

(1992) 04 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 98 of 1982

Kanshi Ram and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 2, Order 22 Rule 3, Order 22 Rule 3(1), Order 22 Rule 3(2)
Constitution of India, 1950 — Article 226
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 — Section 18, 20, 21, 50(1), 50(5)
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104
Limitation Act, 1963 — Article 120 , 121, 137, 2

Citation : (1994) ShimLC 184 Supp

Hon'ble Judges : V.K. Mehrotra, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Bhupinder Gupta, for the Appellant; K.S. Patyal, A.A.G. and H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—In this petition under Article 226 of the Constitution, Petitioners are three in number. They claim to have acquired interest, by purchase, to the extent of the share of Smt. Thakari and Smt. Shankari, in land forming part of Khewat No. 12 in Tika Bakarli, Mauza Jangal, District Hamirpur. The other co-sharers were Sham Lal and Ranpat Mall, both of whom are now dead. Their sons are Respondents 3 to 7 in this petition.

2. Maiya Ram, the 8th Respondent, was a tenant over an area of 7 Kanal and 17 Marias of land of that Khswat comprised in Khasra No. 413, 420 Min, 439 and 518. The Petitioners say that he was a tenant only under Ranpat Mall and Sham Lal and was wrongly shown to be a tenant also under Smt. Thakari and Smt. Shankari. This mistake was, however, corrected by the revenue authorities and in the report Roznamcba pertaining to the year 1967-68 made by the Patwari of the

area, the tenancy of Maiya Ram was shown to be only under Rampat Mall and Sham Lal. This fact was also incorporated in the Jamabandi pertaining to the year 1968-69.

3. Consolidation operations took place in Mauza Jangal under the provisions of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, (for brief the Consolidation Act). Thereafter, Jamabandi was prepared for the year 1976-77. A separate Khata was prepared for Rampat Mall and Sham Lal in these proceedings and Maiya Ram was allotted a separate Khatauni and also allotted land measuring 10 Kanal and 12 Marias in lieu of land measuring 7 Kanal and 17 Marias of which he was earlier a tenant under Rampat Mall and Shamlal alone. This made it clear that Maiya Ram had no tenancy rights under Smt. Thakari and Smt. Shankari from whom the present Petitioners purchased their entire interest.

4. The Petitioners have also stated that during the pendency of the consolidation proceedings, Himachal Pradesh Tenancy and Land Reforms Act, 1972 came into force on its publication in the Himachal Pradesh Rajpatra (Extraordinary) on February 27, 1974. On that date the Khata had already been separated and Maiya Ram was shown to be holding land under Sham Lal and successors of Rampat Mall, who had died in the intervening period.

In spite thereof, applications were filed by Sham Lal and the sons of Rampat Mall u/s 104 of the H.P. Tenancy and Land Reforms Act. An order was passed by the Land Reforms Officer on June 28, 1976 permitting Sham Lal to resume land to the extent of one-half share from that held by Maiya Ram. Another order was passed on the same day by the Land Reforms Officer on an application made by the sons of Rampat Mall, allowing resumption of land to an extent of one-half share from the area held as a tenant of Maiya Ram. These orders, it appears, were passed on the basis of statements made before the Land Reforms Officer on oath on June 28, 1976 and Kulwant Rai, a son of Rampat Mall, Sham Lal and by the tenants including Maiya Ram. Copies of these statements have been appended as Annexures to the writ petition.

5. The Petitioners' tale of vow, as transferees of the entire share of Smt. Thakari and Smt. Shankari, began thereafter. In repetition proceedings allotment had been made, inter alia, to Maiya Ram. Sham Lal filed an objection to the order of allotment saying that Maiya Ram should have been treated as a tenant not only under him and Rampat Mall but also under Smt. Thakari and Smt. Shankari. This objection was dismissed by the Consolidation Officer on May 6, 1975. The view taken was that no objections had been filed as provided u/s 21 of the Consolidation Act, the record of right had been published u/s 18 of the Consolidation Act and the statements of plots and tenure holders had been prepared u/s 20 of the Act and duly published in the village on August, 13, 1973, and as such no objection could be entertained at the belated stage Sham Lal assailed this order by filing an application u/s 54 of the Consolidation Act on June 18, 1975. The Petitioners say that they had no knowledge about these

proceedings till the month of July, 1979. It was only thereafter that they learnt about it when, according to the statement made before us by Shri Bhupinder Gupta, appearing for the Petitioners, notice came to be served upon the Petitioners of the proceedings initiated by Sham Lal u/s 54. These proceedings were registered as case No. 55 of 1977.

6. Sham Lal, say the Petitioners, died on April 4, 1980. That was during the pendency of the case before the Director Pyare Lal, Madan Lal and Girdhari Lal are the three sons of Sham Lal. They are Respondent Nos. 3, 4 and 5 in this petition. On application to bring them on the record of the proceedings before the Director was made within 90 days of the death of Sham Lal inspite of the fact that on May 28, 1980, when the case was fixed before the Director, this was brought to his notice. The case was only adjourned to May 29, 1980. Since no one appeared on behalf of the heirs of late Sham Lal, the Director dismissed the application u/s 54 for want of prosecution, This order of dismissal, it has been stated, was passed in the presence of the first Petitioner.

7. The grievance of the Petitioners is that on July 10, 1980 an application was made by Pyare Lal and his brothers for restoration of proceedings before the Director who passed an order on the same day restoring them without notice to the Petitioners. The matter was heard on merits on February 18, 1982 and an order was passed by the Director which is under challenge in the present petition. The Petitioners say that this order was liable to be set aside as it was not only unjust and arbitrary but had been passed even though the entire proceedings had abated on account of the failure of the legal representatives of late Sham Lal to apply for being brought on the record of the case within a period of 90 days. It has been asserted in the petition, and sought to be supported by an affidavit of the counsel who appeared for the present Petitioners before the Director, that a specific plea was raised before the Director that the proceedings before him stood abated. Yet, the Director did not notice the plea nor record any order in respect thereof,

8. The Respondents in the writ petition include the State of Himachal Pradesh as the first and the Director, Consolidation of Holdings, Himachal Pradesh, as the second amongst them. Shri Dhani Ram was the Director of Consolidation who had passed the impugned order on February 18, 1982. He has sworn the reply affidavit on behalf of the first two Respondents in this case. A separate reply affidavit has been filed on behalf of Respondents 3 to 11. It has been sworn by the 3rd Respondent, Pyare Lal, son of Sham Lal.

9. Shri Bhupinder Gupta has appeared before us on behalf of the Petitioners. He has urged that the dismissal of the application u/s 54 made on May 29, 1980 for want of prosecution was set aside by the Director without notice to the Petitioners and behind their back. As such, the order dated February 18, 1982 deserves to be quashed. We find it difficult to accept this submission in the circumstances of the present case where Petitioner Kanshi Ram was actually present before the Director when the matter was finally heard and his counsel

Shri R.K. Sharma represented him before the Director. The parties were heard by the Director, No objection, whatsoever, was raised to the restoration of the proceedings; on behalf of the Petitioners. The second and 3rd Petitioners were duly served with notice of the application u/s 54 but did not appear. An order was made to proceed ex parte against them. These facts are found mentioned in the impugned order.

10. There is no dispute that Sham Lal died on April 4, 1980. There is also no dispute about the fact that his heirs and legal representatives filed an application to be brought on the record of the proceedings on July 10, 1980. What has been urged with some emphasis by Shri Bhupinder Gupta is that the proceedings stood abated on expiry of 90 days from the date of death of Sham Lal. The order of February 18, 1982 is, therefore, a nullity.

11. Section 50(1) of the Consolidation Act, says:

50(1) The Settlement Officer (Consolidation), Consolidation Officer and the Assistant Consolidation Officer shall have all such powers and rights and privileges as are vested in a civil court on the occasion of any action in respect of the following matters--

(a) the enforcing of the attendance of witnesses and examining them on oath, affirmation or otherwise, and the issue of a commission or request to examine witness abroad;

(b) compelling any one of the production of any document;

(c) the punishing of persons guilty of contempt, and a summons signed by such officer may be substituted for and shall be equivalent to any formal process capable of being issued in any action by a civil court for enforcing the attendance of witnesses and compelling the production of any document.

Sub-section (5) then says that:

(5) Unless otherwise expressly provided by or under this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings including appeal and application under this Act.

12. The argument of Shri Gupta is that the provisions of Order XXII, CPC would become applicable to the proceedings under the Consolidation Act by virtue of Sub-section (5) of Section 50. As such, failure to bring the legal representatives of applicant Sham Lal on the record of the proceedings would result in the abatement of the proceedings on account of the provision contained in Rule 3 of Order XXII, for which the period of limitation prescribed in Article 120 of the Schedule to the Limitation Act, 1963, is 90 days from the date of the death of the party concerned. More so, when no application was made for obtaining an order to set aside the abatement within the period of 60 days from the date of abatement as contemplated by Article 121 of the Limitation Act.

13. The provisions of Order XXII, CPC may be attracted in the case of

proceedings under the Consolidation Act on account of Section 50(5). Yet, in the proceedings of the nature which were before the Director of Consolidation u/s 54, the plea of Shri Gupta may be of no avail. A perusal of Order XXII, CPC makes it clear beyond doubt. Order XXII applies to suits and appeals. It can be held to apply to proceedings of like nature. Rule 11 of Order XXII says that in the application of the Order to appeals, so far as may be, the word "Plaintiff" shall be held to include an Appellant, the word "Defendant" a Respondent, and the word "suit" an appeal. Nothing in Order XXII makes any of its provisions applicable to an application in the nature of Revision.

14. u/s 54 of the Consolidation Act the State Government may, at any time, for the purpose of satisfying itself also the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by an officer under the Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit. The jurisdiction of the civil court is barred as regards matters which arise under the Act, u/s 57, which says that no person shall institute any suit or other proceedings in any civil court with respect to any matter arising out of the consolidation proceedings or with respect to any other matter in regard to which a suit or application can be filed under the provisions of the Act.

Section 55 says that:

No appeal and no application for review, reference or revision shall lie from any order passed under the provisions of this Act except as provided by or under this Act.

15. The power contained in Section 54 is clearly a revisional power. It can be exercised by the State Government (or an officer to whom it may be delegated in exercise of powers under, Section 52 at its discretion. In the absence of any provision in Order XXII, CPC for abatement of proceedings of this nature, for failure of a party to bring on record the legal representatives of a party on its death, the mere fact of applicability of the provisions contained in Order XXII, CPC would not entitle the Petitioners to claim that the proceedings initiated by moving an application u/s 54 would abate on account of the death of Sham Lal in the event of the failure of his heirs being brought on the record of the proceedings within the prescribed period of 90 days.

16. Judicial thinking in this matter is more or less settled. There is no abatement of proceedings initiated by an application u/s 151, CPC or of a petition in revision u/s 115, CPC. Law insists, however, that a legal representative should be brought on the record of such proceedings within a reasonable time which has been treated to be a period of three years as prescribed by Article 137 of the Schedule to the Limitation Act. We find it stated in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, (in para 21) that:

The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object Of the

Limitation Act to include petitions, original or otherwise, under special laws....Article 137 includes petitions within the word "applications". These petitions and applications can be under any special Act as in the present case.

And, (in para 22) that:

The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court.

17. The Director of Consolidation cannot be called a civil court, yet, having regard to the fact that the provisions of the CPC have been made applicable to proceedings under the Consolidation Act by virtue of Section 50(5), we are inclined to take the view that to the extent they are applicable, the provision of Order XXII, CPC would be applicable to proceedings under the Consolidation Act.

18. Thus seen, it is not possible to hold, as canvassed by Shri Gupta, that the failure of the heirs of late Sham Lal to get themselves made parties to the proceedings before the Director within 90 days of the date of the death of Sham Lal would lead to the abatement of the proceedings before the Director.

19. For the view that we have taken, we find considerable support in the observations contained in the judgment of a Full Bench of the Allahabad High Court in Chandradeo Pandey and Others Vs. Sukhdeo Rai and Others, when it says (in para 4) that:

Order XXII, Rule 3(I) provides for bringing the legal representatives of deceased Plaintiff on the record when the right to sue does not survive to the surviving Plaintiff or Plaintiffs alone, and Sub-rule (2) thereof provides the penalty for not bringing the heirs of deceased Plaintiff on record within the period of limitation prescribed....But by virtue of Rule II of Order XXII, Rules 3 and 4 are made applicable to the Appellants and Respondents in appeal as well....Those rules, however, do not apply to revisions.

And, (in para 7), that:

Article 137, being a residuary Article, must be construed ejusdem generis with the other Articles dealing with applications. As most of the other Articles deal with applications under the Code of Civil Procedure, Article 137 should also be held to apply to applications under the Code of Civil Procedure....That the application for substitution of heirs in revision is an application u/s 151 of the CPC can admit of no doubt. Therefore, the period of limitation for bringing the heirs of the deceased (opposite party) would be three years under Article 137 of the new Limitation Act. The application for substitution was filed within three years of the death...so there is no question of abatement or of condonation of delay.

This decision was followed by a Division Bench of the Madhya Pradesh High Court in Smt. Sayeeda Begam and Another Vs. Ashraf Hussain and Others,

20. Coming now to the merits of the matter, we may observe that the

conclusions recorded by the Director Consolidation in the impugned order are expressly stated to be founded upon the state of record in respect of the land in dispute. The Director looked into the relevant record and found against the Petitioners. However, to satisfy ourselves, we asked the learned Additional Advocate General to produce before us the original record which was before the Director Consolidation on the request made by the learned Counsel for the Petitioners. We have perused the record and so has the learned Counsel for the Petitioners. The conclusion of the Director Consolidation is fully justified when seen in the light of the relevant record. In these proceedings under Article 226 of the Constitution, we are not expected to examine the matter as a court of appeal on facts.

21. We find no reason to interfere with the order passed by the Director of Consolidation for, we do not discover any apparent error of law in it.

22. The petition is dismissed but the parties are left to bear their own costs.