

Makhan Singh v. Gian Chand, etc. (A. S. Bains, J.)

accounted for the income of Rs. 41,341/- for the assessment year 1965-66 and Rs. 9,785/- for the assessment year 1966-67 in the returns filed on behalf of the Hindu Undivided Family and the assessee did pay the income-tax on the said income in the hands of the Hindu Undivided Family.

(9) For the reasons recorded above, the view taken by the Income Tax Appellate Tribunal, in accepting the appeal is unexceptionable. The question referred to us, is therefore, answered in affirmative. There will be no order as to costs.

H. S. B.

Before A. S. Bains, J.

MAKHAN SINGH—(Plaintiff) Petitioner.

versus

GIAN CHAND and another,—(Defendant)-Respondents.

Civil Revision No. 318 of 1978.

October 5, 1978.

*Code of Civil Procedure (V of 1908)—Sections 2 and 115—Partition Act (IV of 1893)—Sections 2 and 8—Order passed under section 2 of the Partition Act—Whether a decree under the Code—Revision petition against such order—Whether maintainable.*

*Held*, that from a reading of section 8 of the Partition Act, 1893, it is clear that any order passed under section 2 of the said Act shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure 1908 and accordingly such an order will be appealable. No revision under section 115 of the Code will, therefore lie against such an order.

(Para 2).

*Petition under section 115 of Act V of 1908 for the revision of the order of the court of Shri Bhagwan Singh, Sub Judge, Amritsar, dated 25th January, 1978 directing the parties to purchase the property in question by offering bids and either of the 2 co-sharers can purchase the property by giving higher bid as required by section 2 of the Partition Act, 1893.*

H. L. Sarin, Advocate, for the Petitioner.

K. L. Kapur, Advocate, for the Respondents.

## JUDGMENT

A. S. Bains, J. (oral)

(1) Makhan Singh plaintiff, has filed this petition against the impugned order,—*vide* which the trial Court held that the property in dispute is not partible. The preliminary decree was passed by the Sub-Judge on 27th November, 1974, declaring the plaintiff and the defendant No. 1 to be the owners in equal shares and a local Commissioner was appointed who submitted her report. Objections were raised by both the parties against the report of the local Commissioner. Accordingly, the report was set aside and another local Commissioner was appointed. He visited the site twice and made his report. The present petitioner raised objections alleging that the property in question is partible and the report of the local Commissioner be modified to this extent. The learned trial Court after considering the evidence and the report of the local Commissioner held that the property is not partible and both the parties were directed to purchase property in question by offering bids and either of the two co-sharers can purchase property by giving higher bid as required by section 2 of the Partition Act.

(2) Mr. Kapur, learned counsel for the respondent has raised preliminary objection that the present petition is not competent as appeal lies against order as such order is a decree within the meaning of section 2 of the Code of Civil Procedure. I find merit in what Mr. Kapur says. The order of the learned Sub-Judge is under section 2 of the Partition Act and the same is deemed to be a decree under section 2 of the Code of Civil Procedure as laid down in section 8 of the Partition Act which is in the following terms:—

“Any order for sale made by the Court under section 2, 3, or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.”

Perusal of this section shows that the order under section 2 of the Act shall be deemed to be a decree within the meaning of section 2 Civil Procedure Code, and since it is a decree within the meaning of section 2, Civil Procedure Code, it is appealable to the District Judge. In *Rashbehari Dutta and others v. Panchanan De and others*, (1), it was

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(1) A.I.R. 1967 Calcutta 627.

Balbir Kaur Virk v. Secretary, Education Department, etc.  
(C. S. Tiwana, J.)

held by their Lordships that revision petition against an order allowing the prayer of the opposite parties for sale of the disputed properties under section 2 of the Partition Act is not maintainable. No other point is urged.

(3) For the reasons recorded above, this petition fails and is dismissed. There will be no order as to costs.

H. S. B.

Before C. S. Tiwana, J.

BALBIR KAUR VIRK—*Petitioner.*

*versus*

SECRETARY EDUCATION DEPARTMENT and others—*Respondents.*

*Civil Writ Petition No. 1563 of 1978*

October 9, 1978.

*Constitution of India 1950—Article 226—Punjab Affiliated Colleges (Security of Service of Employees) Act (23 of 1974)—Sections 3 and 4—Private College affiliated to a University receiving grants in aid from the Government—Whether a public institution—Writ of mandamus against such college—Whether maintainable—Impleading of the members of Managing Committee—Whether necessary.*

*Held*, that a private college is a public institution if it is affiliated to a University and is receiving grants in aid. The Managing Committee of the College is, however, a private body in relation to the performance of those functions which are outside the scope of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. However, in relation to those functions which are performed in pursuance of sections 3 and 4 of the Act it could be deemed to be acting in its public capacity. Thus, if the circumstances so permit, a writ could be issued to the Managing Committee of such a College so as to obtain compliance of the statutory provisions and any action taken by it in derogation of the provisions of the Act in terminating the service of a employee could be set aside. (Para 8).

*Held*, that a private college by itself cannot be made a party to a writ petition under Article 226 of the Constitution of India 1950. A