
(1982) 03 AHC CK 0027
In the Allahabad High Court
Case No : Second Appeal No. 891 of 1970

Thagga Mallah

APPELLANT

Vs

Badri Singh and Another

RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 64, 82

Citation : AIR 1982 All 432 : (1982) AWC 300

Hon'ble Judges : S.D. Agarwal, J;A.N. Varma, J

Bench : Division Bench

Advocate : S.K. Varma, for the Appellant; Sripat Narain Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwal, J.—The present second appeal has come up before this Bench because of a reference having been made by a learned single Judge of this court.

2. The plaintiff appellant, Thagga Mallah, had purchased plot No. 1658 and used its northern portion for cultivation and the southern portion as sahan land. The south eastern corner of the said plot was given to one Ram Janam for constructing a house. South east to Ram Janam's house is situate a Well in plot No. 1659.

3. Suit No. 1/8/17 of 1963, was filed by the respondents Badri Singh and Vijay Bahadur Singh for recovery of a sum of Rs. 484 for compensation caused by the destruction of their crops, as the nali which, passed through the sahan of Thagga Mallah, had been stopped by him. This suit had been filed in the Nyaya panchayat, NawaK. The suit was, ultimately, compromised between the parties. By virtue of the said compromise, the respondents were given a right to flow water over the land of the plaintiff-appellant. This compromise was accepted by the Nyaya Panchayat and the suit was filed. The order dated 26th Apr. 1965 by which the Nyaya panchayat accepted the compromise, was challenged in revision

u/s 89 of the U. P. Panchayat Rai Act This revision was also dismissed by the revisional court. Thereafter, the plaintiff-appellant has filed the present suit for a declaration to the effect that the compromise dated 26th April, 1965 filed in the Panchayati Adalat was illegal, ineffective and not binding on the plaintiff appellant.

4. The suit was filed on the allegations that the compromise had been obtained by fraud played by the defendant-respondents on the appellant and that the Nyaya Panchayat, Nawali, had no jurisdiction to record the compromise. Certain other legal pleas were also taken by the appellant.

5. The respondents contested the suit on the ground that their fields had been regularly irrigated by the water of the well, situate in plot No. 1658, through the nali in suit for the last 50 years and thereby a right of prescription and customary easement had arisen in their favour. The appellant had no right to close or block the nali and since the obstruction had been caused to the flow of the Nali damage had been done to the crops which resulted in filing of the suit by the respondents in the Nyaya Panchayat in which the compromise was recorded by the Nyaya panchayat on 26th April, 1965 and that no fraud of any sort had been played upon the plaintiff appellant in filing the said compromise.

6. The trial court, after examining the evidence on the record, found that the plea of fraud set up by the appellant was not established. It was further found by the trial court that the Pan-chayat Adalat had the jurisdiction to record the compromise. The other pleas of the plaintiff-appellant also did not find favour with the trial court. The suit was, ultimately, dismissed by the trial court by judgment dated 10th Dec. 1968. Aggrieved by the decision dated 10th Dec. 1968, the appellant filed an appeal. The appellate court confirmed the findings of fact recorded by the trial court and also did not agree with the contention of the appellant that the Nyaya Panchayat had no jurisdiction to record the compromise. The appeal was, consequently, dismissed on 31st Dec. 1969. Aggrieved by the decision dated 31st Dec. 1969, the present second appeal was filed in this Court.

7. The appeal came up for hearing before Hon. K. M. Dayal, J. The counsel for the appellant urged that the Nyaya Panchayat had no jurisdiction to record the compromise u/s 82 of the Act as the matter in dispute related to rights in immovable property and, as such, the decree passed by the Nyaya Panchayat on 26th April, 1965, was void and ineffective and not binding on the plaintiff appellant.

8. The learned single Judge was of the opinion that there was a conflict between two learned single Judges of this Court, in Bikram Singh v. Surya Pal Singh 1955 All LJ 590 and Rameshwar Prasad Sharma v. Som Prakash 1972 All WR 31 and as such, the case was referred for decision to a larger Bench for the purposes of examining the scope of Section 82 of the U. P. Panchayat Raj Act.

9. In order to examine the scope of Section 82 of The U. P. Panchayat Raj Act U.

P. Act No. XXVI of 1947 (hereinafter referred to as the Act), it is necessary to examine the various provisions of the Act as well as the object for which this provision had been brought about by the Legislature. The Act was enacted to establish and develop local self-government in the rural areas of the United Provinces. The Panchayati Adalats were created with a view to assist in the administration of civil and criminal justice in the rural areas and also to effect improvements in the sanitation and other common concerns of village. So far as the administration of justice was concerned, the Act sought to bring about justice in the rural areas in order to avoid inconvenience of the villagers in order that they may not have to go for each and every matters to the district headquarters for getting relief

10. u/s 42 of the Act, the State Government was authorised to divide a district into circles, each circle comprising as many areas subject to the jurisdiction of Gaon Sabhas as may be expedient and a Panchayat Adalat was to be established for each such circle. Section 64 prescribed the extent of the jurisdiction of a Panchayati Adalat. Section 65 empowered the parties to a suit by a written agreement to refer any suit of the nature mentioned in Section 82 to a Panchayati Adalat for decision, irrespective of the value of the suit and this suit had to be decided by the Panchayati Adalat. Section 66 specified certain suits which the Panchayati Adalat did not have jurisdiction to take cognizance of. Section 82 created special jurisdiction "in certain matters. Section 82 was in the following terms:--

"82. Special jurisdiction in matters comprised etc. -- Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be lawful for a Panchayati Adalat to decide any civil or revenue dispute arising in its local area and not pending in any Court in accordance with any settlement, compromise or oath agreed upon by the parties and likewise decide a case if compoundable."

11. By subsequent amendments in the Act, the nomenclature of Panchayati Adalat was changed and now named Nyaya Panchayat. Certain other amendments were also brought about which are relevant for the purpose of the present suit. By U. P. Panchayat Raj (Amendment) Act II of 1955, Section 65 of the Act was deleted which empowered the parties to refer any dispute of the nature mentioned u/s 82 of the Act to a Panchayati Adalat. Sections 64 and 66 were also amended. The material amendment was that in place of a suit mentioned in the original Act, the words "civil case" were substituted in all the clauses of the said sections. Section 82 was also substituted. The substituted Section 82 which is still in existence, is as under.

"82. Special jurisdiction in certain matter. -- Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be lawful for a Nyaya Panchayat to decide any dispute arising in its local area and not pending in any court in accordance with any settlement, compromise or oath agreed upon in writing by the parties."

12. From the above legislative changes, it is apparent that, initially the power which was given to the parties, to refer any dispute of the nature mentioned in Section 82 for decision by the Panchayati Adalat has now been taken away. No such reference can now be made by the parties. But Section 65 as originally enacted, did contemplate that u/s 82 of the Act other than those which have been referred to in Section 64 of the Act could be decided by the Panchayati Adalat.

13. Section 64 enumerates the types of civil cases which a Nyaya Panchayat can take cognizance of. The words "Notwithstanding anything contained in this Act or in any other law for the time being in force" used in Section 82 of the Act are indicative of the fact that though u/s 64 the Nyaya Panchayat had only a limited jurisdiction in respect of cases enumerated therein, but yet notwithstanding that section and any other law for the time being in force, it does have a jurisdiction to decide any dispute in accordance with the settlement, compromise, or oath agreed upon in writing between the parties.

14. In view of the abovementioned clause used in Section 82 of the Act, it is not possible to restrict the scope of Section 82 in respect of only those cases which have been enumerated u/s 64 of the Act. In our opinion, the Legislative clearly contemplated that even though the case may not come strictly within the scope of Section 64 of the Act, but still the Nyaya Panchayat would have jurisdiction to decide any dispute, including a dispute relating to an immovable property, provided however the dispute is not pending in any Court and the decision can only be by way of a settlement, compromise or agreement between the parties. The Nyaya Panchayat has no jurisdiction to decide on merits the disputes other than those referred to in Section 64, but it can only record settlement, compromise or agreement in respect of disputes though they may not come u/s 64 of the Act. The interpretation which we are placing will advance the object for which the Act has been enacted the purpose, as already mentioned above, being to avoid inconvenience to the rural people from going to the district headquarters for every dispute arising between them,

15. In *Bikram Singh v. Surya Pal Singh* (1955 All LJ 590) (supra), the dispute was as to who was the hereditary tenant of the disputed plot. This dispute related to Immovable property. The parties entered into a compromise and the said compromise was recorded by the Panchayati Adalat u/s 82 of the Act. In view of certain amendments in the Land Revenue Act, the Panchayati Adalat was held to have no jurisdiction to order correction of papers except where correction was sought to be made on the ground of transfer or succession. The argument, consequently, raised was that since, ultimately, the acceptance of the compromise would, in effect, amount to an order for correction of papers, the Panchayati Adalat had no jurisdiction to record the compromise. It was held by Hon^{ble} Mehrotra J. (as he then was) that u/s 82 of the Act as it then stood, the Panchayati Adalat had the jurisdiction to record the compromise though it related to immovable property. We agree with the decision given by Hon^{ble} Mehrotra, J.

16. In *Rameshwar Prasad Sharma v. Som Prakash* (1972 All WR 31 (Supra)) decided by Hon. Hari. Swarup J. (as he then was), a suit had been filed for an injunction against the respondent Som Prakash to restrain him from constructing a house on the land in dispute. In suit the Nyaya Panchayat recorded a compromise. The matter went up in revision. The revisional court allowed the revision and held that the Nyaya Panchayat had no jurisdiction to entertain the suit. In those circumstances it was held by this Court that since the nature of the suit did not come within Section 64, therefore, the Nyaya Panchayat had no jurisdiction to decide the said dispute and pass a decree thereon. In that connection an argument was raised that the decree was supportable in view of Section 82 of the Act, as it conferred additional special jurisdiction in matters where a party wanted a settlement or compromise of the same. Hon. Hari Swarup J. however observed that this question only related to the procedure and the dispute could be compromised only in a case where the dispute should be first cognizable by a Nyaya Panchayat. If such a dispute is not cognizable then it has no jurisdiction to decide it either on merits or in terms of a settlement or compromise. In this case. Hon. Hari Swarup J. was not exactly considering the scope of Section 82 of the Act, but the decision is primarily based on the ground that since the suit itself was not cognizable by the Nyaya Panchayat u/s 64 of the Act, a compromise could not have been recorded by it. If the decision of Hon. Hari Swarup J. is taken to mean that u/s 82, only those disputes can be decided by settlement, compromise or agreement as are mentioned in Section 64 of the Act, then we do not agree with the same. In our opinion. Section 82 is an independent section giving special jurisdiction to the Nyaya Panchayat even in matter which do not come u/s 64 of the Act to decide the same in accordance with the settlement, compromise or agreement provided such a dispute is not pending in any Court. It is further clarified that even in cases which are not covered by Section 64 of the Act, the provisions of Section 82 of the Act can be invoked for the purposes of deciding the dispute under this section. The view, to the contrary, taken by Hon. Hari Swarup J. is therefore, in our opinion not the correct position of law.

17. In the instant case, the suit was for a sum of Rs. 484/- for compensation for destruction of the crops. This suit was clearly cognizable under Clause (c) of Sub-section (1) of Section 64 of the Act, Since it was cognizable by the Nyaya Panchayat, the Nyaya Panchayat had the jurisdiction to decide the said dispute by means of the compromise. In view of the above, the decree passed by the Nyaya Panchayat on 26th April, 1965 cannot be said to be without jurisdiction.

18. In the result, the appeal fails and is accordingly dismissed with costs.