

(1968) 03 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 46 of 1968 and Civil Misc No. 971 of 1968

Karnail Singh and Another

APPELLANT

Vs

The Additional Director, Consolidation of Holdings, Punjab and Others

RESPONDENT

Date of Decision : 22-03-1968

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 16A

Citation : AIR 1968 P&H 469

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : K.N. Tewari, for the Appellant; P.S. Mann, for the Respondent

Final Decision : Dismissed

Judgement

1. Some of the joint owners in this petition under Article 226 of the Constitution being aggrieved by the order of the Additional Director, Consolidation of Holdings, that the khata should be kept joint in consolidation proceedings have invoked the aid of this Court to have it set aside and for enforcement of the original consolidation scheme which had provided for partition

2. It is common ground that the four petitioners and respondents 3 to 9 are joint owners of land in villages Gidarbaha and Gobindpura. According to the assertions made by the petitioners, the joint khata in village Gobindpura had already been partitioned by the Consolidation authorities. It seems that similar orders had been passed in respect of the joint khata of the parties in village Gidarbaha as well. Some objection was raised before the Additional Director by respondents 3 to 7 that the question of title being raised, the Consolidation authorities should stay their hands from carrying out the partition of the joint khata.

3. The relevant provision of law in this matter is Section 16-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called "the Act"), Sub-section (1) of which provides as under:--

"Notwithstanding anything contained in Chapter IX of the Punjab Land Revenue Act, 1887 except Section 117 thereof, the schema prepared by the Consolidation Officer may provide for partition of land between joint owners of land. . . . in accordance with the share of each owner. . . . if

(a) each share is recorded under Chap. IV of that Act as belonging to him, or

(b) the right of such owner or tenant to such share has been established by a decree which is still subsisting at the time of preparing the scheme, or

(c) a written acknowledgment of such right has been executed by all persons interested in the admission or denial thereof."

4. Reference may also be made to Section 32 of the Act which says that-

"After a notification under Sub-section (1) of Section 14 has issued, no proceedings under Chapter IX of the Punjab Land Revenue Act, 1887, in respect of any estate or sub-division of an estate effected by scheme of consolidation shall, subject to the provisions of Section 16-A, be commenced, and where such proceedings were commenced before the issue of the notification, they shall remain in abeyance during the pendency of the consolidation proceedings.

5. It is manifest that the partition proceedings under the Punjab Land Revenue Act have to be stayed during the currency of the consolidation proceedings in respect of lauds which are to be consolidated under the Act. A substitute has been provided under the Act for partition of the joint khata in the contingencies enumerated in Clauses (a), (b) and (c) of Sub-section (1) of Section 16-A of the Act. These statutory provisions in respect of partition came for consideration recently before a Division Bench of this Court of Grover and Tindra Lal, JJ. in *Ram Gopal v. State of Punjab* 1965 PLR 1102, and it was held by Grover J. (Tindra Lal J. concurring) that-

"Instead of any partition being effected according to the procedure laid down in Chapter IX of the Punjab Land Revenue Act, the partition has to be effected by the Consolidation authorities in case the share of the joint owners can be ascertained with certainty from the record-of-rights or there is no disagreement between them in respect of it or it has been settled by a decree of a competent Court." In other words, the discretionary power vested in the Consolidation authorities to effect partition of joint khata is to be exercised in any of the three contingencies embodied in Clauses (a), (b) and (c) of Sub-section (1) of Section 16-A of the Act. There is an overriding consideration which, however, must govern the Consolidation authorities and this is brought out in the judgment of Grover J. at p. 1106 of the report. Says Grover J.:

"Now, when the scheme for consolidation is prepared and a question of title is raised with regard to joint property, there appears to be no escape from the conclusion that the Consolidation Officer should stay his hands with regard to making any provision for partition until the question of title is decided by a competent Court. This follows from the decisions relating to Section 117 of the

Punjab Land Revenue Act which constitutes an exception to the other provisions of that Act in Section 16-A. A Consolidation Officer, at any rate, will not be justified in making a provision for partition of joint property in the event of dispute relating to title until there is a decision of that dispute in the manner indicated above. The result would be that the Consolidation Officer would have to so frame the scheme as to keep the joint property joint."

6. Gurdev Singh J., latterly in *Om Parkash Goel v. State of Haryana* 1968 PLJ 94, has gone so far as to say that "before the partition of a joint khata can be ordered u/s 16-A, the various joint owners must agree to it". With great respect, I do not think that this conclusion is justified by the statutory provisions of Section 16-A (1) and the ruling of the decision of the Division Bench in *Ram Gopal's case* (1965) 67 PLR 1102, to which I have just adverted. An agreement between the parties is only one of the three contingencies and will not govern a situation where a partition may be effected under Clauses (a) and (b). At the end of each of the Clauses (a) and (b) is the word "or" which shows that the condition precedent of agreement under Clause (c) is not to govern Clauses (a) and (b). It is common ground that the joint owners are not agreeing to partition of the joint khata at this stage though some kind of agreement appears to have been reached at the time when the scheme itself was framed. The Additional Director has exercised his discretion in the circumstances to say that the partition of the Joint khata should not be effected as the question of title has been raised. This decision of the Additional Director is supported by the dictum in *Ram Copal's case* (1965) 67 PLR 1102, that, where a question of title is raised, the Consolidation authorities must stay their hands even if it be assumed for a moment that all parties concerned in any event must agree to a partition of the joint khata.

7. In the result, I find no force in this petition which fails and is dismissed. In the circumstances, I make no order as to costs.