
(1999) 10 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1114 of 1996, Civil Miscellaneous No. 1740-C of 1996 and Civil Miscellaneous No. 849-C of 1999

Jasvinder Singh

APPELLANT

Vs

State of Haryana through Collector, Sirsa

RESPONDENT

Date of Decision : 23-10-1999

Acts Referred:

Citation : (2000) 2 LJR 53 : (2000) 2 PLJ 318 : (2000) 2 PLR 481 : (2000) 2 RCR(Civil) 30

Hon'ble Judges : V.K.Jhanji, J

Advocate : Mr. N.S. Bhinder, DA, Haryana., Mr. C.B. Goel, Advocate, Mr. B.D. Sharma, Advocate, Mr. J.R. Mittal Sr. Advocate, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.—This second appeal is directed against the judgment and decree of the Courts below dismissing the suit of the plaintiff for declaring the orders passed by the Authorities under the Haryana Ceiling on Land Holdings Act, 1972, in the case State v. Balbir Singh and in the suit titled Balbir Singh v. State of Haryana to be illegal, void and not binding on his rights.

2. In brief, the facts are that plaintiff, Jaswinder Singh (appellant herein) is natural son of Balbir Singh. On 5.8.1980, the Prescribed Authority under the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act) declared lands surplus in the hands of Balbir Singh. Since the plaintiff was minor on the appointed day i.e. 4.1.1972, he was treated as member of the family of Balbir Singh and land held by the plaintiff was clubbed with the land holding of Balbir Singh. Being aggrieved of order dt. 5.8.1980 of the Prescribed Authority, Balbir Singh preferred appeal before the Collector. Before the Collector, Balbir Singh contended that Jaswinder Singh was given in adoption to one Mukhtiar Singh vide adoptiondeed dt. 5.11.1973, but the said adoptiondeed was wrongly ignored by the Prescribed Authority. He contended that the Prescribed Authority had no authority to declare adoptiondeed dt. 5.11.1973 to be a sham document and to declare the land surplus in his hands by clubbing the land of his son who

had already been given in adoption before the appointed day. Vide order dated 2.12.1980, the Collector dismissed the appeal. Balbir Singh preferred revision before the Commissioner, Hissar Division & vide order dt. 30.7.1982, his revision was dismissed. Thereafter Balbir Singh filed petition under Section 18(6) of the Act before the Financial Commissioner. Vide order dated 5.3.1985, the Financial Commissioner did not find it to be a fit case for exercise of suo motu powers under Section 18(6) of the Act to interfere with order dated 30.7.1982 and accordingly dismissed the petition. Balbir Singh having lost the battle before the Authorities under the Act, filed Civil Suit No. 154 of 1981 challenging orders passed by the Authorities. In the said suit, he not only challenged the orders of the Authorities under the Act, but also sought declaration that Jaswinder Singh, was given in adoption to one Mukhtiar Singh vide adoption deed dated 5.11.1973 and the decision of the Prescribed Authority to the contrary is null and void. In the suit, he impleaded the State of Haryana and also Mukhtiar Singh and Jaswinder Singh as party defendants. Both the defendants, namely, Mukhtiar Singh and Jaswinder Singh filed written statement admitting the claim of Balbir Singh. The State of Haryana, however, contested the suit and the Sub Judge Ist Class, Dabwali vide detailed judgment and decree dated 22.2.1986 dismissed the suit. In appeal filed by Balbir Singh against the said judgment, the first Appellate Court vide judgment dated 20.7.1987 affirmed the judgment and decree of the trial Court. It is thereafter that the suit out of which present appeal has arisen, was filed by Jaswinder Singh challenging the orders of the Authorities under the Act and also judgment and decree dated 22.2.1986 passed by the Sub Judge Ist Class, Dabwali and judgment and decree dated 20.7.1987 passed in appeal by the first Appellate Court. In the suit, plaintiff also challenged order dated 26.2.1981 vide which the land which had been declared surplus, has been allotted to defendants 3 to 6.

3. Upon contest, the State as also defendants No. 3 to 6 contested the suit and in their written statement, submitted that the orders passed by the Authorities under the Act are legal and valid. The contended that because of bar created under Section 26 of the Act, the Civil Court has no jurisdiction to try the suit. Defendants further submitted that order dated 26.2.1981 vide which land was allotted to defendants No. 3 to 6 is legal and valid.

4. Trial Court, on appreciation of evidence adduced by the parties to the suit, held that orders passed by the Authorities under the Act are legal and valid. It also held that the plaintiff was not given in adoption by Balbir Singh and judgment and decree dated 22.2.1986 passed in the suit filed by Balbir Singh and judgment and decree dated 20.7.1987 passed in appeal are legal and binding on the plaintiff. Issue regarding the suit being barred by principle of res judicata was also decided against the plaintiff. Trial Court however, held that the Civil Court has the jurisdiction to try the suit. In appeal, the learned Additional District Judge vide judgment dated 18.3.1996 dismissed the appeal thereby affirming the judgment and decree of the trial Court. Hence this second appeal by the plaintiff.

5. Learned counsel appearing on behalf of the plaintiff has contended that the suit land was given to the plaintiff by his grandfather by a Civil Court degree. It is contended that the area which was owned and possessed by Balbir Singh could only be declared surplus and the Authorities had no jurisdiction to declare the land of the plaintiff surplus by clubbing with the land holdings of Balbir Singh.

6. In answer to these submissions, Mr. N.S. Bhinder, D.A. Haryana appearing on behalf of the State and Mr. C.B. Goel, Advocate, appearing on behalf of defendants No. 3 to 6 have contended that the Courts below have not committed any illegality in declaring the order passed by the Authorities under the Act to be legal and valid. They contended that the Authorities under the Act rightly ignored the adoption deed as the same was a sham and paper transaction and had come into existence only to defeat the mandatory provisions of the Act as well as the utilisation Scheme.

7. I have heard the learned counsel for the parties at length and carefully gone through the record.

8. Section 3 of the Act is definition section. Clause (m) of the section defines "person" to include inter alia a family. Expression "family" is defined in clause (f) and it says that family means husband, wife and their minor children or any two or more of them. Clause (r) says that "surplus area" means in excess of the permissible area. Subsection (1) of Section 4 provides that the permissible area in relation to a landowner or tenant or mortgagee with possession or partly in one capacity or partly in another, of person or family consisting of husband, wife and upto three minor children shall be, in respect of (a) land under assured irrigation capable of growing at least two crops in a year 7.25 hectares; (b) land under assured irrigation but capable of growing at least one crop in a year, 10.9 hectares; (c) land of all other types including land under orchard, 21.8 hectares. Subsection (2) provides that the permissible area shall be increased by one-fifth of the permissible area of the primary unit of family for each additional member of family, provided that the permissible area shall not exceed twice the permissible area of the primary unit of family. Subsection (3) further provides that the permissible area shall be further increased upto the permissible area of the primary unit of a family for each separate unit provided that where the separate unit also owns any land, the same shall be taken into account for calculating the permissible area. Section 7 provides that no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with possession or partly in one capacity or partly in another, land within the State of Haryana exceeding the permissible area on or after the appointed day. Explanation added to this section provides that where the person is a family including the separate unit, if any, the land owned or held by such person together with the land owned or held by the members of the family and the separate unit shall be taken into account for the purposes of calculating the permissible area. Section 9 requires that every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall

within a period of three months from such date, as the State Government may, by notification specify in this behalf, in subsequent acquisition of land, furnish a declaration to the Prescribed Authority supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain. ExplanationI added to this section further states that where the person is a member of the family, he shall include in his declaration the particulars of land held by him and also of land, if any, held by other members of the family and the separate unit. Section 10 provides that if a person fails to select the permissible area in accordance with the provisions of Section 9, the Prescribed Authority may, after collecting the information in such manner as it may deem fit, by order select the permissible area of such person. Section 11 provides for the preparation of statement by the Prescribed Authority of the total area of land owned or held by a person and the separate unit, their permissible area and the surplus area. Section 12 provides for the vesting of surplus area in the State after it is declared as such, by the Prescribed Authority.

9. From a reading of the aforementioned provisions, it is clear that the land held by each member of a family as defined in clause (f) of Section 3 is to be clubbed together and taken into account for determining the permissible area. There is no provision in the Act that while determining the permissible area, only an area owned and possessed by the individual member of the family is to be taken into consideration. In fact what is provided is that a person filing declaration form has not only to include in his declaration the particulars of the land held by him, but also of land, if any, held by the members of the family and the separate unit. He is also required to state therein his selection of permissible area. In case he fails to select or reserve the permissible area, then the Prescribed Authority is competent to pass order selecting permissible area of such person after collecting information in the manner as it may deem fit. In this case, the Collector passed orders selecting the permissible area because the landowner had neither reserved nor selected the permissible area. In this view of the matter, it cannot be urged successfully that the Authorities under the Act had no jurisdiction to declare the land as surplus by clubbing the land holdings of plaintiff with that of Balbir Singh.

10. Faced with this situation, learned counsel appearing on behalf of plaintiff contended that the finding of the Courts below that plaintiff was not adopted and adoptiondeed dated 5.11.1973 was created only with the sole object of saving the land from being declared surplus, is erroneous. It is contended that the Courts below have not properly appreciated the evidence adduced by the plaintiff for proving that he had been legally adopted before the appointed day. I, however, do not find any merit in this contention of the counsel. In adoptiondeed dated 5.11.1973, it is mentioned that Mukhtiar Singh adopted the plaintiff as his son only 45 days before the execution of the deed, i.e. on or about 1.11.1973. Since the adoption had to be before the appointed day, i.e. 4.1.1971 and the

adoption deed stated otherwise, an attempt was made to get the deed rectified for declaring that the plaintiff had been adopted by Mukhtiar Singh since 22.3.1970. In this regard, a suit was instituted on 11.8.1992 and decree obtained on 19.8.1992. This was in order to get over order dated 5.8.1980 of the Prescribed Authority vide which the land had been declared surplus and stood affirmed by the Collector and Commissioner in appeal and revision vide their orders dated 2.12.1980 and 30.7.1982 respectively. It is only thereafter that decree dated 19.8.1992 was obtained. However, in the revenue record, plaintiff was continued to be shown as son of Balbir Singh and not the adopted son of Mukhtiar Singh. Besides this, in the matriculation certificate dated 23.6.1984, plaintiff has been shown to be son of Balbir Singh. In this view of the matter the finding recorded by the Courts below that the plaintiff is not the adopted son of Mukhtiar Singh cannot be said to be erroneous.

No other point has been urged.

11. Consequently, the appeal being without any merit shall stand dismissed. No costs.