
(1983) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Revision Petition No. 361 of 1978

Gram Panchayat

APPELLANT

Vs

Iswar Chand and Others

RESPONDENT

Date of Decision : 03-03-1983

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 79(2)(b)

Citation : (1983) WLN 194

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—Defendant No. 1, who is petitioner has filed this revision under s 115 of the Code of Civil Procedure, against the order dated July 19 1978 passed by the District Judge, Balotra, by which he decided issue No. 18 relating to limitation and held that the suit of the plaintiff-non-petitioners No. 1 to 6 is within limitation u/s 79(2)(b) of the Rajasthan Panchayat Act (No. XXI of 1953) (for short "the Act" here in after).

2. The plaintiff-non-petitioners No. 1 to 6 instituted a suit for declaration, injunction, possession and mense profits in their capacity as trustees of the Oswal Community of Jasol. It was instituted on October 12, 1976. The petitioner and non-petitioners No. 7 to 12 were defendants in the suit. There is a piece of land measuring about 737 7/9 Sq. Yds. within the Panchayat boundary of village Jasol. It is alleged that this land belongs to the Oswal Community. Originally, the aforesaid land was owned by Thakur Madho Singh of Jasol. He orally made a gift of it to the Oswal Community on Ashad Sud 13, Sam vat 200. Thereafter, the cattle of the village were used to be tied on it. It was stated by the plaintiffs that on a part of this land, the defendants No. 2 to 6 have made an encroachment. Defendant No. 1 gave notice dated October 21, 1974 to the Oswal Community to remove the encroachment from the land in question. An objection was filed on October 27, 1974. Defendant No. 1 by its resolution dated April 6, 1975 resolved

that a portion of the land may be sold to the Oswal Community for Rs. 5/- and a patta be granted to them. Against the aforesaid resolution, an appeal was filed by the Panchayat Inspector before the Collector, Barmer, who, by his order dated March 2, 1976 set aside the resolution of the Panchayat and directed the Panchayat to sell the plot in question by public auction. As regards the plot marked ABCD in the plan appended to the plaint it was stated by the plaintiffs that an order dated July 27, 1975 was passed by the Panchayat asking them to remove their encroachment. In respect of the plot marked as DEFH, defendant No. 1 passed an order of removal of encroachment on July 27, 1975. So far as the plot marked BIGPEC is concerned, defendant No. 1 passed an order for removal of the encroachment on August 24, 1975. As a result of the passing of the aforesaid orders, a notice u/s 79 of the Act was issued on April 10, 1975. In para 11 of the plaint, it was stated that the cause of action accrued to them on April 6, 1975. July 27, 1975 and August 24, 1975 when the orders for removal of the encroachment were passed by defendant No. 1. It was further stated that the cause of action accrued to them on September 14, 1976 also when a portion of the land in question was auctioned in favour of defendant No. 7 Smt. Sarjoo. In these circumstances, the plaintiffs filed a suit for declaration, injunction, possession and mense profits.

3. Separate written statements were filed on behalf of defendant No. 1 and defendants No. 2 to 6. The suit was resisted on various grounds. One of the pleas laised in the written statements was that the suit of ths plaintiffs is barred by time on the ground that u/s 79(2)(b) of the Act, the suit of such nature and the reliefs prayed for, would only be filed within six months next after the accrual of the alleged cause of action. A rejoinder was filed to the written statement of defendant No. 1. On the pleadings of the parties, the learned District Judge framed as many as 22 issues inclusive of the relief. In this revision, I am only concerned with issue No. 18 which when translated into English runs as follows:

Whether the plaintiff's suit is barred by time?

The burden of this, issue was placsd on defendant No. 1 The learned District Judge heard the arguments on this issue and by his order dated July 19, 1975 held that the suit of the plaintiffs is not barred by time whereby he decided issue No. 18 against defendant No. 1. Aggrieved, defendant No. 1 has filed this revision questioning the correctness of the decision on issue No. 18.

4. I have heard Mr. A.D. Chopra, learned Counsel for the petitioner and Mr. H.C. Jain, learned Counsel for the plaintiff-non-petitioners.

5. Learned Counsel for the petitioner argued that the plaintiffs' suit was barred by time because it was instituted after six months from the-accrual of the cause of action. We submitted that the provisions contained in Section 79(2)(b) of the Act are attracted in the case and the learned District Judge made a wrong approach to the question of limitation in as much as according to him (District Judge) the orders of the Panchayat which have been challenged in the suit

cannot be said to have been passed under the Act, and, therefore, Section 79(2) of the Act is not attracted. Learned Counsel for the plaintiff non-petitioners supported the order under revision and submitted that the orders so passed by defendant No. 1 were without jurisdiction and, therefore, they cannot be said to have been passed by the Panchayat for anything done or purporting to have done under the Act and as such, p. 79(2)(b) of the Act will not be applicable. Apart from that, he contended that having regard to the averments made in the plaint and particularly its para 9, the cause of action accrued to the plaintiffs on the dates specified in para 11 and from those dates, the suit of the plaintiffs as filed on October 12, 1976 is within limitation.

6. I have bestowed my anxious and thoughtful! consideration to the rival contentions of the learned Counsel for the parties.

7. It will be useful hereto refer the material portion of para 9 of the plaint : (In Hindi - Not typed in the certified copy)

Para 11 of the plaint relating to the cause of action reads as under : In Hindi - Not typed in the certified copy

Section 79 Suits etc. against Panchayats -(1) No suit... ..

(2) No suit against Panchayat or a Nyaya Panchayat or against a Sarpanch, Panch, Chairman, Member, Officer or servant thereof or against any person acting under the direction of such Panchayat, Nyaya Panchayat, Sarpanch, Panch, Chairman, member, officer or servant for anything done or purporting to be done under this Act in its or his official capacity:

(a) shall be instituted until the expiration of two months next after notice in writing stating the cause of action, the name and the place of abode of the intending plaintiff and the nature of the relief which he claims, has been in the case of a Panchayat or Nyaya Panchayat delivered or left at its office and in the case of a Sarpanch, Panch, Chairman, member, officer servant or person as aforesaid delivered to him or left at his office or usual place of abode and the plaint in such case shall contain a statement that such notice has been so delivered or left or

(b) shall be commenced otherwise than within six months next after the accrual of the alleged cause of action.

Mr. A.L. Chopra, learned Counsel for the petitioner on the basis of Section 24 of the Act which deals with "Duties of the Panchayats" and Gram Panchayat of village kluda v. Smt. Pushpa Kanwar 1966 RLW 541 and Nemichandvs. Gram Panchayat Thanvla 1971 RLW 184 contended that the orders of the Panchayat were passed by it purporting to act under the Act. As to the meaning and import of the expression "purporting to be done under this Act", he invited my attention to Municipal Council, Udaipur v. Kishanlal 1971 RLW 184 where Section 271 of the Rajasthan Municipalities Act, 1959 and State of Maharashtra and Another Vs. Shri Chander Kant, where the expression "purporting to be done under the Act"

were considered. On the other hand, Mr. H.C. Jain, Learned Counsel for the plaintiff-non-petitioners referred Municipal Board Bhilwara v. Bhura hi and Anr. ILR (1964) Raj 847 where expression "for anything done or purporting to the done under the Act" was considered and a distinction was made between lawful acts and irregular act on the one hand and illegal or ultra vires on the other. He also cited Nagar Palika, Nathdwara v. Temple Board, Nathdwara 1981 RLW 239 to show that the orders passed by defendant No. I do not fall within the purview of acts done or purported to have been done under the Act. It may be mentioned that Municipal Board Bhilwara's case ILR (1964) Raj 847 was considered in Municipal Council, Udaipur's case 1971 RLW 184 and the view taken therein was not approved by the full Bench. It is not necessary to examine this matter in detail, for, I am of opinion that the suit as instituted for the reliefs by the plaintiffs through the orders of defendant No. I have challenged is within limitation as this is a case where there has been successful denials of the claims of the plaintiffs in regard to the land in question and they could base their suit on the effective cause of action, which arose when a part of the land in question was auctioned on September 14, 1976. In this connection, a few facts deserve recall. Notice dated October 21, 1974 merely says that unauthorised possession has been taken of the land and so it should be removed within 7 days & a compliance report be submitted, failing which, defendant No. I would remove the encroachment and the expenses will be recovered. Thereafter the objection was filed. A reply was also filed. Thereupon, the Panchayat passed the order dated April 6, 1975 to the effect that for public purpose apatta may be issued to the Oswal Samaj on Rs. 5/-. The Collector, by his order dated March 2, 1976 accepted the revision and set aside the order dated April 6, 1975 of the Panchayat. Even after these orders, no effective steps were taken to dispossess the plaintiffs from the land or the part of the land. A notice for auction was issued on April 6, 1975 that the land described in the notice will be auctioned from April 2, 1976. The auction took place on September 14, 1976 though the notice under s 79(2) of the Act had already been served on April 12, 1976 It is, thus, apparent that despite the notice a" d orders, no steps were taken to disposses the plaintiffs from the land in question. It is a case of successive denials and in such circumstances, the question is when the right to sue accrued which means when the cause of action will be considered to have accrued. The right to "sue accrues" does not always mean "the right to sue first accrues". While considering the words "right to sue" in Article 120 of the Limitation Act (Old) their Lordships of the Privy Council in AIR 1930 270 (Privy Council) observed as under:

There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear ,and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

This decision was relied on in AIR 1931 9 (Privy Council) These observations were endoresed in Gannon Dunkerley and Co., Ltd. Vs. Union of India (UOI),

8. In AppaRao v. Secy. of State AIR 1939 Mad 193, it was observed as follows:

There is nothing in law which says that the moment a person's right is denied he is bound at his peril to bring a suit for declaration. It would be most unreasonable to hold that a bare repudiation of a person's title, without even an overt act, would make it incumbent on him to bring a declaratory suit. A party surely has a right to elect as to when he may bring a suit for vindicating his right, when there are several or successive denials. True, a mere continuation of a prior cause of action does not give rise to a fresh right for instance, where property is attached, the procuring of the attachment is the wrongful denial and the cause of action arises when the attachment is effected, in such a case it is wrong as to give a fresh starting point during the whole period the attachment subsists. But from this it does not follow that an owner can never ignore an attack against his title, however, casual or trivial, without his right to sue being imperilled in respect of a subsequent invasion. It is for the plaintiff to decide at his option, on which act he chooses to found his cause of action, and when he does so, it is with reference to the particular infringement he alleges that the limitation should be reckoned.

(Emphasis supplied)

The aforesaid observations were approved in *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, and their Lordships of the Supreme Court have expressed themselves in the following words:

The legal position may be briefly stated thus:

The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however, ineffective and innocuous it may be cannot be considered to be a clear & unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

(Underlining is mine)

The aforesaid orders were ineffective and as the possession of the plaintiffs was not disturbed, they did not constitute clear threat so as to force the plaintiffs-non-petitioners to institute the suit. The order of defendant No. 1 was merely of a declaration that Bada is of villagers. No effective steps for dispossessing the plaintiffs were taken. In my view, it did not furnish any compulsory cause of action to the plaintiffs. The effective cause of action was the auction of land marked MLKI in favour of Smt, Sarjoo which was held by the Panchayat on September 14, 1976. The suit as brought on October 12, 1976 is within limitation, u/s 79 (2) of the Act. I am supported by Appa Rao case 1966 RLW 541 & *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, . I, therefore, affirm the finding of the learned District Judge on issue No. 18 though for altogether

different reasons and hold that the suit of the plaintiffs is within limitation u/s 79(2)(b) of the Act.

9. The result is that there is no merit revision petition. It is, accordingly, dismissed. In the circumstances of the case, the parties, are left to fl bear their own costs.