

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

**Regular Second Appeal No.1999 of 1988 (O&M)
Date of decision: 21.08.2015**

Sunder Singh and others

.....Appellants

Versus

Rattan Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.D. Bawa, Advocate,
and Mr. Samuel Gill, Advocate,
for the appellants.

Mr. P.C. Dhiman, Advocate,
for the respondents.

Ritu Bahri, J.

Defendants-appellants have come up in regular second appeal against the judgment of reversal dated 11.05.1988 passed by the Additional District Judge, Ropar, whereby appeal filed by the plaintiffs-respondents against the judgment and decreed dated 28.05.1984 passed by the Sub Judge Ist Class, Kharar, had been accepted and their suit for mandatory injunction had been decreed with costs.

Rattan Singh and Gurbax Singh-plaintiffs (since deceased) filed a suit for mandatory injunction directing the defendants (appellants herein) to restore the path in dispute, which was obstructed by the defendants by fixing barbed wires. It was alleging that during consolidation proceedings in village Saini Majra, Ran Singh son of Ram Dayal was allotted a residential plot No.126. Against the said allotment, Ran Singh filed an appeal under the

Consolidation Act, whereupon the Settlement Officer made certain changes in the plots of Nathu alias Natha Singh and Smt. Narati widow of Sarwan Singh by providing a shorter path No.137 (2 Karams in width). Southern side of the plots of Natha Singh and Smt. Narati was given to aforesaid Ran Singh by linking path No.137 to the path passing for neighbouring villages for going to Kharar through the village common land. However, the persons occupying the common land along the path had started encroaching upon the portion of that path. By doing so, they had shortened the width of the path in question. Against this unlawful act, plaintiff No.1 made complaints to the village Panchayat vide applications dated 18.01.1982 and 19.04.1982. Upon this, the path opposite to the house of Gurbax Singh was got widened by the village Panchayat on 25.04.1982 to the extent of 2 karams from Kuldip Singh etc. along the portion marked as AB in the site plan attached with the plaint. However, the defendants, who had encroached upon other portion of the path did not agree to vacate their illegal encroachments. They had caused obstruction on the path in question by fixing the barbed wire.

The suit was contested by the defendants-appellants by filing a written statement. It was alleged that the site in dispute was not a path, but was their ancestral property. It was further stated that the site in dispute was part of a village street and vested in Gram Panchayat. Therefore, the Civil Court had no jurisdiction to try the suit.

The trial Court dismissed the suit of the plaintiffs-respondents as it was barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'). It was held that under Section 7 of the Act, the Assistant Collector has the power to eject any person, who was in wrongful and unauthorized possession of the land or other

On appeal, the lower appellate Court reversed the findings returned by the trial Court on issue No.4, which dealt with the question of jurisdiction of Civil Court to entertain the suit. Lower appellate Court held that the Gram Panchayat was not a party to the suit, therefore, bar under Section 13 of the Act was not applicable.

The trial Court had returned a finding that the path had been carved out by the consolidation authorities. The defendants-appellants had not filed any cross appeal or cross objection against the findings of the trial Court before the lower appellate Court. Once, a path had been carved out by the consolidation authorities, the plaintiffs-respondents had every right to use that path and the defendants-appellants could not encroach upon any portion of this path by shortening width thereof. The plaintiffs-respondents had made a complaint to the Village Panchayat vide applications dated 18.01.1982 and 19.04.1982. Defendants-appellants had caused obstruction on the path by fixing barbed wires and thereafter, encroached upon about 1 Karam of path. Trial Court had observed that as per the deposition of Rattan Singh-plaintiff No.1, according to the scheme of consolidation, all the village roads were to be connected with the circular road. *Baras* were allotted keeping in view the interest of residential houses of the proprietors. Ran Singh was allotted *bara* No.126. However, he preferred an appeal against that order, upon which, the Settlement Officer carved out *Pahi* No.137 and connected the same with the disputed path. The disputed path was being used by inhabitants of the village as a thoroughfare for going to the adjoining villages. The said path was about 150/200 years old. The defendants had started making encroachments in the land in dispute. Natha Singh and Kuldip Singh had removed the said encroachments and got the

remove the encroachment. Except the disputed path, the plaintiffs had no other passage for going to their houses. The land adjoining to the disputed path was a common land. The version of the plaintiffs was supported and corroborated by Karnail Singh (PW-1), Ajit Singh (PW-2), Natha Singh (PW-4), Labh Singh (PW-5) and Nanak Singh (PW-7).

Trial Court held that the evidence led by the plaintiffs (respondents) clearly established that the site in dispute was a path and the defendants-appellants had encroached upon some part thereof. Against this finding of the trial Court, the defendants-appellants did not file any appeal or cross objection before the lower appellate Court. Hence, this finding of fact has attained finality and does not require any interference.

Final question for consideration before this Court is, “whether the jurisdiction of Civil Court was barred with respect to the path in question, which had been carved out during the consolidation proceedings to be used by all the villagers.”

The lower appellate Court has referred to the judgment passed by this Court in **Lehna Singh Vs. Gurnam Singh and others**, 1987 (1) CurLJ (CCR) 598. In that case, the dispute was regarding a land and the State was one of the defendants and had pleaded that the land in dispute was *shamlat*. The Gram Panchayat was not impleaded as party to the suit. It was held that the Civil Court had the jurisdiction to try the suit. In para No.2 of the aforesaid judgment, it was observed as under:-

“2. It is evident from the facts narrated above that the Panchayat is not a party in this suit. Even though the suit may involve a question as to whether the land in dispute is Shamlat Deh or not, unless the Panchayat is a party, it was held by a recent decision of a Division Bench of this Court in **Bhagu and others v. Ram Sarup and others**, 1985 RRR 353: 1985 P.L.J. 366, the trial of the suit would not be barred by the Civil Court. In view of this DB decision which is binding on me sitting singly, this appeal is allowed and the

impugned judgment is set aside. No costs. The case would go back now to the District Judge, Ropar, for disposal of the appeal before the District Judge, Ropar, on October 27, 1986.”

Thereafter, a Division Bench of this Court in **Baljinder Kaur Vs. Gurdas Ram**, 1988 (1) PLR 31, in a suit for permanent injunction restraining the defendants from creating obstruction and encroaching upon 'public street', had held that in a dispute between two strangers with regard to village street, where Gram Panchayat was not a party, bar on jurisdiction of Civil Court could not be pleaded on the strength of Section 13 of Punjab Village Common Lands (Regulation) Act. In case the Court came to a decision that the thoroughfare was a private property, such findings were not binding on Gram Panchayat. The Gram Panchayat could always approach the Collector, notwithstanding the findings of the Civil Court. In para No.11 of the aforesaid judgment, it was observed as under:-

“In our view the distinction sought to be drawn by the learned counsel for the respondents between a suit for mere permanent injunction and a suit for a declaration and permanent injunction is not relevant, where the claim made by the plaintiff is that the land is a thoroughfare and he is entitled to pass through it and the defendant be restrained from creating obstruction or remove the obstruction already created and be restrained from doing so in future. The relief sought in such a case is that the defendant be restrained from creating obstruction on the land which is a thoroughfare and on which the plaintiff is entitled to pass. Such a relief cannot be granted to him unless it is first held that the land in question is a thoroughfare or not. In other words, whether the land is or is not a public street, a finding regarding the nature of the land cannot be avoided even when the suit is for a mere permanent injunction. However, qua the Gram Panchayat, which is not a party to the suit, the declaration that a land is or is not a street is irrelevant, because such a declaration is not binding on the Gram Panchayat as held in Bhagu's case (supra). The declaration that it is a public street would ensure between the defendant, who endeavoured to encroach upon or had encroached upon it, and the inhabitants including the plaintiff, who by virtue of land being a street (public street) are entitled to pass through it. Even in the face of Civil Court's declaring a given land as being a private property of the defendant and not a public street, it would always be open to the Gram

Panchayat to approach the Collector with the allegation that notwithstanding what the Civil Court has pronounced, the land, in fact is a public street and is Shamilat Deh and has been encroached upon by the respondent, and have the obstruction removed, if the Collector on the basis of the material adduced before him was to find that the land in question was a public street. When a question of title is raised before the Collector, the Collector in terms of Section 13-A of the Act is to try the case like a Civil Court and give his finding on the question of title, which would then be binding on the Gram Panchayat.”

Similar view has been taken in by this Court in **Mir Singh and others Vs. Sajjan Singh and others**, 2003 (1) PLR 90; **Jhagru Ram Vs. Jagan and others**, 2010 (4) PLR 605 and **Swaran Singh Vs. Charan Singh and another**, 2004 LAR 161.

In the present case, plaintiffs-respondents are not claiming any right of the property, which vests in the Gram Panchayat or is a *shamilat deh*. The plaintiffs are seeking mandatory injunction directing the defendants-appellants to restore the usage of path, which had been obstructed by them. It is not in dispute that the path had been carved out after the consolidation proceedings as per consolidation scheme (Ex.P9). Every inhabitants of the village has a right to use this path. There is no question with regard to title of the path in question. Only usage of the path has been extended to the villagers as per consolidation proceedings (Ex.P9), Jamabandi for the year 1960-61 (Ex.P11), 1977-78 (Ex.P12 and copy of Panchayat Resolution (Ex.P13). The jurisdiction of Civil Court in entertaining a suit for mandatory and permanent injunction is not barred by Section 13 of the Act.

After going through the judgments passed by both the Courts below, this Court is of the view that since the question of title is not involved in the present case and Gram Panchayat is not a party to the suit,

therefore, jurisdiction of Civil Court to entertain a suit for permanent and

mandatory injunction is not barred. No illegality, much less perversity, has been found in the impugned judgment passed by the lower appellate Court warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

21.08.2015
ajp

(RITU BAHRI)
JUDGE