

(1985) 05 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Second Appeal No. 284 of 1975

Gram Panchayat	Vs	APPELLANT
Bala Prasad (dead) through Banwari Lal and Others		RESPONDENT

Date of Decision : 08-05-1985

Acts Referred:

Citation : (1986) 1 WLN 792

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Guman Mal Lodha, J.—This is defendant's second appeal against the judgment of Civil Judge, Alwar in Civil Appeal No. 34 of 197C setting aside the decree passed by Additional Munsif, Alwar.

2. The facts, in short, of this case are that the plaintiff owns Khasras Nos. 929, 781, 785, 774, 775 and 780 of agricultural land located by the side of way. It is alleged that Gram Panchayat Ramgarh by its judgment dated February 11, 1961 has held that plaintiff has encroached upon the land of way in the portion shown in para No. 2 of the plaint. The Panchayat Samiti has also dismissed the appeal of the plaintiff by its order dated October 31, 1962. So the plaintiff went in revision, which was also dismissed on April 15, 1963. The contention of the plaintiff was that the Gram Panchayat had no jurisdiction to try that claim and had no power to inflict penalty. It has been further alleged that the Gram Panchayat should be restrained from recovering the penalty, which has accrued after the order dated February 11, 1961.

3. The Pradhan of the Panchayat Samiti has filed his written statement on November 11, 1964 without contesting the suit of the plaintiff, whereas the counsel of the Gram Panchayat filed written statement on December 7, 1964 contesting the suit. It was alleged that the Panchayat had right to decide the matters of way and its order dated February 11, 1961 was not without

jurisdiction, It was further contended that the plaintiff encroached upon the village path way and the disputed land was not part of his Khatedari land. According to them the suit is not maintainable and was time barred.

4. The trial Court after framing the issues and recording evidence of the parties came to the conclusion that the suit was time barred and dismissed it.

5. The first appellate Court reversed the finding holding that so far as the commencement of limitation is concerned, the point or the date or the event from which the limitation would start would be the final assessment irrespective of the date of judgment of the first Court. In the instant it is the case, date of order of the Gram Panchayat, initially from which limitation was counted by the trial court. The first appellate Court, however, counted limitation from the date of judgment in revision.

6. Mr. Rastogi submitted that limitation would start from the date of original order and not from the date of revisional or appellate order. Reliance was placed on *Sita Ram Goel Vs. The Municipal Board, Kanpur and Others*, in support of his contention.

7. Mr. Tibrewal on the contrary submitted that this view of the Supreme Court has later on been changed and altered. According to him, the judgment of the trial court or the original order for administrative authority merges in the judgment of the appellate authority or revisional authority wherever the matter is taken up by the aggrieved party and the computation of limitation should be from the date of final judgment of the highest authority where the matter was fixed and disputed. Mr. Tibrewal in the alternative submitted that in a case where the order is wholly without jurisdiction and the order is honest and no order in the eye of law, in such a case that order should be ignored. According to Mr. Tibrewal it is not necessary for an aggrieved party to challenge such an order and get a decree for setting aside the same, because the order is ab initio null and void and a scrap piece of paper. Since it is non est there is no question of any limitation to be computed in such cases, as that order is non est. What is non existent and which is ab initio null and void need not be noticed as a hurdle in favour of parties against when the order was passed, argued Mr. Tibrewal.

8. Mr. Rastogi confronted with the above argument of Mr. Tibrewal, submitted that if that is so Mr. Tibrewal should withdraw the suit and rest contended with the doctrine of non est. Mr. Rastogi submitted that there was no occasion for filing a suit for decree beyond limitation. He must satisfy the statutory requirement of law of limitation.

9. In *Sitaram Goyal v. Municipal Board, Kanpur and Ors.* (supra), a decision relied upon by the learned Counsel for the appellant, the question was whether in a suit by dismissed employee under the Municipal Act, the starting point for limitation would be the original order of the Municipal Board or the appellate order. The Hon"ble Supreme Court observed that under the Municipal Act Section 326(3) provides for limitation to run after the accrual of the cause of action for

the suit of the plaintiff was his wrongful dismissal.

10. Since during appeal the consequence of the order would not remain in abeyance, on the wordings of Section 58(1) it cannot be inferred that limitation would commence from the date of decision of the appeal. It was observed that u/s 58(2) the Government has no power to keep the servant under suspension pending appeal and, therefore, the order of dismissal cannot be suspended till the decision of the appeal.

11. In the instant case, it would be noticed that according to para 3 of the plaint the causes of action in the present case is recurring, because the fine Re. 1/- per day till the alleged encroachment is removed.

12. This is a special feature of the case. It is distinguished from the application of the principle laid down in the above judgment of the Supreme Court. When the cause of action is recurring, every day of file which is continuous, provides a fresh cause of action.

13. More over, as held by this Court in Gram Panchayat Kaspi v. Ishar Chand and Ors. 1983 RLR 502 right to sue accrues as contemplated by Section 79(2) (b) of the Rajasthan Panchayat Act, 1953, does act always mean right to sue first accrues.

14. The Privy Council decision in AIR 1930 270 (Privy Council) was relied upon for interpreting the words "right to sue" & for holding that it never means "right to sue first accrues". The above decision of the Privy Council was relied upon in AIR 1931 9 (Privy Council) and the same observations were endorsed by the Supreme Court in Gannon Dunkerley and Co., Ltd. Vs. Union of India (UOI), In the above decision of this Court words "right to sue" and "right to sue first accrues" were considered and it was held that it was a case of successive denials of effective cause of action. In State of Rajasthan v. Maharaja Shree Umaid Mills Ltd. 1985 RLR 201 the question of starting point of limitation in case where payments were made under mistake of law or fact. It was held that in such cases it is the final judgment of Apex Court, which is relevant "for commencement of the starting point.

15. In the instant case it is not in any doubt in debate that there was a right of appeal and revision, which was availed of by the plaintiff earlier to coming to Civil Court. Obviously a litigant is supposed to exhaust his remedies. "Though those remedies are no bar to filing of a civil suit, but in such circumstances when there is recurring cause of action by fine per day and that is continued and when the plaintiff filed appeals and revisions against that order and came to the Court only after when he is unsuccessful in the final decision, it cannot be said that the "right to sue" means "right to first sue" only. I am in agreement with the reasons given by the first appellate Court on this point and hold that the suit was filed within time.

16. No other point was argued by learned Counsel for the appellant.

17. Consequently the appeal fails & is hereby dismissed without any order as to costs.