
(1982) 08 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2014 of 1980

Sat Pal

APPELLANT

Vs

State of Punjab and others .

RESPONDENT

Date of Decision : 09-08-1982

Acts Referred:

Citation : (1982) ILR (P&H) 460 : (1982) PLJ 462 : (1984) RRR 605

Hon'ble Judges : I.S.Tiwana, J

Advocate : Mr. Rajiv Bhalla, Advocate, Mr. R.S. Bindra, Senior Advocate,,
Advocates for appearing Parties

Judgement

I.S. Tiwana, J.

1. The parties to this petition jointly own land detailed in para 2 of the petition in village Jaitu, Tehsil and District Faridkot. The consolidation proceedings started in the village in the year 1962-63. At a subsequent stage, i.e., on October 24, 1969, the consolidation scheme, in pursuance of which consolidation operation had been carried out to some extent, was revoked by the Additional Director in exercise of his powers under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, the Act). This resulted in the preparation and confirmation of a fresh scheme of consolidation. While process of consolidation of holdings was going on, the petitioner made an application before the Additional Director claiming partition of the joint Khata and the said prayer was allowed by the said authority vide order dated March 15, 1972 (Annexure P.2). Some of the respondents challenged this order, Annexure P.2, in Civil Writ Petition No. 1091 of 1972 but remained unsuccessful as the said petition was dismissed in limine.

2. As luck would have it, the consolidation scheme as prepared in the year 1971-72 was again revoked by the Director in exercise of his powers under section 42 vide his order dated December 15, 1976 Annexure R.1. When the process of consolidation started once again in accordance with the new scheme prepared subsequent to Annexure R.1, the Consolidation Officer sought to

partition the joint Khata of the parties probably on the basis of the provision made in the earlier scheme. The respondents approached the Director under section 42 of the Act and pleaded that since a dispute with regard to the title of the parties to the land in question was involved, the joint Khata could not be partitioned in view of the provisions of section 16A read with section 117 of the Punjab Land Revenue Act to which section the earlier section has been made subject. The Director, after hearing the parties while allowing the prayer, concluded the matter thus:

"In this case Shri Sat Pal etc. respondents have sold land beyond their share. It is a different matter altogether that it is the vendees who should be vigilant. The consolidation authorities are not required to decide the questions of title. In the given situation they are only to appreciate the facts and come to a conclusion whether or not question of title is involved. It is clearly a case in which question of title is involved and, therefore, the C.O. should not have partitioned the Khata on the application of Shri Sat Pal etc. The concerned party should approach the competent authority for getting their question of the title decided."

3. Now the submission of Mr. Bindra, learned Senior Advocate for the petitioner, is that the above noted order, Annexure R.1, revoking the scheme of consolidation from the 'valuation stage' does not affect the case of the petitioner at all for the simple reason that the earlier order of the consolidation authorities allowing partition of the joint khata of the parties having been affirmed by this Court in Civil Writ No. 1091 of 1972, would operate as resjudicata, the said authorities could not possibly at the time of passing the impugned order. Annexure P.1, redetermine the same issue. I see no merit in this submission. No doubt it is true that a decision of this Court in proceedings under Article 226 of the Constitution of India can operate as res judicata, but to my mind no such proposition is involved here. It is patent that consolidation proceedings have to be carried out in accordance with the scheme prepared by the consolidation authorities in accordance with the Act and the Rules. This scheme is the very basis of the consolidation proceedings. If at the time of the framing of the earlier consolidation scheme in the year 1971/72 it had been provided for in terms of section 16A of the Act that the joint khata of the parties would be partitioned, it does not mean that the same provision would continue in the subsequent scheme after the revocation of the said scheme vide Annexure R.1. It has neither been shown to me nor was it so pleaded before the Director, Consolidation of Holdings when he passed the impugned order Annexure P.1 that even in the subsequent scheme prepared after Annexure R.1, any provision had been made with regard to the partition of the joint khata of the parties. In the absence of any provision in the scheme in terms of section 16A providing for the partition of joint khata, the consolidation authorities obviously cannot partition the same. The precise case of the respondents before the Director as well as before me is that the parties are in possession of their respective shares of land on the basis of an earlier family partition or settlement and this arrangement has been continuing for more than fifty years. From the contentions raised before the

Director as well as before me a question of title does arise and it is patent in the light of section 117 of the Punjab Land Revenue Act (Section 16A of the Act is subject to section 117) that the consolidation authorities cannot possibly decide this question. Further in view of the above noted conclusion recorded by the Director, I do not find that any case has been made out for interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

4. For the reasons recorded above, I do not find any merit in this petition and dismiss the same but with no order as to costs.