

Sandhya (Smt.) and others v. Shamsher Singh (J. V. Gupta, C.J.)

he passed one examination in 1978 and the other in 1981, he would be entitled to increments with effect from 1981 onwards. The order of the Government that the petitioner will not be entitled to arrears is hereby quashed.

(7) For the reasons recorded above, the writ petition is allowed and a direction is issued to the respondents to grant increments to the petitioner according to the Service Rules with effect from 1981 when he passed the second examination. The arrears be paid within six months from today. No costs.

P.C.G.

Before J. V. Gupta, C.J.

SANDHYA (SMT.) AND OTHERS,—*Petitioners.*

versus

SHAMSHER SINGH,—*Respondent.*

Civil Revision No. 2240 of 1988.

31st July, 1990.

Punjab Land Revenue Act, 1887—Ss. 117(2)(c) & 158 (xvii) and (xviii)—Claim for partition of suit land—Question of title involved in partition proceedings—Suit filed before Civil Court—Where question of title already decided by the Assistant Collector the Jurisdiction of Civil Court to decide such claim is barred.

Held, that the question of title was raised by the present plaintiff in the partition proceedings and was negatived by the Assistant Collector,—*vide* its order dated 24th December, 1981. Section 117 clause (c) of sub-section (2) of the Punjab Land Revenue Act, provides that an appeal could be filed against the decree of the Revenue Officer in the Court of District Judge concerned. No such appeal was filed, rather the appeal was filed before the Collector against the said order where the same was maintained and further in revision to the Commissioner also, the said order of the Assistant Collector was upheld. Section 158 of the Punjab Land Revenue Act, 1887, provides that a Civil Court shall not exercise jurisdiction over any of the following matters, namely, (xvii) and claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought; and (xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy,

or as to distribution of land subject by established custom or periodical re-distribution or as to the distribution of land revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of rent on the partition of a tenancy. In view of the said provisions, the jurisdiction of the Civil Court was clearly barred and the view taken by the learned District Judge in this behalf was wholly wrong and illegal.

(Para 4)

Petition u/s 115 C.P.C. for revision of the order of the Court of Shri D. S. Chhina, Addl. District Judge Gurdaspur dated 29th July, 1988 reversing that of the Court of Shri D. K. Sarpal, PCS, Sub Judge 1st Class, Pathankot, dated 21st November, 1986 accepting the appeal and setting aside the judgment and decree. The case is remanded to the trial court for disposal of the remaining issues after giving the parties reasonable opportunity to produce evidence and directing the parties to appear before the trial Court on 18th August, 1988.

Claim : Suit for declaration that the order of the A.C. 1st Class Grade (Tehsildar) Pathankot dated 9th August, 1977 and subsequently followed by order dated 24th December, 1981, confirmed by Shri V. K. Bhardwaj, PCS, Collector, Pathankot,—vide order dated 28th February, 1983 and further confirmed by the Commissioner (Appeals) Jalandhar Divn., Jalandhar in Revision Petition,—vide order dated 30th October, 1984 pertaining to the partition of the land bearing Khewat No. 83, Khatauni Nos. 118, Khasra Nos. 4R/24/1, 9R/1, 2, 3 4, 5, 9, 10, 11, 12, 19, 20, 21, 22/2 D 10R/2/1/2 total measuring 76 Kls. 6 marlas situated in village Sherpur Tehsil Pathankot are null and void and non-operative and not binding on the plaintiff.

Under Order 7 Rule 1 C.P.C.

Claim in Revision: For reversal of the order of Lower Appellate Court.

M. L. Sarin, Sr. Advocate, with Ashish Handa, Advocate, for the Petitioners

None, for the Respondents.

JUDGMENT

J. V. Gupta, C.J.

(1) This will also dispose of Civil Revision Nos. 2241, 2242, 2243 and 2244 of 1988 as the question involved is common in all these petitions.

(2) Dharam Singh defendant filed an application for partition of the suit land before the revenue authorities. An objection was raised on behalf of plaintiff Shamsher Singh that since question of title is involved, the proceedings should be stayed. The learned Assistant Collector 1st Grade found,—vide order dated 9th August, 1977, that no question of title was involved as alleged. However, on

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appeal to the Collector, the case was remanded back to the Assistant Collector 1st Grade, Pathankot, with the direction to decide the question of title in accordance with the provisions of section 117 of the Punjab Land Revenue Act,—*vide* order dated 31st March, 1978. The Assistant Collector 1st Grade found,—*vide* order dated 24th December 1981, that the plaintiff Shamsher Singh has failed to prove his allegation as to his title. Appeal against the said order before the Collector was dismissed on 28th February, 1983, and further revision to the Commissioner, Jalandhar Division, was dismissed on 30th October, 1984. Having failed up to the Commissioner, Jalandhar Division, the plaintiff filed five separate suits challenging the said orders of the Assistant Collector and that of the Commissioner dated 30th October, 1984 alleging that the Assistant Collector did not follow the procedure for deciding the question of title and, therefore, the orders are illegal and without jurisdiction. The suit was contested on behalf of the defendant. Issues were framed and one of the issues, as to whether the civil court had no jurisdiction to try the present suit, was treated as preliminary. The trial Court relying upon the provisions of Section 158(2) (XVII) and (XVIII) of the Punjab Land Revenue Act, came to the conclusion that jurisdiction of the civil court was barred. According to the trial Court in the present case, partition proceedings have been finalised and the appeals filed by the plaintiff have been dismissed, up to the Court of Commissioner, Jalandhar Division. Moreover the question of title has been decided by the Court of Assistant Collector 1st Grade,—*vide* order dated 24th December 1981, and the plaintiff did not file any appeal in the Court of District Judge as provided under section 117 of the Punjab Land Revenue Act. Consequently, the plaint was ordered to be returned to the plaintiff. In appeal, the learned Additional District Judge reversed the said findings of the trial Court on the ground that the plaintiff has not challenged the mode or manner of partition made by the revenue courts, but has challenged the very jurisdiction of the revenue courts to partition the land in dispute on the ground that there was a mutual private and family partition of the said land between the parties. Thus, according to the learned Additional District Judge, the trial Court had fallen in error in holding that the jurisdiction of the civil Court was barred under the above mentioned provision of law.

(3) Learned counsel for the defendant-petitioner submitted that the whole approach of the lower Appellate Court was wrong. Whereas, the trial Court has rightly held that the jurisdiction of

the civil Court was barred. He also referred to *Suba Singh v. Mohinder Singh* (1), to contend that the partition of agricultural land outside the Court i.e. by way of private partition, becomes valid only if the same is brought to the notice of the revenue authorities and sanction is obtained and only thereafter the Khatas are divided. Otherwise, co-sharers continue to be joint owners in the same Khata. Since the alleged private partition was never brought to the notice of the revenue authorities, the said plea was not available to the plaintiff. Moreover, this plea was taken by him before the Assistant Collector and was negatived and no appeal against the said order was filed before the District Judge, as provided under section 117 of the Punjab Land Revenue Act.

(4) After hearing the learned counsel, I find merit in this revision. The question of title was raised by the present plaintiff in the partition proceedings and was negatived by the Assistant Collector,—*vide* its order dated 24th December, 1981. Section 117 clause (c) of sub-section (2) of the Punjab Land Revenue Act, provides that an appeal could be filed against the decree of the Revenue Officer in the Court of District Judge concerned. No such appeal was filed, rather the appeal was filed before the Collector against the said order where the same was maintained and further in revision to the Commissioner also, the said order of the Assistant Collector was upheld Section 158 of the Punjab Land Revenue Act, 1887, provides that a Civil Court shall not exercise jurisdiction over any of the following matters, namely, (xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of proceedings for partitions, not being a question as to title in any of the property of which partition is sought; and (xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to distribution of land subject by established custom or periodical re-distribution or as to the distribution of land revenue on the partition of an estate or holding or on a periodical re-distribution of land, or as to the distribution of rent on the partition of a tenancy. In view of the said provisions, the jurisdiction of the Civil Court was clearly barred and the view taken by the learned District Judge in this behalf was wholly wrong and illegal.

(5) Consequently, this petition succeeds: the impugned order is set aside and that of the trial Court is restored with no order as to costs.

R.N.R.

(1) 1983 P.L.J. 429.