

(2005) 03 P&H CK 0112
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5056 of 1986

Piara Singh

APPELLANT

Vs

Additional Director C/H and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 42

Citation : (2005) 140 PLR 675 : (2005) 3 RCR(Civil) 1

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Amarjit Markan, for the Appellant; D.S. Bishnoi, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioner has filed this writ petition under Article 226/227 of the Constitution of India with a prayer to issue an appropriate writ to quash orders dated 9.5.1985 (Annexure P/7) and order dated 7.9.1983 (Annexure P/6) passed by respondent No. 1 It was further prayed that during pendency of this writ petition, implementation of the orders, referred to above, be stayed.

2. A Division Bench of this Court admitted the writ petition on 22.9.1986 and ordered that dispossession of the petitioner be stayed in the meanwhile. As per records, service is complete. None has put in appearance on behalf of the private respondents.

3. Heard.

4. It is apparent from the records that consolidation, proceedings were concluded in village "Raunt Kalan in the year 1963-1964. During those proceedings, land was allotted to the petitioner and private respondents in joint khewat, as per their entitlement. They continued to be shown as such throughout. In the year,

1979, petitioner moved an application u/s (I) of the Punjab Land Revenue Act, 1887, for partition of the joint khewat, before the revenue authorities. Private respondents put up appearance and raised question of title. Objection was dismissed. They went in appeal but failed. Thereafter, partition proceedings were finalised and Snand Taksim (Annexure P-1) was prepared by the Assistant Collector, Ist Grade, Roopnagar on 18.5.1981. Consequent thereto, as per averments made in this petition, possession was also transferred. Respective co-sharers were put in possession of the land allotted to them vide document mentioned above. Private respondents feeling dissatisfied, filed a civil suit for declaration and permanent injunction, claiming exclusive ownership of part of the property. It was also prayed that injunction be issued against the petitioner and other co-sharers, not to disturb their possession. They also laid challenge to the partition proceedings which had already become final between the parties. After contest, the civil court dismissed their suit vide judgment and decree dated 22.2.1983. Appeal was also dismissed on 15.6.183. Thereafter, private respondents made another attempt by filing a civil suit on 11.10.1983 for permanent injunction with a prayer that the petitioner and other co-sharers be restrained from interfering in their possession, on the strength of the order passed by the Assistant Collector, Ist Grade, Roopnagar on 18.5.1981, in partition proceedings that suit was dismissed as withdrawn on 1.11.1983. Private respondents then approached respondent No. 1 u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (in short, the "Act) by contending that during consolidation proceedings, they were allotted land separately, as exclusive owners and they had wrongly been shown in subsequent records as co-sharers alongwith petitioner and other, who were shown as co-sharers in the joint khewat. After notice, that application was allowed vide order Annexure P-6 dated 7.9.1983, wherein it was ordered that partition proceedings finalised by the revenue authorities vide order dated 19.8.1980 be ignored and the partition of land, which was allegedly done by the consolidation authority, was ordered to be treated as valid. Thereafter, private respondents again approached respondent No. 1 u/s 42 of the Act with a prayer that the consolidation officer be directed to implement the order dated 7.9.1983 (Annexure P-6). Their application was allowed on 9.5.1985 and the consolidation officer was directed to make necessary correction as per his report bearing No. 449 dated 19.11.1984, which was made during pendency of proceedings before respondent No. 1 and it was further ordered that the subsequent order passed on 9.5.1985 be treated as a supplement to the previous order i.e. Annexure P/6. Hence, this writ petition.

5. Shri Markan, appearing for the petitioner has vehemently contended that the orders, Annexure P-6 dated 7.9.1983 and P-7 dated 9.5.1985 are liable to be quashed having been passed without any jurisdiction. By referring to the orders passed by the revenue authorities, effecting partition and decision of the civil Court, whereby suit and appeal filed by the private respondents were dismissed (Annexure P-3 and P-4), counsel contends that once specific finding was given by

the competent authorities regarding question of title, it was not open to the respondent No. 1 to interfere and pass order to the contrary. Counsel further states that application u/s 42 of the Act was entertained beyond a period of limitation. By referring to contents of judgments passed by the civil Courts, Annexures P-2 and P-3, counsel contends that finding given by respondent No. 1 that the land was partitioned during consolidation proceedings was contrary to the evidence on record. Impugned orders were passed without proper appreciation of records and also orders lack reasoning, as such, deserve to be quashed.

6. After hearing counsel for the petitioner, this Court is of the opinion that this writ petition deserves to be allowed. It is apparent from the records that consolidation proceedings came to an end in the year 1962-63. Land was allotted to the petitioner, private respondents and other co-sharers, in a joint khewat. They continued to be shown as such throughout till application for partition was moved by the petitioner in the year 1979. During partition proceedings before revenue authorities, question of title was raised by stating that the private respondents were allotted land, exclusively, during consolidation proceedings and as such, partition application was not maintainable. Their objection was dismissed. As per averments made in this writ petition, respondents failed upto the Court of Financial Commissioner. Thereafter, partition proceedings were finalised by issuing Sband Takseem (Instrument of Partition) on 18.5.1981. Co-sharers were put in possession of respective portions of the land, allotted to them vide document, Annexure P/1. Feeling dissatisfied, private respondents filed a civil suit, wherein issue Nos. 1 and 2 reads as under:-

" 1. Whether the plaintiffs are the exclusive owners in possession of the land in dispute as alleged in the plaint? OPP

2. Whether defendants No. 1 and 2 are co-sharers in the land in dispute and are in joint possession thereof alongwith the plaintiffs as alleged in the written statement? OPD

7. Before the civil court, it was a separate stand of the private respondents that land was allotted to them during consolidation proceedings, separately as exclusive owners. After contest, suit was dismissed on 22.2.3996. Civil Court, while deciding issues, referred to above, after looking into entire evidence on record, in the shape of revenue record, had opined thus:-

"They are, no doubt, shown in separate possession in a part of the land in the capacity of co-sharer. Even in Naksha haqdarwar Ex.P1 and Khatauni Istemal Arajji Ex.P2, the plaintiffs are not shown to be the exclusive owners of the land. In copy of Misal Haqiat for the year 1964-65 Ex.13 also, the plaintiffs are not shown to be exclusive owners of any specific land. A perusal of the copies of the mutation orders Ex.P-8, Ex.P-9, Ex.P-10 and Ex.P-11 will show that the mutation of any specific land was not sanctioned in their favour as owners. A perusal of the red entry in the remarks column of jamabandi for the year 1955-56 Ex.P-12

also shows that share in the land was mutated in the names of the plaintiffs on account of sales in their favour. The " plaintiffs have also produced some other copies of jamabandis and other revenue record but they have not been shown as exclusive owners of the any land in any of such copies. Charan Singh, one of the plaintiffs, while appearing as PW-1 has admitted in his cross examination that in the revenue record, the khata is recorded joint but the cultivation is separate, and the parties are cultivating specific khasra numbers. He further admitted that no partition through the court, had been done previously and Piara Singh defendant had filed an application for partition before the Tehsildar who had allowed it. He has also admitted to have filed appeal against that order which was too dismissed. He is not in possession of any allotment order of the suit land as stated by him. The plaintiffs had also produced Bhagat Ram Assistant Office Kanungo Tehsil Ropar as PW-2. He has stated in his examination-in-chief that the plaintiffs have been allotted during consolidation area in lieu of the land which they held in their individual cultivation. He has not, at all, stated in his examination-in-chief that the plaintiffs were owners of specific land and during consolidation, they were allotted any specific land as owners. During cross examination, he admitted that Piara Singh defendant is co-sharer in the suit land and the entire land is jointly owned by the parties. He has further admitted that no land has been allotted to the plaintiff as they were not the owners exclusively. In fact, he stated that no land has been allotted to the parties separately during consolidation. He still further admitted that the parties are shown joint owners in Naksha Haqdarwar, Khatauni Ishtemal and Jamabandi and field book. Piara Singh defendant, while appearing as DW-2, has also stated that he is co-sharer in the suit land and they are in joint possession of the suit land. He has further stated that he had filed an application for partition of the land in the court of Tehsildar Ropar and the same was granted.

9. From the evidence discussed above, it is clear that before partition, the plaintiffs and defendants No. 1 and 2 were co-sharers and in joint possession of the suit land and the plaintiffs were not exclusive owners in possession of the suit land as claimed by them. Issue No. 1 is, therefore, decided against the plaintiffs and Issue No. 2 is decided in favour of defendants No. 1 and 2."

8. In appeal also, private respondents failed. An attempt was also made by filing another suit, which was got dismissed as withdrawn on 11.11.1983.

9. This Court is of the view that in the face of findings given by the competent civil court and the revenue courts, as referred to above, it was not open to respondent No. 1 to interfere and decide to the contrary. Perusal of order, Annexure P/6 and P/7 indicates that at the time of passing those orders, no revenue record was discussed. Contents of Naksha Hakdarbar, Khatoni Pemaish, Missal Hakiat were not perused. Orders passed are totally non speaking one and lacks reasoning. Furthermore, respondent No. 1 has no jurisdiction whatsoever to ignore order passed by the competent civil court and also by the revenue authorities under the provisions of the Punjab Land Revenue Act, 1887. Powers u/

s 42 of the Act are very limited. Respondent No. 1 has jurisdiction to interfere only if there exists some defect in effecting the repartition and not otherwise. No such defect was indicated when the orders under challenge were passed.

10. Argument of counsel for petitioner, that the application u/s 42 of the Act was moved after a period of limitation, is also tenable.

11. It is apparent from the records that consolidation proceedings came to an end in the year 1963. Throughout, thereafter, the petitioner and the private respondents continued to be shown as co-sharers. Application for partition of joint khewat was moved in the year, 1979. Private respondents continued to contest litigation before various firms and failed. During pendency, they moved an application u/s 42 of the Act. No sufficient reason was shown as to why they kept mum for a period of more than two decades and failed to agitate the matter before respondent No. 1. In view of ratio of judgment of Hon''ble Supreme Court in Gram Panchayat Kakran v. Addl. Director of Consolidation and Anr.} 1997(2) P.L.J. 375, this Court is of the opinion that at that belated stage, it was not open to the respondent No. 1 to entertain application u/s 42 of the Act, moved on behalf of the private respondents.

In view of reasoning given above, this writ petition stands allowed and orders, Annexure P/6 dated 7.9.1983 and Annexure P/7 dated 9.5.1985 are ordered to be quashed. No orders as to costs.