
(1963) 09 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 68 of 1962

Arya Pratinidhi Sabha Punjab, Jullundur

APPELLANT

Vs

Lal Chand and Another

RESPONDENT

Date of Decision : 16-09-1963

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1953 — Section 3(b)

Citation : (1964) 1 ILR (P&H) 330

Hon'ble Judges : Grover, J;Falshaw, J

Bench : Division Bench

Advocate : B.R. Aggarwal, D.R. Manchanda and S.K. Aggarwal, for the Appellant; F.C. Mittal and P.C. Jain, for the Respondent

Judgement

Grover, J.—This appeal under clause 10 of the Letters Patent arises out of a suit filed by the Arya Fritinidhi Sabha for removal of certain encroachments by means of a mandatoy injunction on a thoroughfare in village Tauru, Tehsil Nuh., District Gurgaon. The allegation of the plaintiff was that the Arya Samaj was the owner of the site shown m yellow colour in the plan, Exhibit P. 4 Suraj Bhan defendant No. 2 had purchased the house shown in blue colour from one Hira Lal which had now come to the share of defendant No. 1 by means of a partition between the two defendants. The wall between the plaintiff's site and the defendant's house was joint and it was alleged that defendant No. 1 had constructed a verandah and a balakhana over it in 1953-54. Besides, defendant No. 1 had also constructed an over hanging shed etc. on thoroughfare. These constructions constituted encroachments on the thoroughfare and the view of the plaintiff's site or sathan was partially disturbed causing special damage. A number of pleas were raised and out of the issues which were framed two may be noticed for the decision of the present appeal The first issue was whether the Court had jurisdiction to try the suit and the fifth issue was whether the plaintiff had suffered any special damage on account of the existence of the construction in dispute. The trial Court held that under clause (b) of section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 (Act I of 1954) which had come

into force on 9th January 1954, the defendant had become the owner of the site in dispute and the jurisdiction of the Civil Court to entertain in the matter was barred by section 8 of that Act. On issue No 5 it was found that no special damage had been suffered because there had been no encroachment. On appeal, the learned Senior Sub Judge was of the view that it was doubtful whether Tauru was a village or a town and that the view of the trial Court that the defendant had become owner of the site under the provisions of Act I of 1954 was erroneous. After considering the relevant material, it was held that Lal Chand defendant No. 1 had not become the owner nor was the jurisdiction of the Civil Court to try the suit barred. After giving decision on the other issue-, the learned Judge found that the defendant had encroached upon the thoroughfare in the master of construction of a verandah in front of his shop. He, however, held that according to law it was not necessary for the plaintiff to prove any special damage. The suit was consequently decreed.

2. On second appeal which was disposed of by Shamsheer Bahadur J. on 24th January 1932, a new point was raised altogether, namely, whether after the enactment of the Punjab Village Common Lands (Regulation) Act, 1961 (Act 18 of 1961) which vested the land included in shamilat deh of the village in the Panchayat. a suit for removal of the encroachments of such land could be brought by anyone except by the Panchayat. After referring to section 4(i) of Act 18 of 1961, the learned Judge held that the thoroughfare on which the encroachment was said to have been made vested in the Panchayat absolutely and, therefore, it was the Panchayat alone that could institute a suit or take any action with regard to it. The learned Judge was alive to the fact that Lal Chand defendant No. 1 was the Sarpanch of the village which meant that the Panchayat would not normally have taken any action and the plaintiff would have been left without any remedy. He considered that u/s 67 of the Gram Panchayat Act, 1952, a person who had any personal interest could not take any part in the proceedings of the Panchayat and in such a contingency the Panchayat would send the case or the suit to the District Magistrate or the District Judge or the Collector having jurisdiction for disposal. It was also observed that the Panchayat under the Gram Panchayat Act had the power to remove encroachments and nuisance. The learned Judge proceeded to rely on certain unreported decisions of this Court Mithu v. Tulla R.S.A. No 631 of 1955, R.S.A.. No. 631 of 1955, decided by Gosain J. on the 9th August 1960, Chhailu v. Banwari R.S.A. No 747 of 1964, K.S.A. No. 747 of 1954, decided by Chopra J. on 19th May 1959, Charan Singh v. Pirthi Ram R.S.A. No 452 of 1953, R.S.A. No. 452 of 1958 decided by me sitting singly on 12th March 1958 and Ch. Vijay Singh v. Sardha Singh S.A.O. No 31 of 1959, S.A.O. No. 31 of 1959, decided by Mahajan J. on 24th February 1960) for holding that it was the Panchayat alone that could institute any legal proceedings in such matters as shamilat land vested in it and no individual could file a suit.

3. It has been pointed out by the learned counsel for the appellant that the decisions on which the learned Single Judge has relied related to different set of facts altogether and were not at all apposite for purposes of the present case. In

most of those cases the suits had been riled by individuals claiming possession of certain part of shamilat deh on one ground or the other. Such suit could certainly not be filed by anyone individually and were competent only at the instance of the Panchyat. In the present case it has been argued that although the thoroughfare on which the encroachment is alleged vests completely in the Panchayat, it is open to any person whose full enjoyment of that thoroughfare is obstructed in some manner or the other or whose property suffers special damage because of the obstruction, to file a suit and seek redress of his grievance. By way of analogy it has been pointed out on behalf of the appellant that even in case of streets which vests in the: Municipal Committees there is a body of judicial opinion that suits are maintainable even against the Committee if the right of any person to enjoy the convenience and amenity in question is hindered or obstructed by means of any encroachment. In this connection reference may be made to a Bench judgment of the Lahore High Court in *Municipal Committee v. Mohammad Ibrahim* AIR 1925 Lah. 196, in which there is a fair amount of discussion of the law on the subject. It has been held that for the owners of houses abutting on a public highway the question of frontage means a great deal and if anything is done by those in whom the highway vests which interferes with the rights of the owners with regard to the highway and which tends to diminish the comforts of the occupants of the house, the owners will undoubtedly have an actionable claim against them, in such cases it is not necessary to prove that any special injury has taken place, before a person wronged by the Committee can take action against it. In *Pahlad Maharaj and Others Vs. Gauri Dutt Marwari and Another*, , it has been laid down that a person in the immediate neighbourhood and entitled to use a local public thoroughfare has a special cause of action in respect of any encroachment upon it, irrespective of whether he has proved special damage or not. The real principle, according to Courtney Terrell C.J. who delivered the judgment of the Bench, is that a person of an immediate community or section of the public who is deprived of the amenity provided for that particular section may be deemed to have suffered loss without proof of such loss. This judgment was followed in a later decision of the Patna Court in *Dasrath Mahto and Others Vs. Narain Mahto and Others*, by Harries C. J. and Fazl Ali J., as he then was. In that case there was a roadway and the defendants proceeded to make certain constructions encroached upon the thoroughfare.

The suit had been brought by certain persons who were inhabitants of the vicinity of the thoroughfare and certain others who were residents of the village alleging that they had suffered inconvenience as a result of this encroachment and they prayed for an order for the removal of the same and for restoration of the thoroughfare to its original state. The Patna Bench directed removal of the obstruction on the ground that there was such damage in the case as was contemplated by law. In *Mandakinee Debee Vs. Basantakumaree Dabee*, the same rule was laid down, namely, that a member of the public could maintain a suit for removal of obstruction of a public highway if his right of passage through it is obstructed without proof of special damage. The learned Single Judge while

appreciating the law laid down by these authoritative decisions felt somehow that the language of Act 18 of 1961 was very wide and did not permit of such an action as had been brought in this case.

4. After giving the matter due consideration, it is not possible to accede to the view that merely because a village thoroughfare vests in the Panchayat, even though in the fullest sense of that word, a person who is entitled to the use of that thoroughfare is debarred from maintaining a suit if he can prove that there is hindrance or obstruction to his right to use that thoroughfare which by itself would constitute a kind of special damage or that he has suffered some other kind of special damage which would entitle him under the law to a relief. It is true that in the Patna and the Calcutta cases as also in the Lahore case it has been observed that it is not necessary to prove special damage but those cases were decided on their own facts from which it could be concluded that the plaintiff had suffered damage of a special kind in some manner or the other, namely, by obstruction of his right of way etc. Indeed, in *Ramabrahma Sastri v. Lakshminarasimham* AIR 1957 . Pra 14, Viswanatha Sastry J. struck a discordant note by observing that the decision of the Privy Council in *Manzur Hasan v. Muhammad Zaman*¹⁰, on which the Lahore and the Patna cases were mainly decided, did not lay down that special damage need not be proved. It will be useful to refer to the observations of Viswanatha Sastry J. at page 47:-

I am humbly of the opinion that apart from section 91, CPC and in conformity with its provisions, no action can be maintained by an individual against another for obstruction to a public highway without proof of special damage. This rule is founded on adequate reasons of public policy that a man who may have committed some public injury shall not be harassed by innumerable actions by persons who have not sustained any damage or injury peculiar to themselves. It had been enforced by Indian Courts as a rule of justice, equity and good conscience till 1924 and in my judgment, has not been abrogated by the decision of the Privy Council in AIR 1925 36 (Privy Council)

Viswanatha Sastry J. agreed with the view expressed in a Bench decision of the Calcutta Court in *Surendra Kumar Basu Vs. District Board and Another*, in which it has been held that where a plaintiff seeks relief in respect of a public nuisance and the suit is not brought in conformity with the provisions of section 91(1) it is bound to fail unless special damage is shown. According to Viswanatha Sastry J., special damage does not mean serious damage in the sense of irreparable loss but damage affecting the plaintiff individually or peculiar to the plaintiff or damage beyond what is suffered by him in common with the owners of the other houses opening into the road or the lane. Moreover, it must be remembered that in the Lahore and Patna cases to which reference has been made, no such objection was raised that the suit was not maintainable without proof of special damage in the absence of compliance with the provisions of section 91 of the Code of Civil Procedure. According to that section, in case of a public nuisance the Advocate-General or two or more persons having obtained

the consent of the Advocate-General may institute a suit, though no special damage has been caused, for a declaration or injunction or for such other relief as may be appropriate in the circumstances of the case. With respect, we are inclined to agree with the view expressed by Viswanatha Sastry J. in the Ramabrahma Sastri's case.

5. In the present case the lower appellate Court did not give any finding with regard to the damage which the plaintiff is suffering or would suffer owing to the existence of the alleged encroachments. It is essential, therefore, before the present appeal can be disposed of, to obtain that finding from the lower appellate Court. We direct that Court to submit a report containing its finding on the above matter with particular reference to issue No. 5 within three months from today.

6. The parties are directed to appear in the lower appellate Court on 21st October 1963. No fresh evidence will be allowed to be produced.

7. The appeal shall be set down for hearing after the report has been received.

Falshaw, C.J.

8. I agree.