(1974) 07 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Second Appeal No. 86 of 1967

Panchayat Samiti APPELLANT

Vs

Moti Singh RESPONDENT

Date of Decision : 17-07-1974

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 257B(4)
Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 83, 85

Citation : (1974) WLN 553

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—This is a defendant''s second appeal in a suit for recovery for Rs. 1,188.31 P.

2. Motisingh, plaintiff respondent, was Sarpanch of Gram Panchayat Naya Sanwara and during his term of office a loan was sanctioned by the Development Block, Pindwara, for constructing a small bridge in village Naya Sanwara. The work of constructing the bridge was entrusted to the Gram Panchayat and the plaintiff in his capacity as Sarpanch received an amount of Rs. 959.75 P. on 1411.57 for being spent on the project. The Plaintiff''s case is that he deposited the amount with the Gram Panchayat However, as the Gram Panchayat failed to carry out construction of the bridge and so Shri S.K. Arain, the then Vikas Adhikari, Development Block, Pindwara, asked for return of the said amount of Rs. 959.75 P. The plaintiff''s allegation is that on 22.1.58 he withdrew the amount from the Panchayat end paid Rs. 800/ to Shri R.R. Khargavat, Industrial Extension Officer. It is further stated by him that for the balance of the amount be made a request to the Vikas-Adhikari to adjust the same against certain amount lying to the credit of the Panchayat in the Development Block. It is alleged by the plaintiff that even though the payment had been made by him, the Block Development Officer, Panchayat Samiti Pindwara, recovered the same

from him over again by issuing a certificate under the Public Demands Recovery Act and the plaintiff made the payment under protest when his movable property was attached. After serving a notice u/s 69 of the Rajasthan Panchayat Act, the plaintiff filed the present suit for recovery of Rs. 1,169.36 P, realised from him together with interest Rs. 18 95 P., total Rs. 1,138.31 P.

3. The defendant Panchayat Samiti, Pindwara, raised a number of objections in the written statement filed by it. It pleaded inter alia that the plaintiff''s suit was liable to be dismissed as the same was not maintainable u/s 257B(4) of the Rajasthan Land Revenue Act, 1956. The trial court repelled the contentions raised by the defendant and decreed the plaintiff''s suit. Its judgment and decree were upheld in appeal by the Civil judge, Sirohi. Hence this second appeal by the defendant.

4. It may be noted here that the statements of the witnesses and the documents produced by the parties in the trial court have been weeded out and the leraned Counsel for the parties expressed their inability to reconstruct the record. I was thus left with no alternative, but to hear the appeal on the record as it exists. Realising the difficulty of substantiating his arguments without record, the leraned Counsel for the appellant confined his submission to one point only, viz., that no suit lies in civil court in respect of the subject-matter of the present suit. Precisely the objection of the leraned Counsel for the appellant is that u/s 257 B (4) of the Rajasthan Land Revenue Act, 1956 (which will hereinafter be called as the Land Revenue Act), no suit shall lie or be instituted if any law under which the sum of money paid under protest is due, provides a remedy, whether by way of suit, appeal, application or other proceedings, to the person from whom such sum was recovered. It is argued that the Rajasihan Panchayat Samitis and Zila Parishads Act, 1959 (which will hereinafter be called ""the Panchayat Samitis Act), confers a power of revision on the Government to modify, annul, reverse or remit for reconsideration any decision or order made by Panchayat Samiti in respect of any proceedings (vide Section 85(1) of the Panchayat Samitis Act). It is contended that in face of Section 85 of the Panchayat Samitis Act, the present suit would not lie.

5. In order appreciate the point canvassed by the leraned Counsel for the appellant, reference may be made to Section 83 of the Panchayat Samitis Act, which reads as under:

83. Recovery of un-utilised subsides and grants--Whenever, in exercise of any power conferred on it by this Act a Panchayat Samiti shall have sanctioned to any institution or individual a subsidy or grant of money for any specified purpose and whole or any portion of such subsidy or grant shall be found not to have been utilised for that purpose in accordance with the conditions subject to which the subsidy or grant was sanctioned, the same or the unutilised portion thereof shall be recoverable by the Panchayat Samiti as an arrear of land revenue.

6. There is no denying the fact that the amount was recovered by the Panchayat

Samiti from the plaintiff u/s 83. It is futile to argue at this stage that the suit amount was not recovered from the plaintiff as arrears of land revenue. It is mentioned in the judgment of the trial court as well as by the first appellate court that it is clear from the endorsement made on the reverse of Ex.9, demand notice, issued to the plaintiff that the recovery was being made as arrears of land revenue u/s 83 of the Panchayat Samitis Act. Thus, there is a concurrent finding of the two courts below that the suit amount was recovered from the plaintiff respondent by Tehsildar, Pindwara, in accordance with the provisions of the Land Revenue Act and the plaintiff-respondent deposited the amount in the Treasury of Tehsil Pindwara under protest. In para No. 9 of the plaint, it has been stated by the plaintiff that inspite of the plaintiff''s protest, proceedings were taken against him under the Rajasthan Land Revenue Act 1956 by attachment of the plaintiff''s movable property and, therefore, the plaintiff had no option, but to deposit the amount.

7. Section 85 of the Panchayat Samitis Act clearly provides that any person interested, may file a revision application before the State Government against the order of the Panchayat Samiti''s order. There is thus no escape from the conclusion that the plaintiff could have filed a revision application before the State Government u/s 85 of the Panchayat Samitis Act against the impugned order of the Samiti. Admittedly he did not do so and chose to file the present suit,

8. Sub-section 3 of Section 257B of the Land Revenue Act no doubt lays down that subject to the provision contained in Sub-section (4), the person making a payment under protest in accordance with Sub-section (1), shall have the right to institute a suit for the recovery of the whole or a part of the sum so paid under protest. So the right to file a suit is there, but it is subject to the previous contained in Sub-section (4).

9. Sub-section (4) to Section 257B of the Land Revenue Act further provides that no suit under Sub-section (8) shall lie or be instituted if any law under which the sum of money paid under protest is due, provides a remedy, whether by wav of suit, appeal, application or other proceedings, to the person from whom such sum was recovered.

10. As already noted above, the plaintiff from whom the suit-sum was recovered could have filed a revision application before the State Government for getting the order of the Panchayat Samiti annulled. Thus a remedy by way of an application for revision is provided under the Panchayat Samitis Act itself under which the amount in question was recovered from the plaintiff. Consequently, Sub-section (4) creates a bar against the plaintiff in filing a suit under Sub-section (3) of Section 257B of the Land Revenue Act.

11. The result of the foregoing discussion is that the suit out of which this appeal arises is not maintainable and deserves to be dismissed as such. Accordingly I allow this appeal, set aside the judgment and decree passed by the courts below and hereby dismiss the suit as being not maintainable. In the circumstances of

the case I leave the parties to bear their own costs throughout.

