

(2013) 07 P&H CK 0202

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 624 of 2012 (O and M)

M/s. New India Construction Company and Others

APPELLANT

Vs

Sh. Kabool Singh and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 172 PLR 270

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Vikas Bahl, for the Appellant; Nitin Jain, for the Respondent

Judgement

K. Kannan, J.—The revision is against the order dismissing the application for rejection of the plaint filed by the respondent herein. The plaintiff by the suit tried to contend that in the partition proceedings brought about by the authorities constituted under the Punjab Land Revenue Act, 1887, the authorities had wrongly carried out the division that actually provided for lesser share than what he was entitled to and the same has come through their assessment regarding the title to the properties. According to the plaintiff, his share in the entire extent 71 kanals 12 marlas was 14 kanals 6 marlas and while considering the issue of allotment, the authorities have assumed that the property in the plaintiff's alleged possession must be taken to be only acquired. According to the plaintiff, in the process there has been short fall in his entitlement and that the allotment made through the orders are vitiated and they were required to be set aside. Along side the prayer, the plaintiff has also contended that the defendant-company has obtained a licence under the Haryana Development Regulation of Urban Areas Act, 1975 in respect of even the properties, which were held by him and seeks for the relief that the licence issued in favour of the defendant is illegal and not valid. The objection to the maintainability of the suit has been taken by the defendant, essentially on the ground that the partition proceedings, which had been originally initiated by the defendant-Company and which had been withdrawn came to be revived on the plaintiffs own application and naksha "B"

was ordered to be prepared on 28.1.2007. This was subject of challenge before successive higher authorities on 14.6.2011 and 18.7.2011 where the plaintiffs challenge to the manner of allotment had been repulsed. The plaintiff is now barred from filing a suit to challenge the orders passed by the authorities in view of Section 158 of the Punjab Land Revenue Act, 1887. The defendant would also contend that the prayer for cancellation of licences would also be barred in the light of Section 15 of the Haryana Development and Regulation and Urban Areas Act, 1975.

2. The trial court dismissed the application for rejection of the plaint on the ground that the relief sought was of civil nature and the exclusion of jurisdiction must be specifically borne out. The plaintiff was taking up an issue regarding title to his property and his contention was not merely with reference to the manner of allotment and, therefore, the suit could not be said to be barred.

3. Learned counsel appearing on behalf of the petitioners takes me to the relevant orders passed as well as the provisions of the Act, 1887 that sets out a complete code in itself for effecting division of property, which would include also the authorities' powers to adjudicate on title if it arises for consideration. Particular relevance would be that in terms of Section 116 of the Punjab Land Revenue Act, the revenue officer himself will decide if a dispute is taken as regards question of title or he may refuse such a consideration. Section 117 sets out the manner of disposal of question of title in the property to be decided. According to him, when the parties were seeking for a respective adjudication regarding the manner of allotment of the properties, were actually arguing for the respective entitlements and therefore, the orders passed by the authorities if they were taken as an adjudication regarding title as well, the civil court will not again res judicate the same.

4. Counsel appearing on behalf of the respondents would contend that exclusion of jurisdiction of the civil court must be expressly barred. Section 158 Clauses (xvii) and (xviii) of the Act are relevant and they are re-produced under:--

158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers.--Except as otherwise provided by this Act-

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(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought.

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land-revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of rent on the partition of a tenancy;

5. Counsel would argue that the issue of title is barred by virtue of clause (xvii) referred to above.

6. In this case, the manner of allotment came to be mired in very serious controversy only on account of some supervening incident, like acquisition of the property by government in respect of certain portion and by alteration of character of the property by the defendant company in colonizing the area, which were allotted to the company. If in this case, the plaintiff himself did not force an issue regarding title and elected for procedure to remove out of consideration those properties which were the subject of acquisition for determination of how the short fall of extent that has arisen by the acquisition were to be accounted for amongst the sharers, it should have been possible for the plaintiff to seek for exclusion of such consideration. If the plaintiff himself did not raise any such dispute, and invited an order in the manner of adjudication that the authorities had undertaken inappropriate remedy would be only to challenge the orders passed by the manner known to law by appropriate challenges to still higher authorities or by means of writ petition and it is doubtful whether a fresh suit could be instituted challenging these orders. Even as I hold that the plaintiffs his own challenge to the orders passed by the authorities cannot be revived again by means of a suit, I will still not find enough grounds made for rejection to the plaint. The rejection must arise for a cause constituted law. The rejection again must be in respect of the whole of the suit and not a portion of the claim. As regards, the alleged untenability of the claim of the plaintiff with regard to his prayer that the licences issued to the defendant were not valid and for a declaration to such an effect, the counsel for the petitioners would refer me to the provision of Section 3 of the 1978 which deals with the application for grant of licence. A procedure for cancellation of licence is contained u/s 8. Section 15 bars the jurisdiction of a civil court to entertain and decide any question relating to matter falling under this Act. The counsel would, therefore, argue that invalidity of the licence cannot be challenged except through a cancellation procedure to be adopted u/s 8 of the Act. Section 8 deals with the powers of the Director to cancel the licence, if the colonizer contravene any of the conditions of the licence. It does not contemplate a situation of third party applying for cancellation. At least, it does not rule out any other manner of challenge by a party affected by the issue of licence. In this case, the plaintiffs averment is that he came to know about the issue of licence to the defendant-Company only on 12.4.2010. If a declaratory relief was to be taken as falling under the residue article 136 of the Limitation Act, 1963 then I understand the suit must be within time and there was no bar. The counsel for the petitioner would seek to argue that there had been reference about the conduct of the defendant in establishing colonizing activities in the writ petition filed by the plaintiff earlier in CWP 11315 of 2005, where he had mentioned even in 2005, the defendant was actually involved in colonizing activities which could not have been done without reference to a licence. I cannot assume the plaintiff's knowledge as established by an averment in his writ petition that the defendant was carrying on colonizing

activities. It is also urged by the counsel for the petitioner that if the manner of allotment as made by the authorities were to be taken as having become final, that itself would also conclude issue of whether he could make a challenge regarding grant of licence. This again cannot be a matter that would call for consideration within the realm of Order 7 Rule 11 of CPC. If there exists no bar for the suit for any of the reliefs which are claimed in the suit on the basis of the pleadings of the plaintiff itself, then the contention raised cannot constitute bar. The test for applying Order 7 Rule 11 is that the substance of the plaint itself should be assumed as correct and proceed to examine whether on such assumptions, the suit were to fail as being barred by law. The contention of the defendant in such a situation is irrelevant. The defendant may perhaps be successful in showing that the cancellation of the licence as sought by the plaintiff cannot obtain in view of the order passed by the revenue authorities provided for certain manner of allocation. That shall be an issue for adjudication at the trial and not a ground for summary rejection. The order passed by the court below cannot be interfered, although for different reasons set out above. The Revision Petition is dismissed.