Commissioner, Punjab and Others*' reported in **2014 (2) R.C.R. (Civil) 721**, the remedy in respect of the disputed lands, thus became ably resorted through the present petitioner, availing the purposeful civil suit remedy before the jurisdictionally competent civil Court concerned. Therefore, it was incumbent upon the statutory authorities constituted under the 'Consolidation Act, 1948' to await the outcome of civil suit no. 27 of 27.01.1993, than the authority concerned proceeding to make Annexure P-4, whereby but breach is caused to the mandate carried in verdict (supra), wherein, in the relevant hereinafter extracted para thereof, there is complete interdiction against exercising of jurisdiction by the authorities constituted under the 'Consolidation Act, 1948' vis-a-vis the petitioner raising a disputed question of title, as but evidently arose amongst the litigants in the petition (supra). Therefore, also the exercising of jurisdiction on the said petition is vitiated.

46. *We, therefore, have no hesitation in recording that it is beyond debate that, if a question arises, before an officer exercising power under the Consolidation Act, regarding any right, title or interest in "Shamilat Deh" "vested" or deemed to have vested in a Gram Panchayat, a Consolidation Officer, the State or its delegate exercising plenary power under Section 42 of the Act, are not empowered, while examining the correctness of any scheme prepared during consolidation or order passed thereunder to record a finding on such a question of title or to hold that land is or is not "Shamilat Deh" and as a consequence whether any right, title or interest vests or does not vest in the Gram Panchayat. **The only authority empowered to answer such a question is the Collector,***

exercising power under Section 11 of the 1961 Act. As a necessary corollary an order passed under Section 42 of the Consolidation Act, holding that the land vests or does not vest in a Gram Panchayat would be illegal and nonest for assumption of jurisdiction where there is none, as opposed to a mere erroneous exercise of jurisdiction or may, at best be construed to be an order passed by a tribunal of limited jurisdiction, in the exercise of its limited powers to correct errors in the scheme or orders passed during consolidation and nothing more. The latter conclusion would require a degree of explanation.”

20. In consequence, Annexure P-4, is liable to be quashed and set aside but the contested rights, titles and interest of all the litigants vis-a-vis the suit lands shall be governed and shall be regulated by the final and conclusive decision as is drawn on Civil Suit No.27 of 27.01.1993, and, if not drawn to be governed by such drawn decision on the suit (supra).

FINAL ORDER BY THIS COURT.

21. In aftermath, this Court finds merit in the writ petition, and, with the above observation(s), the same is allowed.

22. The impugned order (Annexure P-4), is quashed and set aside.

23. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

29.02.2024

kavneet singh