

Mohinder Kaur v. Sardara Singh (Dhillon, J.)

Munshi Ram, his right hand got entangled between the moving belt and the pulley and the result of mutilation of little finger followed. The trial Court has on consideration of this report and other evidence led in the case come to the conclusion that it was as a result of negligence on the part of the management in not providing for fencing that Munshi Ram met the accident and lost his little finger. That finding is a finding of fact. By virtue of section 82(2) of the Act, a finding of fact arrived at by the trial Court is final. According to sub-section (2) of section 82, no appeal can lie in the High Court, if no substantial question of law is involved in the case. This finding of fact as to whether there was negligence on the part of management in not providing fencing does not involve consideration of any question of law, much less a substantial question of law. The finding of fact arrived at by the trial Court that the accident occurred because of negligence on the part of management in their failure to provide for fencing around the area where the belt moved, is a finding which cannot be re-agitated in the present appeal. Thus, the point that the management could not be held guilty of any act of negligence on their part has no force.

No other point has been argued.

For the reasons recorded above, I disallow the appeal with costs and affirm the order of the Court below.

B. S. G.

REVISIONAL CRIMINAL

*Before Bhopinder Singh Dhillon, J.*

MOHINDER KAUR,—*Petitioner.*

*versus*

SARDARA SINGH,—*Respondent.*

**Criminal Revision No. 355 of 1971.**

May 26, 1971.

*Code of Criminal Procedure (Act No. V of 1898)—Section 195—Essential Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 40—Settlement Officer—Whether a "Court" within the meaning of section 195.*

*Held*, that a Settlement Officer appointed under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, no doubt decides the disputes between the contesting parties regarding the consolidation of holdings under section 40 of the Act, he can summon any person if he feels the necessity of doing so and before he disposes of the appeals or the objections against the scheme, he is to hear the parties. But these factors alone are not decisive in order to come to a conclusion that the Settlement Officer is a Court within the meaning of Section 195 of the Code of Criminal Procedure. The parties before the Settlement Officer have no right to adduce evidence as a matter of course whereas in order to come to a conclusion whether a particular authority is a Court or not, it is a dominant consideration whether the parties as a matter of right can adduce evidence before the said authority or not. Under section 40 of the Act, he can only summon the persons if he so desires. In a way the disposal made by the Settlement Officer of the matters before him is in a summary manner as complete discretion is left with him and no right is given to the parties to claim the production of evidence as a matter of right. Furthermore the Settlement Officer is a creature of the Act with a view to consolidate the holdings of the right-holders. The moment consolidation operations of a particular estate are finished and the process gone into, the Settlement Officer becomes *functus officio*. Hence a Settlement Officer appointed under the Act is not a "Court" within the meaning of Section 195 of Code of Criminal Procedure.

(Para 8)

*Petition under Section 439 of the Code of Criminal Procedure for revision of the order of Shri Raghbir Singh Gupta, Additional Sessions Judge, Ambala dated the 16th January, 1971 reversing that of the Chief Judicial Magistrate 1st Class, Ambala dated the 10th June, 1970 accepting the revision petition and setting aside the order under which these respondents have been discharged by the learned Chief Judicial Magistrate and directing the learned Chief Judicial Magistrate to proceed with the complaint and decide the same on merits.*

*Proceedings:—Under Sections 193, 196, 199, 209, 420, 427, 109 Indian Penal Code.*

P. S. MANN, ADVOCATE, for the petitioner.

H. S. AWASTHY, ADVOCATE, for respondent No. 1.

NAUBAT SINGH, DISTRICT ATTORNEY, HARYANA, for respondent No. 2.

#### JUDGMENT.

DHILLON, J—(1) A complaint under sections 193, 196, 199, 209; 420, 427 and 109 of the Indian Penal Code, was filed against the petitioner Mohinder Kaur and two others before the learned Judicial Magistrate 1st Class, Ambala. The Chief Judicial Magistrate

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dismissed the complaint on 19th June, 1970 on the ground that the Settlement Officer before whom the false documents are alleged to have been used by the accused persons had not filed the complaint under section 195 of the Code of Criminal Procedure, therefore, the complaint was maintainable. The complainant went in revision before the learned Additional Sessions Judge, Ambala. The learned Additional Sessions Judge, Ambala, vide his order dated 16th January, 1971 accepted the revision petition and directed the learned Chief Judicial Magistrate to proceed with the complaint and decide the same on merits. Smt. Mohinder Kaur petitioner approached this Court through this revision petition against the order of the learned Additional Sessions Judge, Ambala; dated 16th January, 1971.

(2) I have heard Mr. P. S. Mann, the learned counsel for the petitioner, Mr. H. S. Awasthy, the learned counsel for respondent No. 1, and Mr. Naubat Singh, the learned District Attorney for the State of Haryana, at considerable length, and am of the opinion that there is no merit in this petition. Mr. Mann, the learned counsel for the petitioner vehemently contended the following two points before me :—

- (1) That the Settlement Officer under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is a Court within the meaning of section 195 of the Code of Criminal Procedure, and, therefore, the learned Settlement Officer in whose Court the offence is alleged to have been committed, having not filed the complaint, the private parties are not entitled to file the complaint and the same has been rightly dismissed by the learned Chief Judicial Magistrate.
- (2) That the learned Additional Sessions Judge had no power to quash the order of the learned Chief Judicial Magistrate under section 436 of the Code of Criminal Procedure, and at the most the learned Additional Sessions Judge should have made a reference to this Court and it was this Court which could set aside the order of the learned Chief Judicial Magistrate.
- (3) As regards the point No. 1, the contention of the learned counsel for the petitioner is that the Settlement Officer is an authority created by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, who is to decide the claim of the contending parties regarding the dispute in consolidation proceedings.

The further contention is that according to the provisions of section 40 of the Act, the Settlement Officer is empowered to summon any person whose attendance he considers necessary for the purpose of any business before him as the Settlement Officer and the said person is enjoined by law to speak truth and is bound to appear before him. He, therefore, contends that the Settlement Officer, whose orders are also determinative and are subject to appeal before the higher hierarchy as envisaged under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act is certainly a Court and the provisions of section 195 of the Code of Criminal Procedure would be applicable.

(4) The learned counsel has relied on the Observations of these Lordships of the Supreme Court in a case reported in *Virender Kumar Satyawadi v. The State of Punjab*, (1), which are to the following effect:—

“It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.”

(5) It may be mentioned that in that case the Supreme Court came to the conclusion that the Returning Officer deciding on the validity of nomination paper under section 36(2) of the Representation of Peoples Act, is not a Court.

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(1) A.L.R. 1956 S.C. 153.

(6) The learned counsel then relies on a Full Bench authority of this Court reported in *Smt. Vidya Devi v. Firm Madan Lal Prem Kumar* (2), wherein it was held by the Full Bench that the Rent Controller and the Appellate Authority under the East Punjab Urban Rent Restriction Act (III of 1949) is a Court within the meaning of section 195 of the Code of Criminal Procedure. The learned counsel contends that keeping in view the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, the Settlement Officer is a Court within the meaning of section 195 of the Code of Criminal Procedure for the reason that the said officer is empowered to pass binding orders and the same can be passed after affording an opportunity of being heard to the parties in dispute. He is empowered to settle the disputes of civil nature between the parties and is empowered under section 40 of the Act to summon the witnesses if he so likes.

(7) On the other hand, Mr. Awasthy, the learned counsel for respondent No. 1, contends that in a case reported in *Mohammad Rafiq Khan v. B. M. Singh and others*, (3), the precise question before the Allahabad High Court was whether the Settlement Officer under the U.P. Consolidation of Holdings Act was a Court within the meaning of section 480 of the Code of Criminal Procedure, and the said Court after having examined the powers of the Settlement Officer under the U.P. Consolidation of Holdings Act came to the conclusion that the Settlement Officer was not a Revenue Court and, therefore, he had no power under section 480 of the Code of Criminal Procedure to take proceedings against the petitioner and punish him for an offence described in section 228 of the Indian Penal Code. The learned counsel also relies on a case reported in *Ram Sarup Daya Sukh v. The State and another*, (4), wherein a Single Judge of this Court came to the conclusion that a Settlement Officer under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, is not a Court within the meaning of section 480 of the Code of Criminal Procedure. The learned counsel further contends that the Settlement Officer is a sort of Agent of the State Government who has been invested with certain administrative powers in order to achieve the object of consolidation. The moment consoli-

(2) I.L.R. (1971) I Pb. & Hr. 112=1971 P.L.R. 61.

(3) A.I.R. 1967 All. 88.

(4) A.I.R. 1965 Pb. 454.

dation operations are finished, the further existence of the Settlement Officer and the other Officers under the Act is no more in existence. For that purpose, the learned counsel relies on an authority reported in *Akshoy Kumar Roy v. Lal Mohal Mazumder*, (5), wherein it was held that the competent Authority under Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act, 1951 was not a Court within the meaning of section 195(2) of the Code of Criminal Procedure. In that case it was held that the Competent Authority was not set up as an independent Judicial Tribunal for the purposes of administering justice according to ordinary judicial principle but for the purpose of putting into effect the policy of a department of the Government. The learned counsel also relies on the observations of the Court in a case reported in *Jagannath Prasad and another v. State of Uttar Pradesh* (6), wherein the Sales Tax Officer was held not to be a Court by their Lordships of the Supreme Court. The learned counsel further contends that in a case reported in *Prakash Singh v. Smt. Subaghan and others*, (7), it was held by this Court that the Consolidation Officer is not a revenue officer within the meaning of the Land Revenue Act. The learned counsel for the respondent No. 1 further relies on a case reported in *The State of Punjab etc. v. Sham Kaur etc.*, (8), wherein a Division Bench of this Court took the view that the revenue officer acting and deciding the matter in the course of Mutation proceedings under the Punjab Land Revenue Act is not a Court within the meaning of section 195(1) (c) of the Act.

(8) After examining the contentions of the learned counsel for the parties and going through the authorities cited by them, I am of the opinion that the authorities reported in *Ram Sarup's case*, (4), (supra) and *Mohammad Rafiq Khan's case* (3), (supra) are not of any help to the respondents for the simple reason that the language of sections 480 and 195 of the Code of Criminal Procedure is quite different. Section 480 clearly defines the Court in terms of Civil Court, Revenue Court and Criminal Court; whereas section 195 provides that the Court would include Revenue Court, Civil Court and Criminal Court. The said definition is inclusive. Similar view was taken by the Full Bench of this Court in *Smt. Vidya Devi's case* (2)

(5) A.I.R. 1969 Cal. 161.

(6) A.I.R. 1963 S.C. 416.

(7) 1969 P.L.R. 504.

(8) 1967 Curr. L.J. 405.

(*supra*), relied upon by the learned counsel for the petitioner. The question which has to be determined in this case is whether keeping in view the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, can it be said that the Settlement Officer is a Court within the meaning of section 195 of the Code of Criminal Procedure? No doubt, the Settlement Officer decides the disputes between the contesting parties regarding the consolidation of holdings under section 40 of the Act, he can summon any person if he feels the necessity of doing so and before he disposes of the appeals or the objections against the scheme, he is to hear the parties. But these factors alone are not decisive in order to come to a conclusion that the Settlement Officer is a Court within the meaning of section 195 of the Code of Criminal Procedure. It has to be noted that the parties before the Settlement Officer have no right to adduce evidence as a matter of course whereas in order to come to a conclusion whether a particular authority is a Court or not, it is a dominant consideration whether the parties as a matter of right can adduce evidence before the said authority or not. Under section 40 of the Act, he can only summon the persons if he so desires. In a way the disposal made by the Settlement Officer of the matters before him is in a summary manner as complete discretion is left with him and no right is given to the parties to claim the production of evidence as a matter of right. Furthermore, it has to be seen that the Settlement Officer is a creature of the Act with a view to consolidate the holdings of the right-holders. The moment consolidation operations of a particular estate are finished and the process gone into, the Settlement Officer becomes *functus officio*. As regards the authority reported in *Smt. Vidya Devi's case* (2) (*supra*), it may be mentioned that in that case the Full Bench of this Court held that the Rent Controller and the Appellate Authority are the Courts within the meaning of section 195 of the Code of Criminal Procedure. The Rent Controller and the Appellate Authority decide the civil disputes between the parties as before the enactment of the East Punjab Urban, Rent Restriction Act, the disputes under the domain of the authorities were decided by the Civil Courts. Moreover, a revision petition against the orders of these authorities lies to this Court and there are a number of other considerations which prevailed with the Full Bench of this Court to come to the conclusion that the said Authorities are Courts within the meaning of section 195 of the Code of Criminal Procedure. All these elements are missing in the case of the Settlement Officer. The authority reported in *Virindar*

*Kumar Satyawadi's case (1), (supra)* only lays down some of the broad guidelines which should be kept in view for coming to the conclusion whether a particular authority is a Court or not. As I have already pointed out that since the parties have no right to produce evidence before the Settlement Officer, and he is creation of the Statute for the object of consolidation of holdings, it cannot be said that the Settlement Officer is a Court within the meaning of section 195 of the Code of Criminal Procedure. I, therefore, hold that the Settlement Officer is not a Court within the meaning of section 195 of the Code of Criminal Procedure.

(9) As far as the second contention of the learned counsel for the petitioner that the learned Additional Sessions Judge had no power to set aside the order of the learned trial Magistrate and order further enquiry is concerned, in my opinion, even if it is held in favour of the petitioner, the same would not affect the ultimate decision of this petition for the simple reason that I having come to the conclusion that the Settlement Officer under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, is not a Court within the meaning of section 195 of the Code of Criminal Procedure, the order of the learned trial Magistrate is clearly without jurisdiction and the matter being before me in revision, I am bound to set aside the order of the learned trial Magistrate. Since I have found that the order of the learned Magistrate is without jurisdiction, the said order is quashed and the learned trial Magistrate is directed to proceed with the complaint on merits. The petition stands dismissed.

N.K.S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SEWA RAM SINGAL—Petitioner.

versus

The Punjabi University, Patiala, etc.—Respondents.

Civil Writ No. 1208 of 1971.

May 26, 1971.

*Punjabi University, Patiala, Calendar, Volume II, 1966-67 Edition—Rules 27(A) and 27(B)—Final examination for degree of Bachelor of*