
(1967) 02 MP CK 0003
In the Madhya Pradesh High Court
Case No : S.A. No. 286 of 1963

Bhulibai and others

APPELLANT

Vs

Ambaram and another

RESPONDENT

Date of Decision : 03-02-1967

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 131, 133

Citation : (1972) ILR (MP) 164 : (1972) MPLJ 235

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : S.D. Sanghi, for the Appellant; G.L. Oza, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is a second appeal by the defendant from the concurrent judgments of the lower Courts directing the removal of certain encroachments and obstructions from a strip of village common land which the plaintiff claimed and the Court declared to be a public pathway belonging to Government. The question at this stage is whether the revenue Courts have exclusive jurisdiction in this manner provided in section 142 and 147 of the Madhya Bharat Land Revenue and Tenancy Act which was the law applicable at the time of the initiation of this litigation. Actually there are corresponding provisions in the Madhya Pradesh Land Revenue Code of 1959 the wordings themselves being to the same effect; I may note even here that we are concerned primarily with section 142 of the Madhya Bharat Act which corresponds to section 133 of the Madhya Pradesh Code (which again corresponds to section 213 of the Vindhya Pradesh Law which will be discussed presently) and incidentally that section 140 of the Madhya Bharat law which again corresponds to section 131 of the Madhya Pradesh Code (corresponding again with section 212 of the Vindhya Pradesh Law). The corresponding provisions in the Vindhya Pradesh Act of 1953 have been referred to by the party while arguing about the impact on the present controversy of the

decision of this High Court in *Ramadhar v. Nyaya Panchayat Hanumana and others* 1961 MPLJ 143 -Miscellaneous Petition No. 149 of 1960, decided by a Divisional Bench at Jabalpur on 31-1-1961.

The facts of the case are the following : The plaintiffs resident in a village called Kharsod Khurd filed a suit in the civil Court averring that there was government-owned land in their village used as a public path. The defendants while repairing their house encroached more than half-way into the path and reduced the width from the original "10" to less than 5" over the frontage of their house and thereby made it impossible for the plaintiff's to take their carts and cattle by that way to which they were entitled They prayed for a declaration that the strip indicated on the map was public pathway and also asked for a mandatory injunction on the defendants enjoining them to remove the obstructions. The trial Court went into the facts and found that it was a public pathway and that the defendants had constructed an *otla* over it and directed the removal. At this stage the defendants did not take the position that the case was exclusively cognizable by the Revenue Courts; but after the trial Court's decision they went in appeal and *inter alia* raised the question of jurisdiction. The appellate Court rightly felt that it was a case of basic jurisdiction and accordingly the mere delay in pleading it did not disqualify the defendants from raising this question However, it felt on merits that this was not a case within the exclusive jurisdiction of the revenue Court because it was not shown that "the pathway was one recorded in the record of rights". The appellate Court proceeded on the assumption that the provision applicable was section 141 of the Madhya Bharat Act and not the first half of section 142, and came to the conclusion that there was no exclusive jurisdiction. Moreover it felt that there being a prayer for a declaration of a right of free access over the path it was a matter cognizable only by the civil Court. Accordingly it dismissed the appeal.

In second appeal the whole problem of jurisdiction has been agitated and besides interpreting the sections concerned, the plaintiffs have urged that the judgment of a Bench of this Court in *Ramadhar v. Nyaya Panchayat Hanumana and others*, in a case from the erstwhile Vindhya Pradesh area is conclusive, to the effect that the Tehsildar has no jurisdiction in regard to such disputes. That case arose under the Vindhya Pradesh Land Revenue and Tenancy Act but it is argued that the provisions are similar, and the decision would apply to cases u/s 142 of the Madhya Bharat Act as well. I shall deal with this matter separately after examining the main problem.

It is beyond dispute that in the event of a particular class of disputes being cognizable by a revenue officer or by government under the Madhya Bharat Act the civil Court will have no jurisdiction except where the Act itself expressly empowers it. Such jurisdiction of the civil Court may be exclusive or may be option 1 in the sense that the aggrieved party may either go straightway to the civil Court or having gone to the revenue authority may still go to the civil Court for a declaration of the invalidity of the decision. In fact two types of cases would

arise; those in which the statute empowers the revenue authority-Tehsildar or sub-divisional officer or Collector or the Board or the Government as the case may be, and leaves the matter at that without any indication that the lis is further cognizable by a civil Court; in that class of cases section 147 of the Madhya Bharat Act would make the revenue Court's jurisdiction exclusive. Naturally at any stage a party can invite the civil Court to drop the matter on return of the plaint to the plaintiff for presentation to the appropriate revenue authority. The second class of cases are those in which the revenue Courts initial competency notwithstanding the party is not debarred from going to the civil Court. There the revenue Court's powers are of a summary nature and its orders are provisional; it is open to the party aggrieved to get a fuller adjudication in the civil Court. All this is somewhat rudimentary ; but as it has been lost sight of in the present litigation it would be convenient to make the distinction as clear as possible. In fact the two sections 140 and 142 of the Madhya Bharat Act illustrate the distinction. In the former the Tehsildar after local enquiry decides a dispute, but at the same time statute expressly provides :

140 (2) No order passed under this section shall debar any person from establishing such rights of easement as he may claim by a regular suit in a competent civil Court.

On the contrary, section 142 which deals with the removal of obstructions is exclusive-

142. If a Tehsildar finds that any obstacle has been erected impeding the free use of a recognized road, path or common land of a village or obstructing a route or water-course which has been the subject of a decision u/s 140, he may order the person responsible for erecting the obstacle to remove it; and, if such person fails to comply with the order, may cause the obstacle to be removed and may recover from such person the cost of removing it.

The reference to section 140 in the later half of this section implies that unless the decision u/s 140 (1) is taken up to the civil Court u/s 140 (2), it becomes final; the position would just be as if the land was a pathway for all purposes. Further, section 140 deals, with a question of dispute altogether different from the one which is covered by section 142; the intervening section 141 enables the Tehsildar to implement his decision u/s 140 and has really nothing to do with section 142. Under that section i.e. section 140, the Tehsildar takes note of the disputes arising as to the route by which the holder of land seeks to have access to his fields or to waste or pasture lands otherwise than by recognized routes, paths or common lands; in other words, the holder of land seeks to use another holder's land as a pathway in certain circumstances, or, seeks to exercise an easement of the kind usually described as easement of necessity. This is why on the one hand the Tehsildar is given powers to deal with the matter on summary inquiry and the party concerned is also enabled to get a fuller decision on the question of rights and title in a competent civil Court. But the Tahsildars decision until varied by the civil Court is binding and can be implemented by the coercive

process mentioned in section 141. As long as it is in force it can attract the operation of the latter half of section 142, just as if the land were a public pathway.

But when we come to section 142 we are on different ground. In fact, it is this section that is applicable to a dispute of the instant kind. Here the plaintiff does not claim a right of easement over another's land. What he does say is that there is a recognized road, path or common land and that the defendant has obstructed it partly or wholly. No doubt there is a distinct class of cases where the Tehsildar having given a decision that somebody has an easement over another's land the latter without getting it set aside still obstructs the way. There also section 142 comes in ; but we are not dealing with that part of the section in the present case: here is a straightforward averment that there is a public path or common land owned by Government and available for the use of the entire village and that the defendants have obstructed it. For jurisdictional purpose the question is not whether these averments are true or false: if they are found false or if in other words, the pathway is not proved to be a public pathway, the Tehsildar would straightway dismiss the suit or it being amended to one u/s 140 the Tehsildar would proceed to deal with it on that basis. But as the suit has been framed it :is a straight one regarding a public path or a recognized route the very use of which is being obstructed by the defendants. Thus it comes squarely within the ambit of the first half of section 142.

The lower appellate Court seems to be under the impression that such a recognized road, path or common land should be necessarily one so mentioned in the record of rights. Very often it is; but it is not essential. For example, that Court writes -

The path under dispute has not been shown either to be recognized path or recorded as such in the records of the last settlement.

Now whether it has been shown as a recognized road, path or common land is a question of fact, for the appropriate tribunal which u/s 142 is the Tehsildar. If this is not shown to his satisfaction he would certainly throw out the suit. Again, being recorded as such in the books of the last settlement is a piece of evidence; but it is not essential and it is conceivable that a road, path or common land is recognized as such subsequently to the settlement and accordingly is not so mentioned in the record. That again is a question of fact. The point for our consideration is when the plaintiff comes with an averment that there is a recognized road, path or common land belonging to Government and available to the whole village and further that the defendant has obstructed it, he comes u/s 142 and has accordingly to move the Tehsildar and the Tehsildar only. Not is this section is accompanied by any rider as is found in section 140 (2) In fact once the Tehsildar gives a decision even under that section (140) and nobody moves the civil Court to have it vacated or modified it might again come u/s 142. But we are not immediately concerned with it. Thus it is difficult to see how the lower Courts have persuaded themselves that this is not a case of the exclusive

jurisdiction of the revenue Courts.

The plaintiff is aware of it; but on his behalf it is urged that the decision already referred to puts a new complexion on this problem. I have sent for that decision because it has only been short-noted in the law reports and also the Vindhya Pradesh Code; so as to see whether it has any bearing on the present problem. The position there was that a strip of public land had been taken in special settlement by a private party; the Naib Tahsildar had given settlement under one of the provisions of the Vindhya Pradesh Act (section 150). After that, one of the villagers moved the Tehsildar u/s 214 of that Act that this lessee had put up obstruction on common land and prayed for its removal. By another law in force in the Vindhya Pradesh the powers of the Tehsildar in regard to the removal of obstructions had been delegated to the Nyaya Panchayat and accordingly the prayer was passed on to that authority which in time directed the removal. In a writ petition by the lessee before the High Court the question was whether this dispute was one that really arose u/s 212 of the Vindhya Pradesh Law. This section corresponds to section 140 of the Madhya Bharat law and not to section 142 (corresponding to section 213 of the Vindhya Pradesh Act) and the High Court having found that there was nothing to show that a lease granted u/s 150 came under the ambit of section 212 it held that the Nyaya Panchayat was not competent to order a removal. I have dealt with this case at some length to show how unwise it turns out to be to make a superficial application of a ruling from one context to another. Thus whatever the effect of the decision in that case on the application of the provisions of the Vindhya Pradesh Act it leaves the field of section 142 or of 213 of Nyaya Panchayat Act of the Madhya Bharat Act quite untouched.

The result of the foregoing discussion is that the dispute raised in the plaint, whatever its factual correctness was one coming under the first part of section 142 and as such exclusively cognizable by a revenue authority, namely, the Tehsildar. The fact that it had been worded in the form of a prayer for declaration cannot take it out of the ambit of this section and we must look on the real purport and not the mere words. Accordingly the appeal is allowed and the judgment of the appellate Court is set aside and the suit dismissed. If the obstruction is continuing it is certainly open to the plaintiff to seek the assistance of the Tehsildar. In the special circumstances of the case there will be no order as to costs.