



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2486-1991 (O&M)
Date of decision: 14.11.2024

RANJIT SINGH (DECEASED) THROUGH HIS LRS AND ANOTHER

.....APPELLANTS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Ms. Kamalpreet Kaur, Advocate
for the appellants.

Mr. Vivek Saini, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

The appellants-plaintiffs are in the second appeal against the judgment and the decree dated 08.05.1991 passed in Civil Suit No. 206 of 1988 by the Sub Judge, First Class, Dabwali whereby suit for declaration to the effect that the orders dated 18.06.1985 passed by the allotment authority Dabwali and the order dated 10.02.1985 passed by the Collector Sirsa and the order dated 08.05.1987 passed by the Divisional Commissioner, Hisar declaring land measuring 6.01 ordinary Acres qua each of the plaintiffs, situated at village Odhan, Tehsil Dabwali, District Sirsa, as null and void, was dismissed, as well as against the subsequent dismissal of the Civil

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Appeal No. 81 of 1991 vide judgment and decree dated 12.10.1991 passed by the Court of Additional District Judge, Sirsa.

2. Briefly summarized the case of the appellants is that they had filed the said suit for declaration and permanent injunction claiming therein that they had filed two separate declaration forms under Section 9 of the Haryana Ceiling on Land Holding Act, 1972 (for short 'the Act of 1972'). The said declarations furnished by the appellants-plaintiffs were processed and considered under the statutory provisions by the prescribed Authority and vide its order dated 18.06.1985 the land measuring 47 kanals 19 marlas was declared as surplus in the hands of each of the plaintiffs. Aggrieved of the said order of the prescribed authority, an appeal was filed before the Collector which was dismissed vide order dated 12.12.1985. Subsequently, the revision petition was also dismissed by the Divisional Commissioner, Hisar vide order dated 08.05.1987. It was claimed that Smt. Parsin Kaur, mother of the appellants-plaintiffs resided with them and they were members of the 'family' as defined under the provisions of the Act of 1972. If the land held by their mother, as on the appointed date is clubbed alongwith the land held by each of the appellants/plaintiffs, there was no surplus area as on the appointed date with the family of the plaintiffs and that there is a presumption of jointness of the family, unless the contrary is proved, hence, the said orders were null and void and without jurisdiction. It was also pleaded that unless a severance and separation is proved, the prescribed authority under the Act of 1972 has to treat the family as joint. However, the said presumption was overlooked without any evidence and that the



inferences drawn were contrary to the law and the record. The Revenue authorities recorded a finding that the plaintiffs did not reside with their mother which was contrary to the Principals of justice, equity and good conscience and that the State did not lead any evidence to establish separation of the family and that as the law enjoins a presumption of jointness, the said statutory presumption did not stand satisfactorily rebutted. The version of the appellant-plaintiff that they were residing with their mother as on the appointed date thus was not required to be established any further. Notwithstanding the same, the authorities passed an order to the prejudice of the petitioner compelling them to institute the suit for declaration.

3. The State of Haryana filed its written statement alleging that the suit was barred under Section 26 of the Act of 1972 and also raised objections with respect to the maintainability of the said suit by referring to different provisions of law. It was further stated by the State that the appellant-plaintiffs had submitted their two declaration forms separately and the same were processed as per law. Hence, the appellants-plaintiffs were not only aware of the statutory forms but also the necessity of filing the details as well as the procedure prescribed thereunder. The separate forms were processed in their individual capacity and as per the procedure prescribed under the Act of 1972. The mother of the appellants/plaintiffs was found to be not residing with the plaintiffs more so when the appellants/plaintiffs had themselves submitted separate declaration forms and that the mother Smt. Parsin Kaur also submitted her separate declaration

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form before the Collector, Sirsa but after the prescribed period. On submission of the said form, the Collector, Sirsa remanded the case to the prescribed authority, Dabwali for a fresh decision. The matter was accordingly decided afresh by the prescribed authority, after granting an opportunity of hearing to the parties, whereby declaration form submitted by Smt. Parsin Kaur-mother of the appellants-plaintiffs was not allowed on the ground that the said form was not submitted within the prescribed period and that the same was submitted in the appeal just to save the land from being declared as surplus and bring it out from the purview of the Act of 1972. More over, the declaration forms of the appellants-plaintiffs had already been decided as on the date when Smt. Parsin Kaur submitted the declaration form. She was having an area measuring 67 kanal- 05 marlas as on 24.01.1985 which was less than the permissible area limit. It was specifically submitted that the suit had been filed to defeat the provisions of the Act of 1972 and as an afterthought a concocted story had been put-forth by the appellants-plaintiffs about their mother residing with them in a joint family. By their own conduct and submission of separate statutory forms, the appellants-plaintiffs had portrayed severance of the status of a joint family and that any subsequent act in disowning or denying the said voluntary conduct on their part would estop them from pleading to the contrary.

4. Replication to the written statement was not filed.
5. Vide order dated 26.10.1988, the Sub Judge, First Class, Dabwali framed the following issues:-



- 1- *Whether the impugned orders dt.18-6-1985, 10.12.1985 and 8-5-1987 are liable to be set-aside, as alleged?OPP.*
- 2- *If issue No.1 is proved whether the plaintiffs are entitled to injunction as prayed for?OPP*
- 3- *Whether the suit is barred by Section 26 of the Ceiling on Land Holding Act, 1972, If so to what effect?OPD*
- 4- *Whether the suit is time barred?OPD*
- 5- *Whether the suit is under valued for the purpose of court fee and jurisdiction.?OPD*
- 6- *Whether the plaintiffs have no cause of action to file the present suit ?OPD*
- 7- *Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD*
- 8- *Whether the suit is bad for want of notice u/s 80 of the C.P.C.?OPD*
- 9- *Whether the plaintiffs have no locus-standi to file the present suit?OPD.*
- 10- *Whether the suit is not maintainable in the present form?OPD.*
11. *Relief.*

6. Both the parties led their respective evidence to prove their cases.

7. The appellants/plaintiffs examined only 01 witness namely Daljit Singh son of Rattan Singh while the defendants examined one witness i.e. Bhagwan Dass, Patwari, Surplus Area, Mandi Dabwali.

8. On consideration of the oral as well as documentary evidence adduced on record, including the orders passed by the Collector as well as the Commissioner and the order passed by the prescribed authority, the trial

Court rejected the contentions of the appellants-plaintiffs with respect to



submission of the two declaration forms separately on wrong legal notion under Section 9 of the Act of 1972 and did not accept the subsequent application, showing the jointness of the status filed by the mother. Reference was also placed on the various Jamabandies, orders as well as the postal receipts as well. The respondent-State was held to have satisfactorily rebutted the case of appellant-plaintiff through the testimony of Bhagwan Dass, Patwari (Surplus) supporting the order passed by the competent authority declaring the land measuring 6.01 acres of each of the appellant-plaintiffs to be surplus. It was held that the appellants-plaintiffs did not constitute a joint family with their mother Smt. Parsin Kaur and that they used to reside separately.

9. On consideration of the respective submissions, the Sub Judge, First Class also noticed that apart from the oral testimony of the appellant-Daljit Singh, there was no other evidence on record to corroborate his statement and that a solitary self serving statement uncorroborated by any other documentary evidence was not sufficient to prove that the plaintiffs constituted a single unit alongwith their mother Smt. Parsin Kaur. The appellants-plaintiffs could have duly established the jointness of the family by leading evidence in the form of ration card, voter list etc., however, having chosen not to adduce the said evidence or to lead any other independent evidence to establish the said fact and to corroborate the testimony, an inference ought to be drawn against the appellants-plaintiffs. It was further held that the submission of the application form separately by the appellants-plaintiffs was a voluntary act on their part and they claimed

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themselves to be major as on the date of furnishing the declaration form. Any subsequent attempt at a contrary pleading would not advance their case especially while considering their own conduct not only in the submission of the application form but also in having contested the said orders up to the level of Commissioner of Appeals, Hisar Division, Hisar before challenging them before the Civil Court on new grounds. The competent authorities duly granted opportunity to the respective parties to prove their case. The appellants-plaintiffs failed to establish their case before the competent authority and therefore, the orders declaring the land as surplus cannot be held to be illegal. The operative part of the judgment on the issue No.1 reads thus:-

“ISSUE NO.1.

8- The burdon to prove this issue was on the plaintiffs. It was for the plaintiffs to prove that impugned order dated 18-6-1985 passed by the Prescribed Authority Dabwali, order dated 10-12-1985 passed by the Collector, Sirsa and order dated 8-5-1987 passed by the Commissioner Hisar, Division Hisar are liable to be set aside- The plaintiffs in support of their case have examined Ranjit Singh one of the plaintiffs as P.W.1 who has deposed on oath that under a wrong legal impression the plaintiffs had submitted two declaration forms separately under section 9 of the Haryana Ceiling on Land Holding Act. But thereafter 6.01 O.A. area of each of the plaintiffs was declared surplus by the Prescribed Authority Dabwali vide his order dated 18-6-1985 against that order the plaintiffs filed appeal before Collector, Sirsa and revision before Commissioner



Hissar Division Hissar. But the same were also dismissed. He has further deposed that the plaintiffs used to reside jointly. The plaintiffs in support of their case also relied upon the order dated 10-12-1985 passed by the prescribed Authority Dabwali as Ex.P1, order dated 18.6.1985 passed by Prescribed Authority, Dabwali as Ex. P2, order of revision passed by Hisar Commissioner, Hisar as Ex. P3, order dated 8.5.1987 passed by Commissioner Hisar as Ex. P4, notice as Ex. P5, postal receipt as Ex. P6, jamabandi for the year 1986-87 as Ex. P7, jamabandi for the year 1975-76 as Ex. P8, jamabandi for the year 1990-91 as Ex.29, jamabandi for the year 1970-71 as Ex. P10. On the other hand the defendants to rebut oral as well as documentary evidence of the plaintiffs, the State examined Bhagwan Dass Patwari (Surplus) as D.W1, who has deposed on oath that the impugned orders are in accordance with law and the 6.01 0.A. land of each of the plaintiffs was rightly declared surplus and the plaintiffs did not constitute a statutory family with their mother Smt. Parsan Kaur whereas the plaintiffs used to reside separately and they submitted separate declaration forms under Section 9 of the Haryana Ceiling on Land Holding Act (hereinafter to be called as the Act). The state in support of its case also relied upon order dated 18.6.1985 passed by the prescribed Authority Dabwali as Ex. DA.

9- The plaintiffs have challenged the impugned orders on the grounds that Prescribed Authority Dabwali Collector, Sirsa and Commissioner Hisar Division Hisar after ignoring the facts on the record passed the impugned wrong and illegally orders and they wrongfully presumed that the plaintiffs used to reside separately



whereas the plaintiffs filed two declaration form separately under wrong legal impression, therefore, the impugned orders may kindly be set aside. During course of arguments, the learned counsel for the plaintiffs pointed out the statement of DW1. Bhagwan Dass Patwari (Surplus) wherein he has admitted that if the unit of the plaintiff with their mother Smt. Parsan Kaur is taken one, no land of the plaintiff will be surplus and the Prescribed Authority has wrongly declared the land of the plaintiff as surplus. It is admitted case of both the parties that the impugned orders are quasi judicial and could have been passed after hearing both the parties. Both the parties were allowed to lead evidence in support of their respective contentions. Thereafter the Ld. prescribed authority Dabwali, Ld. Collector Sirsa and Ld. Commissioner Hisar Division, Hisar turn down the requests of the plaintiffs to be treated their family as joint with their mother Smt. Parsan Kaur. In the case in hand also except the oral statement of one of the plaintiffs Ranjit Singh PW1 there is no other evidence on the record to corroborate the statement of Ranjit Singh PW1. Ld.counsel for the defendants has submitted that the solitary statement of PW1 is not sufficient to prove that the plaintiffs constitute one unit with their mother Smt. Parsan Kaur. Since the oral statement of PW-1 stands well rebutted by the oral statement of DW1. The plaintiff by producing the ration card and voter list etc. could easily prove that the plaintiffs constitute only one unit with their mother Smt. Parsan Kaur and they used to reside jointly, not separately. The plaintiffs even failed to examine any respectable person from the village to corroborate his statement. In these circumstances, the solatary statement of PW1 is not sufficient to hold that the



plaintiffs constituted a joint family with their mother Smt Parsan Kaur. Had the plaintiff produced the ration card and the voter list, in that eventuality, the case of the plaintiff would have become crystal clear but the best evidence of the village community and ration card and voter list has been withhold by the plaintiffs. Therefore, the presumption under Section 114 of the Indian Evidence Act goes against the plaintiffs.

10- In the light of my above discussion and findings the plaintiffs have miserably failed to prove that they used to reside jointly with their mother Smt. Parsan Kaur on the appointed date. The plaintiffs voluntarily submitted their application form and they were admittedly major on the date of furnishing their declaration form. It is settled law that ignorance of law is no excuse. Had the plaintiffs used to reside with their mother Smt. Parsan Kaur then they might have not submitted their separate declaration form and joint declaration form would have filed by their mother parsan Kaur. Since the impugned orders have been passed by the Competent Authorities after affording the opportunity of bearing hear. In these circumstances, the plaintiffs have failed to prove that the orders dated 18-6-1985, 10-12-1985 and 8-5-1987 are illegal and noticeable to be set aside.

11. On the other hand, by the evidence led by the defendant and it is admitted by the plaintiff that since the impugned orders have passed after affording an opportunity of being heard to both the parties. Therefore, defendants have been able to prove that the orders are legal and not liable to set aside. Hence I decide this issue against the plaintiffs and in favour of the defendants.



10. Further, on the issue No.3, pertaining to the objection of the Civil Court's Jurisdiction being barred under Section 26 of the Act of 1972, the issue was also considered and it was noticed by the Sub Judge, First Class that there was no illegality on the part of the competent authority in passing the orders declaring the land as surplus and therefore the jurisdiction of Civil Court to entertain and try the suit arising out of the orders passed by the competent authority under the Act of 1972 was barred.

11. Aggrieved thereof, the Civil Appeal No. 81 of 1991 was filed by the appellants-plaintiffs wherein the Counsel for the appellants-plaintiffs argued that the declaration form submitted by the mother of the appellants-plaintiffs ought to have been accepted by the authorities since she was a member of the family of the appellants-plaintiffs and that in case the said declaration form is admitted, then no area in the hands of the appellants-plaintiffs could be treated as surplus. It was further argued that the appellants should not be punished by the authorities by applying the provisions of the Act of 1972 solely on account of a mistaken advice and submission of separate declaration forms by the appellants-plaintiffs, without claiming jointness with their mother. A further submission was also made that they were not a granted proper opportunity of hearing by the authorities under the act to establish their case about residing jointly with their mother and reiterated the argument that there was presumption of jointness of the Hindu family and that the said aspect ought not to have been ignored by the authorities under the Act of 1972.



12. The above said contention was, however, not accepted by the Additional District Judge, Sirsa. It was specifically noticed that the appellants-plaintiffs as well as their mother were having separate land holding in their respective name(s). As the mother of the appellants was in possession of separate land holding within the prescribed limits under the Act, hence, she did not file any declaration form in the beginning. She attempted to save the land of her son(s) from being declared surplus by filing a separate declaration form which was rightly discarded by the authorities under the Act. As per provisions of Section 9 of the Act of 1972, selection of permissible area had to be made by furnishing a voluntary declaration form, within a specified period. There was no reason as to why Smt. Parsin Kaur, mother of the appellants-plaintiffs did not file the said declaration form in time. The authorities were thus correct in observing in the impugned orders that she was holding the land in her own name within the permissible limits and therefore there was no occasion and necessity for her to file a separate declaration form and that it was an afterthought that false declaration form was subsequently filed to save the land declared surplus in the hands of the appellants-plaintiffs. The said finding was thus corroborated by the contemporaneous evidence adduced on record.

13. The matter was also examined from another aspect, that even if the declaration form of Smt. Parsin Kaur was admitted as genuine, then also her land measuring 67 kanals 5 marlas would have been treated as a permissible area in that situation she could not claim two separate units for her two elder sons who are the appellants. Even in that situation, the area in



the hands of the appellants-plaintiffs could not be exempted under the surplus rule. Each of the appellants could retain only the permissible area out of their own individual holdings and the same has been exactly done in the case in hand. The benefit thus could not be extended to the appellants-plaintiffs more so when the declaration forms were already processed in their names and in that situation, the mother could not claim to be a member of their 'family' as defined under Section 3 (f) of the Act of 1972. The said terms includes the husband, wife and their minor children or any two more of them. A mother is thus not a member of the 'family' of the appellants-plaintiffs as per the definition prescribed thereunder especially when they were major on the approved date. Since the statute specifically provided for a definition of a 'family', hence, the arguments as regards presumption of jointness of "family under the customary law" cannot be supplanted on the definition of a family under the Act of 1972. A specific definition having been prescribed by the legislature for examination of the claim under the said Act, no other definition could supersede the definition prescribed under the substantive statute. Hence, even if it is assumed that she was residing alongwith them, yet, as the definition of family has been specifically prescribed under the Act of 1972, no further benefit could be extended beyond what the law stipulates. It was also held that the appellants-plaintiffs thus could not claim any separate unit as the term "separate unit" has been separately defined under Section 3 (q) to mean an adult son living with his or her parents or either of them and in case of his death, his widow and children, if any. Hence, even under the said circumstance, they cannot club together their holding and include the land held by their mother in their



declaration form as she is not a part either of the family or of a separate unit as has been prescribed under the Act of 1972. Thus, all the aspects were duly dealt with and the appeal was dismissed. The operative part of the order passed by the Additional District Judge, Sirsa reads thus:-

“9. The learned counsel for the appellants urged that findings of the trial court on issues No. 1 & 3 were liable to be reversed. It was argued that the impugned orders dated. 18.6.1985, 10.12.1985 and 8.5.1987 passed by the Authorities under the act were null and void in as much as the Authority should have treated the declaration-form submitted by the mother of the appellants as valid as she was a member of the family of the appellants. It was argued that in case this declaration form was admitted, then no area in the hands of the appellants could be treated as surplus. The counsel vehemently argued that the appellants should not have been punished by the Authorities under the act simply because under mistaken advice they had initially submitted their separate declaration forms without claiming jointness with their mother. He further argued that the appellants were not given proper opportunity by the Authorities under the act to show that they were residing jointly with their mother. It was further argued that even otherwise there was a presumption of jointness of a Hindu family and this aspect should not have been ignored by the Authorities under the Act. The counsel, therefore, prayed for declaring the impugned orders dated 18.6.1985, 10.12.1985 and 8.5.1987 as null and void in the eyes of law. It was argued that the civil court had every jurisdiction to try the suit if it was demonstrated that the authorities under the Act either outstepped their



jurisdiction under the act or they while deciding the matter went beyond the provisions of the Act.

10. *I am, therefore, afraid to accept this contention of the learned counsel for the 'appellants. This is because both the appellants and their mother were having separate land-holdings in their names. As mother of the appellants was having in her occupation the land with in the prescribed limits under the Act, so she did not file declaration-form under the Act in the beginning. She attempted to save the land of her sons from going to the surplus pool later on by filing a separate declaration form. It was rightly discarded by the Authorities under the Act. Under section 9 of the Act, selection of permissible area has to be made by furnishing declaration form within a specified period. There is no reason as to why Smt. Parsin Kaur did not file this declaration form in time. The Authorities have rightly observed in the impugned orders that she was holding land in her nam within the permissible limit and for this reason she did not need to file the same earlier but later on with a view to save the land of her sons, she came forward with a false declaration-form. The Authorities under the act vere empowered to take this view, which was taken by them after hearing the concerned parties. I find absolutely no irregularity or illegality in this approach.*

11- *The matter can be looked yet from another angle. If Smt. Parsin Kaur's declaration form, is admitted as genuine, then also her land measuring 67 kanals 5 marlas would have been treated as her permissible area. In that situation, she could claim two separate units for her two adult sons, who are the appellants. Even in that*



situation, the area in the hands of the appellants could not be saved from going to the surplus pool. Each of the appellant could retain only the permissible area out of their individual holdings and that is exactly what has been done in this case.

12. *If converse situation is taken, then also the appellants cannot derive any benefit. This is because if the declaration-forms of the appellants are processed in their names, then in that situation their mother would not be a member of their family. The definition of family is given in section 3(f) of the Act. Under this definition term 'family' means husband, wife and their minor children or any two or more of them. Mother is, thus, not a member of the family as per definition of section 3 (f) of the Act. It has to be noted that this definition does not conform to any kind of natural families prevalent in the State like a Hindu undivided family, known to Hindu law or any family under the Muslim Law etc. The Legislature has purposely adopted an artificial definition of family, which is only applicable to the Act. Thus mother being not a member of the family of the appellants under the Act, they cannot take any advantage, even from the fact that she was living jointly with them. Nor they can claim any separate unit as the term separate unit has been defined under section 3(q) of the Act. Under this definition 'separate unit' means an adult son living with his parents or either of them and in case of his death, his widow and children, if any. Thus the appellants cannot claim separate unit also after including their mother in their declaration-forms. I have already observed that if a separate declaration form of the mother is taken as valid,*



then also in that situation the land of the appellants cannot be saved from going to the surplus pool.

13. Counsel for the appellants also placed reliance upon the authority **Arda Murari and another Vs. State of Orissa and others, AIR 1979 Orissa 58.** From this authority, no help is to be derived by the appellants. This case before the High Court of Orissa had arisen under Orissa Land Reforms Act, 1960. May be, the provisions of the said Act were different from the provisions of our Act. Moreover, a perusal of this judgment rendered by the High Court of Orissa shows that even under 'Orissa Land Reforms Act, 1960, a widowed mother cannot be a member of the family. Thus instead of helping the appellants, this authority rather goes against them.

14. No other point was urged before me. In the net result, I find that the appellants have not been able to show as to how the orders dated 18.6.1985, 10.12.1985 and 08.05.1987 rendered by the Authorities under the act were null and void in any manner. Further the counsel for the appellants has not been able to show as to how the civil Court had the jurisdiction to try the suit in view of the bar created by section 26 of the Act. Under Section 26 of the Act, it is laid down that no orders of the Authorities made under or in pursuance of the Act, shall be called in question before any civil court. I, therefore, affirm the findings of the court below on both these issues.

15. No other point was urged before me. As a result of affirmation of the findings of the court below on issues No. 1 & 3, it follows that this appeal has to be



dismissed and the same is accordingly dismissed hereby with costs. The trial court judgment and decree are maintained. Decree-sheet be prepared accordingly and the file be consigned to record-room.

14. Hence, the present appeal.

15. Learned Counsel appearing for the appellants-plaintiff has reiterated the same and accordingly submitted that in case the declaration form as submitted by the mother is accepted in its totality, their holding cannot be claimed to be severed but the authorities failed to consider the said aspects. It is submitted that on account of lack of legal advice, the appellants-plaintiffs were wrongly led into filing their own separate declaration forms and that the appellants/plaintiffs ought not to be penalized for their lack of awareness. She further places reliance on the testimony of DW-1 wherein it has been said that Parsin Kaur –mother of the appellants-plaintiffs was residing with her sons and that the voter list under the documents had also been shown by them as a proof of being joint in residence and kitchen.

16. Learned Counsel for the appellants-plaintiffs also places reliance upon the judgment of ***“Smt. Giano and others versus the Sub Divisional Officer (Civil) Hissar and Others”*** reported as ***2005 (1) LAR 672*** as well as in the matter of ***“Sukpal and others versus Chattar Singh and others”*** reported as 2020 (2) R.C.R. (Civil) 18 as per which in case the orders passed by the authorities constituted under the special statute are found to be in violation of the statutory requirement, the Civil Court has the



jurisdiction to examine the said illegalities and that the civil suit would be maintainable.

17. Counsel for the respondent-State on the other hand, reiterates his submission as noticed above and contends that all the aspects have already been dealt with by the authority and that the preposition sought to be propounded by the appellants-plaintiffs had already been considered by the District Judge including the aspect as to whether despite the claim of jointness being made, whether the Act of 1972 mandates inclusion of mother in the family unit. Hence, the aspect as to whether her common joint declaration form was filed or not would be irrelevant. He further contends that the Courts have concurrently & specifically noticed that separate declaration forms were filed by the petitioners and as such they were fully aware of the mandate of law. Since the holding in the hands of Smt. Parsin Kaur was within the permissible limits as prescribed under the Act of 1972, hence, she did not file the declaration form at the given instance for selecting the land holding which she wanted to retain for herself and only the holdings in the hand of the appellants-plaintiffs was surplus. It was only as a subsequent wisdom gained, that a separate declaration form, after the prescribed date, was submitted by the mother by including her sons alongwith her so as to incorporate them as a part of the family unit. He contends that the said aspect also cannot be considered since the definition of 'family' as prescribed under the Act of 1972 includes the 'husband, wife and their minor children' and major sons cannot be included in the same.

Similarly, in the definition of a separate unit as defined under Section 3 (2)



of the Act, 1972, a mother does not form part of the family. Hence, considering it from either of the perspectives and even if it is assumed that the declaration of the mother has to be accepted, yet, the appellants-plaintiffs being adults as on the date of submission of the declaration forms, hence, they were only entitled to a separate unit and they could not seek clubbing of their land holding alongwith the land holding held by their mother. Thus, the claim of jointness, as made by the appellants-plaintiffs, is impressible and is not sustainable. He has also argued that Smt. Parsin Kaur never stepped into the witness box to support the case nor any other evidence was led by the appellants-plaintiffs to establish the factum of jointness. The sole self-serving testimony of the appellants-plaintiffs cannot be held sufficient to establish a claim that has been made by her. It is also argued that notwithstanding the preposition of law as expounded by this Court in its judgments relied upon by the appellants-plaintiffs, the jurisdiction of a Civil Court would be vested only in case any illegality or unconstitutionality is noticed in the orders passed by the prescribed authority under the special statute. The appellants-plaintiffs have not been able to refer to any procedural impropriety or illegality in the proceedings undertaken by the competent authority under the special statute i.e. Act of 1972 and once the procedural requirement as prescribed under the statute has been followed, the orders passed by the prescribed authority as well as the revisional authority cannot be impugned in a civil suit.

18. Further, while adverting to the judgment in the matter of “*Smt. Giano and others (supra)*”, it is contended that the said judgment would not



be applicable to the facts of the present case as the claim raised by the appellants-plaintiffs is not that she has not been treated as a separate unit, rather, the grievance espoused before this Court is that the land holding held by the appellants-plaintiffs ought to be clubbed alongwith the land holding held by their mother and to thereafter re-determine as to whether the joint land holding would fall within the permissible limits as available or not. The argument thus runs contrary to the statutory scheme and cannot be accepted.

19. He further submits that ignorance of law in any case cannot be accepted as an excuse but in the present case, the appellants-plaintiffs cannot even plead ignorance since they showed awareness of the applicability of law by submission of separate declaration forms as per Section 9 of the Act of 1972.

20. No other argument has been raised nor any other judgment cited.

21. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record as well as the record of the lower Court.

22. I am unable to find myself in agreement with the arguments advanced on behalf of the appellant-plaintiff. There is nothing on record to rebut that the appellants-plaintiffs were major at the time of submission of a declaration form under Section 9 of the Act of 1972. Hence, the definition of “family” in the Act of 1972 would exclude ‘adult sons’. Thus, the appellants-plaintiffs even if their claim about the mother residing with them, she could not include their land holding in her own.



23. The principles of uncodified personal law are general and not in exclusion to the specific statutory provision in a substantive statute. In such circumstances legislative intent has to be drawn from the statutory provision as codified.

24. This Court has also examined the orders passed by the prescribed authority as well as the revisional authority on the declaration form submitted by the appellants-plaintiffs. The contention of the appellants-plaintiffs about their mother having submitted a separate declaration form before the prescribed authority, Dabwali claiming that the appellants-plaintiffs used to reside with her was also considered by the SDO (Civil)-cum-prescribed authority, Dabwali and even then the said application was rejected by the prescribed authority vide its interim order dated 13.08.1982. An appeal against the said interim order had been passed and vide order dated 27.12.1982, the appellant authority held that no appeal would be maintainable against an interim order. Aggrieved of the said order, both the appellants-plaintiffs as well as their mother preferred further appeal before the Collector which were disposed of by a common order and all the cases were remanded to the Sub Divisional Officer (Civil) for a fresh decision after granting an opportunity to lead evidence and to advance arguments. The needful was done and the parties were permitted to file their respective evidence by the prescribed authority and the arguments were also heard. The declaration form submitted by Smt. Parsin Kaur was also considered as per which she had claimed herself to be family unit and it was noticed that the said declaration form could have been filed under Section 9



within the prescribed period, however, the same was not filed and instead separate independent individual 'declaration form(s)' had been filed by the appellants-plaintiffs declaring their surplus land. Smt. Parsin Kaur-mother of the appellants-plaintiffs reflected that she owned 67 Kanal 05 Marlas land for herself, as per the declaration form submitted by her and as on 24.01.1971, the same was less than 34.37 ordinary raqba and that the same being within the permissible limits, hence, there was no need for filing any declaration form. The appellants-plaintiffs held 40.37 ordinary acres and 40.38 ordinary acres as on 24.01.1971, hence, they filed their separate deed of declaration on 13.08.1976 and did not make any reference to the land held by Smt. Parsin Kaur, which shows that as on 24.01.1971 they were separate in residence.

25. The definition under Section 3 (f) of the Act of 1972 was also considered by the authorities and it was noticed that an elder major son, who owns or holds land and is living separately from his parents shall file the declaration under sub Section (1) and make the selection of permissible area under Sub Section (2) separately, as per the provisions of Section 9 (2) of the Act of 1972. Hence, separate statutory forms and separate declaration were furnished by them. All the claims made by the appellants/plaintiffs were duly considered by the Tehsildar as well and it was reported that the claim about the appellants/plaintiffs residing with Smt. Parsan Kaur was not established and was without any force. Had they been residing together, the declaration form ought to have been filed by them under the correct provision alongwith their mother. Hence, the argument was rightly rejected



by the revenue authorities on consideration of the evidence. The appellate as well as the revisional authority again appreciated the contentions and did not find any force in the arguments advanced by the appellants-plaintiffs. Hence, the said contention about the petitioners to treat Smt. Parsin Kaur as the family head and the form submitted by her to be treated as filed on behalf of the family, under the provisions of Act of 1972, has been considered not only by the authorities prescribed under the special statute but also concurrently by both the Courts and the same has not found any favour.

26. Counsel for the appellants-plaintiffs has not been able to point out any illegality or procedural impropriety in the proceedings undertaken by the authority under the law. In the absence of such procedural violation or illegality or impropriety, the decisions taken by the ompetent authority, under the Act of 1972 cannot be challenged before the Civil Court in view of the bar provided under Section 26 of the Act of 1972. The judgment in the matter of *Sukpal and others (supra)* relied upon by the Counsel for the appellants-plaintiffs does not come to the aid of the appellants/plaintiffs in the established facts of the present case.

27. A perusal of the orders shows that the Appellants-plaintiffs would not fall in the definition of family and that submission of the declaration form by mother, after the cut-off-date and at the appellate stage in the proceeding under Act 9 of 1972 are afterthoughts.

28. The argument seeks to give an over-reading meaning to the general definition and understanding of 'family' under the customary law, in supersession of a specific definition, the same is impermissible in law. It would



amount to allowing supplanting of a statutory definition and ignoring the express statutory definitions.

29. Still further, considering all the aspects and contentions about the presumption of jointness of family as also the specific holdings in the hands of the appellants-plaintiffs coupled in light of the fact that the mother never stepped in the witness box to substantiate the claim of the appellants-plaintiffs and no evidence was led by the appellants-plaintiffs either before the Civil Court establishing the jointness in the status, I find that the judgment and decree passed by both the Courts do not suffer from any illegality. The present appeal is accordingly dismissed. The judgment and decree passed by both the Courts are affirmed.

30. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 14, 2024
Vishal Sharma

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