

PUNJAB AND HARYANA HIGH COURT

Bhagu

Vs

Ram Sarup

R.S.A. No. 2282 of 1980

(P.C. Jain, A.C.J. and I. S. Tiwana, J.)

17.04.1985

JUDGMENT

I. S. Tiwana, J.

1. The short but question of some complexity raised in this Second Appeal relates to the jurisdiction of the Court. It arises on the following facts.

2. Plaintiff-respondent Ram Sarup filed the present suit on 18th July, 1978 with the allegations that out of the two plots Nos. 208 and 212 situated in village Dhadoli, Tehsil Safidon, District Jind, the first one is owned by him and the latter is a public street. He and the proforma defendants in the suit were utilising this street as an approach to their houses for the last more than 30 years. The defendant-appellants being headstrong people not only threatened to dispossess him from plot No. 208 but had actually constructed a 6' high wall in the thoroughfare, i.e. on plot No. 212 and, thus, caused obstruction in the free passage to his house and also to the houses of other defendants. Thus, he sought a permanent injunction restraining the appellants from raising any construction or interference in his possession over plot No. 208 and prayed for a mandatory injunction directing these appellants to demolish the wall and the other construction and to restore the thoroughfare to its original position. The appellants contested the suit denying the above-mentioned allegations. The parties were put to trial on the following issues :-

- (1) Whether plaintiff is owner in possession of the disputed plot No. 208? O.P.P.
- (2) Whether this plot No. 212 has been used by the plaintiff for the last more than 30 years as street? O.P.P.
- (3) Whether defendants have blocked the street No. 212 prior to filing the suit dated 1.7.1978? O.P.P.
- (4) Whether the suit is not maintainable in the present form? O.P.D.
- (5) Whether plaintiff has no *locus-standi* to file the present suit? O.P.D.

(6) Relief.

Having come to the conclusion that the plaintiff was the owner in possession of plot No. 208 and that plot No. 212 was a thoroughfare and was being used as a passage by the plaintiff for more than 30 years and the defendant-appellants had actually blocked the same by raising the construction in question, the reliefs prayed for were granted. Under issues Nos. 4 and 5 it was held that the suit was maintainable in the present form and the plaintiff had the *locus standi* to file the same. In appeal, though the above-noted findings of the trial Court have been affirmed by the District Judge, Jind, yet one of the contentions raised before him and repeated before us is that the Civil Court had no jurisdiction to try the suit as it involved the determination of the question whether the land forming part of plot No. 212 being a thoroughfare did vest or not in the Panchayat. This, according to their learned counsel, could not be done by the said Court in view of the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the Act) as in force on the date of filing of the suit and as now substituted by Haryana Act No. 2 of 1981 with effect from February 12, 1981. The earlier section reads as follows :-

"13. *Bar of jurisdiction.* - No civil Court shall have jurisdiction - (a) to entertain or adjudicate upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in Panchayat under this Act; or (b) in respect of any other matter which any officer is empowered by or under this Act to determine; or (c) to question the legality of any action or any matter decided by any authority empowered to do so under this Act."

This section along with Sections 13-A and 13-B was later substituted by the present section during the pendency of this appeal. This, however, to our mind does not make any material difference to the fate of this case as the learned counsel for the parties are agreed that the bar of jurisdiction brought in by the Haryana Amending Act No. 2 of 1981 applies to pending appeals even. The newly substituted section reads as follows :-

"13. *Bar of jurisdiction.* - No civil Court shall have jurisdiction -

(a) to entertain or adjudicate upon any question whether -

(i) any land or other immovable property is or is not *Shamilat-deh*,

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in Panchayat under this Act,

(b) in respect of any matter which any revenue Court, officer or authority is empowered by or under this Act to determine, or

(c) to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under this Act."

In support of his above noted stand, the learned counsel for the appellants placed firm reliance on a Single Bench judgment of this Court reported as *Lehri and others v. Arjan Dass and others*¹, wherein almost on similar facts it has been held by the learned Judge that the matter is incapable

of being adjudicated upon by the civil Court. Since I felt some difficulty in reconciling myself with the opinion expressed in this judgment, I referred the matter to a larger Bench. This is how the appeal is now before us for disposal.

3. Though in the pleadings of the parties, the land in question is not described as Shamilat Deh and all that has been said and denied is that it is a "*Gali Sheh-re-aam*", yet this factual position is supported by the entries in the Jamabandi for the year 1976-77 (Exhibit P.7). As per this record of rights, the land is owned by the Nagar Panchayat. Undisputably streets and lanes within the Abadi Deh or Gora Deh of a village fall within the definition of "Shamilat Deh" as per the provisions of Section 2(g)(4) of the Act and vest in the Panchayat.

4. The answer to the controversy raised is apparently dependent on knowing of the true content and scope of the present Section 13 of the Act. In the first flush, the language of the section undoubtedly appears to support the stand of the counsel for the appellants, yet on a deeper consideration we find that the same is untenable.

5. In the light of Section 9 of the Civil Procedure Code, a litigant having a grievance of a civil nature undoubtedly has, independently of any statute, a right to institute a suit in some Court or the other unless its cognizance is either expressly or impliedly barred. Though the proposition of law that in interpreting a statute barring the jurisdiction of the civil Court one should not necessarily make an attempt to abridge its operation or cut down or modify its objectives with a view to give effect to the rule of interpretation that the ousting of jurisdiction should not be readily inferred is well settled, yet equally well established is the principle that a statute ousting the jurisdiction of a civil Court must be strictly construed (See AIR 1966 Supreme Court 1718). It is in the light of these principles that the scope and content of Section 13 of the Act needs to be examined. The need for the substitution of the present section vide Haryana Amending Act No. 2 of 1981 is stated in the following words in the Statement of Objects and Reasons :-

"In many places the Shamilat Deh has been occupied unlawfully by unscrupulous persons, acting some times in collusion with the representative of the Gram Panchayats. To combat this evil certain amendments were made to the Punjab Village Common Lands (Regulation) Act, 1961, in 1974. However, when tested in the High Court of Punjab and Haryana, certain of these provisions were struck down, - vide judgment of the Court. The present Bill seeks to remedy the infirmities found by the High Court. It also proposes to make some incidental changes to the Punjab Village Common Lands (Regulation) Act, 1961, to make some of its provisions more explicit so as to ensure more effective implementation."

This amendment was apparently brought about with a view to save and protect Panchayat lands from collusive decrees or to prevent usurpation of Shamilat lands. Further, in order to achieve this object rather quickly or in the shortest possible time, the Legislature thought it proper to exclude the jurisdiction of the Civil Court to try questions stated in clauses (a) and (b) of this section. What sort of adjudication is envisaged by this section is also well-indicated by the next following Section 13-A. It is clearly discernible from a combined reading of these two sections that the jurisdiction of the Civil Court is excluded from entertaining or adjudicating upon the questions stated in Section 13 when the *lis* is between a private person and the Panchayat. In

other words, it is only when the contest is between the Panchayat and a private person for the determination or adjudication of the questions specified in clauses (a) and (b) of Section 13 that the jurisdiction of the Civil Court is barred. It is obvious that the right, title or claim of a private person to a particular land or immovable property vis-a-vis 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 vis-a-vis the subject-matter 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 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. Though the word "entertain" as occurring in the opening part of clause (a) of this section may generally mean "to receive on file or keep on file" yet in the context in which it occurs only means that the Civil Court cannot dispose of the suit or the claim on merits and has to reject it as not maintainable if it relates to any of the questions specified in the section. This is so said by the Supreme Court in *Samarth Transport Co. v. The Regional Transport Authority*², in the context of Section 68-F of the Motor Vehicles Act, 1939 wherein it is laid down that the Regional Transport Authority may by order "refuse to entertain" any application for the renewal of any other permit. 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. In case the contention of the learned counsel for the appellants is to be accepted and taken to its logical end, or Section 13 of the Act is to be subjected to the interpretation suggested by him, then the jurisdiction of Civil Court can be ousted in any and every suit relating to any property or interest therein by raising a wholly frivolous plea in the written statement that the subject-matter of the litigation is Shamilat Deh or Panchayat property. In the face of such a plea, according to the learned counsel, even if the subject-matter of dispute is an urban property or a property with which the Panchayat is not even remotely concerned, the jurisdiction of the Civil Court stands ousted. In a nutshell, according to him, the Civil Court will have no jurisdiction to try any suit *qua* any property in which the defendant has pleaded on howsoever frivolous or mischievous grounds that the property in dispute is or is not Shamilat Deh or Panchayat property. If this argument is to be accepted, then practically all Civil Courts stand divested of their jurisdiction on the basis of the above-noted frivolous plea of the defendant. We do not think that ever was the intention of the Legislature in incorporating the present section or earlier Section 13 in the statute. In the instant case, it is not the claim of the plaintiff that either the suit property (Plot No. 212) be declared as Shamilat Deh or included or excluded from Shamilat Deh. All that has been stated by him in the plaint is that the suit land is a "Gali Sheh-re-aam" which is only a statement of fact. The denial of this fact by the defendant led to the settlement or determination of the question whether the land in dispute was a Gali Sheh-re-aam or a thoroughfare which was being used by the plaintiff as an approach to his house for the last about 30 years. This determination by the trial Court was only ancillary to the prayer or the relief sought by the plaintiff. Any finding either way is not to affect the interest or title of the Panchayat to the land in question. In the light of this we find it difficult to endorse the view expressed in Lehri's case (supra) or some other Single Bench Judgments of this

Court to which a reference was made by the learned counsel for the appellants as in none of those cases the above-noted aspect of the matter was taken into account and thus over-rule the same.

6. We thus find no merit in this appeal and dismiss the same but with no order as to costs.

Appeal dismissed.

Cases Referred.

11981 PLJ 52

2AIR 1961 SC 93