

(2001) 06 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1906 of 1981

Jog Raj

APPELLANT

Vs

Gram Panchayat (Gram Sabha), Tibba Nangal

RESPONDENT

Date of Decision : 01-06-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 102
Limitation Act, 1963 — Section 3
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 — Section 2
Punjab Panchayati Raj Act, 1994 — Section 86, 92

Citation : (2001) 4 RCR(Civil) 805

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : J.S. Chahal, for the Appellant; Gur Rattan Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Gupta, J.—This Regular Second Appeal is directed by the plaintiff against the judgment and decree dated 2.4.1981, whereby his appeal filed against the judgment and decree dated 7.2.1989 was dismissed and the judgment of the Sub Judge 1st Class, Rup Nagar, whereby his suit for permanent injunction for restraining the respondents from recovering the amount of Rs. 4,000/- was dismissed was up-held.

2. Briefly stated, the facts are that respondent No. 1, Gram Panchayat, Tibba Nangal was the owner of the common land situated in Village Tibba Nangal. Respondent No. 1 through respondent No. 2, Ram Ditta, Sarpanch, auctioned the Bagar Grass which had grown on the common land in the year 1972-73 for Rs. 13,350/- on 4.5.1972 which was purchased by the appellant. The appellant had paid the amount of Rs. 9,350/- but had not paid the remaining amount of Rs. 4,000/-.

3. The case of the appellant was that he had paid the amount of Rs. 4,000/- to

Ram Ditta, Sarpanch, respondent No. 2 on 23.7.1973 in the presence of Telu Ram and Paras Ram, Members Panchayat and respondent No. 2 had issued a Kachi receipt in lieu of having received the amount and had further promised to issue proper receipt when the Secretary of the Panchayat was available. However, later on the Sarpanch denied the receipt of payment of Rs. 4,000/- and moved an application to respondent No. 3 to effect the recovery of this amount by coercive means i.e. by way of arrears of land revenue to which they were not entitled.

4. With these allegations, the appellant filed a suit for permanent injunction for restraining the respondents from effecting recovery of the amount of Rs. 4,000/- as arrears of land revenue.

5. Respondent Nos. 1 and 2 contested the suit and filed written statement. They stated that the appellant had not paid Rs. 4,000/- to Ram Ditta, Sarpanch, and he had not issued any receipt and the alleged Kacha receipt was a fabricated document. They further stated that the suit was not maintainable and the civil Court had no jurisdiction to try this suit and further the suit was not properly valued for the purposes of Court fee and jurisdiction. It was also stated that no valid and legal notice had been served upon the respondents before filing the suit.

6. Accordingly, the following issues were struck on 20.9.1977:-

" 1. Whether the plaintiff has made a payment of Rs. 4,000/- on 23.7.1973 to the Sarpanch, defendant No. 2 ? OPP

2. Whether the alleged amount of Rs. 4,000/- is barred by time and cannot be recovered ? OPP

3. Whether the recovery can be effected under the provisions of Punjab Land Revenue Act and the Punjab Gram Panchayat Act ? OPD

4. Whether this Court has no jurisdiction to try this suit ? OPD

5. Whether the suit is not valued correctly for the purpose of court fee and jurisdiction ? OPD

6. What is the effect of non-service of notice on the defendants ? OPP

7. Whether the plaintiff is entitled to the injunction prayed for?OPP

8. Whether the suit is not maintainable in the individual name of the defendant ? OPD

9. Relief."

The parties adduced their evidence. The Sub Judge 1st Class, Anandpur Sahib, tried this case. He, after hearing counsel for the parties vide his judgment dated 7.2.1980, dismissed the suit by holding under Issue No. 1 that it was not proved on file that the appellant had made payment of Rs. 4,000/- to respondent No. 2, Ram Ditta, Sarpanch. Under Issue Nos. 2 and 3, it was held that the law of

limitation did not bar the defence but it only barred the action and the Gram Panchayat was competent to recover the amount as arrears of land revenue as the law of limitation was not applicable to the proceedings for the recovery of the amount as arrears of land revenue. Under Issue No. 4, it was held that the said Court has no jurisdiction to try the suit. Under Issue No. 5, it was held that the suit was properly valued for the purposes of Court fee and jurisdiction. Under Issue No. 6, it was held that the non- service of the notice upon the respondents did not effect the merit of the case. Under Issue No. 7, it was held that the appellant was not entitled to the relief claimed and further under Issue No. 8, it was held that the suit was not maintainable against the Government Officer in his personal name without making the State of Punjab as party.

7. Aggrieved by the said judgment and decree, the plaintiff filed an appeal which was dismissed by the Additional District Judge, Rup Nagar, vide his judgment dated 2.4.1981.

8. Still feeling dissatisfied, the plaintiff has filed the present Regular Second Appeal.

9. It has been held by both the Courts below that the appellant had failed to prove that the amount of Rs. 4,000/- was paid by him to Ram Ditta, Sarpanch and that he had issued a Kacha receipt. It was further held that the alleged Kacha receipt was not a genuine document and in fact it was not duly proved by summoning the document expert and further the witnesses examined by the appellant for the alleged payment were inimical to the Sarpanch. These are findings of fact which have become final and cannot be agitated in Second Appeal in view of the provisions of Sections 100 and 102 of the Civil Procedure Code.

10. I have heard counsel for the appellant, Sh. J.S. Chahal, counsel for the respondents, Sh. Gur Rattan Pal Singh and carefully gone through the file.

11. It has been held by both the Courts below that the appellant had not paid the amount of Rs. 4,000/- to respondent No. 2, Ram Ditta, Sarpanch. This finding of fact has become final and cannot be agitated in Second Appeal. Now the only question to be determined is whether the Gram Panchayat of Tibba Nangal was competent to recover the aforesaid amount as arrears of land revenue, especially when the amount due appears to be time barred. Counsel for the appellant contended that where the limitation to recover the amount had expired, then the remedy was barred and the Gram Panchayat was not competent to recover the amount of Rs. 4,000/- by coercive means as land revenue. In my opinion, the contention of learned counsel is not tenable. Section 86 of the Punjab Panchayati Raj Act, 1994, talks about Gram Panchayat fund. According to Sub-section (1) Clause (h), income derived from the common land vested in the Gram Panchayat under any law for the time being in force would be treated as Gram Panchayat fund. Section 92 of the said Act states that the Collector shall recover any sum due under this Act, other than sums due under decree passed by the Panchayat in exercise of its civil jurisdiction or as fine imposed in exercise of its criminal

jurisdiction as if they were arrears of land revenue. Therefore, the Collector is competent to recover any sum due under the Act as arrears of land revenue. Since Rs. 4,000/- were due from the appellant as the lease money of common land vested in the Gram Panchayat, which the appellant had not paid, so, the Collector was competent to recover it as arrears of land revenue. It is true that the disputed amount related to the period 1972-73 and no proceedings were started for the recovery of the said amount till the year 1977. It has been held by the Allahabad High Court in *Rajeshwar Mani Tripathi Vs. Sahkari Samiti*, that Limitation Act bars the remedy but it does not excuse the liability which one incurs. Section 3 of the Limitation Act says that if a law court finds that prima facie case is not within the period of limitation it shall dismiss it although no such plea is taken in defence. This simply means that the court concerned may say that your remedy is barred but the liability would exist and the man who is liable may choose to fulfil the liability even though the remedy is barred by limitation and the limitation would not stand in his way. In the present case, it is not the Gram Panchayat who had filed the suit for the recovery of the lease amount but on the other hand, the person who was liable to pay the lease money had come forward by filing suit for permanent injunction that the Panchayat was not competent to recover the amount as arrears of land revenue as he had already paid the amount. The words used in Section 92 are with respect to the recovery of any sum due and not payable. The authority *Kalu Ram v. New Delhi Municipal Committee and Anr.*, 1965 PLR 1190, cited by the learned counsel for the appellant is not applicable to the facts of the present case because the words used in Section 2(dd) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, are with respect to rent in relation to any public premises "payable" periodically for the authorised occupation of the premises but in Section 92 of the Act, the word "payable" has not been used. Only the word "due" is used. Moreover, in the abovesaid authority, the Municipal Committee had filed a suit for the recovery of the amount which was dismissed as time barred and as such, it was held that since the Committee had lost the remedy to recover the amount in a court of law so, it cannot recover the same by invoking the coercive machinery-provided by the Act. In the present case, no such suit had been filed by the Gram Panchayat. Section 92 does not talk that a time barred amount cannot be recovered by coercive means. On the other hand, it contains summary procedure for recovering the amount due to the Panchayat.

12. It has been held in *Ali Mohd. v. Ramnivas and Ors.*, AIR 1967 Raj 258, that limitation of law is applied only to suits and applications and it is no bar to the pleas raised by way of defence.

Therefore, in view of the discussion above, I hold that there is no force in the appeal and as such, the same is dismissed.

13. Appeal dismissed.