

PUNJAB AND HARYANA HIGH COURT

Bhagwan Singh

Vs

Additional Dir, Consolidation

Civil Writ No. 373 of 1966

(R.S. Sarkaria, J.)

14.08.1967

JUDGMENT

R. S. Sarkaria, J.

1. This is a writ petition instituted on 22-2-1966, by Smt. Kaki and her brother Bhagwan Singh, of village Khusla, and one Jagta Singh of village Fategarh Sahianwali, Tehsil Mansa.

2. The facts giving rise to this petition are, that consolidation operations took place in village Sahianwali in 1962. On repartition, some land was allotted to the petitioners in accordance with the consolidation scheme. Surjit Singh, respondent 2, unsuccessfully appealed against that allotment to the Settlement Officer, Bnatinda. His further appeal to the Assistant Director of Consolidation under Section 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) hereinafter referred to as 'the Act'), was also dismissed. Surjit Singh, then, made an application under Section 42 of the Act to the Additional Director of Consolidation (respondent No. 1). He did not implead the petitioners therein. The Additional Director illegally made changes in the 'taks' of the petitioners in the presence of Kirpal Singh, son of Jagta Singh, petitioner, who, it is alleged, had no authority to represent them and had nothing to do with the land in question. On these facts, the petitioners prayed that the order, dated 9-12-1965, passed by respondent No. 1, be quashed, and an appropriate writ order or direction issued.

3. On 14-7-1967, Surjit Singh, respondent No. 2, filed an application (C.M. No. 2352 of 1967) alleging that Jagta Singh, one of the petitioners, had died on 26-1-1967, while the other two petitioners had, no present right, title and interest in the land in question, and, consequently, the writ petition was no longer maintainable. On receiving notice of this application, on 17-7-1967, Sukhdev Singh and Gurcharan Singh (minor), sons of Kirpal Singh, i.e, grandsons of Jagta Singh, deceased (petitioner) made an application (Civil Misc. No. 2367 of 1967), praying that in the interest of justice, they may be brought on the record as legal representatives of Jagta Singh, deceased, being legatees under a will made by him. This order will dispose of both these applications.

4. The learned counsel for Surjit Singh, Singh, respondent 2, contends, and the learned counsel

for Gurcharan Singh and Sukhdev Singh. applicants, concedes, that Mst. Kaki and Bhagwan Singh had transferred all their right, title and interest in the land in dispute, by a registered sale deed, dated 22-2-1966, to Kirpal Singh.

5. It is well settled that the existence of a legal right is the foundation of the exercise to jurisdiction of the High Court under Article 226 of the Constitution. The legal right that can be enforced under Article 226, must ordinarily be the right of the petitioner himself, who complains of infringement of such right and approaches the Court for relief, though in the case of some of the writs, like habeas corpus or quo warranto, this rule may have to be relaxed or modified. The latest pronouncement of the Supreme Court on this point is reported as *Calcutta Gas Co. (Private), Ltd. v. State of West Bengal*¹. Since Mst. Kaki and Bhagwan Singh, petitioners, because of the admitted transfer, ceased to have any right, interest or title in the subject-matter of this petition, they have no locus standi to maintain it.

6. As regards the case of Jagta Singh, deceased, petitioner, the learned counsel for Surjit Singh, respondent, contends that the provisions of Order 22, Rules 3 and 4 of the Code of Civil Procedure and Article 177 of the Indian Limitation Act apply to these proceedings; and that the application of Sakhdev Singh and Gurcharan Singh for being brought on record, having been made more than 90 days after the death of Jagta Singh, is barred by time. In the alternative, it is argued that even if the aforesaid provisions of the Code of Civil Procedure do not, in terms, apply to those writ proceedings, the application by the legal representatives of the deceased having been made about six months after the death of the deceased, without any satisfactory explanation of the delay, should be dismissed on the score of laches alone.

7. On the other hand. Air. Surjit Singh, counsel for the petitioner, contends that the jurisdiction which the High Court exercises under Article 226 of the Constitution, is a special type of jurisdiction and in the instant case, the impugned orders were not passed by "any Court of civil jurisdiction" within the meaning of Section 141 of the Code of Civil Procedure, and that, consequently, the provisions of Order 22, Civil Procedure Code, had no application. This Court, in order to do substantial justice, should allow the legal representatives of Jagta Singh, deceased, to continue these proceedings. The delay, in making the application, according to the counsel, occurred because the applicants were not aware of the institution of this writ petition by Jagta Singh, deceased.

8. The aforesaid contentions resolve themselves first, into the issue, whether an application under Article 226 of the Constitution is a 'proceeding in a Court of civil jurisdiction' within the contemplation of Section 141 of the Code of Civil Procedure. In *Annam Adinarayana v. State of Andhra Pradesh*², that Court has taken the view that an application under Article 226 is a proceeding in a Court of 'civil jurisdiction, and Section 141 of the Code of Civil Procedure is, therefore, directly attracted. The Calcutta High Court, however, has taken a different view.

According to that Court, the jurisdiction which the High Court exercises under Article 226 is a special and limited jurisdiction. Section 141 of the Code, therefore, does not apply literally to proceedings under Article 226 of the Constitution (See *Bharat Board Mills, Ltd. v. Regional Provident Fund Commissioner*³). In *Management of Rainbow Dyeing Factory, Salem v. Industrial Tribunal*⁴, a Division Bench of the Madras High Court has also taken the view that the provisions of Order 1 of the Civil Procedure Code cannot be applied to writ proceedings under

Article 226, on the strength of the rule laid down by Section 141 of that Code inasmuch as a writ proceeding cannot be held to be in the nature of a civil suit.

9. In *Uma Shankar Rai v. Divisional Superintendent, Northern Railway, Lucknow*⁵, it was held that the writ jurisdiction is a special jurisdiction and is for the enforcement of an individual right and there can be no question of the application of Order 1 of the Code of Civil Procedure to such proceedings. Similarly, in *Revenue Patwaris' Union, Punjab vs. State of Punjab*⁶, the Division Bench consisting of Gosain and Grover, JJ., held that the fact that the relief prayed for by the several individuals each of whose individual right is alleged to have been invaded improperly by the impugned order, is grounded on a common objection does not afford any basis for a joint writ petition by several petitioners, aggrieved by similar orders.

By implication, it was held that the relevant provisions of the Civil Procedure Code did not as such apply to these writ proceedings. Recently, in *Khurjawala Buckles Manufacturing Co., Tantanpara v. Commissioner, Sales Tax, U.P., Lucknow*⁷, a Division Bench of the Allahabad High Court has held that the provisions of the Civil Procedure Code do not govern a proceeding under Article 226 of the Constitution of India.

10. If I may say so, with respect, the view taken by the Andhra Pradesh High Court does not appear to be correct. What is provided in Section 141 is, that the procedure laid down in the Code in regard to suits is to be followed so far as it can be, in all proceedings in any Court of civil Jurisdiction. A High Court, when it exercises extraordinary jurisdiction under Article 226 of the Constitution, cannot, in my opinion, be said to be a Court of civil jurisdiction. This special jurisdiction of a High Court aims at securing a very speedy and efficacious remedy, 'to a person' whose legal or constitutional right has been infringed. If all the elaborate and technical rules of Civil Procedure laid down in the Code, were to be imported through Section 141 of the Code into these writ proceedings, their very purpose is likely to be defeated by their becoming bogged in procedural delays. In short, the provisions of the Code of Civil Procedure do not, in terms, govern writ proceedings under Article 226 of the Constitution.

11. This Court will, however, apply the principles as distinguished from the technical provisions of Order 22, Rules 3 and 4 of the Code of Civil Procedure relating to substitution in appropriate cases in the exercise of its discretion on the ground of justice, equity and good conscience. This further raises the question,; whether in the present case, there is any equity in favour of Sukhdev Singh and Gurcharan Singh, grandsons of Kirpal Singh, deceased. In my opinion, the answer to this question must be an emphatic 'no'. Jagta Singh, deceased, died as far back as 26-1-1967. His son Kirpal Singh and his grandsons, Sukhdev Singh and Gurcharan Singh, petitioners, who claim under a will left by the deceased, slept over the matter.

They made no attempt whatever to get themselves substituted in place of the deceased till the question of abatement was raised by respondent No. 2 in his petition on 14-7-1967. The application for substitution was made on 17-7-1967. No explanation worth the name of this delay in making the application, is coming forth. Counsel, however, says that the applicants were not aware of these proceedings instituted by their grandfather. This, on the very face of it appears to be incorrect. One of the admitted facts in this case is, that Kirpal Singh, son of the deceased and the father of the petitioners, was prosecuting these proceedings before the consolidation authorities.

He was present when the impugned order was passed under Section 42 of the Act by the Additional Director of Consolidation. Indeed, that order purports to have been made with the consent of Kirpal Singh. I am, therefore, not prepared to believe that the petitioners, one of whom is a major, were not aware of these proceedings instituted by the deceased jointly with others.

12. The Court is, therefore, loath to put a premium on this procrastination, laxity and negligence on the part of the petitioners, and refuses to exercise its discretion in their favour.

13. For all the reasons aforesaid, preliminary objections raised in Civil Misc. No. 2352 of 1967 succeed, and Civil Misc. No. 2367 of 1937, filed by Sukhdev Singh and Gurcharan Singh, is dismissed. As a result of the decision of the preliminary objections, the writ petition automatically fails and is dismissed. In the circumstances of the case, however, there will be no order as to costs.

Petition dismissed.

Cases Referred.

- 1AIR 1962 SC 1044
- 2AIR 1958 And Pra 16
- 3AIR 1957 Cal 702
- 4AIR 1959 Mad 137
- 5AIR 1960 All 366
- 6AIR 1962 Pun 55
- 7AIR 1965 All 517