

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4426 of 2010

Date of Decision: 09.01.2017

Gram Panchayat

... Appellant

Vs.

Gurmail Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R. S. Chauhan, Advocate,
for the appellants.

Mr. Amardeep Singh Gill, Advocate,
for the respondent.

Amol Rattan Singh, J.

This is an appeal by the appellant-Gram Panchayat (hereinafter to be referred to as the Panchayat) in a suit filed by the respondent-plaintiff (hereinafter to be referred to as the plaintiff), seeking a decree of permanent injunction against the present appellant, restraining it from digging out the earth from a path and from interfering in any other manner, in the use of the path/*rasta* of 3 karams, stated to be running on the Northern and Eastern side of the property of the plaintiff, as was depicted in the site plan exhibited in the suit. The plaintiff further sought that the Gram Panchayat be restrained from blocking the windows and doors of the house of the plaintiff, as were located on the Northern side and also not to damage the projection on the roof of the house of the plaintiff.

2. As per the plaint, the plaintiff is the owner of 8 marlas of land,

falling in Khasra No.402, Khewat/Khatoni No.3/3, situated in village Kot Khurd, Tehsil and District Jalandhar, which he had purchased on 01.07.1988 and had constructed his house thereupon. He had also opened doors and windows towards the *rasta* on the Northern side of the house. It was further contended that the *rasta* was going to the grave yard and *Hadda Rori* (ground for disposal of dead cattle) of the village and had been in existence since the father of the plaintiff purchased the suit property. (Though, as per the judgment of the Civil Judge, it is earlier shown that the plaintiff had purchased the suit property, thereafter, it is stated that his father purchased it).

The said *rasta* is stated to have been paved by laying bricks on it 15 years earlier, spending the funds of the Gram Panchayat and was being used by the public.

It was also contended that at the time when the plaintiff was constructing his house and installing the doors and windows, no objection had been raised by the Panchayat and none was raised for the use of the path either. However, in the month of December 2001, it was contended that the Gram Panchayat “raised a threat to the plaintiff” that it would remove the bricks from the path. The plaintiff filed a suit seeking permanent injunction and upon notice having been issued in that suit, the Sarpanch of the Panchayat is stated to have appeared and suffered a statement that the Panchayat would not remove the bricks from the path and also would not interfere in the use of the path. Consequently, that suit was dismissed as withdrawn, vide an order dated 10.01.2002, with the parties held bound down to their statements.

In the present suit, it was further contended by the plaintiff that

on 17.10.2003, the Sarpanch alongwith other persons of the village, “in connivance with each other” removed the bricks from the path in question and disobeyed the order of the Court and further dug out the earth upto a depth of 8 to 9 ft. (erroneously shown as 8 to 9 inches in the judgment of the Civil Judge), near the house of the plaintiff, thereby causing damage to his property. Contempt proceedings were therefore filed by the plaintiff, which were stated to have been still pending against the Panchayat, at the time when the suit in the present *lis* was filed on 20.11.2003.

The plaintiff further averred that the Panchayat alongwith other persons had threatened to dig out the earth from the path, with the intention to cause damage to the house of the plaintiff and had also tried to block the doors and windows on the Northern side of the house and to demolish the projection constructed by the plaintiff on the roof of his house, on its Northern side.

However, the immediate threat was stated to have been averted with the intervention of respectables but due to the refusal of the Panchayat to accept the request of the plaintiff to desist from digging out the path etc., the suit was filed by him.

3. Upon notice issued to it, the Panchayat filed a written statement raising preliminary objections with regard to the locus standi of the plaintiff, further stating that the area that was alleged to be a path, was actually a common *Chhappar*, on the Northern side of the cremation ground of the village and that the *Chhappar* as well as the cremation ground had since long been the property of the Panchayat, shown as Panchayat *deh*, with the ownership vesting in the Gram Panchayat, as duly reflected in the record of rights (*jamabandi*) for the years 1973-74 and 1998-99, as also in the *aks-*

shijra and the report of the Halqa Patwari.

It was further contended that the suit was not maintainable in its present form, with the plaintiff already having admitted that earth upto 8 to 9 ft. had already been dug out.

The jurisdiction of the civil Court to entertain the suit was also objected to by the Panchayat, with the property vesting in the Gram Panchayat, still further stating that the plaintiff had not come with clean hands as he had encroached upon 31 karams x 1 karam of land on the Northern side of his property and 5½ karam x 1 karam on the Eastern side of his property, which was a part of the property “known as Panchayat *deh*”.

Still further, the earlier suit having been dismissed as withdrawn, it was also pleaded that the suit in the present *lis* was barred on the principle of *res judicata*. The suit being barred under Section 41(h) of the Specific Relief Act was also taken as a plea in the preliminary objections.

4. On merits, it was again pleaded by the Panchayat that actually there was no *rasta* in existence as was alleged by the plaintiff and that he had “illegally” installed his windows and doors on his house, towards the property of the Panchayat *deh*. The Panchayat having paved the *rasta* 15 years earlier by laying bricks was also denied in the written statement, as were other averments made in the plaint.

5. A replication having been filed by the plaintiff, the following issues were framed by the learned Civil Judge (Junior Division), Jalandhar:-

- “1. Whether the plaintiff is entitled to permanent injunction prayed for? OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable? OPD

4. Whether this Court has no jurisdiction so entertain and decide the present suit? OPD
5. Whether the plaintiff has not come to the Court with clean hands? OPD
6. Relief.”

6. In support of his suit, the plaintiff deposed as PW5, reiterating his stand. He further examined one Opinder Pal Singh, an Accountant in the office of the Additional Deputy Commissioner, who deposed that an enquiry had been marked on 04.12.2003 to the Additional Deputy Commissioner by the Deputy Commissioner and after the enquiry, a report dated 29.01.2004 was sent to the District Development and Panchayat Officer, Jalandhar. An endorsement to that effect was exhibited as P2, objected to by the Panchayat.

The plaintiff also examined one Amrik Rai, Junior Assistant in the office of the Deputy Commissioner, who deposed that he had conducted the enquiry, a photocopy of which he proved as Ex.P3, alongwith an endorsement on it as Ex.P4. This witness also proved some other documents, such as a letter issued by the District Development and Panchayat Officer to the Sarpanch of the village, all of which were objected to by the Panchayat.

A Panchayat Officer testified as PW4 in support of a letter, Ex.P6 and further deposed that he had not brought the original measurement book, though he produced a photocopy thereof, which was taken on record as Mark-A.

This witness was again examined by the plaintiff, who proved the certified copy of a resolution dated 11.11.1994, passed by the Gram Panchayat, as Ex.P7, as also an attested copy of the measurement book as Ex.P8.

A Draftsman was examined as PW6, who proved the site plan,

Ex.P21.

The plaintiff also tendered the order dated 10.01.2002 passed by the Civil Judge in the earlier suit filed by him as Ex.P9, a certified copy of the statement of Sarpanch Balbir Kaur made in Court in that *lis*, as Ex.P10, a certified copy of another site plan as Ex.P11 and an order dated 18.10.2004 and a photocopy of another order, Ex.P12, alongwith a letter written by the BDPO to Sarpanch Kewal Singh, as Ex.P13.

The sale deed in favour of the plaintiff and some photographs and negatives were also tendered in evidence, duly exhibited.

7. The Panchayat examined one Sukhjinder Singh, a member of the Panchayat, as DW1, who deposed that he had been authorised by the Sarpanch to so depose.

This witness deposed in terms of the stand taken by the Panchayat in its written statement. The Panchayat also examined Baldev Singh, Patwari, as DW2, who deposed in respect of the correctness of the *Aks Shijra*, Ex.D2, prepared by another Patwari. This witness further deposed that Khasra No.402 was in the joint ownership of various persons including the plaintiff, and as per the revenue record, land measuring 5 kanal 14 marlas was *Chahi* land, whereas 10 marlas was *gair mumkin*/non-agricultural. He however could not testify with regard to the presence or non-presence of any houses on the spot.

He further deposed that khasra No.403 was in the ownership of the Gram Panchayat, reserved for “shamshan bhumi” (cremation ground), though there was no entry with regard to a cremation shed and verandah constructed thereupon. The *Hadda Rori* was stated to be located in Khasra No.380, which was on the Southern Eastern corner of Khasra No.403.

Importantly, this witness deposed that there was no passage/*rasta* approaching the cremation ground and *Hadda Rori*, though he did not remember whether he had seen any *rasta* at the time of spot inspection.

As regards Khasra Nos. 405-406, these were stated to be in the ownership of the Panchayat alongwith other some other persons, though even with regard to these pieces of land, the Patwari could not give the exact location of the possession of the individuals. He also denied knowledge with regard to there being any passage/*rasta* on the Northern and Eastern side of Khasra No.402, leading to the *Hadda Rori* and cremation ground.

[Note: Since there was seemingly a discrepancy in the judgment of the Civil Judge, with regard to the deposition of this witness, the version depicted above has been taken directly from the testimony of the witness, present in the record of the trial Court, summoned by this Court].

8. Upon appraising the aforesaid evidence, as also the pleadings and arguments before her, the learned Civil Judge held that the sale deed dated 01.07.1988, Ex.P14, stood proved, by which the plaintiff was proved to be the owner of 8 marlas of land comprised in Khasra No.402, the entire Khasra number consisting of 6 kanals and 4 marlas of land, in Khewat/Khatoni No.3/3.

It was also found that as per the *jamabandi* for the year 1998-99, Ex.D3, Khasra No.405 vested in the Panchayat *deh* to the extent of 125/160th share, with the remaining 35/160th share being in the ownership of other persons and that there existed *gair mumkin abadi* and a *Chhappar* in the said Khasra number.

Khasra No.406 was again found to be vested in the Panchayat

deh, in which also there was seen to be *gair mumkin abadi* in some part of the said piece of land.

Thus, on the basis of the documentary evidence, it was held that no path was shown to be existent on the Northern side of the house of the plaintiff.

As regards the enquiry report Ex.P1 and endorsement No.392, Ex.P2, these documents having been objected to, they being photostat copies of the carbon copy of the original record, they were held to be not admissible in evidence. Similarly, a photocopy of the enquiry report, Ex.P3, and an endorsement letter Ex.P4, and another photocopy of a letter written by the DPO to the Sarpanch, Ex.P5, were also held not to be admissible in evidence as they too were photocopies of the carbon copy of the original letters.

9. The testimony of the Panchayat Officer, (the same person, Satish Kumar, first appeared as PW3 and then as PW4), was also not held to be helping the plaintiff. It was held that the resolution, a copy of which was tendered as Ex.P4 by this witness, could not be held to have been proved, as the witness had admitted that it was not passed in his presence, nor could he identify the signatures of “The authority passing the said resolution”.

The Measurement Book, Ex.P8, also tendered by the same witness, was held to have lost its significance and otherwise was found to be not connected with the suit property. Hence, the paving of the path was also held to be not proved by the Civil Judge.

10. The order dated 10.01.2002, passed by the Civil Court in the earlier *lis*, by which the statement of Balbir Kaur, acting Sarpanch, had been recorded, was also held to be not proved to have been suffered by a person who was duly authorised by the Gram Panchayat to make that statement.

Hence, it was held that even if she had suffered that statement, it could only be in her personal capacity and not as the Sarpanch.

Yet further, it was held by the Court that the plaintiff had even failed to connect the said order with the suit property in the present *lis*, as the headnote of the plaint only revealed that he had filed a suit for permanent injunction restraining the Panchayat from removing the bricks from the path and interfering in any manner over the peaceful use of the *Pucca rasta* on the Northern and Eastern side of the property. A copy of the site plan, Ex.P11, was also held to be not revealing that it actually related to the property of the plaintiff situated in Khasra No.402.

11. Recording findings as above, it was further held that to the Northern side of the house of the plaintiff, Khasra Nos.406 and 405 existed, which vested in the Panchayat *deh*, consisting of *gair mumkin abadi* and a *Chhappar*. Hence, holding that the existence of the path had not been proved by the plaintiff, he could not seek any injunction against the Panchayat.

12. On the issue of jurisdiction of the civil Court however, though the counsel for the Panchayat had cited various judgments of this Court, including Ruldu Singhv. Nagar Panchayat of village Umarpura 1997(4) RCR (Civil) 203 and Nahar Singh v. Gram Panchayat Atta and others 2000 (3) RCR 7, it was held that such jurisdiction is only barred under Section 13 of the Punjab Village Common Land (Regulation) Act, 1961, where the dispute was in respect of the title of the property, whereas in the instant *lis*, the plaintiff had not disputed the title of the property of the Gram Panchayat, the only bone of contention being whether it was being used as a *Chhappar* or as a *rasta*.

Hence, as regards jurisdiction, it was held that the civil Court

was vested with jurisdiction to adjudicate upon the dispute.

Yet, on merits, the plaintiff having been held to have not proved the existence of the *rasta*, his suit was dismissed with costs.

13. In the first appeal filed by the plaintiff before the learned Additional District Judge, Jalandhar, after noticing the pleadings and the evidence and considering the judgment of the lower court, it was firstly held that the certified copy of the order dated 10.01.2002, Ex.P9, passed in the earlier suit, proved that the Panchayat was bound by its statement not to dig up the path and remove the bricks on it and in fact, the site plan, Ex.P11, tallied with the site plan Ex.P21 filed in the present suit, thereby proving that the suit property was the same in both the suits.

This was further found to be substantiated by the fact that even the photographs, Exs.P18 to P20, showed the house of the plaintiff with the brick pavement a “little bit damaged”. Hence, it was held that there was a threat to the house of the plaintiff, and to his windows and doors being closed, as also to his right of user of the path in question.

14. The first appellate Court further held that the report of the Additional Deputy Commissioner (Development), Jalandhar, Ex.P3, had been duly exhibited and the lower Court had erroneously held it to be not so. This was so held by the appellate Court in view of the fact that PW2, Amrik Rai, Junior Assistant in the office of the Additional Deputy Commissioner, had deposed in clear terms that he had brought a photocopy of the enquiry report and had also identified the signatures of the Additional Deputy Commissioner, as also the photocopy Ex.P3. Further, no question or suggestion had been put on behalf of the Panchayat, in the cross-examination of this witness, that the original enquiry report had actually not been brought

by him.

It was further held that the said report indicted the Sarpanch, Kewal Singh, and other members of the Panchayat, for digging up the pavement duly constructed by the earlier Panchayat with Panchayat funds, without any sanction having been taken from the competent authority to do so. Hence, in fact, action against the Sarpanch and concerned members of the Panchayat was recommended in the said enquiry report.

15. On the aforesaid reasoning, it was held by the learned lower appellate Court that, “*prima-facie* case of the plaintiff is proved”, that the defendant (Panchayat) was threatening and interfering in the path being used by the plaintiff, and was trying to lock the doors and windows of the house of the plaintiff.

Consequently, reversing the findings of the learned Civil Judge, the suit of the plaintiff was decreed in his favour by the first appellate Court.

16. Before this Court, Mr. R.S. Chauhan, learned counsel for the appellant-Panchayat, first pointed to that part of the judgment of the learned Civil Judge, wherein it was held that there actually exists no passage on the spot as per the *aks-shijra*, Ex.D2 and the *jamabandi* for the year 1998-99, Ex.D3, which clearly revealed that on the Northern side of Khasra Nos.402 and 403, there exist Khasra Nos.406 and 405, which vest in the Gram Panchayat, also revealing the existence of *Gair Mumkin Abadi* and *Chhappar*, in Khasra No.405 with the *Gair Mumkin Abadi* shown to be existing in Khasra No.406 also.

Hence, Mr. Chauhan submitted that a specific finding of fact, on the basis of revenue record, having been recorded by the Civil Judge, on the non-existence of the *Rasta*, a suit seeking permanent injunction restraining

the owner of the land, i.e. the Panchayat, from digging up the earth, itself was not maintainable. He submitted that the learned lower appellate Court having wrongly relied upon a photocopy of a report purported to be made by the Additional Deputy Commissioner, could not have reversed that finding of the Civil Judge.

Hence, learned counsel prayed that the appeal be allowed and the suit of the plaintiff dismissed.

17. On the other hand, Mr. Goel, learned counsel for the respondent-plaintiff, firstly submitted that the evidence led by the plaintiff was not properly appreciated by the trial Court only because there was no *Rasta* shown in the revenue record. However, the learned lower appellate Court had found the *Rasta* to be proved not only because of the report of the Additional Deputy Commissioner but also because of the statement made by the earlier Sarpanch before the civil Court in the previous round of litigation, as also on perusal of Ex.P8, which is a photocopy of the measurement book, duly proved by PW3 and 4, Satish Kumar, who in his capacity as PW4 was shown to have brought the original measurement book also, pertaining to the paving of the *Rasta*, as also a certified copy of the resolution, Ex.P7, by which the then constituted Panchayat had resolved to pave the *Rasta*. He submitted that this witness being a Panchayat Officer, from the office of the Block Development and Panchayat Officer, obviously wholly proved the existence of the *Rasta* and thus, simply because the revenue record did not show it, was no reason that the Civil Judge should have held that the existence of the *Rasta* was not proved.

18. Mr. Goel submitted that actually the whole problem was on account of "party factions in the village" and since the Additional Deputy

Commissioner had indicted the Sarpanch for digging up a *Rasta* paved by using the funds of the Panchayat, without any authorisation to do so, the Panchayat was holding the respondent-plaintiff responsible for such indictment.

19. Learned counsel further submitted that even as per the site plan Ex.P21, no other road was seen going to the cremation ground and the *Hadda Rori* and as such, the judgment of the lower appellate Court deserves to be upheld and the appeal dismissed.

20. Having considered the arguments of both learned counsel, though no specific arguments were addressed on the issue of jurisdiction of the civil Court to entertain the appeal, however, since this Court itself had raised a query to both counsel in this regard, it needs to be stated that as per Section 13 of the Punjab Village Common Lands (Regulations) Act, 1961, no civil Court has jurisdiction to entertain or adjudicate upon any question as to whether a property is *Shamlat Deh* or is deemed to vest in a Panchayat or not; however, in the present case, admittedly the property vesting in the Gram Panchayat is not being doubted even by the plaintiff and the only question is whether the Panchayat could dig up the *Rasta* paved by itself. Hence, the bar contained in Section 13 would not apply and as such, the findings of the Courts below in that regard, need not be interfered with by this Court.

21. Coming to the merits of the appeal, I do not find any error in the judgment of the learned lower appellate Court, in the face of the fact that even the measurement book dealing with paving of the *Rasta* was duly proved by PW4, Satish Kumar, Panchayat Officer, alongwith the resolution dated 11.11.1994 (Ex.P7), passed by the Gram Panchayat, duly resolving to pave the *Rasta*.

The learned Additional District Judge having specifically recording a finding that it had been proved from the testimony of PW4, who had also brought the original measurement book, with no cross-examination to the effect that he had not actually brought it, or to the effect that he had not brought the original proceeding book in which the resolution, Ex.P7, was entered, there would be no reason to hold that these documents did not stand duly proved.

Thus, simply because the *Rasta* was not depicted in the revenue records, but with concrete proof having been produced showing the *Rasta* to have been actually paved, on a resolution validly passed in the year 1994, then simply because the original enquiry report of the Additional Deputy Commissioner was not produced by the witnesses from that office (PWs1 and 2) would be no reason to hold, firstly, that the path was not actually constructed and existent, or that even the enquiry report duly testified in respect of by the said witnesses, had not been proved.

Similarly, the learned lower appellate Court, in the opinion of this Court, correctly appreciated the fact that the certified copy of the order of the learned Civil Judge in the previous *lis*, i.e. the order dated 10.01.2002 (Ex.P9), duly proved that the Sarpanch of the then constituted Panchayat had suffered a statement that the path would not be disturbed.

However, even having said so, it needs to be stated that with no resolution led by way of evidence, that the Sarpanch who had suffered that statement had been duly authorised to make it in Court, it needs to be stated that the Panchayat would not be held bound by that statement in different circumstances.

Yet, with the path having been paved with Panchayat funds and

as held by this Court, the enquiry report of the Additional Deputy Commissioner having been proved from the testimony of PW2, who specifically testified that he had brought the original report, as seen from the testimony in the record, by this Court itself. In any case, there being no reason to disbelieve the same, in the circumstances, the Panchayat needed to be enjoined from digging up the path in question and from blocking the windows and doors of the house of the plaintiff, unless with proper sanction of the competent authority, the path was to be put to a different use, with such competent authority obviously taking care of the fact that the right of easement of any person is not disturbed in a manner so as to completely block access to his or her property, including the passage to the cremation ground and *Hadda Rori*.

22. In view of the aforesaid discussion, I find no ground to interfere with the well reasoned judgment of the lower Court. Consequently, this appeal is dismissed with costs of Rs.10,000/- to be paid by the appellant-Panchayat to the respondent-plaintiff.

January 09, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.