

Sher Singh v. The Additional Director and etc., (A. D. Koshal, J.)

(51) The other pronote (dated 31st January, 1963) for Rs. 5,000 was also scribed by Mansa Ram (PW6) in favour of Karam Chand accused. Munshi Ram, personating as Sansara, had executed it by thumb-marking the same. Entry with regard to this pronote in the petition-writer's register (P. 21/A) is Exhibit P. 21. It also bears the thumb-impression of the person who executed the pronote. According to the prosecution, Munshi Ram had, personating as Sansara, thumb-marked this entry, in the register P21/A, as well. In his examination, Munshi Ram denied that he had thumb-marked it. Shri Shanti Sarup Jain (PW4), Hand-writing Expert, after examining and comparing this thumb-impression at Exhibit P21, testified that it was that of Munshi Ram appellant. The Expert testimony has thus established that this false document had also been prepared by Munshi Ram. Thus the charge of forging these pronotes, which are valuable securities, was also brought home to Munshi Ram and Nasib Singh appellants and they were rightly convicted under Section 467, Penal Code.

(52) In the light of the above discussion, we would set aside the conviction of all the appellants under Section 120-B, Penal Code, for want of the necessary sanction under Section 196-A, Code of Criminal Procedure. For the same reasons, the State appeal (filed through Hari Chand complainant), *Criminal Appeal No. 1271 of 1969*, against the acquittal of Karam Chand on the charge under Section 120-B, Penal Code, must fail and is dismissed. The convictions and the sentences of the appellants on the remaining charges are maintained.

(53) In the result, the appeal of the convicts (*Criminal Appeal No. 848 of 1969*) is dismissed except to the extent indicated above.

S. C. MITAL, J. I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

SHER SINGH,—*Petitioner.*

versus

THE ADDITIONAL DIRECTOR AND OTHERS,—*Respondents.*

Civil Writ No. 2167 of 1970.

September 6, 1971.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Impugned order passed in the absence

of and without notice to the affected landowner—Landowner's son residing, messing and cultivating land jointly with him, appearing at the hearing when the order passed—Such landowner—Whether duly represented.

Held, that no doubt where one of the several joint land-owners has been served with a notice of a petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 and is present at the hearing of the petition, all the landowners are deemed to be effectively represented. This dictum, however, is not to be extended by analogy to the case of a person who is not served with a notice of a similar petition but one of whose relations is present at the hearing when the impugned order is passed. It makes no difference if the relation be a son who is living, messing and cultivating land jointly with his father and has no interest adverse to the latter. Unless the father permits himself to be represented by his son, a representation by the son cannot take the place of appearance by the father himself and he cannot be said to be duly represented in the petition under section 42 of the Act. (Para 2)

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the order dated 12th of June, 1970 passed by Respondent No. 1 and further praying that pending the final decision of the writ petition, the dispossession of the petitioner be stayed.

H. S. Wasu, Senior Advocate with L. S. Wasu, Advocate,—for the petitioners.

B. S. Jawanda, Advocate,—for respondent No. 2.

D. S. Chahl, Advocate,—for respondent No. 4.

JUDGMENT

KOSHAL, J.—(1) This is a petition under Articles 226 and 227 of the Constitution of India and seeks the issuance of a writ of certiorari quashing the order, dated the 12th of June, 1970 (a correct copy of which is Annexure "B-I" to the petition) passed by the Additional Director, Consolidation of Holdings, Punjab, Chandigarh, under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

(2) It is now common ground between the parties that the impugned order was passed in the absence of and without notice to the petitioner according to whom it is, therefore, void and without jurisdiction. It is contended on behalf of respondents Nos. 2 and 4, however, that the petitioned and his son Niranjan Singh are residing,

messing and cultivating land jointly, that Niranjn Singh aforesaid appeared at the hearing before the Additional Director, who gave him a full opportunity of being heard and that the petitioner must, therefore, be held to have been duly represented before the Additional Director. With this contention I do not find myself in agreement. It has no doubt been held in *Rattan and another v. The State of Punjab and others* (1), and *Bhagwana and others v. The State of Punjab and another* (2), that where one of several joint land-owners has been served with a notice of a petition under section 42 *ibid* and one of them is present at the hearing of the petition, all of them are deemed to be effectively represented. This dictum has not been extended by analogy to the case of a person, who is not served with a notice of a similar petition, but one of whose relations is present at the hearing. On the contrary, in *Kanshi Ram v. The State of Punjab and others* (3), Mehar Singh, C. J., and R. S. Narula, J., held that while a co-sharer may be taken to represent his other co-sharer during consolidation proceedings because of the sameness or similarity of their interests, a mere relation could not be placed in that position. And it appears to me that it makes no difference if the relation be a son, who is living, messing and cultivating land jointly with his father and has no interest adverse to the latter. Unless the father permits himself to be represented by his son, a representation by the son cannot take the place of appearance by the father himself. A son may not be able to put the case in the same light as his father and may on that account suffer an order which would operate to the detriment of the father whose right to represent himself cannot, therefore, be taken away, especially when the statute is silent on the point. Accordingly the decision of a petition under section 42 *ibid* without notice to those whose rights it affects must be deemed to have been taken without jurisdiction even though the progeny of those affected were heard before it was taken. Order Annexure "B-I" is an order of that type.

3. It is contended on behalf of the contesting respondents that even though the impugned order be one without jurisdiction, it should not be quashed inasmuch as it does substantial justice between the parties and is likely to be repeated even if proceedings under section 42 are taken after notice to the petitioner. With this contention I cannot agree. The scheme of consolidation of holdings

(1) 1965 P.L.R. 276.

(2) 1966 C.L.J. (Pb.) 5.

(3) 1970 R.L.R. 309.

applicable to the parties states that in case land has to be allotted to a party away from his major portions, an attempt should be made to see that it is situated in the same *patti* as those portions. A major grouse of the petitioner is that the land which the order allots to him is not situated in the *patti* where his other land is, that no attempt was made to allot the said land to him in that *patti* and that, in fact, his son never cared to request the Additional Director to make an effort to allot all the land to the petitioner in one *patti*. Clearly, therefore, the order of the Additional Director is not in accordance with the scheme and it cannot be said that substantial justice has been done by him to the parties.

4. In the result, the petition is accepted and the impugned order is quashed. The Additional Director shall rehear the petition under section 42 *ibid* after hearing the parties who have been directed to appear before him on the 29th of September, 1971. There will be no order as to costs.

N. K. S.

INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, J & K AND

CHANDIGARH, PATIALA.—*Applicant.*

versus

M/s. THE ORIENTAL CARPET MFR. (INDIA) P.LTD., AMRITSAR,—
Respondent.

Income Tax Reference No. 15 of 1971

September 7, 1971.

Income-Tax Act (XLIII of 1961)—Sections 36(1) (iii) and 37—Payment of income-tax due for a particular year delayed—Interest on such delayed payment—Whether permissible deduction as revenue expenditure—Expression “for the purpose of business” occurring in section 37(1)—Scope of—Stated.

Held, that interest on delayed payment of income-tax has no connection with the business of the assessee and as such it has nothing to do with