
(1981) 10 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 822 of 1970

Siri Kishan and Others

APPELLANT

Vs

Mem Chand

RESPONDENT

Date of Decision : 09-10-1981

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 30, 9

Citation : AIR 1982 P&H 188 : (1982) 2 ILR (P&H) 209

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Judgement

1. Whether a sale or any other alienation made during the currency of the consolidation, without obtaining permission of the Consolidation Officer, would be void between the parties to the transaction, in view of S. 30 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is the sole question of law of somewhat significant importance which arises in these two appeals, R. S. A. Nos. 822 and 823 of 1970.

2. Mam Chand was owner of certain agricultural land in village Badasa, tahsil Jhajjar, district Rohtak. In 1960, consolidation proceedings started in the village and the land held by Mam Chand was put in hotch-pot and during consolidation he was allotted 71 Kanals 10 Marlas comprised in Khasra Numbers detailed in para 1 of the complaints. After the allotment was made to him of the said 71 Kanals 10 Marlas, on 9th Oct, 1961, Mam Chand sold by two separate registered sale deeds for Rs. 10,000/- each, half of the land to Siri Kishan and others, plaintiffs in this appeal, and the balance half to Siri Raj and others, plaintiffs in R. S. A. No. 823 of 1970. Since the consolidation was going on, mutations with regard to the aforesaid sales were not sanctioned in favour of the vendees. In the year 1964, the notification of consolidation was revoked and thereafter a fresh notification was issued in the year 1966 for consolidation. In Pursuance of that, consolidation started in the year 1966. Since the name of Mam Chand continued in the revenue records to be the owner of 71 Kanals 10 Marlas, he was allotted

107 Kanals 13 Marlas, the detailed Killa numbers of which are stated in the body of the plaints, and possession was given to him. On 2nd Aug. 1967, the two sets of vendees of Mam Chand filed the present two suits for recovering possession in each for half of 107 Kanals 13 Marlas of land allotted during the consolidation to Mam Chand in lieu of 71 Kanals 10 Marlas of land which had been sold to them equal Shares. While Mam Chand defendant admitted that in lieu of 71 Kanals 10 Marlas, he was allotted 107 Kanals 13 Marlas during consolidation, he denied having made any sale to the plaintiffs and pleaded that he had executed lease deeds and the plaintiffs were his tenants and, as such, Civil Court had no jurisdiction to try suits. The trial Court found, after evidence was led on the issues framed in the case, that the plaintiffs had proved the due execution of the sale deeds in their favour, the story of lease set up by the defendant was wholly untrue and as such the Civil Court had the jurisdiction. However, it found that both the sales were void in view of S. 30 of the E. P. H. (C. and P. of F.). Act, 1948 (hereinafter called the Act) and, therefore, dismissed the suits. The plaintiffs filed appeals which met with the same fate. The plaintiffs have come to this Court in these second appeals.

3. These appeals have to be decided on the findings of facts namely, that Mem Chand sold his entire land, 71 Kanals 10 Marlas, which was allotted to him during the first consolidation which started prior to the sales and which was revoked in the year 1964, i. e. after the sales were made and thereafter fresh consolidation started in the year 1966 during which 107 Kanals 13 Marlas of land allotted in lieu of the aforesaid land. On these facts, I am of the opinion that, viewing the case from any angle, the plaintiffs-appellants are entitled to the decrees for possession as prayed for against Mem Chand, defendant-respondent.

4. Mem Chand was allotted 71 Kanals 10 Marlas of land in the first consolidation and after that allotment he made the sales to the plaintiffs in the year 1961 and the consolidation was revoked in the year 1964. Fresh consolidation started in the year 1966 by issue of a fresh notification under S. 14 of the Act. Therefore, by revocation of the earlier consolidation it has to be deemed as if no consolidation took place earlier and the impugned sales were made at a time when no notification under S. 14 of the Act was in operation, and as if the consolidation in the village started for the first time in the year 1966. In view of these facts, the consolidation will be deemed to have been started in the year 1966 and since the sale was made in the year 1961, the provisions contained in S. 30 of the Act would not be applicable to the facts of the present case. Therefore, the Courts below were in error in applying S. 30 of the Act to the facts of the present case. Once that is so, the plaintiffs were entitled to follow the land which was allotted in lieu of 71 Kanals 10 Marlas purchased by them, in the consolidation proceedings of 1966 and seek possession thereof from the person who came in its possession namely, Mam Chand, the original vendor and therefore, on this ground alone, the suits deserve to be decreed.

5. Even if it is assumed that the sales were made at a time when the first

consolidation proceedings were on and the revocation of consolidation after the making of sales would not be affected by the operation of S. 30 of the Act on the date of sale, i.e., 9th Oct, 1961, still I am of the view that S. 30 of the Act has been misinterpreted and, thus, wrongly applied to the facts of the present case. It will be useful to notice two provisions in this regard, namely, Ss. 9 and 30 of the Act which are reproduced below :--

"9. The transfer or partition of any land contrary to the provisions of this Act, shall be void."

"30. After a notification under sub-section (1) of Section 14 has issued and during the pendency of the consolidation proceedings no landowner or tenant having a right of occupancy upon whom the scheme will be binding shall have power without the sanction of the Consolidation Officer to transfer or otherwise deal with any portion of his original holding or other tenancy so as to affect the rights of any other landowner or tenant having a right of occupancy therein under the scheme of consolidation."

Admittedly, no sanction of the Consolidation Officer to make the impugned transfers was obtained in the present cases. Therefore, it has to be seen whether the impugned sales would be hit by S. 30 of the Act to such an extent that the contract between the two parties would be totally void or would bind them inter se without affecting the consolidation proceedings or the scheme of consolidation with the result that the particular Khasra numbers consisting of 71 Kanals 10 Marlas belonging to Mam Chand, which was put in a hotch-pot during consolidation of 1966, would be treated for the purposes of consolidation as belonging to him alone and not to the two sets of vendees and the fresh allotment would be made during consolidation in the name of Mam Chand and whatever is allotted in lieu of the Khasra numbers comprised in 71 Kanals 10 Marlas would be treated in law as having been sold by Mam Chand to the two sets of vendees in equal shares. To find out the answer, the scheme of the Act will have to be noticed.

The title of the Act clearly gives an indication that the Act has two purposes. One is to consolidate the holdings of land-owners and tenants and the other is to prevent fragmentation of holdings of the land-owners and tenants. As regards prevention of fragmentation, the matter is covered by Chap.II consisting of Ss. 3 to 13 and this chapter would come into force for a "notified area" as may be specified by the State Government has to determine the "standard area" which would be considered as the minimum area necessary for profitable cultivation in the said "notified area". It is not the case of the parties that the State Government ever specified the estate where the land in dispute is situated as a "notified area" or any "standard area" was determined in that notified area. Hence Chap II would not be applicable and S. 9 which comes in that chapter would also not be applicable to the facts of the present case.

6. Chapter III talks of "consolidation of holdings". This chapter consists of Ss. 14

to 36. Section 14 provides for the issue of a notification by the State when it considers proper that for better cultivation of land in any estate or a group of estates or any part thereof, consolidation of holdings is necessary and a scheme in this regard deserves to be made. After the notification is published then the Consolidation Officer so empowered prepares a draft scheme against which objections are heard and then there are provisions for appeal, second appeal and petition to the State Government. The scheme provides for the method of calculation of different qualities of land originally held by the land-owners or tenants the method of allotment during consolidation in lieu thereof, provision of minimum and maximum number of plots in lieu of the original number of plots to each land-owner or tenant, the method of fixation of major portion of each land-owner or tenant and various other matters in order to consolidate the holdings of land owners and tenants for better cultivation taking into consideration the position which prevails at the time of publication of the notification for consolidation.

It will be best to have the example of Mam Chand land-owner to further understand the scheme of this chapter. If Mam Chand had not made the two sales in dispute then he would have continued to be the owner of particular Khasra numbers comprised in 71 Kanals 10 Marlas throughout the currency of the consolidation proceedings and under the scheme of consolidation prepared on that basis he would have been allotted land in lieu thereof. Similar would be the position of all other land-owners or tenants owning or possessing land in the revenue estate for which the notification for consolidation was issued. However, if he makes a sale, the same would be ignored and land would be allotted in the same manner as if he had not made the sale.

If Section 30 had not been enacted then the result would have been that the sales, gifts, mortgages or creation of leases, etc., namely any sort of alienation by a land-owner or a tenant made during the currency of the consolidation proceedings would have had to be recognised for purposes of consolidation scheme and while doing so it would have become impossible to finalise a consolidation scheme because the moment a scheme was finalised, on the next day there would be a fresh such transaction and again a fresh scheme would have to be prepared and in this manner, it would have been an unending process and the very purpose of framing a scheme to consolidate the holdings would have never fructified. In order to avoid this, a deadline was fixed by enacting Section 30 of the Act that whosoever was owner or was entitled to occupy the land on the date of notification published u/s 14 of the Act was to be considered as the owner or occupier of the land for purposes of consolidation scheme and for implementation of the same. All such transactions made during the currency of the consolidation had to be ignored by the consolidation authorities and notwithstanding such transactions, the original holding of a land-owner or a tenant could be allotted by the consolidation authorities under the scheme of consolidation to any other land-owner or tenant and the transferee of the original holding could not come forward and raise objection during consolidation that the

same had been purchased by him and, therefore, should be kept out of consolidation or that he has become a new land-owner or a tenant, as the case may be, by virtue of the transaction and, therefor, he is entitled to have the scheme modified so as to include his name in the scheme and then to have allotment of land under the scheme on that basis and also to file objections, appeals and petitions before the State Government.

By making a provision like S. 30, the transferee of the original holding or tenancy who acquired rights during the currency of consolidation were kept out of the consolidation proceedings. However, S. 30 nowhere goes to show that the transfer or other transaction, of the original holding or tenancy was to be treated as completely void even between the parties to the transaction, otherwise it would have been so specifically provided in S. 30. Even by necessary intendment or implication, I find that the Legislature while enacting S. 30 never wanted to make a provision that such transactions would be wholly void and unenforceable in a Court of law even between the parties to the transaction. On the other hand, it is clear from the express provisions of the section that after a notification is issued under S. 14, no land-owner or tenant having a right of occupancy upon whom the scheme of consolidation would be binding would be entitled to deal with his original holdings so as to affect the rights of any other land-owners or tenants having right of occupancy therein under the scheme of consolidation. Meaning thereby that even if original holding is sold by a land-owner or an occupancy tenant, the same would not affect the enforcement or the scheme of consolidation and the consolidation authorities would be entitled to deal with the original holding under the scheme of consolidation and if the original holding is allotted to some other land-owner or tenant having a right of occupancy then the rights of such a person therein would not be affected by such transaction by the original owner of his original holding.

Similarly in consolidation, the rights of the original land-owner who has parted with the same during the currency of the consolidation would be considered on the date of publication of the notification and he would be allotted fresh land in accordance with the scheme of consolidation for his original holding. The transferee from such a land-owner would not be entitled to claim his original holding but his right to follow the land which is allotted in consolidation to such a land-owner: has not been taken away by any provision of this section. Hence I conclude that the only reasonable interpretation to be placed on S. 30 would be that the rights of all land-owners or occupancy tenants will have to be found out as existing on the date of the publication of notification for consolidation under S. 14 and all transactions with regard to the land covered by the notification made during the operation of consolidation would be ignored by the consolidation authorities and fresh repartition will be made as if no transaction occurred during the consolidation operations. But as regards the rights of the parties to the transactions inter se they will bind them and the transferee can enforce in a court of law the transaction against the transferor and follow the land which is allotted to the transferor during consolidation since there is no indication in the

section that the transaction itself would be totally void even between the parties to the same.

7. If, however, the transferor obtains sanction of the Consolidation Officer and the transfer is made after the sanction is granted then the transfer will be recognised by the Consolidation Officer and the right of the transferee would also be decided under the Act on the basis of the scheme. In that event, the transferee would be entitled to allotment of land re-partition in his own right in accordance with the scheme of consolidation.

8. The aforesaid interpretation of S. 30 finds some support from two decisions of this Court in *Amar Singh v. Director of Consolidation of Holdings, Punjab* 1967 C LJ 146 and *Ranbir Singh and Another Vs. Mangal Singh and Others*,). The facts of *Amar Singh's* case (supra) were that the writ petitioner in that case owned land in village Mahlan in a compact block known as Chamariwala fields. While the consolidation proceedings were in process, with the permission of the Consolidation Officer, he purchased the whole of the land belonging to Gajjan Singh in that village. In re-partition on the basis of the scheme, the petitioner wanted his original holding to be clubbed with the land purchased during consolidation from Gajjan Singh and on that basis his major portion, should be calculated and allotment made. His request was declined by the State Government on the sole ground that since he had purchased area from Gajjan Singh, therefore, the same could not be counted while calculating his major portion. Against the aforesaid order of the State Government, a writ petition was filed in this Court and D. K. Mahajan, J., while interpreting S. 30 of the Act came to the conclusion that since purchase had been made by the writ petitioner with the permission of the Consolidation Officer, therefore, the same had to be given effect to under the scheme of consolidation, and the petitioner's writ petition was allowed and the order of the State Government was quashed restoring that of the Consolidation Officer, who had made allotment to the writ petitioner considering his major portion to be 100 per cent at the disputed place which percentage was arrived at after taking into consideration the sale made by Gajjan Singh in his favour.

9. *Ranbir Singh's* case (supra) is a Division Bench judgment wherein Section 29 of the Pepsu Holdings (Consolidation and Prevention of Fragmentation) Act (5 of 2007 BK) was considered which is in pari materia with S. 30 of the Act. In that case a land-owner transferred a part of his holding to his son by way of gift after the Publication of notification under S. 14 of that Act without obtaining permission of the Consolidation Officer. The Additional Director gave effect to the gift deed on the ground that the same was made before the notification was actually published in the village although after the publication of notification in the Official Gazette. The opposite party who was affected in the re-partition, filed a writ petition in this Court and a learned single Judge of this Court held that S. 29 of that Act prohibited the alienations after the issue of notification under S. 14 of that Act and, therefore, the gift had to be ignored and whole of the land had

to be held to belong to the original land-owner and the valuation of the original land-owner and the valuation of the properties had to be fixed on that basis and re-partition made according to the scheme and, consequently, allowed the writ petition and issued the necessary directions. The original land-owner filed a Letters Patent Appeal, which was dismissed. The relevant observations are these :--

"One thing is clear that this section does not in any way affect the question of title. Any transfer can be made and the transferee will be given good title. and all that is provided is that such a transfer will not be taken into consideration for affecting the rights of the land-owners under the scheme of consolidation. It is well known that the scheme of consolidation normally provides that the land-owner should be given his tak at his first major portion and if his percentage is not higher as compared with the other landowners, then he should be shifted to his second major portion and so on. Thus a transfer made during the pendency of the consolidation proceedings could be with a view to change the major portion from one place, where the landowner has inferior land, to another place, where he has got better quality land. It is to avoid such an eventuality that S. 29 has been enacted."

10. In view of the above, the finding recorded by the Courts below that the two sale transactions between the parties are void is hereby reversed and it is held that in spite of S. 30 of the Act, the title of the Khasra numbers measuring 71 Kanals 10 Marlas described in para 1 of the plaint passed on from Mam Chand to the present two sets of plaintiffs as vendees, in equal share and the vendees would, therefore, be entitled to follow the land allotted in the subsequent consolidation in lieu of the above. Since the sale transaction took place during the pendency of the consolidation, therefore, mutations could not be entered in the names of the vendees and because of the provisions of S. 30 of the Act, the allotment of new land had to be fictionally in the name of new land had to be fictionally in the name of Mam Chand, the original owner but otherwise the title of the same would vest in the two sets of vendees who are plaintiffs before me.

11. This brings me to the consideration of S. 9 of the Act. I have already held above that S. 9 would apply to matters covered by Chap. II of the Act. Even if it is assumed that S. 9 can be looked into on the facts of the present case, I am of the opinion that since S. 30 of the Act is not in absolute terms to render all transactions void and only envisages that the same would not be given effect to so as to affect the rights therein of any other land-owner or tenant having right of occupancy, the sale transactions in dispute between the vendor and the vendees cannot be held to be void and the same could be ignored for purposes of carrying out the scheme of consolidation and by treating the vendor as the owner of the property. Hence, the impugned sales cannot be held to be contrary to any provision of the Act and, therefore, cannot be held to be void under S. 9 of the Act.

12. For the reasons recorded above, both the appeals are allowed and after

setting aside the judgments and decrees of the Courts below both the suits for possession are decreed as prayed for with costs throughout.

13. Appeals allowed.