

S. S. Said-ul-Hamid
 v.
 The Federal Indian Assurance Co, Ltd.,
 New Delhi,

Applying the test laid down in *Naresh Chandra Bose v. Sachindra Nath Deb and others* (1) the proceedings in the Court of the Senior Subordinate Judge at Delhi originated on the 15th of April 1948, on the filing of the application for execution by the decree-holder.

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 Singh J.

For the foregoing reasons, I find that immediately before the appointed day there were no proceedings pending in the Court of the Senior Subordinate Judge, Delhi, and that when the application for execution was made in that Court on the 15th of April 1948, that Court had ceased to have jurisdiction to deal with that case by reason of the partition of the country into India and Pakistan.

In the result, the appeal fails and dismissed with costs.

REVISIONAL CIVIL

Before Harnam Singh, J.

JARNAIL SINGH, ETC.,—Petitioners,

versus

Jam. CHATAR SINGH, ETC.—Respondents.

Civil Revision No. 145 of 1949.

The Indian Soldiers (Litigation) Act (IV of 1925), sections 3, 10, 11, 12—Scope and purpose thereof—Person serving under special conditions—Within the meaning of section 3—Question of his death coming before the Court in the trial of civil suit to which he was a party—Procedure to be followed—Trial Court not noticing the provisions of section 12—Whether material irregularity in the exercise of Jurisdiction—Within the meaning of section 115 of the Code of Civil Procedure (Act V of 1908)—High Court whether can interfere in revision.

Held that when a Court is in doubt as to whether a party can be said to be serving under war conditions or not it ought to refer the matter to the prescribed authority and act on the certificate given by such authority.

(1) 1950 A.I.R. (Cal.) 8.

The certificate of the prescribed authority is conclusive evidence on the points referred to the prescribed authority and must be necessarily accepted as correct even though there may be a glaring proof of the incorrectness thereof.

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Where the trial Court, as in the present case, has not noticed the provisions of section 12 of the Act, it has acted with material irregularity in the exercise of its jurisdiction and the case falls within the provisions of section 115 of the Code of Civil Procedure and can be revised by the High Court if the other conditions of that section are fulfilled.

Petition under section 44 of Act, VI of 1918 (Punjab Act), for revision of the order of Shri Jasmer Singh, Sub-Judge, 1st Class, Jagraon, dated 19th April 1949, dismissing the application of Jarnail Singh and Harnail Singh with costs.

JHANDA SINGH, for Petitioner.

N. L. WADEHRA, for Respondent.

JUDGMENT.

HARNAM SINGH, J. On the 1st of April 1942, Jemadar Chatar Singh instituted the suit out of which these proceedings have arisen for a declaration that Sadhu Singh was not the adopted son of Bogha Singh and in case the factum of adoption of Sadhu Singh by Bogha Singh was established then the adoption was contrary to the custom and not binding on the reversionary interests of the plaintiff after the death of Bogha Singh, defendant No. 2.

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At the time of the institution of the suit Sadhu Singh was serving under special conditions within the meaning of section 3 of the Indian Soldiers Litigation Act, 1925, hereinafter referred to as the Act. On the 5th of November 1947, Chatar Singh made an application in the trial Court for bringing on record the three sons of Sadhu Singh as his legal representatives on the ground that Sadhu Singh had died in the year 1942. That petition was dismissed on the 30th of March 1948, on the finding that the death of Sadhu Singh was not proved and that Sadhu Singh must be deemed to be alive. A similar application was

Jarnail Singh, then made by Jarnail Singh on the 28th of October
 etc. 1948, but that application was also dismissed on the
 v. 5th of February 1949. In the order passed on the
 Jam. Chatar 5th of February 1949, *Sardar Jasmer Singh*, Subor-
 Singh, dinate Judge, 1st Class, Jagraon, said :
 etc.

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“ The statement of the learned counsel for the applicants was recorded on the back of this application on the same day. According to that statement the applicants do not contend that Sadhu Singh is dead. All they say is that his whereabouts were not known and it cannot be said he is alive or dead. They do not accept the position taken up by the authorities as correct. In face of this statement the application in question is rendered meaningless. If the applicants themselves come forward with a plea that Sadhu Singh is dead or should be presumed to have died in the peculiar circumstances of the case, then this matter can be inquired into by the Court.”

Now, the present proceedings have arisen from the application of Jarnail Singh and Harnail Singh, sons of Sadhu Singh, alleging that now the Army authorities have declared that all prisoners of war should be treated as dead with effect from the 1st of November 1948, and that being so, the sons of Sadhu Singh, have to be brought on the record of the case because they were necessary parties to the suit after the death of Sadhu Singh and furthermore they were in possession of the suit property.

Chatar Singh, plaintiff resisted the application, *inter alia*, on the ground that the orders passed on the 30th of March 1948, and on the 5th of February 1949, operate as *res judicata*. Then, it was pointed out in the written statement by Chatar Singh, plaintiff, that the order of the Army authorities, if any, has no binding force in proceedings pending before the Court. On

the pleadings of the parties, the following issues were framed :

- (1) Is Sadhu Singh to be presumed to have died ?
- (2) What is the effect of the previous orders, dated the 30th of March, 1948, and the 5th of February 1949, on the present application ?

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The trial Court finding issues Nos. 1 and 2 against the applicants dismissed the application with costs on the 14th of April 1949.

Jarnail Singh and Harnail Singh, majors and Gurnek Singh, minor, now apply to this Court under section 44 of Act VI of 1918 (Punjab) for the revision of the order passed by the trial Court on the 14th of April 1949.

Issue No. 2 need not detain us for the finding that it was not proved that Sadhu Singh was dead at a particular time does not bar the trial of that issue in subsequent proceedings to show that Sadhu Singh has died subsequent to the decision of that issue in the previous proceedings. Indeed, the order passed by the trial Court on the 5th of February 1949, shows that the applicants were allowed to make another application alleging that Sadhu Singh was dead or should be presumed to be dead. That being so, I find that the orders passed on the 30th of March 1948, and the 5th of February 1949, do not operate as *res judicata* in these proceedings.

Then, in the suit out of which these proceedings have arisen Chatar Singh, plaintiff, applied for the amendment of the plaint on the 28th of October 1948, alleging that Bogha Singh, defendant, had died on the 6th of October 1948. On those facts Chatar Singh, plaintiff, applied for the conversion of the suit instituted by him into one for possession of the suit

Jarnail Singh, property. The application for amendment was allowed on the date that it was made and in pursuance of the order of the Court the plaintiff has amended the
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plaint. In those proceedings Harnail Singh, one of the sons of Sadhu Singh, made an application alleging that he and his two brothers Karnail Singh (*sic*) and Gurnek Singh were in possession of the property in suit as owners and in any case they were intermeddlers with the estate of Bogha Singh, deceased, and, as such, were his legal representatives. The application was, however, disallowed on the finding that Karnail Singh, Jarnail Singh and Gurnek Singh (*sic*) were not the legal representatives of Bogha Singh.

Finally, on the 26th of November 1948, Jarnail Singh and Harnail Singh relying upon a certificate issued by the Senior Record Officer of the Army authorities applied that they may be brought on the record of the civil suit No. 136 of 1942, being necessary parties to those proceedings. In this application they then alleged that they were in possession of the suit property and that Sadhu Singh must be deemed to be dead as the Army authorities have declared that all prisoners of war must be deemed to be dead with effect from the 1st of November 1948. The certificate of the Record Officer of the Army reads :

“ It is certified that No. 14521 I. O. Jem, Sadhu Singh, son of Nikka Singh, of village Gorsian, District Ludhiana, embarked for service overseas (Far East) on the 6th of March 1941, with his Unit 1|14th Punjab Regiment. He became Prisoner of War on the 15th of February 1942, and since then no news having been received about him, the Government of India have decided to presume him dead with effect from 1st November 1948 and family pension is being granted to his widow Shrimati Jai Kaur.

For all purposes he will, therefore, be considered as dead.”

The trial Court has, however, come to the conclusion that the certificate of the Record Officer of the Army has no legal force in these proceedings.

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Now, section 12 of the Act reads :—

“ If any Court is in doubt whether for the purposes of section 10 or section 11, an Indian soldier is or was at any particular time serving under special conditions, or has died while so serving or as to the date of such death or as to the date on which official intimation of such death was sent to his next of kin by the authorities in India the Court may refer the point for decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point. ”

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From a perusal of section 12 it appears that reference under section 12 can be made for the decision of any one or more of the following points :—

- (i) whether the soldier was at any particular time serving under special conditions ;
- (ii) whether the soldier was serving under special conditions at the time of his death ;
- (iii) the date of death of the soldier ; and
- (iv) the date on which official intimation of the death of the soldier was sent to his next of kin by the authorities in India.

Now, the certificate of the prescribed authority is “conclusive” evidence of the points referred to the prescribed authority. In other words, the certificate must necessarily be accepted as correct even though there may be a glaring proof of the incorrectness thereof. If the certificate recites that the soldier was serving under special conditions at the time of his death the

Jarnail Singh, recital of the fact in the certificate shall be conclusive
etc. evidence on the point.

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But it is said that the conclusive presumption raised under section 12 arises only in proceedings under section 10 or section 11 of the Act, and Mr. Nathu Lal Wadehra contends that there are no proceedings pending in the trial Court under section 10 or section 11 of the Act. He then contends that in any case the revision petition put in in this Court does not fall within section 115 of the Code of Civil Procedure, 1908.

Dealing with the last contention first, the point that arises for determination is whether Sadhu Singh has died while serving under special conditions within the meaning of section 3 of the Act. As shown above, the certificate of the prescribed authority under section 12 has been declared to be conclusive evidence on this point. Now, if the trial Court was not satisfied about the death of Sadhu Singh, then it was clearly the duty of the trial Court to refer the point for the decision of the prescribed authority and to treat the certificate of that authority as conclusive evidence on the point. This has not been done with the result that the procedure prescribed for enquiry in such cases has not been followed. But it is said that the trial Court was not bound to make a reference to the prescribed authority. On this point reliance is placed on the language of section 12 of the Act, which shows that it is optional with the Court to make or not to make a reference to the prescribed authority for the decision of any of the points mentioned in the section; but it will ordinarily be difficult to decide the points involved by the ordinary method of production of evidence in Court, and as remarked by Bevan-Petman, J., in *Gurbachan Singh v. Ralla Ram and another* (1), when the Court is in doubt as to whether a party can be said to be serving under war conditions or not, it ought to refer the matter to the prescribed authority and act on the certificate given by such authority. Indeed the trial Court in the present case has not

(1) (1920) 56 I. C. 947.

noticed the provisions of section 12 of the Act. On these facts I am clearly of the opinion that the trial Court has acted with material irregularity in the exercise of its jurisdiction and that the case falls within section 115 of the Code of Civil Procedure and can be revised if the other conditions of that section are satisfied.

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etc.
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As already stated, Chatar Singh, plaintiff, applied on the 5th of November 1947, that the legal representatives of Sadhu Singh should be brought on the record alleging that Sadhu Singh had died in 1942. That application failed for want of proof. Even at that stage the trial Court did not take action under section 12 of the Act. Now, the point arising in these proceedings is whether Sadhu Singh has died while serving under special conditions within the meaning of section 3 of the Act, and this point can only be satisfactorily determined if the procedure prescribed in section 12 of the Act is followed. As shown above, no steps have been taken by the trial Court under section 12 of the Act.

Finding, as I do, that the previous orders do not operate as *res judicata* in these proceedings and that no steps have been taken by the trial Court under section 12 of the Act, I allow this petition for revision, set aside the order passed by the trial Court on the 14th of April 1949, and remit the case to the trial Court for the trial of the case in accordance with the observations made above.

Considering, however, all the circumstances of the case, I leave the parties to bear their own costs in these proceedings.

Parties are directed to appear in the trial Court on the 26th of June, 1950.