

For the reasons recorded above, this petition is accepted. The order of the learned Magistrate dated September 27, 1974, ordering the complainant to produce evidence is quashed. The learned Magistrate will proceed further in accordance with the provisions of section 209 of the New Code of Criminal Procedure. The parties have been directed through their counsel to appear before the learned Magistrate on February 17, 1975.

B. S. G.

APPELLATE CIVIL

Before Ajit Singh Bains, J.

RISAL SINGH, SON OF RAM CHAND,—*Plaintiff-Appellant*

versus

GRAM SABHA VILLAGE SAIDPUR, TEHSIL SONEPAT AND
OTHERS,—*Defendants-Respondents.*

Civil Regular Second Appeal No. 1116 of 1971.

January 31, 1975.

Punjab Gram Panchayat Act (IV of 1953)—Sections 104(2) and 105—Financial loss caused to a Gram Panchayat by negligence or misconduct of Sarpanch—Such loss assessed by Panchayat Officer under section 105 of the Act after giving opportunity of being heard to the Sarpanch—Suit filed by the Sarpanch to challenge such assessment—Whether triable by Civil Courts—Code of Civil Procedure (Act V of 1908)—Section 9—Jurisdiction of a Civil Court—when barred to try a suit.

Held, that under section 104(2) of the Punjab Gram Panchayat Act, 1953, no suit or other legal proceedings in a Civil or Criminal Court lie against any gram Panchayat in respect of any act done in good faith under this Act. Where financial loss is caused to a Gram Panchayat by the negligence or mis-conduct of a Sarpanch and this loss is assessed by the Panchayat Officer under section 105(2) of the Act, after giving full opportunity of being heard to the Sarpanch, the assessment order is conclusive proof of the amount due from a Sarpanch for the loss. The assessment order becomes final and cannot be gone into by a Civil Court which has no jurisdiction to try a suit challenging the assessment.

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Held, that where a remedy is provided under a particular Act, jurisdiction of the Civil Court is excluded and if no remedy is provided, then the matter can be agitated in the Civil Court. However, where an Officer passing an order has acted without jurisdiction or has infringed any provision of the Act, then the jurisdiction of the Civil Court is not barred; but if the Officer has acted within his jurisdiction without violating any provision of the statute, then the Civil Court has got no jurisdiction. Moreover it is well settled that where the question of title is involved in a dispute, the Civil Court has the jurisdiction to adjudicate upon it.

Regular Second Appeal from the decree of the Court of day of March, 1971 affirming that of Shri P. L. Sanghi, Senior Shri S. R. Seth, Additional District Judge, Rohtak, dated the 8th Sub-Judge, Rohtak, dated the 10th August, 1970, dismissing the suit of the plaintiff. Both the Courts left the parties to bear their own costs.

S. C. Kapoor, Advocate, for the appellant.

J. S. Malik, Advocate, for respondent 1 and 2.

Nemo, for 3 and 4.

JUDGMENT

BAINS, J.—Risal Singh appellant has filed this regular second appeal against the judgment and decree dated March 8, 1971 passed by the Additional District Judge, Rohtak, whereby he affirmed the judgment and decree dated August 10, 1970 of the Senior Subordinate Judge, Rohtak.

The facts of the case are not disputed. Risal Singh, plaintiff-appellant, was the Sarpanch and Chairman of the Gram Sabha, Saidpur, during the relevant period and was suspended on account of certain allegations levelled against him. It is alleged that during his tenure as Sarpanch and Chirman, he leased out some *shamlat* land, but did not make any attempt to recover the lease money from the lessee. Subsequently, while he was holding office of Sarpanch, some land of the Gram Panchayat was also exchanged with that of one Dhani Ram. The Panchayat thus suffered loss due to neglect and misconduct of the plaintiff-appellant in his capacity as its Sarpanch. On the move of the representative of Gram Panchayat, the Block Development and Panchayat Officer, exercising the powers of District Panchayat Officer under section 105 of the Gram

Panchayat Act, 1952, (hereinafter referred to as the Act) was deputed to assess the loss suffered by the Gram Panchayat. The Block Development and Panchayat Officer, after due enquiry and giving an opportunity of explaining to the appellant, assessed the loss suffered by the Panchayat at Rs. 12,308, *vide* his order dated September 29, 1966. Thereafter the appellant filed an appeal before the Assistant Director, Panchayat, who,—*vide* his order dated August 30, 1968 maintained the assessment of Rs. 2,042 for loss of lease money and Rs. 10,000 for exchange of shamlat land.

Aggrieved by the abovesaid assessment orders, the appellant filed a civil suit against the Gram Sabha, Gram Panchayat, Block Development and Panchayat Officer, and Assistant Director of Panchayats. In their written statements, the Gram Sabha and Gram Panchayat had denied the allegations made in the plaint and pleaded that the Civil Court had no jurisdiction in the matter. The trial Court framed as many as four issues but the material issue for the purpose of this appeal is issue No. 4, which is in the following words :—

“Whether the Civil Court has no jurisdiction to try the suit?”

The trial Court decided the issue against the appellant and held that the Civil Court has no jurisdiction to try the suit. The first appellate Court affirmed the findings of the trial Court and dismissed the appeal. The present appeal is directed against the judgment and decree of both the Courts below.

Mr. S. C. Kapoor, learned counsel for the appellant, has contended that since there is no express bar under the Gram Panchayat Act, the Civil Court has jurisdiction to try the suit and that the Courts below have erred in law in dismissing the plaintiff-appellant's suit on this ground alone. In support of his argument, he has placed reliance on *Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddi* (1) and *Musamia Imam Haider Bax Razvi v. Rabari Govindhai Ratnabhai and others* (2). Mr. J. S. Malik, learned counsel for the Gram Sabha and Gram

(1) A.I.R. 1967 S.C. 781.

(2) A.I.R. 1969 S.C. 489.

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Panchayat, has contended that there is no merit in the arguments of Mr. S. C. Kapoor as the Civil Court's jurisdiction is expressly and impliedly excluded to adjudicate upon such matter. In his support, he has relied upon *Darshana Nand v. The State of Punjab and others* (3).

After giving my careful thought to the entire matter and going through the above authorities cited by learned counsel for both sides, I find no merit in the the arugments advanced by Mr. Kapoor, learned counsel for the appellant. Relevant portion of sub-section (2) of section 104 of the Act reads as under:—

“(2) No civil or revenue suit or proceedings shall lie against any Gram Panchayat in respect of any act done in the discharge of any of its duties imposed under this Act.”

From the bare reading of this section, it is evident that no suit or other legal proceedings in a civil or criminal court shall lie against any Gram Panchayat in respect of any act done in good faith under this Act. The instant case was initiated at the instance of the Gram Panchayat. The liability of financial loss suffered by the Gram Panchayat was assessed by the Block Development and Panchayat Officer, who, by virtue of Punjab Government Gazette Notification No. BDO (P)-59/13461, dated October 30, 1959, was empowered to perform the powers, duties and functions of the District Panchayat Officer in his block area. Hence the Block Development and Panchayat Officer was competent to make the assessment. Sub-section (2) of section 105 of the Act provides that an aggrieved person be afforded full opportunity of explaining his case by the District Panchayat Officer before he comes to a certain conclusion. It is further provided under sub-section (3) of section 105 of the Act that the aggrieved person can seek his remedy by way of appeal against the assessment order of the District Panchayat Officer before the Assistant Director of Panchayats. In the present case, the appellant was given full opportunity of explaining his case by the Block Development and Panchayat Officer with delegated powers of District Panchayat Officer. He also filed an appeal against the order of the Block Development and Panchayat Officer before the Assistant Director of Panchayats, who dismissed the same on merits. The language of the section shows that the order after

appeal shall be a conclusive proof of the amount due. Thus the assessment order has become final and cannot be gone into by the Civil Courts. In *Firm Seth Radha Kishan v. Administrator Municipal Committee, Ludhiana* (4), their Lordships of the Supreme have observed as follows:—

“Under section 9 of the Code of Civil Procedure the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of Civil Courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of Civil Courts. The statute may specifically provide for ousting the jurisdiction of Civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had.

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Applying the principle stated *supra*, the party aggrieved can only pursue the remedy provided by the Act and he cannot file a suit in a civil court in that regard.”

Their Lordships of the Supreme Court have made the abovesaid observations in a Municipal Committee case, wherein also such remedies, as in the Gram Panchayat Act, were provided. The rulings in *Sri Vadagiri Lakshmi Narasimha Swami Temple's case* (*supra*) and *Musamia Imam Haider Bax Razbi's case* (*supra*) relied upon by the learned counsel for the appellant do not help him at all. These two authorities also lay down the same principle as enunciated by the earlier Supreme Court authority. The ratio of all these Supreme Court authorities is that where a remedy is provided

(4) A.I.R. 1963 S.C. 1547.

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under the Act, the jurisdiction of the Civil Court is excluded and if no remedy is provided, then the matter can be agitated in the Civil Court. Secondly, if the officer passing the impugned order has acted without jurisdiction or has infringed any provision of the Act, then the jurisdiction of the Civil Court is not barred; but if the officer has acted within his jurisdiction without violating any provision of the statute, then the Civil Court has got no jurisdiction. However, it is well settled that where the question of title is involved in a dispute, the Civil Court has the jurisdiction to adjudicate upon it.

In this view of the matter, I find no merit in this appeal and the same is hereby dismissed, but there will be no order as to costs.

B. S. G.

MISCELLANEOUS CRIMINAL

Before S. S. Sandhawalia and S. C. Mital, JJ.

SHRI GOBIND PRASAD LATH,—Accused-Petitioner.

versus

SHRI PAUL OSWAL,—Complainant-Respondent.

Criminal Miscellaneous No. 1163-M of 1973.

February 5, 1975.

Code of Criminal Procedure (V of 1898)—Sections 181(2), 439 and 561-A—Penal Code (XLV of 1860) Section 406—Offence under—Neither entrustment of property nor conversion thereof taking place within the territorial jurisdiction of a Court—Such Court—Whether has jurisdiction to entertain a complaint of the Commission of the offence—Non-rendering of account by the accused within such territorial jurisdiction—Whether confers jurisdiction on the Court to entertain the complaint under section 181(2) of the Code—Objection regarding territorial jurisdiction of a Court—Whether can be decided under section 561-A of the Code.

Held, that all crime is local and jurisdiction to deal with it depends on the place where the crime is committed. In a case of complaint under section 406 of the Penal Code, where neither entrustment of the property nor conversion thereof has taken place within the territorial jurisdiction of the Court where complaint is lodged,