

*Before Permod Kohli, J.*

**LATAF ALI KHAN AND OTHERS,—Appellants**

*versus*

**JAI CHAND AND OTHERS,—Respondents**

R.S.A. No. 1898 of 1981

19th March, 2008

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948—S. 44—Jurisdiction—Dispute regarding right of plaintiffs as owners of disputed land not reserved for common purposes and determination of their share—Whether Civil Court has jurisdiction to determine question of title—Held, yes—Such a dispute does not come within the purview of S. 44 of 1948 Act—Judgments and decrees of Courts below non-suiting appellants for want of jurisdiction of Civil Court set aside being not sustainable in law—Trial Court finding plaintiffs owners of disputed land and also determining their share—Ist Appellate Court also affirming findings of trial Court—Whether plaintiffs are entitled to possession of specified parcel of land—Held, no—Remedy is by seeking partition before competent authority—Appeal partly allowed, judgments and decrees of Courts below set aside while declining relief of possession.*

*Held*, that from the bare reading of Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, it is apparent that there is no absolute bar for the Civil Court to entertain all suits. The bar is confined to the matters in which the State Government or any officer under the Act is empowered to determine, decide or dispose of. In the present case, neither there is any dispute regarding the formulation of scheme, reservation of land, vesting of land in Panchayat nor any other related matter as prescribed in relevant provisions of the Act, 1948. The dispute simplicitor is right of plaintiffs as owners and determination of their share and possession to be delivered to them if they ultimately succeed. None of the reliefs claimed in the suit fall within the purview of the relevant provisions of 1948

Act and thus, the embargo created under Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 is not attracted in the present case. Thus, judgments and decrees of both the Courts non-suiting the appellants for want of jurisdiction of Civil Court are not sustainable in law.

(Paras 6 & 8)

*Further held*, that both the Courts below have not disputed the title of the plaintiff-appellants. The trial Court has returned a categorical finding on the basis of the revenue record that plaintiffs are owners along with others and their share has been determined as 66 kanals 6 marlas. This finding of fact has not been disturbed by the Lower Appellate Court rather this finding seems to have been affirmed. The Lower Appellate Court non-suited the plaintiff-appellants only on the question of jurisdiction of Civil Court which part of the judgment has already been set aside. Now the question is whether the plaintiffs are entitled to possession of specified parcel of the land. The simple answer to this is "no". Definitely the plaintiffs have the share to the extent of 66 kanals 6 marlas in the joint holdings of 238 kanals 16 marlas along with other owners. They cannot ask for possession for specified parcel of the land under law. The remedy of the plaintiffs is to seek partition before the competent authority. Admittedly, no such relief has been sought in the present suit/appeal. Therefore, I decline the relief so far the possession is concerned. However, the plaintiffs are at liberty to seek remedy before the competent authority/forum.

(Para 9)

D.S. Bali, Senior Advocate with Dharamvir Gupta, Advocate  
*for the appellants.*

*None for the respondents.*

**PERMOD KOHLI, J. (ORAL)**

(1) Unsuccessful plaintiffs before the Courts below have come up in appeal before this Court for setting aside the judgments and decrees impugned herein. Respondents have chosen not to appear. At the time of admission of this appeal, no substantial question of law was

framed or even projected in the Memo of Appeal. After going through the record, I am of the considered view that following question of law arises in the present appeal :—

“Whether land not reserved for any common purposes during the consolidation can be retained by the owners thereof and the plaintiffs are entitled to proportionate share therein ?”

(2) Plaintiff, appellants herein filed a suit for declaration that they are owners of 66 kanals 6 marlas as of 61346/223176 share of the agricultural land measuring 238 kanals 16 marlas comprised in Khewat No. 210, Khatuni Nos. 273 to 279. It is alleged that the land in question is the joint property of Mustraka Malkan and other proprietors and the defendants Nos. 18 to 24 are in unauthorised possession thereof. It is further alleged that at the time of consolidation of holdings the total land of village Mochiwali, Tehsil and District Fatehabad was 11158 kanals 10 marlas and out of that plaintiffs were owners to the extent of 3068 kanals 6 marlas. During the consolidation, cut was imposed on the land of the proprietors according to their holdings for the common purposes of the village and after meeting the requirement for the common purposes an area measuring 238 kanals 16 marlas was left, which was required to be distributed to the owners. According to the plaintiffs they are entitled to 66 kanals 6 marlas out of total left over land measuring 238 kanals 16 marlas. It is further stated that on 4th September, 1978 after obtaining the copies of revenue record, the plaintiffs came to know that defendants Nos. 18 to 24 have been given the aforesaid land by the Gram Panchayat, who are stated to be in unauthorised occupation of the property. Defendants Nos. 1, 2, 4, 5, 7, 8, 12, 14, 15, 18, 20 and 24 filed their written statement and admitted the allegations in the plaint. However, the suit was contested by Gram Panchayat defendant No. 25 and rest of the defendants chose not to appear and were set *ex parte*. The defendants also challenged the jurisdiction of civil court to entertain the suit and grant the relief. Regarding the possession of the defendants Nos. 18 to 24, it was pleaded by the Gram Panchayat that they are its lessees. The Gram Panchayat also pleaded that suit land is meant for common purposes of the village and is being used for such purposes for the

benefits of the village community. On the basis of the pleadings of the parties, the trial Court framed as many as eight issues. However, relevant Issues are Issue Nos. 1 and 7, which read as under :—

“1. Whether the plaintiffs are the owners of the suit land ?  
OPP

7. Whether the civil court has no jurisdiction ? OPD”

(3) While dealing with issue No. 1, the trial Court concluded that plaintiffs are owners of the agricultural land measuring 66 kanals 6 marlas but ruled that possession of the same cannot be delivered to the plaintiffs. While dealing with the question of jurisdiction of civil court, the trial Court recorded the findings that there is no entry in the revenue record that the suit land is being used for common purposes of the village. It has also not been recorded as Shamlat land nor any mutation has been sanctioned in favour of the Gram Panchayat. The trial Court also found that suit is based upon title and thus the civil court has the competence and jurisdiction to try the issue. The suit is not barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961. In the ultimate analysis the suit of the plaintiffs came to be dismissed in toto though the trial Court found that plaintiffs are the owners.

(4) Aggrieved of the findings of the trial Court, the plaintiffs preferred appeal before the Additional District Judge, Hisar. The Lower Appellate Court-non suited the plaintiff-appellants by invoking Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The Lower Appellate Court concluded that the jurisdiction of civil court is barred as the matter relates to consolidation and it is the Authority under the Consolidation Act, which is competent to redistribute the unutilised area and unless the redistribution takes place, the appellants cannot sue for possession or for injunction. Resultantly the appeal also came to be dismissed,—*vide* judgment and decree, dated 4th May, 1981.

(5) Against the aforesaid judgments and decree, present Regular Second Appeal has been preferred. Shri D.S. Bali, learned senior counsel appearing on behalf of the appellants has taken me to the

provisions of Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which reads as under :—

**“44. Jurisdiction of civil court barred as regards matters arising under this Act.—**No civil court shall entertain any suit instituted or application made, to obtain a decision or order in respect of any matter which the State Government or any officer is, by this Act, empowered to determine, decide or dispose of.”

(6) From the bare reading of aforesaid Section, it is apparent that there is no absolute bar for the civil court to entertain all suits. The bar is confined to the matters in which the State Government or any officer under the Act is empowered to determine, decide or dispose of. Therefore, the relevant question that needs consideration is whether the relief claimed in the suit is such that only the Authorities under the Consolidation Act are empowered to decide. Some of the relevant provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 are Sections 14, 15, 16, 16-A, 17, 18, 23 and 23-A. Section 14 provides for formulation of scheme for consolidation of holdings, Section 15 deals with compensation to be paid, Section 16 deals with right of occupancy tenants, Section 16-A empowers the authorities under the Act to incorporate provisions in the scheme to partition joint lands and joint occupancy tenancies, Section 17 deals with amalgamation of public roads etc. within the scheme for consolidation of holdings, Section 18 provides for reservation of land for common purposes, Section 23 further empowers the authorities to give possession of new holdings and deals with the right to possession of new holdings and Section 23-A vests the management and control of lands for common purposes in the Panchayats or State Government. In the present case neither there is any dispute regarding the formulation of scheme, reservation of land, vesting of land in Panchayat nor any other related matter as prescribed in the aforementioned Sections. The dispute simpliciter is right of plaintiffs as owners and determination of their share and possession to be delivered to them if they ultimately succeed. None of the reliefs claimed in the suit fall within the purview of the aforementioned Sections and thus the embargo created under Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 is not attracted in the present case. Similar

issue came up before this Court in **Mandir Baba Sidh Bhoi versus State of Punjab and others (1)** wherein following observations have been made :—

“In this petition, as already seen, the petitioner, in substance, is seeking a declaratory relief that he and not the Gram Panchayat, is the owner of the disputed land. He seeks to establish his right to property. It is transparently (wrong to say that the petitioner cannot go to the Civil Court and establish his right by means of a regular civil suit. There is nothing in Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, or in any other provision of the Act or any other enactment, which bars the jurisdiction of the civil Court to determine disputed questions of title.) The question for determination in this case is, whether the land in dispute is really *Shamlat Deh* vesting in the Gram Panchayat, or is the exclusive property of the petitioner (Mandir Sidh Bhoi). There is ample authority in support of the proposition that such disputes as to title cannot be decided by the Consolidation Officer, and are to be decided only by the civil Court. The dictum of Pandit J. in **Gram Panchayat of village Azizpur Kalan versus Mehar Singh**, direct I.S.A. authority on the point.”

(7) Another judgment of this Court reported as **Tara Singh versus Dalip Singh (2)** wherein following observations have been made :—

“The objection of the learned counsel for the appellant that Section 44 of the Act bars jurisdiction of a Civil Court, is also without any merit. A bare perusal of this Section reveals that Civil Court jurisdiction is barred in respect of any matter which the State Government or any officer, by this Act, is empowered to determine, decide or dispose of. Since the matter in issue is with regard to the title of the suit land, such a dispute does not come within the purview of the

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(1) 1966-1968 Supplementary The Punjab Law Reporter 391  
(2) 1993 (2) RRR 137

authorities under the Act. In **Karam Singh versus Hartej Bahadur Singh and another**, 1970 PLJ 99, it has been held as under :—

“It may be noted here that the Consolidation Act does not provide for the settlement of disputes relating to title which lie within the province of the Civil Courts or of Special Tribunals authorised for the purpose under various statutes.”

(8) In view of the legal position and the dictum of the aforesaid two judgments, I am of the considered view that judgments and decrees of both the Courts non suiting the appellants for want of jurisdiction of civil Court are not sustainable in law.

(9) The appellants have sought two reliefs. (One) declaration of title over the 66 kanals 6 marlas of land being share in 238 kanals 16 marlas of land and (two) possession of the land of their share. Both the Courts below have not disputed the title of the plaintiff-appellants. The trial Court has returned a categoric finding in para 13 on the basis of the revenue record that plaintiffs are owners alongwith others and their share has been determined as 66 kanals 6 marlas. This finding of the fact has not been disputed by the Lower Appellate Court rather this finding seems to have been affirmed. The Lower Appellate Court non suited the plaintiff- appellants only on the question of jurisdiction of Civil Court which part of the judgment has already been set aside. Now the question is whether the plaintiffs are entitled to possession of specified parcel of the land. The simple answer to this is “no”. Definitely the plaintiffs have the share to the extent of 66 kanals 6 marlas in the joint holdings of 238 kanals 16 marlas alongwith other owners. They cannot ask for possession for specified parcel of the land under law. The remedy of the plaintiffs is to seek partition before the competent authority. Admittedly no such relief has been sought in the present suit/appeal. Therefore, I decline the relief so far the possession is concerned. However, the plaintiffs are at liberty to seek remedy before the competent authority/forum.

(10) This appeal is accordingly partly allowed. The judgments and decree impugned are hereby set aside in the above manner. No order as to costs.

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**R.N.R.**