

Ajit Singh *v.* Smt. Subaghan, etc. (Mehar Singh, J.)

FULL BENCH

*Before Mehar Singh, C.J., Harbans Singh and D. K. Mahajan, JJ.*

AJIT SINGH,—*Appellant*

*versus*

SMT. SUBAGHAN AND OTHERS,—*Respondents*

**Letters Patent Appeal No. 354 of 1965**

March 19, 1969

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948 as amended by XV of 1959)—S. 16-A(1) and 16-A(2)—Provisions of—Whether subject to a decision of the question of title by a civil Court under section 117, Punjab Land Revenue Act (17 of 1887)—Right holder raising a question, purporting to be of title at the time of framing of scheme of Consolidation—Consolidation Officers—How to proceed—Remedies of the aggrieved right-holder—Such officers—Whether can convert themselves into civil Courts to decide question of title.*

*Held*, that provisions of both sub-section (1) and sub-section (2) of section 16-A of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 50 of 1948 are subject to a decision of the question of title by the civil Court under section 117 of Punjab Land Revenue Act, 17 of 1887.

(Para 7)

*Held*, that if a right holder endeavours to raise what he considers is a question of title at the time of the framing of the scheme of consolidation and objects to a provision in that scheme for partition so far as his holding is concerned, then, if the officers under the East Punjab Act 50 of 1948 reach a conclusion that a question of title is involved, they must stay their hands and leave the question of title to be decided in a civil Court, but if, on the contrary, they come to the conclusion that a question of title does not arise before them for the matter of framing the scheme of consolidation, then an aggrieved rightholder has one of the two courses open, (a) to go immediately to a civil Court and obtain a decision on the question of title claimed by him, or, (b) if he does not pursue the first course, to go before a civil Court after the completion of the partition and obtain a decision on the question of title as claimed by him. He would be doing so under section 117 of Punjab Act 17 of 1887, which is an exception kept alive by section 16-A of East Punjab Act 50 of 1948, and in either of the two

cases, as above, the operation of sub-section (2) of section 16-A of East Punjab Act, 50 of 1948 will be subject to the decision of the civil Court.

(Para 7)

*Held*, that as there are no revenue officers under the provisions of East Punjab Act 50 of 1948, under sub-section (1) of section 117 of Punjab Act 17 of 1887 a Consolidation Officer or a Settlement Officer cannot convert himself into a civil Court to try any question of title that he considers arises in relation to any partition of a holding or holdings that becomes necessary to be provided in the scheme of consolidation. The only possible course open in such a contingency, when a Consolidation Officer or a Settlement Officer on Appeal or the authority exercising powers under section 42 of East Punjab Act 50 of 1948 reaches a decision that a question of title arises in a particular case, is to refer the parties to a civil Court to have such question decided according to sub-section (1) of section 117 of Punjab Act, 17 of 1887. An officer under the provisions of East Punjab Act, 50 of 1948, not being a revenue officer, cannot be deemed to be so and thus he has no power or jurisdiction to convert himself into a civil Court while deciding a question of title in the course of a dispute with regard to partition of land in consolidation of holdings.

(Para 5).

*Case referred by Hon'ble the Chief Justice Mr. D. Falshaw and the Hon'ble Mr. Justice D. K. Mahajan, on 24th March, 1966, to a Full Bench for decision of an important question of law involved in the case. The case was finally decided by a Full Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice D. K. Mahajan, on 19th March, 1969.*

*Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice Jindra Lal, dated the 23rd November, 1963, passed in Civil Writ No. 994 of 1964.*

J. N. KAUSHAL, SENIOR ADVOCATE WITH ASHOK BHAN, BAHAL SINGH MALIK, AND S. P. GOYAL, ADVOCATES, for the Appellant.

PURAN CHAND AND N. L. DHINGRA, ADVOCATES, for the Respondents.

#### JUDGMENT

MEHAR SINGH, C.J.—On the death of Harnam Das, his land, situate in village Barod, in tehsil Jind of Sangrur District, was mutated one-half in the name of his widow Subhagan, respondent I, and the other half in the name of his son, Ranjit Singh. The total area of the land was 142 Bighas and 17 Biswas. So half of that, that

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is to say, a few Biswas over 71 Bighas was mutated in the name of Ranjit Singh. No partition had taken place between the mother and the son. On February, 16, 1949, Ranjit Singh sold 65 Bighas and 8 Biswas of land, out of the total holding of 142 Bighas and 17 Biswas, to Ajit Singh appellant by a registered sale deed. The area sold was both irrigated, whether by canal or well, and unirrigated. Ranjit Singh said in the sale deed that he was the sole owner of the whole land, but because of the Ruler's circular in the former Jind State with regard to the rights of widows in Hindu families, half of the land from the inheritance of his father had been mutated in the name of his mother as a widow. He further said that his half share was mortgaged with the Jind Cooperative Bank. He claimed to be in possession of the total area. Specific survey numbers were sold to Ajit Singh appellant.

(2) Sometime in 1961 proceedings for consolidation of holdings started in village Board in consequence of a notification under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948). In the course of the preparation of the scheme of consolidation on February, 5, 1964, the Mukhtar or attorney of respondent 1 raised an objection that joint *khewat* of respondent 1 be directed to be partitioned, obviously asking the Settlement Officer to make a provision in that behalf in the scheme. In paragraph 5 of the petition under Article 226 of the Constitution by respondent 1 it is clearly stated that the Settlement Officer gave notice of that objection to Ajit Singh appellant and, after hearing both the parties, ordered that the joint *khewat* of respondent 1 be partitioned and her share in the land be separated. At that stage Ajit Singh appellant said that respondent 1 was dead and her Mukhtar or attorney had no right or status to have the joint *khata* partitioned, whereupon the Settlement Officer ordered the Mukhtar or attorney of respondent 1 to produce respondent 1 within ten days before the Consolidation Officer. In paragraph 6 of the petition it is stated that respondent 1 duly appeared before the Constitution Officer on February, 18, 1964, and her statement was recorded by him. when she clearly said that she wanted her joint *khata* to be partitioned. No return to the petition of respondent 1 was filed by Ajit Singh appellant, but a return to it was filed on behalf of respondents 2 to 5, namely, the State of Punjab, the Director of Consolidation of Holdings, the Settlement Officer, Jind, and the Consolidation Officer, Jind. In that return

the facts given as above from paragraph 5 and 6 of the petition of respondent 1 are not denied. In paragraph 5 of that return it is said that Ajit Singh appellant moved an application under section 36 of East Punjab Act 50 of 1948 before the Settlement Officer praying for keeping the *khewat* joint by amending the scheme. On February, 20, 1964, the application of Ajit Singh appellant was dismissed by the Settlement Officer, copy of whose order is Annexure 'A' to respondent 1's petition. It is pointed out in that order that when the Settlement Officer visited the village on February, 5, 1964, in connection with the confirmation of the scheme of consolidation, Ajit Singh appellant raised two objections, (a) that respondent 1 was dead and her attorney was not competent to ask for partition of land, and (b) that since he had purchased specific survey numbers from the joint *khewat*, the partition will affect him adversely. He, therefore, prayed that application of respondent 1 for partition of the land be disallowed. The Settlement Officer found that respondent 1 being a widow and a weaker party had been deprived of her legitimate share in the land the best part of the land had been sold by her son Ranjit Singh to Ajit Singh, appellant. The Settlement Officer also found that respondent 1 was not residing in the village. He ordered respondent 1's attorney to produce her before the Consolidation Officer and she was duly produced before the said officer on February 18, 1964, when her statement was taken by that officer to the effect that she wanted her land partitioned. The Settlement Officer pointed out that according to the order in regard to confirmation of the scheme under section 19(2) of East Punjab Act 50 of 1948, the joint *khewat* was to be partitioned. He then referred to the application of Ajit Singh, appellant and pointed out that what this appellant at that stage urged was (i) that a question of title was involved and so the partition should not be allowed, and (ii) that he would be put to much loss because he had made substantial improvements on the land he had purchased from Ranjit Singh, co-sharer. He, therefore, sought amendment of the scheme under section 36 of East Punjab Act 50 of 1948. The Settlement Officer, then proceeded to say that he found no reason to differ from his previous order, pointing out that Ajit Singh, appellant had purchased land from a joint *khata* and his vendor, Ranjit Singh, was not competent to alienate specific survey numbers. He, however, directed that 'the possession of the vendee will be respected during partition only to the extent of his share in a particular kind of land'. He also pointed out that Ajit Singh, appellant should have known that the *khewat* was joint and

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according to law the other co-sharers could claim partition of land at any time. So he dismissed Ajit Singh, appellant's application under section 36 of East Punjab Act, 50 of 1948. Against that order, there was an application under section 42 of that Act by Ajit Singh, appellant to the Director of Consolidation of Holdings, respondent 3. After referring to the co-ownership of respondent 1 and her son, Ranjit Singh, in the total area of the land and the area sold by Ranjit Singh to Ajit Singh, appellant from the joint holding, with specific survey numbers, respondent 3 pointed out that on evaluation of the lands with respondent 1 and Ajit Singh, appellant in the course of consolidation of holdings the value of the area with respondent 1 came to 42—4 standard *kanals* and that with Ajit Singh, appellant to 178—19 standard *kanals*. The disparity is immediately apparent. Respondent 1 wanted the joint holding to be divided according to shares, obviously the shares shown in the revenue papers where she was shown as half owner of the land with her son Ranjit Singh vendor. Ajit Singh, appellant claimed to have improved the land since the date of the sale in his favour on February 16, 1949, and urged that the benefit of the improvement should not go to respondent 1. Respondent 3 then proceeded to make this order, which is the operative part of his order, dated March 28, 1964, copy Annexure 'B' to respondent 1's petition,—“Obviously this is a correct demand and we cannot allow Shrimati Subhagan (respondent 1) to have share from the value enhanced by Ajit Singh (appellant) during the period after the date of sale. (The improvement, however, has been denied by the Mukhtar of Shrimati Subhagan.) Therefore, in such a case the Consolidation Department should keep *khewats* Nos. 10, 42 and 46 (the joint land of Ajit Singh, appellant and respondent 1) joint and I, therefore, order accordingly and set aside the order, dated 20th February, 1964, passed by the Settlement Officer, Consolidation of Holdings, Sangrur.” This is the only ground on the basis of which respondent 3 interfered with the order of the Settlement Officer, respondent 4. There is a copy, at pages 40—42 of the paper-book, of the grounds in his application under section 42 of East Punjab Act 50 of 1948, by Ajit Singh, appellant before respondent 3. No return was filed to respondent 1's petition by Ajit Singh appellant. It may be that a copy of those grounds was filed with the return by respondents 2 to 5, that is to say, the Punjab State and the Consolidation Officers. In the course of arguments the learned counsel for the appellant has referred to grounds 6 and 7, out of those grounds, which read—“6. That the petitioner (Ajit Singh, appellant) has

acquired such rights in the whole land that no one is entitled to get any part of it partitioned. A question of title is involved. According to section 16-A of the Consolidation Act, the consolidation authorities have no jurisdiction to partition such a *khewat*. 7. That specific *khassra* numbers have been sold to the petitioner (Ajit Singh appellant) and since then the petitioner is the exclusive owner and in possession of these *khassra* numbers. The question of being joint with anybody does not arise at all. In this way also there is involved a question of title concerning the said *khewat*." A copy of respondent 3's order, Annexure 'B' to respondent 1's petition, of March, 28, 1964, shows that the Mukhtar or attorney of Ajit Singh appellant with counsel appeared before respondent 3. So the case of Ajit Singh appellant was argued and urged before respondent 3 by his counsel. There is not one single word in the order of respondent 3 on any of the grounds urged before him except the one on the basis of which he proceeded to make the order, that ground being the claim of Ajit Singh Appellant with regard to the improvements made by him on the land purchased from Ranjit Singh since the date of the purchase on February, 16, 1949. It was after that on May, 12, 1964, respondent 1 filed her petition under Article 226, challenging the legality and validity of respondent 3's order made on March, 28, 1964, copy Annexure 'B' to her petition. Only the State of Punjab and the three officers under the provisions of East Punjab Act 50 of 1948 made a return to that petition, but not Ajit Singh appellant. Respondent 1 urged in her petition that in the *jamabandi* or record-of-rights she was shown co-sharer of the land with Ajit Singh appellant and was entitled to partition of the same, to which the reply on the side of respondents 2 to 5 was that she could get her *khewat* partitioned if there was no question of title. Another ground taken by respondent 1 was that respondent 3 had not given any reason to set aside the order of the Settlement Officer and even the previous order of February, 5, 1964, had not been set aside, and to this the return of respondents 2 to 5 said that respondent 3 had given reasons in his order and it was merely accidental slip that an incorrect date was mentioned regarding the order of the Settlement Officer, respondent 4, which respondent 3 was setting aside. It was pointed out that in fact he was setting aside Settlement Officer's order of February, 5, 1964. To another ground on the side of respondent 1 that the order of respondent 4, the Settlement Officer, Jind, of February, 5, 1964, was perfectly legal and there was no appeal or revision against that order, the reply rendered in the return of respondents 2 to 5 was that 'the propriety and legality of the order

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was examined by the Director, Consolidation of Holdings, Punjab, and a decision on merits was made.' The return emphasised that question of title in this case was involved and that could not be adjudicated upon by the consolidation authorities under the provisions of East Punjab Act 50 of 1948. Respondent 1, according to them, should seek her remedies in a civil Court. On November 23, 1965, a learned Single Judge accepted the petition of respondent 1 and quashing the order of respondent 3 restored that of respondent 4, the Settlement Officer. The learned Judge pointed out that no co-sharer can take possession of a specific portion of land adversely affecting his co-sharer, that in partition co-sharers are to have equal areas of land, quality-wise, and that a co-sharer's right to have joint land partitioned or a provision with regard to partition made in the scheme of consolidation under section 16-A of East Punjab Act 50 of 1948 cannot be defeated by mere contention that the other co-sharer is in possession of a specific portion of land which he has improved, the exception to this being a case where question of title is involved as was held in *Ram Gopal v. The State of Punjab*. (1). The learned Judge then proceeded to rely on *Pat Ram v. The State of Punjab* (2) where it has been held that the consolidation authorities had to effect partition in accordance with the entries in the *jamabandis* and, consequently, an order directing that the partition should not take place of the joint *khata* was neither legal nor *bona fide* and had to be quashed. The learned Judge pointed out that "the decision in *Pat Ram's* case entirely covers the present petition and in this view it is clear that the Director of Consolidation had no jurisdiction to upset the order of the Settlement Officer directing the partition of the *khewats* inasmuch as in the present case no question of title is involved." It is against the judgment and order of the learned Judge that Ajit Singh appellant has come up in appeal under clause 10 of the Letters Patent and so also respondents 2 to 5 in his appeal. The appeal of Ajit Singh appellant is Letters Patent Appeal No. 354 of 1965 and that of respondents 2 to 5 in that appeal in Letters Patent Appeal No. 35 of 1966.

(3) These appeals came for hearing before Falshaw, C.J., and my learned brother Mahajan, J., on March, 24, 1966, when the same were referred to a larger Bench with this order,— "In the present

(1) 1965 P.L.R. 1102.

(2) C.W. 1641 of 1960 decided on 18th Octo. 1963.

case we were at first inclined to uphold the decision of the learned Single Judge on the ground that no question of title arose, but it is clear that there is a dispute which in a sense can be called a question of title, and as has been pointed out by the learned Advocate-General appearing on behalf of the State if the order of the Settlement Officer for the partitioning of the joint holdings according to the shares in revenue entries is upheld, Ajit Singh might be left with no remedy at all or no recourse to a civil Court in the light of the provisions of sub-section (2) of section 16-A. The question of whether one or more of joint owners of the holding of land have in some manner or other acquired rights which go beyond their rights as recorded in the revenue records is one which is constantly arising and the question is whether the Consolidation Officers should be deemed to have the powers of the revenue Court under section 117 of the Land Revenue Act to determine such questions as if they were Civil Courts or should in every case leave the parties to have their rights determined by competent civil Court, and there is also the question whether where once a decision of this kind has been made by a Consolidation Officer a party would have the right to establish his rights in civil Court in spite of the provisions of section 16-A (2)?" This is how these appeals come before this Bench.

(4) In East Punjab Act 50 of 1948, section 32 provides that "after a 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 effected by 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." It is in section 16-A that the matter of partition of joint lands during the consolidation of holdings has been dealt with and that section reads—

"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 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



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- (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 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."
- (5) The whole of Chapter IX of the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887), is not to apply to any matter of partition during the consolidation of holdings after a notification under sub-section (1) of section 14 of East Punjab Act 50 of 1948, but to that the exception is section 117 of the first-mentioned Act, of which sub-section (2) deals with the matter of procedure, and sub-section (1) provides—"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." On a question of partition of land arising, it is the initial jurisdiction of the Revenue Officer under sub-section (1) of section 117 of Punjab Act 17 of 1887 to first decide whether 'a question as to title in any of the property of which partition is sought,' is or is not involved. This is what he has to decide first. On his decision in this respect, further consequences arise. If he decides that no question of title arises, he proceeds to take proceedings for partition of the land, but if he decides that a question of title arises, then one of the two courses is open to him, either to refer the parties to an ordinary civil Court or to convert himself into a civil Court for the purpose of decision of such question of title. Section 16-A, sub-section (1), of East Punjab Act 50 of 1948, only excepts section 117 of Punjab Act 17 of 1887, taking away all other provisions relating to partition of land in Chapter IX of the Land Revenue Act from application to consolidation proceedings.

There is no such officer in East Punjab Act 50 of 1948 as a 'revenue Officer.' The only officers who appear in this Act are the Consolidation Officer and the Settlement Officer, both expressions defined respectively in clauses (a) and (h) of section 2 of that Act. It may be that a revenue officer may be appointed to those offices, but East Punjab Act 50 of 1948, does not make that a necessity. Any other person properly qualified can be appointed to those offices to answer the definition of those expressions as in clauses (a) and (h) of section 2 of that Act. As there are no revenue officers under the provisions of East Punjab Act 50 of 1948, under sub-section (1) of section 117 of Punjab Act 17 of 1887 a Consolidation Officer or a Settlement Officer cannot convert himself into a civil Court to try any question of title that he considers arises in relation to any partition of a holding or holdings that becomes necessary to be provided in the scheme of consolidation. So, the second alternative in sub-section (1) of section 117 of that Act cannot become operative while applying section 16-A of East Punjab Act 50 of 1948 to a particular scheme of consolidation. The only possible course open in such a contingency, when a Consolidation Officer or a Settlement Officer on Appeal or the authority exercising powers under section 42 of East Punjab Act 50 of 1948 reaches a decision that a question of title arises in a particular case, is to refer the parties to a civil Court to have such question decided according to sub-section (1) of section 117 of Punjab Act 17 of 1887. The second question of law in the reference order is thus answered in this manner that an officer under the provisions of East Punjab Act 50 of 1948, not being a revenue officer, cannot be deemed to be so and thus he has no power or jurisdiction to convert himself into a civil Court while deciding a question of title in the course of a dispute with regard to partition of land in consolidation of holdings.

(6) In so far as the first question of law in the reference order is concerned, the whole of section 16-A of East Punjab Act 50 of 1948 has already been reproduced above. What is stated in sub-section (2) of that section, is consequent upon partition that takes place in pursuance of sub-section (1) of that section. Now, sub-section (1) of section 16-A is clear that to matters of partition of land during the consolidation of holdings the provisions of Chapter IX of Punjab Act 17 of 1887 do not apply, to which the exception is section 117 of that Act. So the matter of partition in consolidation of holdings is subject to the provisions of section 117 of that Act; it follows that whatever is the consequence stated in sub-section (2) of section 16-A is subject

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also to the provisions of section 117 of Punjab Act 17 of 1887. No doubt according to sub-section (2) of section 16-A of East Punjab Act 50 of 1948, notwithstanding anything to the contrary contained in any law for the time being in force, when land has been partitioned pursuant to a scheme confirmed under section 20 of that Act, it is to be held by each owner or tenant, to whom it has been allotted, 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 are deemed to be extinguished. When this sub-section says that its provisions are to prevail 'notwithstanding anything to the contrary contained in any law for the time being in force,' these words do not exclude sub-section (1) of the very section of which sub-section (2) is a part, that is to say, sub-section (1) of section 16-A of East Punjab Act 50 of 1948. So the provisions of both sub-section (1) and sub-section (2) of section 16-A of that Act are subject to a decision of the question of title by a civil Court under section 117 of Punjab Act 17 of 1887.

(7) It has been held in *Jit Singh v. State of Punjab* (2) (P. C. Pandit, J.); *Ram Gopal v. The State of Punjab* (1) (Grover and Jindra Lal, JJ.), *Beg Raj v. The Additional Director, Consolidation of Holdings* (3). (Shamsher Bahadur, J.), and *Bhajan Lal v. The Punjab State*, (4) (P. C. Pandit, J.), that when a question of title arises at the time of making provision for partition of joint holdings in a scheme of consolidation, then such a provision is not to be made until the question of title is disposed of by a civil Court according to section 117 of Punjab Act 17 of 1887. This deals with a situation when consolidation proceedings are still in progress and obviously when the officers under East Punjab Act 50 of 1948 come to the decision that a question of title is involved which needs decision by a civil Court under section 117 of Punjab Act 17 of 1887. Obviously if they come to a decision to the contrary, no such situation can possibly arise and they then proceed according to the terms of section 16-A of East Punjab Act 50 of 1948. It is conceivable that even when those officers come to a conclusion that no question of title arises and make a provision for partition of joint holdings in the scheme of partition, a rightholders affected by such provision in the scheme and feeling aggrieved may go straight to a civil Court and obtain an *ad interim* order from it not giving effect to the scheme

(2) (a) C.W. 538 of 1962 decided on 11th November, 1962.

(3) 1966 Curr. L.J. (Pb.) 134.

(4) C.W. 439 of 1965 decided on 19th May, 1966.

in this respect until the decision of the question of title by a civil Court. However, no such case has been brought to the notice of this Bench during the hearing of these appeals. It is settled under the provisions of section 117 of Punjab Act 17 of 1887 that even when a question of title is raised before a Revenue Officer in partition, but, on his direction to a party to have it settled by a civil Court, the party does not go to a civil Court, and the partition proceeds, the party can still, after completion of the partition, approach a civil Court and obtain a decision on the question of title. It has been so decided in *Bachan Singh v. Madhan Singh* (5) in which the learned Judges held that when in partition proceedings before a Revenue Officer a question of title is raised, the Revenue Officer is bound, under section 117 of the Land Revenue Act, 1887, to refuse partition until such question is decided by the civil Court, or to decide it himself, and if such officer completes the partition proceedings without the question of title raised before him being settled in one of the two ways provided in the said section, then the mere fact that the partition has been completed cannot oust the jurisdiction of the civil Court to entertain a subsequent suit regarding such question of title. In *Ghulam Mohammad Shah v. Said Hussain Shah* (6) this last-mentioned case was followed and the approach prevailed. So even when an officer under East Punjab Act 50 of 1948 decides that no question of title arises before him and proceeds to make a provision for partition in a scheme of consolidation of holdings and during the course of consolidation of holdings no step is taken by a person aggrieved to file a suit to establish his title as claimed by him, he may do so, in view of section 117 of Punjab Act 17 of 1887, even afterwards and the civil Court will have jurisdiction to hear and decide the question of title. The result then is that if a right-holder endeavours to raise what he considers is a question of title at the time of the framing of the scheme of consolidation and objects to a provision in that scheme for partition so far as his holding is concerned, then, if the officers under East Punjab Act 50 of 1948 reach a conclusion that a question of title is involved, they must stay their hands and leave the question of title to be decided in a civil Court, but if, on the contrary, they come to the conclusion that a question of title does not arise before them for the matter of framing the scheme of consolidation, then an aggrieved right-holder has one of the two courses open, (a) to go immediately to a civil

(5) 61 P.R. 1897 (F.B.).

(6) A.I.R. 1937 Lah. 315.

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Court and obtain a decision on the question of title claimed by him, or; (b) if he does not pursue the first course, to go before a civil Court after the completion of the partition and obtain a decision on the question of title as claimed by him. He would be doing so under section 117 of Punjab Act 17 of 1887, which is an exception kept alive by section 16-A of East Punjab 50 of 1948, and in either of the two cases, as above, the operation of sub-section (2) of section 16-A of East Punjab Act 50 of 1948 will be subject to the decision of the civil Court.

(8) The arguments in these appeals on the side of the appellants have, in my opinion, proceeded on an entirely wrong basis as if these are appeals from a decree of a civil Court made pursuant to a suit under and in view of section 117 of Punjab Act 17 of 1887. This approach is, to my mind, basically wrong, for obviously the proceedings out of which these appeals have arisen are not proceedings in the nature of an appeal from any decree of a civil Court under or in view of the provisions of section 117 of Punjab Act 17 of 1887. These appeals have arisen in writ proceedings under Article 226 of the Constitution and it is settled beyond the pail of controversy that such proceedings are not in the nature of an appeal from the order or orders of authorities below. The learned counsel for the appellants has urged that a question of title arises in these appeals in this manner. His first contention is that respondent 1 had abandoned her holding in the particular village, but this was never the case of Ajit Singh appellant before any of the consolidation authorities under the provisions of East Punjab Act 50 of 1948 and not even before the learned Single Judge. Abandonment is apparently a question of fact and a question like this cannot possibly be raised in appeals of the present type under clause 10 of the Letters Patent. It has next been urged by the learned counsel that Ajit Singh appellant having, since the purchase of land by him, made improvements in the land purchased, his claim to compensation for improvements is a question of title. Of the cases on which the learned counsel has relied to support this approach, *Dewa Singh v. Mst. Jawali* (7), and *Mohommada v. Jhanda* (8), were cases in which claim to compensation was based upon a contract, and no such thing appears anywhere in regard to the facts of the present case. In

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(7) 39 P.R. 1892.

(8) A.I.R. 1931 Lah. 654.

*Muzaffar Ali v. Ghazanfar Ali* (9), the dispute between the brothers was whether the garden came by inheritance to both or whether it had been planted only by one, and it is obvious that no such or similar matter arises in the present appeals. In *Devi Dial v. Ahmad Khan* (10), the question was whether according to the *Wajib-ul-arz* a garden planted by a person was in partition to be allotted to him or not and the learned Judges held that this did not raise a question of title. The last case in this respect on which reliance is placed by the learned counsel for the appellant in *Ilahi v. Dadu* (11), but in that case the Revenue Extra Assistant Commissioner in partition proceedings made an order that a particular party will be entitled to compensation for improvements and further said that they will have to make a separate application for it. So the persons concerned brought a suit for recovery of a defined sum as compensation in the Revenue Courts and the suit was treated by the Revenue Courts as if it was a suit for rent. The learned Financial Commissioner held that the suit was not one for rent and a suit for such a claim would lie in a Civil Court. Apparently, if a claim is filed for a sum of money as compensation due, such a suit is to be tried by a Civil Court. No such question arises in the present case. Thus not one of the cases upon which reliance has been placed by the learned counsel for the appellants supports the proposition urged by him that when compensation for improvements is claimed during partition proceedings, that raises a question of title which is triably by a Civil Court alone. A decision of the Financial Commissioner reported as *Salig Ram v. Badhawa Mal* (12), is rather to the contrary and the learned Financial Commissioner held that unless in partition proceedings the party making application for partition agrees to pay fair compensation for improvements to other parties who had made improvements, it was open to a Revenue Officer to refuse partition. The learned Financial Commissioner directed an enquiry into the cost of improvements claimed, with a further direction that the party making the application should pay the cost of improvement and on his doing so he shall be entitled to obtain partition of his share. This case clearly decides that such a question is a question for the authorities carrying out partition consequent upon an application for partition by a co-sharer.

(9) A.I.R. 1935 Lah. 175.

(10) 4 P.R. 1908.

(11) 1902 P.L.R. 289.

(12) 3 P.R. 1886.

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(9) The last aspect of the matter that has been urged by the learned counsel for the appellants is that Ajit Singh appellant claims title to the land purchased by him by reason of adverse possession. The learned counsel has stressed that he was a stranger, he purchased defined survey numbers from a co-sharer, namely, Ranjit Singh, and ever since the purchase of the same he has been in exclusive possession of the land. In this way the learned counsel has urged that Ajit Singh appellant has acquired title to the land in his possession by prescription. He has relied upon *T.P.R. Palania Pillai v. Amjath Ibrahim Rowther* (13), in which, at page 625, the learned Chief Justice observed that "When one of several co-sharers lets into possession a stranger who proceeds to cultivate the land for his own benefit the other co-sharers must, unless they deliberately close their eyes, know of what is going on, but they are so regardless of their own interests they must take the consequences." The learned counsel has stressed that the learned Judges, after review of cases on the subject made the observation, as has been reproduced above, and on the basis of that observation Ajit Singh, appellant has completed his title by adverse possession for prescribed time so far as the land purchased by him is concerned. The facts in *Ghulam Nabi v. Umar Bakhsh* (14), were somewhat exactly similar to the present case. A co-sharer had sold defined survey numbers to the vendee, who then claimed title to those survey numbers excluding the other co-sharers on the basis of adverse possession. Tek Chand, J., who delivered the judgment of the Division Bench, observed thus—

- A. "In law uninterrupted sole possession of one co-sharer of a part of the joint property cannot, by itself and without more, amount to ouster of the others: (1912) A.C. 230 and 64 P.R. 1918. In such circumstances the possession of one co-owner is presumed to be the possession of all and it is only when a co-sharer in assertion of a hostile title does a hostile overt act that the statute begins to run against the other co-sharer.
- B. Counsel for the plaintiffs-respondents admitted that this is so, but he contends that this rule does not hold good as between the transferee from a co-sharer and the other co-sharers. This statement of the law, however, is not

(13) A.I.R. 1942 Mad. 622 (F.B.).

(14) A.I.R. 1941 Lah. 307.

true in every case. If the transferring co-sharer, claiming to be the exclusive owner, purports to transfer the property as belonging to him alone, this will certainly be an overt act hostile to the other co-sharers and if the transferee continues in sole possession for more than the statutory period, without admitting the joint character of the property, he will, of course, acquire a prescriptive title.

- C. But if the transfer purports to be of a part of the joint property and there is denial of the title of other co-sharers, the transferee steps into the shoes of the transferring co-sharer and his sole possession for whatever length of time will not be adverse against the other co-sharers."

(10) The distinction thus drawn by the learned Judge in the three situations, as detailed above, has not been kept in view in the Madras Full Bench case and *Ghulam Nabi's* case has held the field in this Court throughout. It states the position of law on the subject correctly and accurately and the observations of the learned Judges in *Ghulam Nabi's* case are endorsed. The reply on the side of respondent 1, is that it is proposition C as in *Ghulam Nabi's* that applies to the facts of the present case. Ranjit Singh sold less than his half share of the joint holding to Ajit Singh, appellant. He sold specific survey numbers and delivered possession of the same to this appellant. So he sold a part of his share in the joint holding. The learned counsel has further stressed with reference to the recitals in the sale-deed, already reproduced above, that Ranjit Singh, did not claim exclusive ownership of what he was selling, rather he explained in detail that according to the circular of the Ruler of former Jind State, with regard to the rights of inheritance of widows, the inheritance of his father had half been mutated in the name of respondent 1. So, according to the learned counsel, instead of asserting exclusive ownership, Ranjit Singh, admitted and pointedly admitted that his mother was a co-sharer with him of the land he was selling, though he was in separate possession of that land. The learned counsel has thus stressed that on the facts the case is covered by proposition C in *Ghulam Nabi's* case and no question of title arises in the present case. The learned counsel for the appellants has also relied on the observations of the learned Judges in the referring order that they were of the opinion that on



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the facts of the present case in a way a question of title arises, but the learned Judges referred the whole of the case to a larger Bench and not only the two questions of law which were stated at the end of that order. Now, if the argument of the learned counsel for the appellants, to the effect that on the facts of the present appeals a question of title arises was to be accepted and a decision in this respect given, the effect of that would be to by-pass the provisions of section 117 of Punjab Act, 17 of 1887. It would mean that a party can ignore the provisions of law in that section and, without approaching a Civil Court for decision of a question of title, it can obtain decision on the same question in a petition under Article 226 of the Constitution. It has, however, not been explained why this novelty should be permitted to be introduced and why the parties be not required to proceed according to law, that is to say, according to section 117 of Punjab Act 17 of 1887. If the contention of the learned counsel for the appellants is accepted and a decision on the question of title is given here, even on the question whether or not such a question arises, then the party in whose favour that decision is not cannot have recourse to section 117 of Punjab Act, 17 of 1887. If in spite of such a decision it does have recourse to that provision it would be prejudiced in the trial of its suit. So, in my opinion these are not proper proceedings in which matters that are to be agitated according to section 117 of Punjab Act, 17 of 1887 should be permitted to be raised. The statute has provided a specific forum for dealing with specific questions and there is no reason why the parties should not have recourse to that forum. If they do so, the case may any how come to this Court in first or second appeal, when it will be considered from an entirely different angle. So no decision can be given in these appeals, arising as they do out of writ proceedings, whether on the facts of the case a question of title does or does not arise. It has already been stated that in the first instance it is the jurisdiction of the consolidation officers under the provisions of East Punjab Act, 50 of 1946 to decide whether or not a provision for partition of joint holdings be made in a scheme of consolidation in the wake of section 16-A of that Act. If they come to the conclusion that no question of title arises, they may proceed to make such a provision, but, if on the contrary, their conclusion is that a question of title does arise, they must hold their hands and leave the aggrieved party to have recourse to section 117 of Punjab Act 17 of 1887. The initial decision lies with them. It is apparent that such a decision is not a final decision, for it is subject to the decision of

a Civil Court according to section 117 of the said Act. Even though it is not a final decision, it still is a decision by the officers under the provisions of East Punjab Act, 50 of 1948 so as to decide initially the question of jurisdiction with them to make a provision with regard to partition of joint holding in the scheme of consolidation or not. In proceedings under Article 226 what is to be seen is whether the orders made by the authorities under the provisions of East Punjab Act, 50 of 1948 were within jurisdiction and according to law. There is, as already pointed out no appeal to this Court from those orders under Article 226. Consequently in these appeals what is to be seen is whether the order made by respondent 3, the Director of Consolidation of Holdings, Annexure 'B' to the petition of respondent 1, of March 28, 1964, can be interfered with under Article 226?

(11) The order of respondent 4, the Settlement Officer, Annexure 'A' to respondent 1's petition, of February 20, 1964, was obviously an order made under section 36 of East Punjab Act, 50 of 1948. It has been so stated in the return of respondents 2 to 5. It was an order made within jurisdiction. Respondent 3 could only interfere with that order of respondent 4 in the terms of section 42 of that Act on two grounds, (a) for the purpose of seeing its legality, or (b) for the purpose of seeing its propriety. Now, so far as legality of the order of respondent 4 is concerned, having regard to proposition C, as reproduced above, from *Ghulam Nabi's case*, there was no possible want of legality in his order. Respondent 3 has not pointed out in his own order any illegality or anything contrary to law in the order of respondent 4. So, as a matter of fact, respondent 3 has not interfered with the order of respondent 4 on the ground of some question of legality or otherwise in that order. The only matter that remains for consideration is the propriety of his interference with the order of respondent 4. Of course, as has been shown above, in the express words of section 42, respondent 3 had jurisdiction to look into the propriety of the order of respondent 4, copy Annexure 'A' to respondent 1's petition. What has then respondent 3 done in this respect? All that he has done is to say that because of improvements claimed by Ajit Singh, appellant in the land purchased by him from Ranjit Singh, co-sharer, partition cannot be permitted. But this cannot, in view of the decision in *Salig Ram's case*, be said to be contrary to propriety so far as the order of respondent 4 is concerned, when that order allowed partition of the joint holding between respondent 1 and

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Ajit Singh, appellant, maintaining possession of Ajit Singh, appellant as far as the law and equity of partition of land permitted. The only impropriety or the only thing contrary to propriety, which respondent 3 relied upon so far as the order of respondent 4 is concerned, is the matter of compensation claimed by Ajit Singh, appellant for alleged improvements made by him on the land purchased from Ranjit Singh, co-sharer. But, as pointed out in *Salig Ram's case* that is a matter which could have been taken cognizance of in the matter of partition and enquiry made with regard to the value or cost of improvements so as to compensate Ajit Singh, appellant for the same. This was not a reason on the basis of which out-right partition could be refused, unless perhaps in the event of respondent 1 totally refusing to associate herself with an enquiry in regard to the existence of any improvements and, if there were any improvements, with regard to the cost or value of the same. But no such situation arose either before respondent 4 or before respondent 3. There was, therefore, nothing contrary to propriety, upon the basis of which respondent 3 proceeded to interfere with the order of respondent 4. This means that respondent 3 interfered with the order of respondent 4 without regard to legality or propriety of the same as is required by section 42 of East Punjab Act, 50 of 1949, and in doing so he made an order beyond his power and jurisdiction under that section. It is this approach which justifies interference of this Court under Article 226 with the order, copy Annexure 'B' to respondent 1's petition, of respondent 3, and to proceed to set aside the same, leaving the order of respondent 4 operative, which order, as has already been stated, is still subject to litigation between the parties in the terms of and in accordance with section 117 of Punjab Act, 17 of 1887. In this approach, and in my opinion this is the only approach that can be made to a case like the present in these appeals, there is no possible room for interference with the order of the learned Single Judge, though it proceeds on a somewhat different basis.

(12) So these appeals are dismissed with costs, counsel's fee in each appeal being Rs. 100/-.

HARBANS SINGH, J.—I agree.

D. K. MAHAJAN, J.—I agree.

K.S.K.