

(2014) 04 P&H CK 0268

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. Nos. 4727 of 1987, 874, 875 of 1988 and R.S.A. No. 3876 of 2001 (O & M)

Lakhmir Singh

APPELLANT

Vs

Additional Director

RESPONDENT

Date of Decision: April 3, 2014**Acts Referred:**

- East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Section 42

Citation: (2014) 4 RCR(Civil) 56

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: Amarjit Markan and M.L. Saini, Advocate for the Appellant; M.K. Singla, Harveen Kaur and K.S. Cheema, Advocate for the Respondent

Judgement

Hemant Gupta, J.

This order shall dispose of CWP No. 4727 of 1987, CWP No. 874 of 1988, CWP No. 875 of 1988 and RSA No. 3876 of 2001 raising identical questions in respect of the same village. However, for facility of reference, the facts are firstly being taken from CWP No. 4727 of 1987 wherein the challenge is to an order passed by the Additional Director, Consolidation, on 05.05.1987 whereby an application filed by respondents No. 2 and 3 was allowed when the earlier order of Additional Director, Consolidation of Holdings, dated 17.03.1986 was passed for the reason that the order has been passed without granting any opportunity of hearing to them. CWP No. 4727 of 1987. On a petition filed u/s 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act"), the Additional Director, Consolidation of Holdings, passed an order on 25.03.1976 of partition of mushtarka malkan land. The matter was remanded to Consolidation Officer for partition of the bachat land. Thereafter, the Consolidation Officer has passed an order on 19.11.1983 in respect of partition of land of 277 proprietors. The name of the

petitioners appears at Sr. No. 116 of the list (Annexure P-6) of proprietors whereas name of respondents No. 2 and 3 appears at Sr. No. 140 of the list. Annexure P-5 is the list of proprietors who were said to be present before the Consolidation Officer. The name of one Harcharan Singh appears at Sr. No. 24 of the list of proprietors present at the time of hearing.

2. Some of the proprietors filed a petition u/s 42 of the Act against the order passed by the Consolidation Officer where the statement by counsel appearing for the present petitioners was made to the effect that in respect of manner of partition be not disturbed which included land of the present respondents. Such Petition was partly allowed on 17.3.1986 remanding the matter to the Consolidation Officer but not in respect of the five proprietors as against them, the mode of partition was said to be not in dispute.

3. Harcharan Singh son of Sant Singh (present respondent) filed a separate petition u/s 42 of the Act with the grievance that the Consolidation Officer has passed an order on 19.11.1983 in their absence without giving any opportunity of hearing to them and the same be set aside.

4. The order dated 17.03.1986 was challenged in the writ petition No. 2991 of 1986 before this court which was dismissed on 21.08.1986. But after the decision of the writ petition, the petition filed by respondent No. 2-Harcharan Singh u/s 42 has been allowed on 05.05.1987 when the matter was remanded to the Consolidation Officer for fresh decision keeping in view the valuation of the property and the area in possession of the present petitioners and the respondents No. 2 and 3.

5. Learned counsel for the petitioners has vehemently argued that the respondent-Harcharan Singh was present before the Consolidation Officer, whose name appear at serial number 24 of the person present before the Consolidation Officer, therefore, the order could not have been passed by the Additional Director, Consolidation, on 05.05.1987 remanding the matter. It is also pointed out that the Basant Singh-respondent No. 3 was the respondent in the writ petition as respondent No. 49 as well.

6. We have heard learned counsel for the parties and find that the order dated 05.05.1987 passed by the Additional Director, Consolidations, cannot be said to be suffering from any patent illegality causing substantial injury to the rights of the parties. A perusal of the list of the proprietors present shows that at Serial No. 24, the person present is shown as Harcharan Singh son of Sunder Singh whereas the proprietor is Harcharan Singh son of Sant Singh son of Sunder Singh. Basant Singh son of Sant Singh son of Sunder Singh is not even said to be present before the Consolidation Officer. The statement recorded by the Additional Director Consolidation is of Lakhbir Singh son of Mit Singh (the present petitioner). Such statement affects the land of the respondents though they were not present before the Director, Consolidations nor were present before the Consolidation Officer.

7. It may be noticed that once the Consolidation Officer has been directed to re-examine the distribution of bachat area land with the proprietors vide order dated 17.03.1986, it does not really make any sense not to consider the re-distribution of land to 5 persons as ordered in the order dated 17.03.1986.

8. Therefore, the order passed by Additional Director, Consolidation, on 05.05.1987 directing the Consolidation Officer to reconsider the distribution of bachat land cannot be said to be suffering from any patent illegality or irregularity. The Consolidation Officer, consequent to the order passed by the Additional Director, will consider the respective contentions of the parties before passing an order of distribution of bachat area to the parties to the present petition. The CWP No. 4727 of 1987 is thus dismissed.

CWP Nos. 874 and 875 of 1988

9. The grievance in CWP No. 874 of 1988 preferred by Babu Singh son of Amar Singh and Harnek Singh son of Harnam Singh is against the order passed by the Additional Director, Consolidation of Holdings on 09.09.1987 whereby their claim for re-determination of the bachat land by the Consolidation Officer was declined. In CWP No. 875 of 1988 the claim of the Jangir Singh and Mukhtiar Singh sons of Ram Rakha for re-determination of the bachat land by Consolidation Officer in terms of order dated 17.03.1986 was declined.

10. We find that the order of not considering the distribution of the land in respect of the above said petitioners in the order dated 17.03.1986 is without their consent. Once the Additional Director is directing the distribution of bachat land to the proprietors, the same is required to be determined in respect of the proprietors as well. Consequently, the order dated 09.09.1987 is also set aside and the matter shall be decided by the Consolidation Officer afresh in accordance with law in terms of the order dated 17.3.1986. CWP 874 and 875 of 1988 are thus allowed.

RSA No. 3876 of 2001

11. The Regular Second appeal is preferred by the plaintiffs aggrieved against the judgment and decree passed by the Courts below arising out of suit for permanent injunction in respect of land measuring 14 Kanals 4 Marlas. The suit was dismissed by the learned trial Court on 28.03.2001. Such judgment and decree has been affirmed in appeal on 13.08.2001 by the learned Additional District Judge, Sangrur.

12. The plaintiff-appellants sought injunction for restraining the defendants from raising any construction in the land in question and from changing its nature for the reason that it is bachat land which has been distributed in accordance with order dated 25.03.1976. The defendants were in illegal possession of the same and the land has fallen to the share of the plaintiffs. The plaintiff-appellants rely upon the order passed by the Consolidation Officer on 19.11.1983 whereby they were allotted 14 Kanals 4 Marlas of land.

The, appellants have claimed the following questions of law:--

"I. Whether the plaintiffs are owners of suit land on the basis of order dated 19.11.1983 especially when operation of the order dated 05.05.1987 has been stayed by this Hon"ble Court on 30.03.1987 in CWP No. 4727 of 1987?

II. Whether the defendants can be held as owners on the basis of order dated 05.05.1987 operation of which has been stayed on 30.03.1987 in CWP No. 4727 of 1987?

III. Whether the defendants can be allowed to raise construction upon the agricultural land which is subject matter of CWP No. 4727 of 1987 as well as the suit, particularly when the plaintiffs are owners on the basis of order dated 19.11.1983 which is still operative?"

The learned Civil Court has taken into consideration the order dated 05.05.1987 whereby the case was remanded to the Consolidation Officer to give land to the proprietors as per the valuation from khasra numbers mentioned therein. The learned Civil Court has taken into consideration the pendency of the writ petition against the order dated 05.05.1987 passed by the Additional Director, Consolidation. The aforesaid writ petition is being decided by the present order. The matter stands remitted to the Consolidation Officer to decide the issue of distribution of bachat land amongst all the proprietors and not by excluding the present appellant as well as four other proprietors mentioned in the order dated 17.03.1986. The questions of law framed by the appellant are consequent to the pendency of CWP No. 4727 of 1987 alone. Since such writ petition stands dismissed, therefore, none of the questions of law arises for consideration.

We do not find any substantial question of law arises for consideration of this Court in the present Regular Second Appeal.

In view of the observations made above, CWP No. 4727 of 1987 and RSA No. 3876 of 2001 are dismissed, whereas, the CWP 874 and 875 of 1988 are allowed.