

Gobind  
and others  
v.  
Chhajjan  
and others  

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Mahajan, J.

totally different property and this could only be done by concurrence of both the mortgagor and the mortgagee. In such circumstances there would be a new contract and as such there would be novation. Nothing of this type has happened in the present case.

For the reasons given above this appeal fails and is dismissed but, in view of the circumstances of this case, I leave the parties to bear their own costs throughout.

R. S.

APPELLATE CIVIL.

Before D. K. Mahajan, J.

MANGE RAM AND ANOTHER,—Appellants.

*versus*

KARAM SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 619 of 1958.

1959  

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Dec., 8th

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 44—Suit filed in a civil court for injunction restraining the defendant from taking possession of the land allotted to him in repartition proceedings—Whether competent—Scheme of the Act noticed.*

*Held*, that under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, a draft scheme is prepared and objections are invited to the scheme. After the objections are settled, a scheme is finally published. After the scheme is published, repartition proceedings start and the land is allotted to the various right-holders in the village. Under section 21 of the Act, it is provided that people, who are dissatisfied with the repartition, can raise objections to the repartition and an appeal and a revision are also provided against the orders of the Consolidation Officer while dealing with the

matters of repartition. According to section 44 of the Act if any order is passed by the Consolidation Officer within the ambit of the Act, it cannot be challenged in a civil court. In the present case no objections were taken to repartition or to the withdrawal of the area in suit from the *shamilat* and the reallocation of another area to the *shamilat*, with the result that the orders of the Consolidation Officers in repartition proceedings became final. The present suit has been filed in place of the remedy provided by section 21 of the Act and it is not conceivable how the civil court has jurisdiction to unsettle the matters, which have become final under section 21 of the Act. There was no lack of jurisdiction in the consolidation officers as whatever happened, happened during the course of the repartition proceedings. Thus the orders passed by the consolidation officers were not open to attack in a civil court in view of the provisions of section 44 of the Act.

*Second appeal from the decree of the Court of Shri Bahal Singh, Senior Sub-Judge with Enhanced Appellate Powers, Rohtak, dated the 2nd day of July, 1958, affirming with costs that of Shri Rajinder Lal Sehgal, Sub-Judge 1st Class, Rohtak, at Sonapat, dated the 31st day of October, 1957, granting the plaintiffs a decree with costs for injunction, restraining the defendants from coming into possession of the suit land and from interfering with the possession of the plaintiffs over the same, against the defendants*

P. C. PANDIT AND R. K. AGGARWAL, for Appellants.

P. C. JAIN, for Respondents.

#### JUDGMENT

MAHAJAN, J.—This second appeal is directed against the decision of the Senior Subordinate Judge, Rohtak, decreeing the plaintiffs' suit for a permanent injunction restraining the defendants from taking possession of the suit land which had been allotted to them in consolidation proceedings.

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The village in dispute is village Qumashpur in tahsil Sonapat. Besides the proprietary land in the village the *shamilat* area of this village was

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496 *kanals* 5 *marlas*. The whole of this area was a *charand*. During the consolidation proceedings, it was settled in the scheme that the *charand* may be put in the hotch potch and in lieu thereof whatever land is allotted in the repartition that will be held as a *charand* and would not be liable to division or breaking up. It seems that on repartition the land allotted in lieu of 496 *kanals* 5 *marlas* came to 380 *kanals*. This discrepancy is explainable on the hypothesis that the repartition is done not on the basis of the area but on the basis of the value of the area. Therefore, the argument that less land has been allotted is not tenable. The present suit was filed on the 15th of October, 1956, by Karan Singh and others, proprietors of *thulla Inchhan* of the village against Mange Ram and others praying for a permanent injunction restraining the defendants from taking possession of the suit land, which measured 52 *kanals* 8 *marlas* and which during the repartition had been allotted to the *shamilat* and had been during the course of repartition taken away from the *shamilat* and given over to the defendants, and in lieu thereof another bit of land was allotted to the *shamilat*. The principal defence to the suit was that the civil Courts had no jurisdiction to try the suit in view of section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act No. 50 of 1948—hereinafter called the Act. It is not necessary for the purpose of this appeal to deal with the other defences raised. The trial Court held that the suit was triable by the Civil Court and he accordingly decreed the suit holding that the order of the Consolidation Officer withdrawing this 52 *kanals* 8 *marlas* from the *shamilat* and allotting another area to the *shamilat* was without jurisdiction. This decision was upheld by the Senior Subordinate Judge in appeal. The present

appeal has been preferred by the defendant in this Court.

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Mr. Pandit has raised various contentions, but the contention which I propose to deal and which puts an end to the entire matter is regarding the question whether this suit was triable by the civil Court or in other words the civil Court had jurisdiction to try the suit? The Courts below seem to have displayed utter lack of knowledge of the provisions of the Act. Under the Act, a draft scheme is prepared and objections are invited to the scheme. After the objections are settled a scheme is finally published. After the scheme is published, repartition proceedings start and the land is allotted to the various right-holders in the village. Under section 21 of the Act, it is provided that people, who are dissatisfied with the repartition, can raise objections to the repartition and an appeal and a revision are also provided against the orders of the Consolidation Officer while dealing with the matters of repartition. Section 44 of the Act is in these terms:—

“44. 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.”

According to this provision if any order is passed by the Consolidation Officer within the ambit of the Act it cannot be challenged in a civil Court. It is not disputed in the present case that to repartition no objections were filed by the plaintiffs, nor did they object to the withdrawal of this area of

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52 kanals 8 marlas from the *shamilat* and  
 ment of another area to the *shamilat*, wi  
 result that the orders of the Consolidation O.  
 in repartition became final. The present suit has  
 been filed in place of the remedy provided under  
 section 21 of the Act and it is not conceivable how  
 the civil Court has jurisdiction to unsettle the matters,  
 which have become final under section 21 of the  
 Act. There is no lack of inherent jurisdiction in  
 the present case. It is not the plaintiff's case that  
 after the repartition had been completed and a re-  
 cord of rights had been prepared the land allotted  
 to the *shamilat* was withdrawn by the Consolida-  
 tion Officer and handed over to the defendants.  
 Whatever happened, happened during the course of  
 repartition proceedings. A similar matter  
 came up for decision before G. D. Khosla, J., (as  
 he then was), in *Kartar Singh v. Tulsi and others*  
 (1). It was held by the learned Judge that an  
 order of the Consolidation Officer passed in conso-  
 lidation proceedings was not open to attack in a  
 civil suit in view of the provisions of section 44  
 of the Act. I am in respectful agreement with the  
 observations made by the learned Judge in that  
 case.

In this view of the matter, the present appeal  
 must succeed. I would, accordingly, allow the  
 appeal, set aside the judgments and decrees of the  
 Courts below and dismiss the plaintiffs' suit, but in  
 view of the circumstances that the Courts below  
 were totally oblivious to the import of the provi-  
 sions of the statute, I leave the parties to bear their  
 own costs throughout.

B. R. T.

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