

from the scope of the amendment it would be necessary to make this intention plain. The result is that I would accept the appeal and dismiss the writ petition and I would restore the order of the Financial Commissioner for the case to be remanded to the Court of the Assistant Collector to be decided in accordance with law. It would be befitting in my opinion if the parties are left to bear their own costs throughout.

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Falshaw, C.J.

MEHAR SINGH, J.—I agree.

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J.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Jindra Lal, JJ.

RAM GOPAL AND OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 802 of 1964

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L 1948)—Sections 16A and 32—Scheme of Consolidation—Whether can provide for partition of joint land in respect of which dispute as to title inter se between the joint owners exists—Course to be adopted in such an event indicated—Punjab Land Revenue Act (XVI of 1887)—S. 117—Effect of.*

1965

August, 30th

Held, that a Consolidation Officer is given the power to make provision in the Scheme of Consolidation for partition of Joint Khata between the joint holders in the eventualities contained in section 16A(2) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Instead of any partition being effected according to the procedure laid down in Chapter IX of the Punjab Land Revenue Act, 1887, the partition has to be effected by the consolidation authorities in case the shares of the joint owners can be ascertained with certainty from the Record-of-rights or there is no disagreement between them in respect of it or it has been settled by a decree of a competent Court. There is, however, an important exception embodied in sub-section (1) of Section 16-A which relates to the provisions of section 117 of the Punjab Land Revenue Act. The word "may" in this section has been construed to mean "must", when a question of title is raised in any of the properties of which partition is sought. When a scheme for consolidation is prepared and a question of title is raised with regard to joint property the Consolidation Officer must stay his hands with regard to making any provision for partition until the question of title is decided by a competent Court because section 117 of the Punjab Land Revenue Act constitutes an exception to the provision in section

16-A of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. Moreover, where before a notification is issued under sub-section (1) of section 14 of the Act, the partition proceedings are already pending, they cannot proceed by virtue of section 32 of the Act till consolidation proceedings conclude except that the question of title, if raised, can be determined either by the Civil Court or by the Revenue Officer constituting himself as a Court in accordance with the provisions of section 117 of the Punjab Land Revenue Act. If, however, before any notification is issued under sub-section (1) of section 14 of the Act any proceedings have been commenced for partition under Chapter IX of the Punjab Land Revenue Act, and a question of title is raised that can be determined by the Civil Court alone. A Consolidation Officer, at any rate, will not be justified in making a provision for partition of joint property in the event of dispute relating to title until there is a decision of that dispute in the manner indicated above. The result would be that the Consolidation Officer would have to so frame the scheme as to keep the joint property joint in such a case.

*Case referred by Hon'ble Mr. Justice A. N. Grover, on 25th November, 1964 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Justice A. N. Grover and Hon'ble Mr. Justice Jindra Lal finally disposed of the case on 30th August, 1965.*

*Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued quashing the order dated 17th April, 1964 passed by the Additional Director, Consolidation of Holdings, respondent No. 2.*

S. P. GOYAL, ADVOCATE, for the Petitioners.

A. M. SURI AND SURAJ MAL, ADVOCATES, for the Respondents.

#### ORDER OF THE DIVISION BENCH

Grover, J.

GROVER, J.—This judgment shall dispose of Civil Writs Nos. 801 and 802 of 1964.

Since in the referring order the facts relating to Civil Writ No. 802 of 1964 have been set out, it is only necessary to recapitulate them. It is alleged in the petition that the petitioners and respondents 3 to 76 are right-holders of village Mataur, Tehsil Narwana (in the written statement it is denied that respondents Nos. 66 and 68 are right-holders). A notification under Section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter called the Act), was issued by the State Government for carrying out consolidation

of holdings in the aforesaid village. It appears that the Consolidation Officer made a provision in the draft scheme for partition of a *Khewat* in which the aforesaid respondents were the joint owners. When the draft scheme was published, petitioner No. 1 Ram Gopal filed objections saying that although the *Khewat* was entered as joint of the petitioners and the other right-holders, that was not correct and the fact was "that the owners in that *Khewat* have become full owners by way of adverse possession of the land under their respective possession and are entitled to have ownership rights according to their respective possessions." It was further stated that because of the question of adverse possession and disputed measure of rights a question of title arose and partition of the *Khewat* was beyond the jurisdiction of the consolidation authorities. The Consolidation Officer submitted a report to the Settlement Officer who made an order on 4th February, 1964 (copy Annexure 'B') in which it was stated that it was admitted that the petitioners were in possession of more land at the spot from times immemorial and, therefore, the *Khewat* be kept intact. Indeed, it was mentioned in this order that Ram Gopal and others would be entitled only to 25 *bighas* of land according to their shares whereas they were in possession of 73.7 *bighas* of land. When the matter was taken under section 42 of the Act to the Additional Director, Consolidation of Holdings, he set aside the order of the Settlement Officer because in his view there was no question of title involved and no civil or revenue suit had been filed by any of the three or four persons who were opposed to the division of the *Khewat* when the total number of the owners was 70. He, therefore, directed that partition of the *Khewat* should be carried out respecting the ownership and possession as they were at the time consolidation proceedings were taken up." The previous scheme was to be considered amended in respect of the *Khewat* in dispute.

The main question that we are called upon to determine is whether consolidation authorities cannot proceed to make a provision for the partition of land among joint owners in the scheme of consolidation under section 16-A of the Act if a dispute as to title *inter se* between the joint-owners is raised as also the course which should be adopted by them in such an event. Now, in the Act, as originally enacted, there was no provision analogous to section

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16-A and the only manner in which a provision could be made in the scheme for partition of a joint *Khewat* was by agreement of the parties. Under the Punjab Land Revenue Act, 1887, partition of joint land can be sought under Chapter IX by filing an application for partition under section 111. Under section 113, the Revenue Officer, on receiving such an application, has to give notice to the other co-sharers if the application is not open to objection in view of the restrictions and limitations contained in section 112. Section 116 lays down that the Revenue Officer is bound to ascertain the question, if any, in dispute between the persons interested distinguishing between—

“(a) questions as to title in the property of which partition is sought; and

(b) questions as to the property to be divided, or the mode of making the partition.”

The provisions of section 117(1) are as follows:—

“When there is a question as to title in any 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.”

After consolidation proceedings commence in a village by virtue of the notification issued under section 14 of the Act, section 32, as it stood before the enactment of amending Punjab Act No. 20 of 1959, provided that no proceedings under Chapter IX of the Punjab Land Revenue Act in respect of any estate or sub-division of an estate which would be affected by the scheme of consolidation, would be commenced and such proceedings pending would remain in abeyance during the pendency of the consolidation proceedings. The following section, however, was substituted by section 5 of the amending Act:—

“32. After notification under sub-section (1) of section 14 has issued, no proceedings under Chapter IX of the Punjab Land Revenue Act, 1887, in respect of any estate or sub-division of

an estate affected by the scheme of consolidation shall, subject to the provisions of section 16-A, be commenced, and where such proceedings were commenced before the issue of the notification they shall remain in abeyance, during the pendency of the consolidation proceedings."

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By the same Act, section 16-A was inserted which is reproduced below:—

"16-A. (1) Notwithstanding anything contained in Chapter IX of the Punjab Land Revenue Act, 1887, except section 117 thereof, the scheme prepared by the Consolidation Officer may provide for the partition of land between joint owners of land, or between joint-tenants of a tenancy in which a right of occupancy subsists, in accordance with the share of each owner or tenant in the land or tenancy, as the case may be, if—

- (a) Such share is recorded under Chapter IV of that Act as belonging to him, or
- (b) the right of such owner or tenant to such share has been established by a decree which is still subsisting at the time of preparing the scheme, or
- (c) a written acknowledgment of such right has been executed by all persons interested in the admission or denial thereof.

(2) When the scheme is finally confirmed under section 20, the land so partitioned shall, notwithstanding anything to the contrary contained in any law for the time being in force, be held by each such owner or tenant in full right of ownership or tenancy, as the case may be, and the rights of other joint owners or joint-tenants, in the land shall be deemed to be extinguished."

By amending Punjab Act No. 25 of 1962, the word 'Finally' in sub-section (2) of section 16-A was omitted.

The combined effect of sections 32 and 16-A of the Act so far as owners are concerned now is that as soon as a

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notification is issued under section 14, no proceedings under Chapter IX of the Punjab Land Revenue Act in respect of partition can be commenced and where they have already commenced they have to remain in abeyance during the pendency of the consolidation proceedings. But the Consolidation Officer is given the power to make a provision in the scheme of consolidation for the partition of land between joint owners in the eventualities contained in section 16-A (2). When such a scheme is confirmed, the land so partitioned becomes the property of the owner and the rights of other joint owners are completely extinguished. It would thus appear that instead of any partition being effected according to the procedure laid down in Chapter IX of the Punjab Land Revenue Act, the partition has to be effected by the consolidation authorities in case the share of the joint owners can be ascertained with certainty from the Record-of-rights or there is no disagreement between them in respect of it or it has been settled by a decree of a competent Court. There is, however, an important exception embodied in sub-section (1) of section 16-A which relates to the provisions of section 117 of the Punjab Land Revenue Act and it is the effect of that exception which requires determination in the present cases. That section enjoins that a question of title in any property of which partition is sought ought ordinarily be determined by the Civil Courts. If the Revenue Officer wishes to decide that question himself he can only do so as a Court which apparently means a Civil Court and an appeal against his judgment lies to the District Court or the High Court, as the case may be.

In proceedings for partition under Chapter IX of the Punjab Land Revenue Act, the law appears to be well settled. It was held by Plowden, J., as far back as 1890 in *Radhu v. Mussammatt Nando* (1), that when in a claim for partition of land its liability for partition was denied on the ground of a private partition the suit was cognizable by a Civil Court as a question of title had been raised. While dealing with section 116 of the Punjab Land Revenue Act, the learned Judge made a distinction between questions of title and questions as to the property to be divided and regarded them as essentially distinct questions. According to him, "questions as to the property to be divided 'meant' questions other than a question of title to

(1) 150 P.R. 1890.

the property to be divided." This is what he said at page 490:—

"The issue on the pleadings is whether the whole *Khata* is joint, or whether only the fields specified by Ram Dhan are joint. The decision on that question will determine what property is in law liable to partition. Thus a question of title to the whole *Khata* as joint property is raised by the plaintiff, and this question is *prima facie* cognizable by a Civil Court."

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The same learned Judge, sitting in Full Bench in *Ata Muhammad Khan v. Arjan Singh*, (2), said—

"When there is question as to title in any of the property of which partition is sought, the course of procedure open to the Revenue Officer is prescribed by section 117(1)—we are agreed that only two courses are open to him under the terms of that section. He may, in the first place, decline to grant the application for partition, until the question of title has been determined by a competent Court. If he so determines, further proceedings on the application would necessarily be suspended; or, in the second place, he may himself proceed to determine the question as though he were a Civil Court. In that event where, as here, the question of title is one over which a Civil Court has jurisdiction, his procedure is under sub-section (2) to be that of a Civil Court, and an appeal is provided by sub-section (2) to the superior Civil Court from his decision.

We think it is clear that no third course is allowed by this section, as has been argued, of proceeding in the capacity of a Revenue Officer to make a partition, brushing aside the question of title as of no consequence or as depending upon the entries in the Revenue Records where such exist."

In another Full Bench judgment of the Chief Court in *Bachan Singh v. Madhan Singh* (3), the same view was

(2) 72 P.R. 1896.

(3) 61 P. R. 1897.

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reiterated and it has been held that whenever a question of title is raised in partition proceedings before a Revenue Officer, he is bound under section 117 of the Punjab Land Revenue Act to refuse partition until such question is decided by the Civil Court. He can alternatively decide the question himself but if he completes the partition without the question of title being settled in one of the two ways provided in the section, the mere fact that partition has been completed cannot oust the jurisdiction of the Civil Courts to entertain a subsequent suit regarding such question of title. Shadi Lal, C.J., delivering the judgment of the Bench in *Siraj Din v. Narain Das* (4), has observed that if a question of title is raised in partition proceedings before a Revenue Officer, he cannot order partition until that question is determined by a competent authority. A Civil Court is the only authority having jurisdiction to adjudicate upon a dispute relating to title but in order to expedite partition proceedings the Legislature has created an exception to the ordinary rule and invested the Revenue Officer with jurisdiction to determine the question of title as if he were a Court. It is clear from all these decisions that the word "may" in section 117 of the Punjab Land Revenue Act has been construed to mean "must" when a question of title is raised in any of the properties of which partition is sought. It would also seem that the word "may" has been used not because there is any option given to the Revenue Officer to carry on partition, without the decision of the question of title but because there are two alternative courses suggested by the Legislature for him for decision of that question.

Now, when the scheme for consolidation is prepared and a question of title is raised with regard to joint property there appears to be no escape from the conclusion that the Consolidation Officer should stay his hands with regard to making any provision for partition until the question of title is decided by a competent Court. This follows from the decisions relating to section 117 of the Punjab Land Revenue Act which constitutes an exception to the other provisions of that Act in section 16-A. It would further appear that where before a notification is issued under sub-section (1) of section 14 of the Act and partition proceedings are already pending, they cannot proceed by virtue of section 32 of the Act till consolidation

(4) A.I.R. 1927 Lahore 412.



proceedings conclude except that the question of title, if raised, can be determined either by the Civil Court or by the Revenue Officer constituting himself as a Court in accordance with the provisions of section 117 of the Punjab Land Revenue Act. If, however, before any notification is issued under sub-section (1) of section 14 of the Act any proceedings have been commenced for partition under Chapter IX of the Punjab Land Revenue Act, and a question of title is raised that can be determined by the Civil Court alone. A Consolidation Officer, at any rate, will not be justified in making a provision for partition of joint property in the event of dispute relating to title until there is a decision of that dispute in the manner indicated above. The result would be that the Consolidation Officer would have to so frame the scheme as to keep the joint property joint. P. C. Pandit, J., in *Jit Singh v. The State of Punjab* (Civil Writ No. 538 of 1962, decided on 13th November, 1962) said that if a question of title was involved in a joint holding, the Revenue Officer could not make provision for the partition of that land in the scheme. According to the learned Judge, the reason was obvious because questions of title had to be determined by the Civil Courts.

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It has been contended by the learned counsel for the respondents that the whole object of consolidation would be defeated if the above view were to be accepted as correct. It is urged that a good deal of room would be left in such circumstances for any one to raise even a frivolous claim which may relate to title and that will hamper the task of consolidation for a number of years because litigation in the Civil Courts generally takes a long time. A great deal of reliance has been placed on certain observations in a Bench decision of this Court in *Pat Ram v. The Punjab State* (Civil Writ No. 1641 of 1960, decided on 18th October, 1963). In that case the allegations of the petitioners were that there had been an agreement between the co-sharers and the persons actually in possession of the land in dispute who had gone back on their original agreement and the Government had sided with them and had cancelled the provisions in the scheme for partition of the joint *khata* without any justification. The State, on the other hand, had taken up the position that Consolidation authorities were not bound to partition a joint *Khata* and that such a partition was likely to result in a serious

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deteriment to the interests of those who had been cultivating a larger part of the land as tenants since long. Harbans Singh, J., who delivered the judgment of the Bench, has laid emphasis on the object underlying the Act, namely, the land-owner should be allotted after consolidation one plot which is easily manageable instead of small bits of land scattered all over the village which he may be holding before consolidation. He referred to section 16-A and said that in that case if the matter was left to regular proceedings under the Punjab Land Revenue Act for partition after the conclusion of consolidation, the very object of consolidation would be defeated. Dealing with the suggestion on behalf of the respondents that litigation relating to disputed questions of title was pending in Courts between the parties and it was not possible to effect the partition of the *Khata* for that reason it was observed that some of the documents which had been produced relating to those suits showed that they had been filed for the purpose of creating some sort of defence against the prayer made in the writ petition. Harbans Singh, J., proceeded to say that so far as the Consolidation authorities were concerned, they had to effect partition in accordance with the entries in the *Jamabandis* and were not to take notice of any suits that might be pending unless the authorities received a stay order or injunction from a competent Court preventing them from proceeding in any particular manner. The order directing that partition should not take place of the joint *Khata* was held to be neither legal nor *bona fide* and was quashed.

It may be that there are certain observations which are more or less obiter in the aforesaid judgment which run counter to the submissions which have been made on behalf of the petitioners in the present cases but, as has been stated before, the facts there were different and the arguments did not proceed on the lines on which they have been canvassed before us. It is true that consolidation may not be effected as expeditiously as is desirable if joint *Khatas* are not partitioned during the consolidation proceedings. That, however, cannot influence or affect our decision in interpreting the law as it has been enacted. Moreover, any apprehension of that nature does not have much foundation for the simple reason that it is not likely that in every case of joint holding a question of title will

ways be raised and that also with regard to all the joint *hatas* of the village.

The learned counsel for the respondents has emphasised the view expressed by the learned Financial Commissioner in *Shrimati Dhan Kaur v. Nihal Kaur* (5), that partition proceedings can be stayed only if a Revenue Officer after examining the facts decides that a question of title is involved and not merely on the insistence of a party that such a question exists. In that case partition proceedings were being held under the Punjab Land Revenue Act and one of the pleas raised was that a question of title was involved in the disputed property. The learned Financial Commissioner was of the view that there was no valid dispute and the plea had been taken only to delay the proceedings. So far as proceedings under the Punjab Land Revenue Act are concerned, section 116 provides that the Revenue Officer shall ascertain the question in dispute between the persons interested distinguishing between questions as to title in the property of which partition is sought and questions as to the property to be divided or the mode of making the partition. Section 117 then provides the procedure for disposal of questions as to title. It is quite clear that whenever there is a dispute regarding partition, the authority before whom the dispute is raised has to make a distinction of the nature indicated and the position would be the same before the Consolidation authorities and presumably they would be guided by the same principles as have been held applicable to cases which have arisen under Section 116 of the Punjab Land Revenue Act. It is difficult to lay down any hard and fast rule in the matter. There can, however, be no manner of doubt that questions of title had clearly been raised in the present cases and, therefore, the impugned order or orders directing partition deserve to be quashed and are hereby set aside. In the circumstances there will be no order as to costs.

JINDRA LAL, J.—I agree.

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