

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4349 of 2013 (O&M)

Date of Decision.01.12.2015

Dilbag Ram

.....Appellant

Vs.

Bhajan Dass and others

.....Respondents

Present: Mr. Vijay Lath, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. Delays of 5 days in filing and 68 days in refiling the appeal are condoned.

2. The appeal is at the instance of the defendant who had suffered decree of mandatory injunction for removal of encroachment upon a property reserved as a public passage. The character of the property as public passage in Khasra No.708 is not denied but the contention that was taken was that the plaintiff was ever using the passage or that the plaintiff has any competency to institute the suit through a power of attorney. The plaintiff did not examine himself and issue of whether there had been a user of the property by the plaintiff was not being spoken by the plaintiff and the Court drew an adverse inference on the non-examination of the plaintiff. The Court also reasoned that there had been no specific demarcation made to identify the nature of encroachment or the area of encroachment and therefore,

declined any relief in favour of the plaintiff.

3. In appeal filed by the plaintiff, the Appellate Court observed that there had been no denial of the fact that the property in Khasra No.708 itself was shown in the village record as a public passage and therefore, there was no element of necessity for the plaintiff to examine himself for proof of character of the property. The Court adverted to the fact that the defendant himself admitted in evidence that he had purchased the property in Khasra No.708 but did not file the document of purchase. The Court referred to the admission of the 2nd defendant that a wall had been raised in the portion of the passage without knowing that it was a public passage and the Appellate Court, therefore, reasoned that the aspect of the admission of construction in the passage need not have been proved any more than admission of the defendant himself. The Appellate Court had, therefore, reversed the judgment of the trial Court and allowed the appeal on the said line of reasoning.

4. Learned counsel appearing on behalf of the appellant contends that the power of attorney had admitted that he had not been granted any power with reference to property other than the plaintiff's own and he had no authority to file a suit on behalf of the plaintiff in respect of a property belonging to the Gram Panchayat. The counsel, therefore, would place as a first argument that the plaintiff had no competency to institute the suit through power of attorney and it was incompetent. The second argument that is brought is that the Civil Court did not have jurisdiction and the counsel would refer me to the definition of Section 2(g)(iv) of the Punjab Village Common Lands

(Regulations) Act, 1961 that the passage which is meant for use of the public vests in the Gram Panchayat and Section 13 constitutes bar of civil suit for any action in relation to the property of Gram Panchayat.

5. As far as the competency of the plaintiff to file the suit through a power of attorney is concerned, I would hold that the objection taken is not tenable, for a right of user of a passage which vests in the public is an intangible right which is a right capable of being exercised by any individual as a member of the public and a power of attorney which acts as such for the plaintiff's right shall be treated as including a right to exercise a power in respect of such plaintiff's intangible right as well. I will, therefore, not finding anything wrong about the institution of suit through the power of attorney. The non-examination of the plaintiff himself is also irrelevant for the same reason as the lower Appellate Court has held that the property which is shown through the village record as a pathway through the jamabandi would not require any further proof by a personal knowledge and the point that would require to be considered was that whether there was any encroachment. The 2nd defendant's statement and the admission was found by the lower Appellate Court to hold that there had been such an encroachment and therefore, the action was properly laid.

6. The only surviving point that would fall for consideration would be whether there exists any bar for suit in Civil Court as per Section 13 of the Act which is reproduced as under:-

“13. Bar of Jurisdiction in Civil Courts:-

No civil court shall have jurisdiction:-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *Shamilat deh* vested or deemed to have been

vested in a Panchayat under this Act ; or
(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or
(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

It must be understood as a principle of law that exclusion of Civil Court jurisdiction must always be strictly construed in the light of Section 9 CPC and there has to be a clear exception with reference to what is contained under the enactment itself. What Section 13 bars is to entertain or adjudicate upon any question whether the property is or not a shamilat deh vested in Panchayat. There is hardly a dispute here that the property in Khasra No.708 is a property vesting in Panchayat. There is no dispute with reference to the character of the property or the vesting and therefore, there is no adjudication that is brought before the Court of whether it is a property belonged to the Panchayat or not. Clause (a) does not, therefore, operate. Clause (b) will be invoked in situation when the legality of action taken by the Commissioner or Collector of the Panchayat is brought to question. The Gram Panchayat is not in any way causing any disturbance to the plaintiff nor has it passed any order against the plaintiff for the plaintiff to require to question the legality of action. In fact, the Gram Panchayat is not anywhere in the picture except that the plaintiff is trying to exercise a right over the property belonging to the Gram Panchayat. Clause (c) will operate in case of matter where the Commissioner or Collector is deployed by the Court under this Act to determine. There is no power of Commissioner which is sought to be usurped by the plaintiff and a right which he is claiming is personal to him which can be exercised by

him or a person who has been authorized to act on his behalf.

7. The judgment of the Appellate Court conforms to law and there is no merit at all in the second appeal. The second appeal is frivolous and it is dismissed as such.

(K. KANNAN)
JUDGE

December 01, 2015
Pankaj*