



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1390-2020 (O&M)
Date of decision: 20.02.2025

Bikram Singh

....Appellant

V/s

Mehar Chand and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sarju Puri, Advocate, for the appellant.

VIKRAM AGGARWAL, J. (ORAL)

Plaintiff (Bikram Singh) assails the judgment and decree dated 21.01.2020 passed by the Court of learned District Judge, Shaheed Bhagat Singh Nagar, dismissing the appeal preferred against the judgment and decree dated 17.07.2019 passed by the Court of learned Addl. Civil Judge (Sr. Divn.), SBS Nagar, vide which the suit for mandatory injunction filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff (Bikram Singh) filed a suit for mandatory injunction for directing the defendants (Mehar Chand and Gram Panchayat of Village Ranewal, Tehsil Nawanshahr, District SBS Nagar) to remove the obstruction/overhanging projections/construction shown in red colour in the site plan and marked by letter ABCD, situated at Village Ranewal, Tehsil Nawanshahr, District SBS Nagar. A direction was also sought to the defendants to remove the staircase constructed in between the two overhanging projections on the ground floor and first floor, through which

defendant No.1, in connivance with defendant No.2 had encroached upon



the public street (shown in yellow colour in the site plan). Consequential relief of permanent injunction restraining the defendants from raising any further construction was also sought.

4. The case set up by the plaintiff was that he was owner in possession of the house shown in green colour in the site plan and defendant No.1 was the owner in possession of the property shown in blue colour. The common street was shown in red and yellow colour, which was for the use of inhabitants of the locality and was the only access to the house of the plaintiff from the main road. Defendant No.1, in connivance with defendant No.2 had forcibly and illegally encroached upon a part of the common street by raising obstruction/overhanging projections/construction on the ground floor and first floor and had also constructed a staircase between the overhanging projections, thereby encroaching upon the public street. Under the circumstances, the suit was filed.

5. The suit was opposed by defendant No.1, whereas defendant No.2 did not appear despite service. In the written statement, certain preliminary objections as regards maintainability, estoppel, waiver and acquiescence, *locus standi*, the suit being bad for non-joinder and mis-joinder of necessary parties, the plaintiff not having approached the Court with clean hands etc. were raised. On merits, a stand was taken that defendant No.1 was running a *Karyana* shop for earning his livelihood, which was under his ownership and he had every right to use the same. It was averred that previously the level of the shop was lower than the street as a result of which water of drains used to come into the shop. Defendant No.1 had, therefore raised the level of the shop and had constructed a step to enter his shop. It was averred that the shop had been sold before filing of



6. From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to the decree of mandatory injunction as prayed for?OPP*
- 2. Whether plaintiff is entitled to the decree of permanent injunction as prayed for?OPP*
- 3. Whether the suit is not maintainable?OPD*
- 4. Whether the plaintiff is barred by his own act and conduct to file this suit?OPD*
- 5. Relief.*

7. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff and the appeal preferred against the said judgment and decree was also dismissed by the first appellate Court leading to the filing of the present second appeal.

8. I have heard learned counsel for the appellant.

9. Learned counsel for the appellant has submitted that both the Courts non-suited the plaintiff only on the ground of the Civil Court not having the jurisdiction to deal with the matter. Learned counsel submits that a plain reading of Section 7 of the Punjab Village Common Lands Regulation Act, 1961 (hereinafter referred to as the “Act”) shows that the plaintiff could not have filed a petition under Section 7 of the Act and further that Section 13 of the Act did not bar the institution of a civil suit by a private party. Learned counsel has referred to the judgments relied upon by the trial Court while dismissing the suit and has tried to distinguish the same. He submits that in the case of **Jai Parkash vs. Ram Narain, 2010(1) RCR (Civil) 972**, no law had been laid down that a suit could never be filed by a private person and that the jurisdiction of the Civil Court would be barred. He submits that in the case of **Chhaju Ram vs. Nand Lal, 1982 PLJ 399**, the plaint had been ordered to be returned, whereas, in the present case,



the suit itself has been dismissed. Learned counsel submits that under the circumstances, the judgments and decrees passed by the Courts are not sustainable.

10. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

11. Section 7 of the Act lays down as under:-

"7. Power to put panchayat in possession of shamilat deh.-

(1) The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

[Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh].

(2) An appeal against the order of the Collector under sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against."



Further Section 13 of the Act lays down as under:-

“13. Bar of Jurisdiction in civil courts.-- No civil courts shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether, 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.”***

12. In the case of ***Jai Parkash (supra)***, the plaintiff therein had filed a suit for mandatory injunction, wherein also the public street had been encroached upon by the defendants. Though both the Courts held that the street was a public street, the suit was decreed and the defendant was directed to remove the construction. When the matter reached this Court, the issue of jurisdiction was raised. It was contended that the public street falls within *Shamilat Deh* and, therefore, the Civil Court did not have the jurisdiction to deal with the same. After examining the entire matter, a coordinate Bench held that the Civil Court did not have the jurisdiction to deal with the matter and only the Collector had the powers to remove illegal possession and encroachment in terms of the provisions of Section 7 of the Act. It was held that in view of the provisions of Section 13B of the Act, there would be no jurisdiction of the Civil Court to deal with the matter. In the considered opinion of this Court, the said judgment squarely covers the present case, for, in the present case also, the plaintiff seeks the removal of encroachment from a public street and the only remedy would be to move a petition under the provisions of the Act. Even if a private individual is not entitled to move a petition for eviction, the plaintiff could always have moved an application before the Collector or the authority concerned bringing to the notice of the authority about the encroachment and a report



could have been called upon by the said authority and action could have been taken. Nothing has been brought on record to show that any such action was initiated by the plaintiff or that at any point of time, some application was submitted to the competent authority. Under the circumstances, the view taken by the Courts cannot be said to be erroneous.

13. In the case of **Chhaju Ram (supra)**, the trial Court tried the issue of jurisdiction as a preliminary issue and held that the Civil Court had the jurisdiction to try the suit. Under the circumstances, the defendant came up in revision which was allowed and it was held that the Civil Court did not have the jurisdiction to try the suit. Since the suit had not been decided and only findings had been returned on a preliminary issue, the trial Court was directed to return the plaint. In the present case, however, the main suit itself was decided and, therefore, the question of return of plaint would not arise.

14. In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Application(s), if any, shall also stand disposed of.

(**VIKRAM AGGARWAL**)
JUDGE

February 20, 2025
vcgarg

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No