

(1967) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 1131 of 1963

Sodagar Singh and Others	Vs	APPELLANT
Smt. Sham Kaur and Others		RESPONDENT

Date of Decision : 04-10-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4(2)
Contract Act, 1872 — Section 28
Punjab Land Revenue Act, 1887 — Section 117(2)

Citation : AIR 1968 P&H 341 : (1968) 1 ILR (P&H) 566

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; D.N. Aggarwal and B.N. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—Saudagar Singh and Dal Singh were two brothers. Dal Singh's widow Sham Kaur, respondent No. 1 in this appeal, filed an application for partition against Saudagar Singh before the Revenue Officer. The other respondents were impleaded as merely pro forma parties. While contesting the application for partition, Saudagar Singh raised a dispute about title, which could not admittedly be decided by the Revenue Officer as such. By order, dated June 23, 1959, the Revenue Officer directed the plaintiff to present a plaint within one month from that day before himself as a civil--Court, and adjourned the partition proceedings to July 27, 1959 for further action. Though there was an appeal and a second appeal against the order of the Revenue Officer, the ultimate result was that by his order, dated, July 15, 1961, the Commissioner restored the Revenue Officers order referred to above afore than two months after the disposal of the appeal by the Commissioner, Saudagar Singh presented a plaint before the Civil Court on September 25, 1961. By one line order, dated May 9, 1962, Mian Dalip Singh, Assistant Collector, Second Grade sitting as Subordinate Judge, Patti dismissed the suit as barred by time without discussing

the matter at all. It is, however, not disputed by either of the parties before me that the suit was not dismissed as barred by the law of limitation but on the solitary ground that the plaint had been presented after the expiry of the time fixed by the Revenue Officer's order, dated June 23, 1959. It is also admitted by the learned counsel for the parties that the order of the Subordinate Judge, Patti, was passed under Clause (b) of Sub-section (2) of Section 117 of the Punjab Land Revenue Act (17 of 1887) (hereinafter referred to as the Revenue Act). Not satisfied with the order of the Subordinate Judge, Saudagar Singh went up in appeal under Clause (c) of Sub-section (2) of Section 117 to the Court of the District Judge, Amritsar. The appeal was dismissed by the order of Shri Kartar Singh, Additional District Judge, Amritsar, dated May 13, 1963 on the ground that though in case of a direction for filing a civil suit in an ordinary Civil Court, the suit cannot be dismissed as barred by time on account of exceeding the period fixed by the order of the Revenue Officer, different considerations prevail in a case where the Revenue Officer elects to decide the disputed question of title himself as a Civil Court u/s 117 (2) (b) of the Revenue Act. Reliance was also placed by the learned Additional District Judge on paragraph 18-9 of the Punjab Land Records Manual for upholding the order of the Subordinate Judge. During the pendency of this appeal, Saudhagar Singh died and his legal representatives have been brought on record in his place.

2. In this second appeal, Mr. Y. P. Gandhi, the learned counsel for the appellant, has submitted that the Revenue Officer had no jurisdiction to fix the period of time within which the plaint of the title suit had to be presented to the Civil Court even though he had adopted the course permitted by Sub-section (2) of Section 117 of the Revenue Act, and the plaint had to be presented to his own Court. It is further submitted by Mr. Gandhi that even if there is no legal bar to a Revenue Officer fixing a time within which the plaint may be filed before himself as a Civil Court, the plaint cannot be rejected and the suit cannot be dismissed merely because it is filed or instituted after the expiry of the period so fixed by the Revenue Officer. The argument in brief is that even if the Officer happens to be the same, he cannot as a Revenue Officer control the proceedings in the Civil Court. Mr. Gandhi has firstly referred to the basic Full Bench judgment in *Bachan Singh v. Madhan Singh*, 61 Pun Re 1897. In that case a partition proceeding was decided by the Revenue Officer without awaiting the decision on a disputed question of title which had been raised before him though he had directed the question to be decided by a Civil Court. The question which came up for decision was whether the title suit instituted within the period of limitation allowed by law but after the conclusion of the partition proceedings before the Revenue Officer was barred or not. It was held by the Full Bench that whenever the question of title is raised before a Revenue Officer in partition proceedings, such officer is bound to refuse partition until the question of title is decided by a Civil Court or by himself acting as such, and that the mere fact that the partition has been completed cannot oust the jurisdiction of the Civil Court to subsequently entertain a suit regarding the disputed question of title. The law laid down by the

Fun Bench in the aforesaid case has subsequently been followed by a Division Bench of Lahore High Court in *Tirath Ram v. Mst. Nihal Devi* ILR 12 Lah 688 : AIR 1931 Lah 664, and even by a Division Bench of this Court in *Ram Gopal v. State of Punjab* 1965 PLR 1102. It has been consistently held that the word "may" in Section 117 of the Revenue Act must be construed to mean "must" when a question of title is raised in connection with any of the properties of which partition is sought. Mr. Gandhi has also referred to the order of the Financial Commissioner in *Gunda Singh v. Jhanda Singh* (1890) 14 PR 1890. In that case it was held that where a question of title had been raised, the lower Courts acted ultra vires in deciding upon which party the onus of appealing to the Civil Courts lay, and in directing that the partition proceedings should continue in default of a party suing in the Civil Court within a specified time. The learned Financial Commissioner held that the proper procedure in such a case was for the Revenue Court either to proceed u/s 117 (2) or to leave the parties to have the point at issue determined by a competent Court at their pleasure and till then to decline to grant the application for partition. The order of the Financial Commissioner does not appear to help the appellant. In all the cases cited by Mr. Gandhi, the order of the Revenue Officer had been passed under Sub-section (1) of Section 117. Even Mr. D. N. Aggarwal, learned counsel for the respondent No. 1 did not seriously contest the proposition that in a case where the Revenue Officer leaves the party concerned to institute a suit in an ordinary Civil Court, he cannot control the period of limitation allowed by law for the institution of such an action. None of the decided cases has dealt with the precise question which has arisen in the present appeal, that is whether a Revenue Officer sitting as a Civil Court is bound to dismiss a suit which is filed before that Court in pursuance of a direction given by the Revenue Officer u/s 117 (2) of the Revenue Act merely because it is filed beyond the time allowed for its institution by the Revenue officer though the suit is within time according to the law of limitation for the time being in force. The learned counsel for both the sides agree that this precise question is res integra.

3. After carefully considering every argument advanced by the learned counsel for the parties before me at the hearing of this appeal, I am of the opinion that a Revenue Officer has no jurisdiction to control the intended proceedings in the Civil Court even though he himself may be intending to preside over the Civil Court under Clause (b) of Sub-section (2) of Section 117 of the Revenue Act. Though there may be no legal or statutory bar to the Revenue Officer directing that a suit for getting the disputed question of title determined should be instituted within a specified time the Civil Court cannot dismiss the suit as barred by time if it is filed within the period of limitation allowed by law even though it is instituted after the expiry of the period fixed by the Revenue Officer. To hold otherwise would amount to permitting parties in an action filed in an ordinary Civil Court in pursuance of Sub-section (1) of Section 117 being treated differently than those in whose case the Revenue Officer elects to act as a Civil Court himself under Sub-section (2) of Section 117. There appears to be no

warrant for permitting this kind of discriminatory treatment as regards as vital a matter as the period of limitation prescribed for filing a suit for the same relief. Remedy to approach a Court of law for proper and legal relief can be held to be time barred only in accordance with an appropriate law of prescription passed by a competent legislature and not by an order of a Revenue Officer. Even a voluntary agreement to curtail the period of limitation for filing suit is declared to be void by Section 28 of the Contract Act. In this view of the matter, the decision of the Subordinate Judge, Patti dismissing the appellant's suit as barred by time, is wholly untenable. The learned Additional District Judge should have set aside that decision of the sub-Judge straightway on the additional ground that the sub-Judge had not complied with the requirements of Clause (b) of Sub-section (2) of Section 117, as he had failed to record a proper judgment containing all the particulars required by the Code of Civil Procedure. Section 117 of the Revenue Act may be quoted at this stage:

"(1) When there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the Revenue Officer himself proceeds to determine the question, the following rules shall apply, namely:--

(a) if the question is one over which a Revenue Court has jurisdiction, the Revenue Officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887.

(b) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgment and decree containing the particulars required by the CPC to be specified therein.

(c) An appeal shall lie from the decree of the Revenue Officer under Clause (b) as though that decree were a decree of a Subordinate Judge in an original suit.

(d) Upon such an appeal being made, the District Court or High Court, as the case may be, may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal.

(e) From the appellate decree of a District Court upon such an appeal, a further appeal shall lie to the High Court if such a further appeal is allowed by the law for the time being in force".

Sub-rule (2) of Rule 4 of Order 20 of the CPC which is brought into play by the operation of Clause (b) of Sub-section (2) of Section 117 of the Revenue Act provides that the judgment must contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such a decision. To say the least, the order of the Subordinate Judge, Patti, dated May 9, 1962, is wholly lacking in almost all the requisite particulars.

4. Once it is held that the suit of the appellant could not be dismissed as barred by time merely because it was filed beyond the time fixed by the Revenue Officer, the order under appeal has to be set aside. The learned Additional District Judge is also incorrect in observing that the plaint of the title suit could not be presented about two years after the order of the Revenue Officer. The order of the Revenue Officer had been set aside by the Collector in appeal. It was restored, as stated above, only on July 15, 1961 by the Commissioner. Even if it could be said that the title suit should have been filed within the time fixed by the Revenue Officer the time in this case would have finished only after the expiry of one month from the date on which the order of the Commissioner was communicated to Saudagar Singh, if he was not present at the time of the pronouncement of the said order. Another apparent error in the judgment of the learned Additional District Judge is that he thought that Saudagar Singh had filed the application for partition. This observation is admittedly contrary to the facts on record. As stated in the opening part of this judgment the partition proceedings had been initiated by Sham Kaur respondent No. 1.

5. Mr. D. N. Aggarwal has, in my opinion, rightly not pressed the other ground on which the Additional District Judge decided the case in favour of his clients. The relevant part of paragraph 18-9 of the Punjab Land Records Manual is in the following terms:--

"If the revenue officer determines to hear the case himself and the burden of proof is on the applicant for partition, he should order the applicant to put in by a certain date a written statement giving full particulars of his claim. Similarly, if the objecting party is the respondent in the partition proceedings he should be required to put in a written statement by a certain date, giving full particulars of his objections. If either party fails or refuses to obey these instructions the revenue officer should pass orders under Order 8, Rule 10 of the CPC (Act 5 of 1908). On a plaint being presented, he should record a brief note stating whether the question at issue is cognizable by a Revenue Court, Section 117 (2) (a) or by a Civil Court, Section 117 (2) (b) of the Land Revenue Act, and consequently what his future procedure is intended to be. Although in case of appeal the appellate Court would have to decide by what description of Court the question was really cognizable the note of the revenue officer will determine the course of appeal in the first instance and thus save both litigants and the appellate Court much trouble"

The application of the above-quoted provisions could be invoked only in an order had been passed by the Revenue Officer to put in a written statement giving full particulars of his claim within the time specified by him. No such order was admittedly passed as the direction in the instant case was for filing a suit or presenting a plaint. Even in a case where a written statement giving full particulars of the claim is required to be filed by a certain date all that the Civil Court can do if the party concerned fails or refuses to obey the instructions is to pass an order under Order 8, Rule 10 of the Code, i.e., the Court may pronounce

a judgment against the party who has failed to file his written statement within the time allowed to him. The learned Subordinate Judge does not appear to have acted, and indeed in my opinion could not have acted, under Rule 10, Order 8 of the CPC in the circumstances detailed above.

6. No other point has been argued before me in this case. For the foregoing reasons I would allow this appeal, set aside the judgment and decree of the learned Additional District judge, Amritsar, dated May 13, 1963, as well as of the Subordinate Judge, Patti, dated May 9, 1962, and direct the Subordinate Judge concerned to proceed to hear and dispose of the civil suit filed by Saudagar Singh on merits in accordance with law. In view of the fact that the question of law involved in the case was *res integra*, I leave the parties to bear their own costs throughout. For the same reason, I grant a certificate to the effect that this is a fit case for further appeal under Clause 10 of the Letters Patent.