
(1987) 04 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 22 of 1986

Gram Panchayat at Village Mander and ors.

APPELLANT

Vs

Dilbag Singh and ors.

RESPONDENT

Date of Decision : 09-04-1987

Acts Referred:

Citation : (1987) PLJ 544 : (1988) 1 RRR 594

Hon'ble Judges : D.V.Sehgal, J

Advocate : K.K. Gupta, Advocates., S.P. Jain, O.P. Sharma, Advocates., Vijay Jhanji, Advocates for appearing Parties

Judgement

D.V. Sehgal, J.—This second appeal from order is directed against the judgment dated 20.2.1986 passed by the learned Additional District Judge Jalandhar, whereby he accepted the appeal of the plaintiffrespondent No. 1 against the judgment and decree dated 15.2.1985 of the learned Sub Judge Second Class, Jalandhar, and remanded the case to him for trial on merits.

2. The defendant appellants Gram Panchayat, its Sarpanch and Panches being aggrieved against the said order of remand have approached this Court through the instant appeal.

3. Respondent No. 1 (Dilbag Singh) had filed a suit alleging that he owns a taur in the village abadi where he stores his fuel, fodder, household articles, agricultural implements etc.; that he has also grown trees on the said taur; that Piara Singh appellant No. 2 who is Sarpanch of the Gram Panchayat and other appellants bear illwill against him; that on 18.7.1984 they along with two Police Constables came to the taur in dispute with building material and converted a portion of it shown in the site plan attached with the plaint into a street. Thus, he complained that the appellants had encroached upon a portion of the taur which belongs to him. He prayed for grant of a decree for possession of the said portion of his alleged taur. The appellants resisted the suit. They filed a written statement and pleaded therein that the site in dispute was a street and was being used as such by the inhabitants. They admitted that the taur of the

respondent (Dilbag Singh) abuts the phirni of the village. They, however, denied that his taur had been encroached upon by them. They maintained that the site in dispute is a part of the street and on 18.7.1984 its brick flooring was laid under the orders of the District Development and Panchayat Officer.

4. The pleadings of the parties led the learned trial Court to frame, following issues :

(1) Whether the plaintiff is the owner of the land in dispute ? OPP.

(2) Whether the Civil court has no jurisdiction to decide and adjudicate the matter in controversy ? OPD.

(3) Whether the site plan attached with the plaint is correct ? OPP.

(4) Whether valid notice has been served upon the Panchayat ? If so, its effect ? OPP.

(5) Whether the suit is bad for misjoinder of defendants No. 2 to 6 ? OPD

(6) Whether the property in dispute vested in Gram Panchayat of village Mander ? OPD.

(7) Whether the plaintiff is entitled for possession of the property in dispute ? OPP.

(8) Relief.

5. The learned trial Court treated issue No. 2 as preliminary and since it could be decided on the basis of the pleadings of the parties, it proceeded to determine the same. It held that the suit is barred by the provisions of the Punjab Village Common Lands (Regulation) Act, 1981 (for short 'the Act'), and as such the Civil Court had no jurisdiction to entertain and try the suit.

6. On an appeal filed by respondent No. 1 this finding has been reversed by the learned Additional District Judge. He has held that the precise question in the present case is whether the Gram Panchayat has encroached upon the property of respondent No. 1 and observed that the authorities under the Act have no jurisdiction to decide this question of title. He further proceeded to hold that respondent No. 1 had prayed for decree for possession of the area said to have been encroached upon by the appellants and if ultimately after enquiry it is found that the site in dispute is owned by Dilbag Singh respondent the authorities under the Act would have no jurisdiction to grant the relief prayed for by him. Relying on a Full Bench judgment of the Andhra Pradesh High Court in Sangubhotla Venkatramaiah v. Kullu Venkataswamy and others, A.I.R. 1976 Andhra Pradesh 402, the learned District Judge held that the jurisdiction of the Civil Court is not ousted. He, thus, accepted the appeal and remanded the suit for decision on merits to the trial Court.

7. I have heard the learned counsel for the parties. I am of the firm view that the decision of the learned Additional District Judge is contrary to law and the

specific provision of the Act. Section 2(g)(4) of the Act provides that shamilat deh includes lands used or reserved for the benefit of the village community including street lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gora deh. Sections 11 and 13 of the Act are to the following effect :

Section 11, "Decisions of claims of right, interest in shamilat deh (1) Any person claiming right title or interest in any land vested or deemed to have been vested in a Panchayat under this Act, or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed. (2) Any person or a Panchayat aggrieved by an order of the Collector made under subsection (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit."

Section 13, "Bar of jurisdiction of Civil courts No Civil Court shall have jurisdiction (a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or (b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or (c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine."

8. The facts mentioned above make it clear that respondent No. 1 through the suit claimed title in a portion of the land which according to the appellants vest in the Panchayat as the same being a street is shamilat deh. Under section 11 of the Act respondent No.1 can claim this right by making an application to the Collector and appropriate relief, if his claim is established, could be granted to him by the Collector. Civil Court had no jurisdiction to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under the Act. The learned counsel for respondent No. 1, however, contended that when a private person claims that the property is owned by him, and not by the Gram Panchayat he can maintain the suit and the Civil Court has the jurisdiction to entertain the same. To canvass this proposition, he relied on a Division Bench judgment of this Court in Bhagu and others v. Ram Sarup and others, 1985. P.L.J. 366 : 1985 R.R.R. 353. I find that this judgment does not support respondent No. 1. The question which arose for determination before the Division Bench was whether the jurisdiction of the Civil Court is barred when the plaintiff asserts that a particular piece of land is a thoroughfare and has been wrongfully encroached upon by the defendant particularly when in such a case both the parties are private individuals and Gram Panchayat is not a party to the suit. It was held that a dispute of this nature can be adjudicated upon and

decided by the Civil Court and the suit is not barred by the provisions of Act. The following observations made in Bhagu's case (supra) are quite to the point :

"It is obvious that the right, title or claim of a private person to a particular land or immovable property visavis the Gram Panchayat cannot factually and effectually be settled in the absence of the Panchayat being impleaded as a party to the litigation. Any decree obtained by an individual in his favour, collusively or after a contest, about the properties vesting or deemed to have vested in the Panchayat can never bind the Gram Panchayat in the absence of its being a party to the litigation. The very implication of the word adjudication is to finally determine the rights of the two contestants visavis the subjectmatter of dispute judicially or in a judicial manner. One of the essential traits of `adjudication is proprio vigore" binding on and creates rights and obligations between the parties. This can never be done unless the dispute is between the parties. Panchayat and a private individual qua the shamilat deh or any other land or immovable property or any right, title or interest therein and unless the Panchayat is the real party to the litigation So, in a nutshell the whole implication of section 13 of the Act is that the jurisdiction of the Civil court is taken away when the lis is between the Gram Panchayat and a private person and it relates to any of the questions specified in this section. It appears clear that the section would not be operative when the lis or the dispute is between two private individuals".

9. In the present case the dispute is between respondent No. 1 on the one hand and the Gram Panchayat appellant on the other. The elaborate discussion in Bhagu's case (supra) leaves no doubt that the instant suit as constituted and particularly the nature of the dispute involved therein cannot be entertained by the Civil Court as a claim in this regard can be raised by respondent No. 1 before the Collector under Section 11 of the Act.

10. The learned counsel for respondent No. 1 then tried to seek support from Sangubhotla Venkatramaiah's case (supra). It no doubt lays down that where the subjectmatter of the suit falls outside the exclusive jurisdiction of the Special Tribunal or where the relief sought in the suit is one which the Special Tribunal is incapable of granting, the jurisdiction of the Civil Court is not ousted. But that is not the case here. The subject matter of the suit falls well within the jurisdiction of the Collector under section 11 of the Act. If respondent No. 1 establishes his claim before him, the Collector can grant the relief, i.e. possession of the site in dispute, to him.

11. As a result, I allow this appeal, set aside the judgment dated 20.2.1986 of the learned Additional District Judge and restored that of the learned Sub Judge Second Class, Jalandhar, dismissing the suit of the respondents on the ground that the Civil Court had no jurisdiction to entertain the same. There shall, however, be no order as to costs.