
(1970) 02 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 666 of 1960

Achhar Singh and others

APPELLANT

Vs

Kartar Singh and others

RESPONDENT

Date of Decision : 12-02-1970

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 41

Citation : (1970) 02 P&H CK 0014

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : Roop Chand, for the Appellant; B.S. Bajwa, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is a Plaintiff's second appeal against the decision of the learned. First Additional District Judge, Amritsar, reversing on appeal the order of the trial Court decreeing their suit.

2. Achhar Singh and his brother Dewa Singh brought the suit, out of which the present second appeal has arisen, against Kartar Singh and Dara Singh, sons of Ganda Singh, and Ujagar Singh, son of Sucha Singh, Defendants 1 to 3, for a declaration that they as allottees were in possession of 3/8th and 3/16th shares in chah Mastuwala and Chah Jwindwala, respectively, in village Dhanoiya Kalan, District Amritsar, and that they were not liable to pay compensation therefore to the Defendants, and further that the Defendants be restrained from interfering in their possession. Their allegations were that they had, on 24th of February 1956, been allotted evacuee land in the said village along with irrigation rights in the two wells to the extent of the shares mentioned above. Since the data of the allotment they were in possession of the land and were also enjoying the irrigation rights in the said two wells. During the consolidation proceedings in the village, the Consolidation officer had held that they were entitled to the shares in the wells only on payment of compensation to the Defendants. The Defendants

were, therefore, demanding the said compensation and were interfering in their possession. According to the Plaintiffs this trouble had arisen because Ganda Singh, father of Defendants 1 and 2, and Ujagar Singh Defendant 3, had transferred the land along with shares in the wells to Umar Din evacuee, but, through an oversight, in the mutation of sale in favour of the said evacuee the shares in the two wells had not been mutated in favour of the vendee.

3. The suit was contested by the Defendants, who denied the allegations made by the Plaintiffs. It was also pleaded that the suit was barred under the provisions of Section 41 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act, 1948 (hereinafter referred to as the Act). It was denied that the Plaintiffs were allottees of the shares in the wells in dispute. The suit, according to them, was time-barred and it was also averred that they had acquired ownership by adverse possession.

4. The Trial Judge held that the shares in the wells were in the first instance sold to Umar Din who irrigated the land, after the sale, from those wells. The said land was then allotted to the Plaintiffs and they also irrigated it from the wells and continued to do so till the filing of the suit. Mutation regarding the shares in the wells, however, was not effected in favour of Umar Din. But mutation by itself, according to the learned Judge, did not either create or extinguish any rights and, therefore, failure to effect the mutation did not in any way effect the rights of the Plaintiffs. It was held that Section 44 of the Act did not bar the suit. The learned Judge also found that the Defendants had not acquired ownership of the said shares in the wells by adverse possession and the Plaintiff's suit was within limitation. On these findings the suit was decreed.

5. When the matter went in appeal before the learned Additional District Judge, Amritsar, he came to the conclusion that the shares in the wells were not allotted to the Plaintiffs during the consolidation proceedings and the Defendants still owned 3/8th and 3/16th shares in the two wells. It was also held that neither Umar Din nor the Plaintiffs after him had been irrigating the land purchased by the former from Ganda Singh and Ujagar Singh. The learned Judge further found that the suit of the Plaintiffs was barred by limitation and the Defendants had acquired ownership, rights in the two wells by adverse possession. As a result, the appeal was accepted and the Plaintiff's suit dismissed. The Plaintiffs have filed the present appeal,

6. The learned Counsel for the Respondents has raised an objection that the appeal should be dismissed on the short ground that the suit, out of which it has arisen was barred by the provisions of Section 44 of the Act and the finding on this point by the trial court was erroneous.

7. After hearing the counsel for both the parties. I find that there is merit in the objection raised by the learned Counsel for the Respondents. Section 44 says-

No civil court shall 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.

It is beyond dispute that it was during the consolidation proceedings that the Consolidation Officer had ordered the Plaintiffs to pay a certain amount of compensation before they could get the above mentioned shares in the said two wells. This was a matter which, under the provisions of the Act, had to be determined by the said Officer. u/s 15 of the Act, the scheme to be prepared by the Consolidation Officer had to provide for the payment of compensation to any owner who was allotted a holding of less market-value than that of his original holding and for the recovery of compensation from any owner who was allotted a holding a greater market value than that of his original holding. According to rule (5)(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, every scheme of consolidation had to contain apart from other things, a statement of valuation of lands, wells, trees, etc to be exchanged, showing the compensation to be given or received by the holders concerned. According to Section 44 of the Act, no civil court could entertain any suit instituted to obtain a decision or order in respect of any matter which any Officer was by the Act empowered to determine or decide. That being so, if the Consolidation Officer makes a scheme to the effect that the Plaintiffs should pay compensation to the Defendants before they could get the said shares in the wells, they should have availed themselves of the remedies provided under the act. The present suit however was not competent.

8. In view of what I have said above this appeal fails and is dismissed. There will, however, be no order as to costs in this Court.