
(1959) 01 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 870 of 1954

Kundan and Others

APPELLANT

Vs

Sardara Ramji Lal and Others

RESPONDENT

Date of Decision : 05-01-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101, 9
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 44

Citation : AIR 1959 P&H 206

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : K.S. Thapar, for the Appellant; H.L. Sarin and C.L. Lakhanpal, for the Respondent

Final Decision : Dismissed

Judgement

I.D. Dua, J.—The only question arising for consideration in this appeal is whether or not the present suit is barred by Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act of 1948. In so far as the merits are concerned the learned counsel for the appellants has conceded that there, is no substance in the appeal. The question of jurisdiction is also being raised on second appeal for the first time.

The plaintiffs have brought the present suit for a declaration that they along with defendants 26 to 32 were exclusive owners of the land described in para 3 of the plaint and for a permanent injunction restraining defendants 1 to 25 and 33 to 35 from interfering with the plaintiffs' ownership and possession of the said land. It was pleaded that the plaintiffs and defendants 26 to 32 were descendants of Bahala whereas defendants 1 to 25 and 33 to 35 were descendants of Mehru who were real brothers and were joint owners of the land situate in village Sarai Kuhand and in Patties Jasu and Jawahara Har Kishan of village Kohand.

It was further alleged that the ancestors of the parties got partition of the joint

land in village Sarai Kohand and village Kohand effected through Court sometime in 1910 and mutation was entered on the basis of the said partition; while mutations Nos. 20 and 21 relating to village Kohand were sanctioned, mutation No. 19 relating to village Sarai Kohand was rejected by the revenue authorities under some mistake.

It is also pleaded that the plaintiffs and defendants Nos. 26 to 32 were awarded less land in village Kohand and in lieu thereof they were given more land in village Sarai Kohand as compared to defendants 1 to 25 and 33 to 35 and the parties continued as owners in possession of the land allotted to them at the time of partition. Recently, so the plaintiffs allege, consolidation of holding proceedings took place when defendants 1 to 25 and 33 to 35 were awarded land, in lieu of the land mentioned above with respect to which mutation No. 19 had been rejected.

On the basis of these allegations the plaintiffs claimed that the land with respect to which mutation had been rejected but of which they have all along continued to be owners in possession belonged exclusively to them and that the defendants were not entitled to any share in the land allotted in consolidation proceedings in lieu of the above land. They also claimed ownership on the basis of adverse possession.

As stated above the lower appellate Court after considering the merits of the case granted a decree to the plaintiffs as prayed. On issue No. 1 which relates to the jurisdiction of the Civil Courts the counsel on behalf of the plaintiffs did not address arguments in the lower appellate Court; it has been expressly stated in the judgment that the findings of the trial Court on issues 1 and 4 were not disputed.

2. As the question raised was one of inherent jurisdiction of the trial Court to entertain the suit I permitted Mr. Thapar to address arguments on the point because it is well established that it is never too late to consider whether or not an order is a nullity being without jurisdiction. The only provisions of law on which the learned counsel for the appellant has placed reliance are Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act and Rule 7 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation); Rules of 1949. Section 44 reads thus --

"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"

and Rule 7 framed u/s 46 of the Act reads as follows : --

"7. The Consolidation Officer shall after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 20, and shall prepare the following repartition papers : --

- (i) a map of the village showing all the existing field numbers, recognized roads, and irrigation channels and areas assigned for public purposes, such as burial grounds, disposal of animal carcasses, ponds or grazing areas, etc., with new field numbers superimposed upon it in red lines or other markings;
- (ii) another similar village map exhibiting the position emerging as a result of repartition;
- (iii) a statement showing the names of the owners of holdings, with particulars of field numbers, shares, class of land, tenure, area, assessment and encumbrances, if any, after getting the record of rights up-to-date;
- (iv) a statement showing the names of owners with particulars of all different rights possessed by each individually;
- (v) a statement showing the compensation payable by or to an owner in order to adjust differences in the value of land exchanged u/s 15 of the Act or due to the existence of wells, trees, etc., under Sub-section (4) of Section 17;
- (vi) a statement showing the names of occupants or holders to whom the new consolidated holdings are allotted with particulars of field number, shares, class of land, tenure, area, assessment and encumbrances, if any, and
- (vii) such other papers as may be considered expedient by the Settlement Officer (Consolidation) in this behalf."

The contention of the learned counsel is that according to Rule. 7 it is the duty of the Consolidation Officer to prepare a statement showing the names of the owners of holdings with particulars of field numbers, shares, class of land, tenure, area or assessment and encumbrances, if any, after getting the record of rights up-to-date. He submits that this is a matter which an officer is by this Act empowered to determine, decide or dispose of and therefore a Civil Court is debarred u/s 44 of the Act from entertaining a suit for establishing title to the land involved in the consolidation proceedings.

It is not possible for me to sustain this argument. He has not drawn thy attention to any part of the Act where the Consolidation Officer is empowered to determine, decide or dispose of a question of tide raised with respect to a piece of land which has been or is to be the subject-matter of proceedings under this Act. I have been taken through the various provisions of this Act but no specific provision has been pointed out to me which lays down any procedure for an enquiry into a question of title.

This Apt has been enacted for the purposes of providing for the compulsory consolidation of agricultural holdings and for preventing their fragmentation. The consolidation of holdings has been defined to mean the amalgamation and the redistribution of all or any of the lands in an estate or sub-division of an estate, so as to reduce the number of plots in the holdings (see Section 2 (b)).

Under Section 14 the Government is empowered of its own motion or on

application made in this behalf to make a scheme for the consolidation of holdings; with that object it may issue notifications in the prescribed manner on the publication of which a Consolidation Officer may be appointed, who after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned has to prepare scheme for such consolidation,

This scheme must provide for compensation to the owners who are allotted holding of less market value than their original holding and for the recovery of compensation from any owner who is allotted holding of greater market value than his original holding. u/s 17 while preparing the scheme for the consolidation of holdings the Consolidation Officer may, if necessary, amalgamate any road, street, lane, path, channel etc., and any member of the public or any person having any interest or right in or over such road, street or lane etc. may object to the proposal and the Consolidation Officer after, considering those objections has to submit the papers with his opinion to the Settlement Officer whose decision is final.

It is noteworthy that though this decision may involve an enquiry into a question of title, the enquiry is not at all detailed and no specific or proper procedure is Prescribed. u/s 19 a provision is made for the publication of the draft scheme of consolidation and there is a provision for objections being raised by persons likely to be effected by such scheme.

Under Section 20 it is for the Settlement Officer after considering the objections to confirm the scheme which is then published in the prescribed manner. Then comes the provision for repartition contained in Section 21. Any person aggrieved by the repartition has been given a right to raise objections and is also entitled to appeal to the State Government against orders of the Settlement Officer.

Under Section 22, the Consolidation Officer has to get a new record of rights prepared in accordance with the provisions of Chapter 4 of the Punjab Land Revenue Act in so far as they are applicable and such record of rights is deemed to have been prepared u/s 32 of the Punjab Land Revenue Act. Then follow the provisions which entitle the owners to get possession of the new holdings and on their getting into possession the new scheme is deemed to have come into force.

3. The learned counsel for the respondents has drawn my attention to two unreported cases of this Court in Civil Revn. No. 3 of 1953 and Civil Revn. No. 27 of 1955 where the Hon^{ble} the Chief Justice has observed that the jurisdiction of civil Courts is not barred where question of title in proceedings Under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, is involved In Civil Revn. No.3 of 1953 (Punj.) the landlords had brought a suit for the ejectment of their tenants and had obtained a decree from a revenue Court in May 1951, in pursuance of which the tenants were actually evicted. On an appeal having been preferred to the Collector by the tenants the case was remanded to the Court below for determining the amount of compensation to which the

tenants were entitled and a direction was also given that possession of the land be restored to the tenants. Consolidation proceedings had also started in "(1951 and it appears that Siri Chand defendant No. 1 had been allotted the land belonging to the landlords. In 1952 the Settlement Officer directed the tenants to be put in actual possession of the land which had been allotted to the landlords in the consolidation proceedings before they could be compelled to deliver possession of the land to Siri Chand defendant No. 1 as it was considered that the tenants had the same rights in the new land of their landlords as they had in their old tenancy.

Two months later the new Settlement Officer felt that there was no provision of law under which a tenant-at-will, whose land had been allotted to another person, could claim to be put in possession of any other land, with the result that he varied the order of his predecessor to the extent that the tenants were directed to be evicted from the original plot of land without making any order for their (i.e. the tenants) being put in possession of any other plot of land.

The tenants declined to vacate the original plot and filed a suit in June 1952 for a declaration that they could not be evicted in consolidation proceedings and for an injunction restraining the Settlement Officer from giving effect to the order passed by him. On these facts the two Courts below had held that the jurisdiction of civil Courts to entertain a suit of this nature was barred by Section 44 of the Act of 1948.

On second appeal the learned Chief Justice set aside the order of the Courts below and remanded the case to the trial Court for decision on the merits holding that the tenants were entitled to claim by means of a suit that they could not be dispossessed from one plot of land under the provisions of the Act of 1948 without being put in possession of another plot of land.

In support of this decision reliance was placed by the learned Chief Justice on the AIR 1940 105 (Privy Council) *R. v. Governor of Brixton Prison* (1916) 2 K.B. 742 and *Lahore Electric Supply Co. Ltd., Lahore v. Province of Punjab* ILR 1943 Lah. 617: (AIR 1943 Lah. 41). It is true that in *Hem Raj's* case a reference was made to Sections 23, 25 and 26 of the Act of 1948 and it was observed that the provisions of the above Act made it clear that no landowner, tenant or lessee could be deprived of the possession of any plot of land until he was put in possession of another plot of land and that the duty of putting a person in possession of the new holding has been entrusted by the legislature to the Consolidation Officer.

It was further observed that in that case those officers had not cared to carry out the duty which devolved on them. With these observations the suit was held to be entertainable by the civil Courts.

In Civil Revn. No. 27 of 1955 (Punj.) the correctness of a record of rights prepared under the provisions of Section 22 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act 1948 was held to be capable

of being challenged in a civil Court.

In that case also my Lord the Chief Justice observed that a record of rights according to Sub-section (2) of Section 22 of the Act of 1948 is to be deemed to have been prepared u/s 32 of the Punjab Land Revenue Act 1887 and therefore Section 45 of the Punjab Land Revenue Act of 1887 empowered a person aggrieved by an incorrect entry to bring a declaratory suit. It was also observed in this case that Sub-section (2) of Section 22 of the Act of 1948 being a special provision must over-ride the general provision contained in S. 44 of that Act.

I have also been referred to *Rahmatulla Khan v. Mahabirsiogh* AIR 1956 Nag. 132, where a suit for possession of certain Khud Kasht lands which were the subject-matter of consolidation proceedings to which the plaintiff was not a party was held not to be barred by the provisions of the C.P. Consolidation of Holdings Act as the Consolidation Officer under the said Act was not held empowered to determine whether the disputed lands were Khud Kasht or occupancy lands; such a controversy being wholly beyond the scope of the proceedings taken under the C.P. Act.

In my opinion this ruling is not of much help to the respondent because in their reported case the plaintiff was admittedly not a party to the consolidation proceedings and besides, we, are not aware of the similarity of the provisions of the C.P. Act with those of the Punjab Act : Mr. Sarin has also submitted that in the present case the Consolidation Officer had himself directed the plaintiff-respondent to have a final decision with respect to his title from the civil Courts; in other words the Consolidation Officer has declined to decide the question of title.

4. It is well established that so far as possible I statutes should in the absence of express language or words of necessary intendment to the contrary be construed in such a way as to avoid the effect of transferring the determination of Questions of title from civil Courts to the executive officers; and we also know that whenever parliament has intended to take away jurisdiction of the ordinary courts in matters affecting title to property it has always used the clearest possible language. The provisions of law which exclude the jurisdiction of ordinary Courts must therefore generally speaking be strictly construed.

The ratio of the two unreported cases to which my attention has been drawn also lays down a similar rule. Mr. K. S. Thapar, the learned counsel for the appellants, has submitted that decision by one Single Judge of this Court is not binding on another Single Judge. It is true that strictly speaking one Single Judge is not bound by the decision of another Single Judge, but in my opinion normally a Judge ought in the interest of consistency to follow a decision of Court of coordinate jurisdiction as to the construction of an Act of the legislature.

In the present case, however, in so far as the construction to be placed on the Punjab Act of 1948 is concerned I am in respectful agreement with the ratio of the two unreported decisions. There is no provision in the Punjab Act, to which

my attention has been invited, which imposes a duty on the Consolidation Officer to determine questions of title; indeed in the present case he has himself referred the parties to the civil Courts for getting the question of title decided.

5. For the reasons given above, I am inclined to hold that the jurisdiction of the civil Courts is not ousted by Section 44 of the Punjab Act in so far as the questions of title raised by the parties are concerned . In the result the appeal fails/and is hereby dismissed; the parties will however bear their own costs in this Court.