



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

CR-1757-2022 (O&M)

Reserved on :-21.08.2025

Date of Pronouncement:-26.082025

Ishwar Singh @ Ishwar Saini

... Petitioner

Versus

Surender Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Veer Imaan Singh Gill, Advocate
for the petitioner.

Mr. Ravinder Malik, Advocate
for respondents No.1 to 5.

VIRINDER AGGARWAL, J.

1. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, praying for setting aside the impugned order dated 28.02.2022 (Annexure P-11), whereby the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), seeking rejection of the plaint, was dismissed by the learned Civil Judge (Junior Division), Karnal. The petitioner contends that the said order suffers from material irregularity and legal infirmity, and therefore warrants interference by this Court in exercise of its constitutional jurisdiction.



2. Brief facts of the case are that consolidation proceedings pertaining to three villages namely Keharwali, Amritpur Kala, Amritpur Khurd of District Karnal on land measuring 16660 Bigha 1 Biswas was notified in 1965 and Scheme was prepared on 29.11.1966, the same was assailed in CWP-756-1967 and it was directed vide order dated 29.01.1968 to avail alternative remedy. On 18.08.1970 Director Consolidation quash the Scheme qua partition of "*Burdgi-Barmmgdmi*" under Section 42 East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred as 'the Act'). Some land owners preferred Civil Writ Petition No.3193 of 1986, which was decided on 10.08.1987 with direction to partition the land in question among the co-shares as per the terms and conditions of '*shart wazib ul arz*' Consolidation Officer, Karnal published the amended Consolidation Scheme on 08.02.1995, which was accepted by Settlement Officer (Conslidation, Rohtak), on 05.05.1995 and partition scheme was prepared on 22.05.1998. The same was challenged by some right holders vide petition under Section 42 of the Act. The same was dismissed and the order was assailed in writ petition No.18310 of 1998, writ petition was also dismissed. The Hon'ble Supreme Court upheld the Consolidation Scheme on 06.09.2005. Plaintiff and others preferred complaints against partition dated 22.05.1988 before the Deputy Commissioner, Karnal. A Committee of five Senior Revenue Officers was constituted. Committee submitted Report No.611 on 24.12.2015 and it was found that there was illegalities, misuse of power and fraud committed by Revenue Authorities while effecting partition. Consolidation staff with motive to give benefit to their own people after taking gratification allotted



more land than entitled to number of people and the plaintiffs were not given their due share. They were allotted less than their actual entitlement. Plaintiffs filed suit challenging the Settlement Scheme dated 22.05.1988 on the grounds of illegality and fraud committed by staff of defendant No.1 and sought declaration for declaring the Partition Scheme as illegal, null-&-void and also sought relief of permanent injunction restraining defendants from giving effect to illegal and effective partition and for mandatory injunction for issuing directions to defendant No.1 to prepare fresh Settlement Scheme as per Inquiry Report dated 24.12.2015.

3. Petitioner, who was not initial party to the suit moved an application and got himself impleaded and thereafter moved an application under Order 7 Rule 11 of CPC for rejection of the plaint on the grounds that Civil Court has no jurisdiction to entertain and decide the suit in view of the provisions 44 of the Act and the plaintiff has no cause of action, *locus-standi* to maintain the present suit.

4. Application was contested by the respondents/plaintiffs by filing a written reply alleging that suit is maintainable, application be dismissed. After hearing arguments vide impugned order the learned Civil Judge (Junior Division), Karnal, dismissed the application.

5. Aggrieved by the order so passed, present revision petition has been filed. Notice of the revision was served upon respondents/plaintiffs and State Government.

6. I have carefully heard the submissions advanced by the learned counsel for the respective parties and have meticulously examined the entire



record of the case. Due consideration has been given to the pleadings, evidence brought on record, and the findings recorded by the Courts below.

7. The learned Civil Judge has dismissed the application by recording its finding in para No.5 of the impugned order, which reads as under :-

5. “While considering an application under Order 7 Rule 11 CPC, the plea of demurrer operates. The authorities cited by learned counsel for applicant have been gone through, the legal ratio culled out is not in doubt, however from perusal of the plaint (discussed above in detail), the plaint is not liable to be rejected on account of Section 44 or other provisions of the East Punjab Holdings (Consolidation and Preventions of Fragmentation) Act 1948. Further, the issues for determination were framed by the learned predecessor Court on 02.11.2019. The issues are reproduced below for the sake of facilitative reference:-.
1. Whether the plaintiff is entitled for declaration for consequential relief for permanent injunction as prayed for? OPP
2. Whether the plaintiff has got no locus standi to file and maintain the present suit?OPD
3. Whether the suit is not legally maintainable?OPD
4. Whether the plaintiff has not come to this court with clean hands and suppressed true material and facts from the Court?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
6. Whether the plaintiff has got no cause of action to file and maintain the present suit? OPD
7. Relief.



Where the aspect of a person being divested of proprietary right is concerned, the jurisdiction of the Civil Court is not barred. This aspect is to be viewed from the point of evidence and not solely on the anvil of the provisions of Order 7 Rule 11 CPC. In light of the above said discussion, there is no ground which warrants the rejection of the plaint and consequently this application is hereby dismissed.”

8. Learned counsel for the petitioner contended that the learned Civil Judge has not taken into consideration that the Scheme was upheld upto the Hon’ble Supreme Court and there was no jurisdiction with the Deputy Commissioner, Karnal to get any inquiry conducted or that the Scheme which was upheld upto the Hon’ble Supreme Court cannot be contested in the Civil Court, particularly in view of the bar created by Section 44 of the Act, which reads as under :-

44. Jurisdiction of Civil Court barred as regards matters arising under this Act. No civil court entertain any suit instituted or application made, to obtain a decision or order in respect of any matter which the [State] Government or any officer is, by this Act, empowered to determine, decide or dispose of.”

9. The learned Civil Judge has failed to consider that the present plaint in the suit is result of clever drafting and an attempt to circumvent the provisions of Section 44 of the Act, so the impugned order be set aside.

10. Whereas learned counsel for the respondents has argued that Civil Court has jurisdiction to entertain and decide the present suit as consolidation authorities has not exercised the jurisdiction vested in them and has mis-applied the provisions of law and has acted beyond jurisdiction by committing fraud and he placed reliance upon judgment of Full Bench of



this Court in “Parkash Singh and Other vs. Joint Development Commissioner, Punjab and Others, CWP-2318-2002 decided on 08.11.2013” and has also relied upon the judgments of this Court “Prithi Singh and Raghbir Singh etc., RSA-225-1967 decided on 01.12.1972; Sant Singh vs. Kripal Singh and Others, RSA-40-1980 decided on 28.08.2008; and Kundan and Other vs. Sardara and Others, RSA-870-1954 decided on 05.01.1959” and prayed for dismissal of the petition.

11. Perusal of the paper-book shows that the Scheme was upheld by the Consolidation Authorities and subsequently upto the Hon’ble Apex Court and now the Scheme has been challenged in the suit by the respondents/plaintiffs on the grounds that respondents/plaintiffs have been granted less share in the land than entitlement as fraud was committed by the officials of the Consolidation Department. The main stress of the learned counsel for the respondents/plaintiffs is upon the fact that since the Consolidation Authorities has not prepared the scheme as per the provisions of the Act and as officials has committed fraud and plaintiffs have been divested of their rightful claim the suit is maintainable and Civil Court has jurisdiction to decide the question in view of authorities relied upon by the respondents/plaintiffs titled as Parkash Singh and Other vs. Joint Development Commissioner, Punjab and Others (supra), wherein para No.63 of the Full Bench of this Court has held as under:-

63. The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter,



we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of. Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in "*Jumla Mushtarka Malkan*" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court.

11.1 **And** he further relied upon Para Nos.28 & 29 of the aforesaid Full Bench's Judgment, which reads as under:-

28. By the time of re-partition, Consolidation Authorities had already applied a pro-rata cut on the holdings of proprietors and created "Jumla Mushtarka Malkan" (as distinct from "Shamilat Deh") for the panchayat and for other common purposes and an entry to that effect is incorporated in the new record of rights, referred to as the "Missal Haqiat", ie, the first jamabandi prepared after consolidation. As soon as a scheme is complete, the management



and control of all land created assigned or reserved for common purposes of the village as "Jumla Mushtarka Malkan", under Section 18 and 23A of the Consolidation Act and vests in the Panchayat of that village for the purpose of management and control, as clarified by Rule 16(ii) of the Consolidation Rules.

29. We would, thus notice that during the process of consolidation, a Consolidation officer exercises powers of a revenue officer, as conferred by Punjab Land Revenue Act, 1887, but is not empowered by any provision of the Consolidation Act or the 1887 Act, to decide a disputed question of title. It would be necessary to once again reiterate that the Consolidation Act, does not contain any provision conferring power upon consolidation authorities to decide a question of title whether between private individuals or between a Gram Panchayat and a private individual and with respect to common lands only empowers Consolidation authorities, to delimit the "Shamilat Khewat" and create "Jumla Mushtarka Malkan".

12. There is no doubt in the preposition of law that fraud vitiates every act and the fraud can be challenged at any time. Now considering the fact that the decision of the Consolidation Authorities was earlier assailed in the Civil Writ Petition, which was correct approach in view of the provisions of Section 44 of Act, wherein the jurisdiction of Civil Court is barred and the findings recorded by this Court in Civil Writ Petition were assailed through SLP and that SLP was also declined by Hon'ble Apex Court. So in case subsequently some fact emerged whereby it was found that the entire facts were not brought before the Court then the correct approach was to approach the Hon'ble Apex Court.



13. As per Order 47 Rule 1 of CPC the review is maintainable when on account of discovery of new and important matter or evidence which after the exercise of due diligence was not within knowledge of the plaintiffs or could not be produced by the plaintiffs at the time when the order was so passed review of order can be applied. So now considering the fact that when respondents/plaintiffs were having efficacious remedy of review before them, the Civil Court cannot be clothed with the jurisdiction, the judgment of the Full Bench is not strictly applicable to the facts of the case in hand as Consolidation Authority has not decided any question of title rather the grouse and grievance of the plaintiffs is that they have not been provided due share in the partitions proceedings in partition while framing scheme of consolidation and on account of that they had already filed petition under Section 42 of the Act and the order of the Consolidation Authority was challenged by way of writ petitions upto the Hon'ble Supreme Court, so filing of this suit is certainly barred in view of the provisions of Section 44 of the Act and the Court cannot be clothed with jurisdiction by clever drafting in order to circumvent the provisions of law as has been held by Hon'ble Apex Court in "Ramisetty Venkatanna and Another vs. Nasyam Jamal Saheb and Others, 2023(2) Apex Court Judgments(SC) 444, wherein para No.6 of Hon'ble Apex Court is held as under:-

"6. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief



with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law.”

14. The learned Civil Judge has not exercised the jurisdiction vested in him and by not exercising the jurisdiction vested in him, the learned Civil Judge vide impugned order has committed a material illegality, as such, revision petition is allowed and the impugned order is set-aside and the application filed by the petitioner for rejection of plaint is allowed.

15. However, observations made herein above may not to be construed as opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

16. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

26.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No