



RSA-1141-2016 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-1141-2016 (O&M)
Reserved on:-04.09.2025
Date of Decision : 08.09.2025**

Jai Ram

....Appellant

VERSUS

Krishna alias Krishna Devi and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Ajay Pal Singh Rehan, Advocate for the appellant.

Ms. Neha Jain, Advocate for
Mr. K.S.Dadwal, Advocate for respondent No.1.

Respondents No.2(a) to (c) proceeded *ex-parte*.

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MANDEEP PANNU,J.

1. Present RSA has been filed by the appellant/plaintiff against the judgment and decree dated 19.11.2015 passed by the learned Lower Appellate Court, whereby the judgment and decree dated 19.11.2014 passed by the learned trial Court was set aside and the suit of the appellant/plaintiff was dismissed.

Brief Facts

2. The plaintiff filed a suit for mandatory injunction, seeking a direction to the defendants to remove the obstruction and encroachment made by them by raising illegal construction over the passage site measuring 3'-3" x 19 karams, bearing Khasra No. 363 (0-4), recorded as Gair Mumkin Rasta in the site plan, situated in the area of Village Barrian Kalan, Tehsil and District Hoshiarpur, and detailed in the Jamabandi for the year 2001-2002. The plaintiff also prayed that if



any other encroachment was found at the spot on demarcation on either side of the passage, the same may also be ordered to be removed.

3. It was pleaded by the plaintiff that he is a permanent resident of Village Barrian Kalan and is competent to file the suit for removal of encroachment from the common passage in the village. The passage was carved out during consolidation operations and was left for the common use of the inhabitants of the village in the year 1953–54. Since the day of consolidation, the plaintiff and other residents of the village have been using the said passage as an approach to their residential houses.

4. It was further pleaded that the width of the said passage was fixed at two karams, i.e., 11 feet, during the consolidation proceedings, and the same has been used accordingly. No inhabitant of the village has any right or authority to encroach upon any part of the said passage, bearing Khasra No. 363, or any other common property reserved for the common use of the village. However, the defendants, without any right, title, or authority, have illegally and unauthorizedly encroached upon the passage site to the extent of 3'-3" wide, as shown in red in the plan attached with the plaint, and have occupied the same by raising illegal construction. By doing so, they have narrowed down the passage.

5. According to the plaintiff, due to the illegal encroachment raised by the defendants, he cannot bring his tractor-trolley or car to his house. Despite repeated requests made by the plaintiff to the defendants to remove the encroachment, they refused to accede. The plaintiff also approached the Gram Panchayat for intervention, but no action was taken. The plaintiff asserted that the encroachment over the passage by the defendants is illegal and liable to be removed, so as to restore the common passage to its original condition. It was also



prayed that in case, on demarcation, any further encroachment is found, the same may also be ordered to be removed to avoid multiplicity of litigation.

6. Upon notice of the suit, defendants No. 1 and 2 appeared and filed their separate written statements, though raising similar pleas. Preliminary objections were taken regarding maintainability of the suit, non-joinder of the Gram Panchayat as a necessary party, and lack of jurisdiction of the civil court.

7. On merits, the defendants denied the allegations of encroachment and asserted that the plaintiff has no document to establish any title or right entitling him to file the suit. It was pleaded that the plaintiff cannot take benefit of assumptions and that without any legal basis, he has no possession over any part of Khasra No. 363. It was further pleaded that the plaintiff had not got any demarcation carried out from the revenue authorities nor produced any document to show that Khasra No. 363 was abutting his house or passage.

8. Defendant No. 3 specifically pleaded that he is not in possession of any part of Khasra No. 363. In the end, all defendants prayed for dismissal of the suit.

9. Replication was not filed by the plaintiff. During the pendency of the suit, defendant No. 1 expired and his legal representatives were impleaded; however, none of them appeared to contest the case.

10. From the pleadings of the parties, the following issues were framed:

1. Whether the defendants have encroached upon the passage site bearing Khasra No. 363 to the extent of 3'-3" shown in red in the site plan? OPP
2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP



3. Whether the suit is not maintainable in the present form? OPD
4. Whether the site plan produced by the plaintiff is not correct as per the spot and the site plan produced by the defendants is correct?
OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is bad for non-joinder of necessary parties?
OPD
7. Whether the Civil Court has no jurisdiction to try and decide the present suit? OPD
8. Relief.
11. The parties led their respective evidence.

Findings of the Trial Court

12. The learned trial Court took up Issues No. 1, 2, and 4 together. After appointing the Halqa Kanungo as Local Commissioner by order dated 28.11.2013, the Court directed him to demarcate Khasra No. 363 and report the extent of encroachment. The Local Commissioner submitted a detailed report along with the site plan, concluding that defendant Krishna Devi (defendant No. 2) and Rajwinder Kaur (legal representative of defendant No. 1) had indeed encroached upon Khasra No. 363. The encroached area was shown in green (Rajwinder Kaur) and red (Krishna Devi). Krishna Devi herself admitted during cross-examination that the demarcation was conducted and that no objections were raised at the spot.
13. On the basis of this report and other evidence, the trial Court held that the defendants had encroached upon the passage in question. Issues No. 1, 2 and 4 were decided in favour of the plaintiff, granting mandatory injunction.



14. The trial court thereafter took up Issues No. 3 and 7 together. Relying upon *M/s Indian Sulphacid Industries Ltd. and Another v. Union of India and Others, 2008 (1) PLR 162*, it held that under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as, 'the Act'), Section 13 vests title in the Gram Panchayat, but since there was no dispute about ownership, jurisdiction of the civil court was not barred for granting injunction against private individuals. Issues No. 3 and 7 were decided in favour of the plaintiff.

15. Issues No. 5 and 6 were also decided in favour of the plaintiff.

16. Consequently, the suit was decreed, and the defendants were directed to remove the obstruction and encroachment as reported by the Local Commissioner.

Findings of the Lower Appellate Court

17. The Lower Appellate Court allowed the appeal filed by defendant Krishna Devi and dismissed the plaintiff's suit. Relying upon *Jai Prakash v. Ram Narain, 2010 (1) RCR (Civil) 972*, it held that a public street falls within the definition of shamlat deh and only the Collector under Section 7 of the Act, has jurisdiction to order removal of encroachment. It was held that civil court jurisdiction was barred by Section 13-B of the Act, and the trial court erred in decreeing the suit.

18. Aggrieved by the judgment and decree passed by the Lower Appellate Court, the appellant-plaintiff filed the present Regular Second Appeal, which upon notice has been contested only by respondent No.1 – Krishna alias Krishna Devi. Respondents No.2(a) to (c) were proceeded against ex-parte vide order dated 30.04.2018.

**Submissions on behalf of the parties**

19. It was argued that the trial court rightly decreed the suit, having correctly appreciated the evidence and rejected the objection of jurisdiction. The lower appellate court wrongly dismissed the suit solely on the ground of jurisdiction. It was emphasized that the ownership of the passage by the Gram Panchayat was admitted by both parties, and therefore no determination of title was required. The only dispute was between private parties regarding encroachment. Reliance was placed on **Om Prakash v. Tara Chand, 2007 (4) RCR (Civil) 597**, and Division Bench judgment **Bhagu v. Ram Sarup, 1985 RRR 353**.

20. Learned counsel for respondent No. 1, the only contesting respondent, argued that the trial court wrongly held civil jurisdiction to try present suit. Lower Appellate Court rightly held that since the property was a public street, falling within shamlat deh, the bar of Section 13 applied and only the Collector had power under Section 7 of the Act to remove encroachment. Reliance was placed on **Jai Prakash v. Ram Narayan (2010 (1) RCR (Civil) 972)**.

Findings of This Court

21. I have considered the rival submissions and perused the record. The sole question before this Court is whether the civil court has jurisdiction to entertain a suit for mandatory injunction between private parties regarding encroachment on a passage admittedly owned by the Gram Panchayat.

22. It is not disputed that Khasra No. 363 is owned by the Gram Panchayat and recorded as gair mumkin rasta. It is also not disputed that encroachment was found by the Local Commissioner. The only question is whether Section 13 of the Act, bars jurisdiction of the Civil Court.



23. The Punjab Village Common Lands (Regulation) Act. 1961 vests jurisdiction in the Collector or revenue authorities to decide disputes relating to vesting of land in the Gram Panchayat. Section 13 of the Act specifically bars the jurisdiction of the Civil Court only in respect of questions that are required to be determined by the Collector, such as whether land vests in the Panchayat or not. However, where title is not in dispute, and the only controversy is whether a private individual has encroached upon common land, the jurisdiction of the Civil Court is not barred. Civil courts are competent to issue injunctions to protect public rights and to order removal of unauthorized encroachments when such encroachment by one private party affects the rights of other individuals.

24. Shamlat deh or common land is undoubtedly owned by the Gram Panchayat, but it is meant for the common use of the villagers. The Panchayat holds it in trust for the benefit of the community. No private person can appropriate or enclose any portion of such land. If the Panchayat itself is not a party, and the dispute arises between private individuals where the ownership of the Panchayat is admitted, the jurisdiction of the civil court can certainly be invoked to protect public rights.

25. In *Bhagu v. Ram Sarup (1985 RRR 353)*, a Division Bench of this Court clearly held that Section 13 does not oust jurisdiction in every case where Panchayat property is involved. The bar applies only where the lis is between the Panchayat and an individual on questions specified in Section 13. Likewise, in *Om Prakash v. Tara Chand (2007 (4) RCR (Civil) 597)*, it was held that when ownership of the Panchayat is admitted and the only question is removal of encroachment, the civil court has jurisdiction.



26. The reliance of the respondents on *Jai Prakash v. Ram Narayan* is misplaced. In that case, the dispute itself was whether the land was a private street of the plaintiff or a public street belonging to the Panchayat. Since title was in issue, jurisdiction was rightly held to be barred. In the present case, there is no such controversy. Both sides admit that the land is a public passage belonging to the Panchayat. The only question is removal of encroachment.

27. Section 7 of the Act empowers the Collector to remove encroachments when the Panchayat seeks his intervention. But when the Panchayat is not a party, and the dispute is between private individuals, the Civil Court has ample jurisdiction.

28. **The law is summarised as follows :-**

- i) The Punjab Village Common Lands (Regulation) Act, 1961 (and similar state enactments) vests jurisdiction in the Collector or revenue authorities to decide disputes regarding title of shamlat deh/common land.
- ii) However, where the title is not in dispute (i.e., both parties admit the land belongs to the Gram Panchayat), but the only issue is whether the defendant has encroached or not, the civil court's jurisdiction is not ousted.
- iii) Civil courts are competent to grant injunctions in cases of trespass/encroachment, even if the land is shamlat land, because it is essentially a question of fact and possession, not of ownership/title.

29. Thus, applying the above principles, the trial Court was right in decreeing the suit. The lower appellate court misdirected itself in holding that the civil court lacked jurisdiction.

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30. It is held that the civil court has jurisdiction to try the present suit, as this was the only question involved. The defendants are directed to remove the encroachment as per the Local Commissioner's report. Parties are left to bear their own costs.

Conclusion

31. In view of the foregoing discussion, the present RSA is allowed. The judgment and decree dated 19.11.2015 passed by the Lower Appellate Court are set aside, and the judgment and decree dated 19.11.2014 passed by the trial Court decreeing the suit are restored.

32. Pending application(s), if any, also stands disposed off.

September 08, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes