

Union of India
v.
Sheela Devi
and another

Pandit. J.

while referring to *Chowthmull Mangamul v. Calcutta Wheat and Seeds Association* (3)—

“It was stated moreover that the money was paid into Court to give security to the decree-holders that in the event of their succeeding in the appeal they should obtain the fruits of their success. In my opinion, this is the correct way of regarding the deposit in the present case also; it was primarily a deposit of security rather than a deposit of the decretal debt, and the decree-holder cannot claim it as his own, unless the judgment-debtor fails to satisfy the decree by the payment of the money due under the decree.”

In view of what I have said above, I find no force in this appeal, which is hereby dismissed. Since the respondent is unrepresented before me, I make no order as to costs in this Court.

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APPELLATE CIVIL

Before Tek Chand and S. B. Capoor, JJ.

KANSHI RAM AND OTHERS,—Appellants.

versus

HAR LAL AND OTHERS,—Respondents.

Regular Second Appeal No. 558 of 1960.

1961
December, 6th *Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 6(1), 7 and 13—Suit by some proprietors for a permanent injunction against the Gram Panchayat and some biswedars restraining them from preventing the plaintiffs and other residents and inhabitants of the village from grazing their cattle in the land in suit and from removing dried wood for fuel and from*

utilizing the shamlat deh in the manner permitted by the Act and the Rules made thereunder—Whether maintainable—Words and Phrases—Collusion—Meaning of.

Held, that such a suit is maintainable when collusion between the Gram Panchayat and *biswedars* is alleged and the jurisdiction of the Civil Court to entertain such a suit is not barred under section 13 of the said Act. The plaintiffs can have no relief under section 6 of the Act which provides the right of appeal to a party aggrieved from those acts or decisions of a Panchayat which are under section 5. A collusion or a deceitful concert with a *bisweddar* is not an "act or decision of a Panchayat". Section 7 of the Act also does not contemplate the relief of the nature prayed for in the suit.

Held, that it is true that the Gram Panchayat is the custodian of the rights and benefits guaranteed by the statute to the inhabitants of the village concerned. But if for a sinister purpose, it barter away the rights and privileges of the party for whose protection it was constituted, then the law cannot insist that the injured party is without a remedy as it could be represented only by the perpetrator of fraud.

Held, that a collusion is where two persons apparently in a hostile position or having conflicting interests by arrangement do some act in order to injure a third person or deceive a Court. It is a secret concert of action between two or more persons for the promotion of some fraudulent purpose and thereby accomplish a wrong.

Case referred by Hon'ble Mr. Justice Mehar Singh, on 11th May, 1961, to a larger Bench for decision of the important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice Capoor, on 6th December, 1961.

Second Appeal from the decree of the Court of Shri Ishar Singh Hora, Senior Sub-Judge with Enhanced Appellate Powers, Gurgaon, dated the 21st day of March, 1960 affirming with costs that of Shri J. B. Garg, Sub-Judge, IV Class, Gurgaon, dated the 30th January, 1959,

granting the plaintiffs a decree for permanent injunction against the defendants restraining them from preventing the plaintiffs from grazing their cattle in the land in dispute and further ordering that the defendants would pay the costs of the plaintiffs.

F. C. MITAL AND PREM CHAND JAIN, ADVOCATES, for the Appellants

H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—This regular second appeal has been placed before this Bench having been referred by Mehar Singh J., by his order dated 11th May, 1961.

The facts giving rise to this case are that the plaintiffs, eight in number, are Harijans of village Chakarpur and they have filed this representative suit on behalf of the inhabitants of the village against six defendants as representatives of the proprietors of three *pattis* of the village, viz., *patti Zalim*, *patti Ude Ram*, *patti Jai Kishan*. Leave to institute the suit in a representative capacity had been granted. The seventh defendant is the Panchayat of village Chakarpur through its Sarpanch.

The plaintiffs' case in the trial Court was that the land in suit measured 264 *pucca bighas* and 4 *biswas* and that it was *shamilat deh* of the village and, therefore, had vested in the Gram Panchayat of the village under section 3 of Punjab Act No. 1 of 1954. The result of vesting was that all rights and title in the proprietors had come to an end. This area now vested in the Gram Panchayat and could be used for the benefit of all the inhabitants under the Act and the Rules made thereunder. Previous to this suit, the proprietors had filed a civil suit No. 310 of 1955 against the Panchayat entitled *Kashi Ram, etc., v. Panchayat Chakarpur* in the Court of Sub-Judge, 2nd Class, Gurgaon. In

that suit, it was alleged that the land was not *shamilat deh* but had been previously divided between the three *pattis* and, therefore, it could not vest in the Panchayat. Udmi Ram, Sarpanch appeared in the Court and admitted the plaintiffs' contention. It was said that Udmi Ram being a *bisweddar* was personally interested in the suit being decided in favour of the *biswedars* and no resolution had been passed by the Gram Panchayat authorising Udmi Ram, to defend the suit on its behalf or to consent to a decree being passed in favour of the plaintiffs with the result that the Panchayat stood divested of its rights over this land which could not be used for the benefit of the residents of the village. It was stated that the defendants obstructed the plaintiffs from making use of the land in accordance with rights conferred upon them under the Act and the Rules. On these allegations, the plaintiffs had prayed for a decree for permanent injunction against the defendants restraining them from preventing the plaintiffs and other inhabitants from exercising the rights of grazing their cattle and of taking fuel and exercising other rights in accordance with Act No. 1 of 1954 and the Rules made thereunder.

The defendants in their written statement raised several preliminary objections, one of them being that the plaintiffs had no cause of action. On the merits their contention was that the plaintiffs were not the inhabitants of the village and had no rights in the land in dispute. They also maintained that the land in dispute was not *shamilat deh* and that it had been previously partitioned between the three *pattis* of the village. It was also contended that as the plaintiffs had not obtained permission of the Panchayat to use this particular land for themselves and others they could not claim any right in its user. With reference to the previous suit, it was maintained that the Panchayat had rightly admitted their claim and the decree so obtained was not bad for collusion.

Curiously enough, the Gram Panchayat, through Sarpanch Udmi Ram, had taken a similar line of defence as defendants Nos. 1 to 6.

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On the pleadings of the parties, the trial Court framed certain issues which were later on amended. These issues are—

- (1) Whether the plaintiffs are residents of village Chakarpur and have *locus standi* to maintain the suit?
- (2) Whether the civil Court has no jurisdiction to try the suit?
- (3) Whether the plaintiffs have right under law or custom for grazing of their cattle in the land mentioned in the title of the plaint and for cutting and removing the dried trees therefrom, as alleged in the plaint?
- (4) Is the suit not maintainable in the present form?
- (5) Is the Panchayat of village Chakarpur suspended and to what effect?
- (6) Is the suit bad for misjoinder of parties and causes of action?
- (7) Is the suit properly valued for purposes of court-fee and jurisdiction?
- (8) Is the plaint defective and to what effect?
- (9) Relief.

The trial Court by its order dated 13th March, 1957, disposed of issue No. 2 and held that under section 8 of Act No. 1 of 1954 the jurisdiction of civil Court was barred and, therefore, on this ground the plaint was rejected. The plaintiffs then filed an appeal and the Additional District Judge held that the civil Court had jurisdiction and remanded the case for decision on the remaining issues. No appeal was taken to this Court from the order of remand and the finding that the civil Court had jurisdiction was no longer challenged further.

On the remaining issues, the trial Court, after remand, held that the plaintiffs were residents of village Chakarpur and had *locus standi* to bring the suit. The third issue was decided in plaintiffs' favour. It was held that Udmi Ram Sarpanch of the Panchayat in the previous suit

acted fraudulently and in collusion with the proprietors who were the plaintiffs in that suit and the decree passed in that suit (suit No. 310 of 1955) was ineffective and inoperative. The argument on behalf of the defendants that the plaintiffs should have filed a separate suit for getting the previous decree set aside, was rejected. The trial Court held that the land in dispute vested in the Gram Panchayat of village Chakarpur and the right of the plaintiffs as also of other inhabitants of grazing cattle was undisputable, though the right of collecting dried fuel was subject to terms and conditions to be laid by the Panchayat. On issue No. 4 the defendants had contended that the plaintiffs should have sued for possession and not for permanent injunction. This issue was decided in favour of the plaintiffs and it was held that the suit was maintainable in the present form. Issue No. 5 was decided against the defendants. Issues Nos. 6 and 8 had not been pressed by the defendants in the trial Court and the pleas covering those issues were treated as given up. Issue No. 7 was decided in favour of the plaintiffs. The trial Court decreed the plaintiffs' suit for permanent injunction against the defendants restraining them from preventing the plaintiffs from grazing their cattle in the land in dispute. The defendants were ordered to pay the plaintiffs' costs.

From this decision, the defendants filed an appeal to the Senior Sub-Judge, Gurgaon, which was dismissed. The lower appellate Court concurred in the reasoning of the trial Court and came to the conclusion that the land in dispute was vested in the Panchayat and the plaintiffs had based their claim on the provisions of Punjab Village Common Lands (Regulation) Act (1 of 1954). The defendants being unsuccessful in the two Courts below preferred a regular second appeal in this Court which was heard by Mehar Singh J., who, by his order dated May 11, 1961, expressed the view that the question of maintainability of a suit like the present, on the part of the plaintiffs was a question which should be decided by a larger Bench.

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The learned Single Judge said that issues Nos. 5, 6, 7 and 8 were never contested and were, therefore, redundant and on issue No. 1 there was a concurrent finding of fact that plaintiffs were inhabitants of village Chakarpur and, therefore, this issue was no longer open to question. The learned Single Judge was also of the view that after the passing of Punjab Village Common Lands (Regulation) Act (18 of 1961) *shamilat deh* in a *patti*, when it has been used for common purposes, is also vested in a village Panchayat and, therefore, the land in suit was *shamilat deh* and vested in the Panchayat. Before the learned Single Judge the defendants had raised a contention that it was not competent for one or more inhabitants of the village to institute a suit like the present and obtain a decree for injunction. The learned Single Judge felt that the argument was not advanced in the Courts below in the shape in which it was presented before him. In their written statement the defendants had questioned the maintainability of the suit.

The argument presented before us by the learned counsel for the defendant-appellants is that the *shamilat* land in question vested in the Panchayat under the Act and it is for the Panchayat alone to institute a suit and seek relief against defendants Nos. 1 to 6. It was also said that the relief sought in the plaint did not include avoidance of the previous consent decree passed in favour of the *biswedars* against the Gram Panchayat. Our attention was also drawn to sections 6(1), 7 and 13 of Act No. 18 of 1961. Lastly, it was contended that in view of the investment of the *shamilat* land in the Panchayat there were no rights of grazing or the like left with the plaintiffs.

On behalf of the plaintiffs, it was argued that a suit for permanent injunction restraining the defendants from interfering with the plaintiffs' right of grazing and from taking dried wood for purposes of fuel and from using the land in accordance with the objects of the Act and the Rules made thereunder, was maintainable. Our

attention was drawn, *inter alia*, to rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1955. Rule 5(i) provides—

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“All pasturable land may be utilised by the residents of the village for—

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- (a) grazing purposes; or
- (b) collecting dry fuel-wood from the jungle on terms laid down by the Panchayat.”

Our attention was also drawn to section 5 of the Act, according to which all lands vested or deemed to have been vested in a Panchayat shall be utilised or disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed. Then the details as to the manner of utilisation of *shamilat deh* are given. The contention on behalf of the plaintiffs is that it is the statutory obligation of the Panchayat to utilise or dispose of the land for the benefit of the inhabitants. If the Panchayat does not discharge this statutory obligation but in collusion with individual *biswedars* refuses to treat the *shamilat* land as vested in it, the inhabitants of the village, for whose benefit the Act was passed, could seek the protection of the law Courts in ensuring that their statutory rights were not being violated. It was argued that if by fraud and collusion the Panchayat had betrayed its trust and had thereby denied its jurisdiction or right or title in the land which was intended by the law to be used for the benefit of the inhabitants, the latter could invoke the jurisdiction of the Courts to see that the purposes of the Act were not defeated in consequence of a deceitful concert between the Panchayat and the *biswedars*. It would be inequitable in the extreme that a Panchayat could be enabled to accomplish an unlawful purpose and in violation of the statutory injunction by entering into a conspiracy to injure the interests of the inhabitants, and, further, the participants in the fraud should be permitted to successfully

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non-suit the victim of their fraud by the plea that colluding party alone could institute a suit against the co-conspirator.

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A collusion is where two persons apparently in a hostile position or having conflicting interests by arrangement do some act in order to injure a third person or deceive a Court. It is a secret concert of action between two or more for the promotion of some fraudulent purpose and thereby accomplish a wrong.

It is true that the Gram Panchayat is the custodian of the rights and benefits guaranteed by the statute to the inhabitants of the village concerned. But if for a sinister purpose it barter away the rights and privileges of the party for whose protection it was constituted, then the law cannot insist that the injured party is without a remedy as it could be represented only by the perpetrator of fraud. It does not appear to me that the Act has left the objects of its bounty so completely helpless as has been made out by the appellants' counsel. Section 6 of the Act provides that a person aggrieved by an act or a decision of a Panchayat under section 5 may, within thirty days from the date of such act or decision, appeal to the Collector. Section 6 provides rights of appeals to a party aggrieved from those acts or decisions of a Panchayat which are under section 5. A collusion or a deceitful concert with a *biswedar* is not an "act or decision of a Panchayat", and in any case it is not so under section 5 which is a provision for regulation of use and occupation etc., of lands vested or deemed to have been vested in Panchayats. Again, section 7(1) provides a machinery for a Panchayat to make an application to the Assistant Collector in order to be put in possession of land in the *shamilat*. And subsection (2) provides for ejection of a person in wrongful or unauthorised possession of any land in the *shamilat deh*, but the relief of the nature prayed for in the suit is not within the contemplation of section 6 or section 7.

Section 13 was then referred to which provides that no civil Court shall have any jurisdiction over any matter arising out of the operation of this Act. The bar of the jurisdiction is in respect of a matter arising out of the operation of this Act. The Additional District Judge, in his order of remand, dated 30th July, 1956, held that the civil Court had jurisdiction, among others, for the reason that a matter in dispute did not arise out of the operation of the Act. Section 105, subsection (2), of the Civil Procedure Code, provides that where any party aggrieved by an order of remand, from which an appeal lies, does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. Reference may also be made to *Talebali v. Abdul Aziz*, (1). The grievance of the plaintiffs is that if there had been no collusive concert between defendants Nos. 1 to 6 and the Panchayat the inhabitants of the village would have enjoyed the benefits extended by the Act and the Rules in respect of the land in suit. The collusive act has resulted in their valuable rights having been injured and the injury is of a continuous nature. Under Rule 6, the residents of the village are entitled to utilise pasturable land for grazing purposes. They are also entitled to collect dried fuel wood from the jungle but on terms laid down by the Panchayat. Rule 5(i) governs the case of pasturable land. Rule 7 empowers the Panchayat to allow the use of *Shamilat deh* vested in it free of charge to the inhabitants of the village for several specified purposes including grazing. There are also other valuable rights conferred upon the inhabitants of which they cannot avail themselves so long as the land in suit remains in the exclusive possession of defendants Nos. 1 to 6.

In view of what has been discussed above I am of the view that suit is maintainable in the present form. In other words, the plaintiffs are entitled to a permanent injunction against the defendants as prayed for, that is to say, that the defendants be restrained from preventing the

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plaintiffs and other residents and inhabitants of village Chakarpur from grazing their cattle in the land in suit and from removing dried wood for fuel and from utilising the *shamilat deh* in the manner permitted by the Punjab Village Common Lands (Regulation) Act and the Rules made thereunder.

It may also be mentioned that the plea against maintainability of the suit taken by the defendants was altogether different. They sought rejection of the plaint on the ground that the plaintiffs should have sued for possession and the trial Court rightly declined to entertain this contention. It may also be noticed that this plea was not even reiterated before the lower appellate Court which, after examining the contentions raised by the appellants, had expressly said that no other point was urged or argued in appeal.

Finally, the learned counsel for the appellants urged that it was no longer open to his clients to challenge that the area in suit was *shamilat deh* and that it actually vested in the Panchayat in view of the concurrent findings of the Courts below, but nevertheless this suit was not maintainable. I have already expressed by disagreement with this contention.

This appeal is devoid of merit and deserves to fail. The appeal is, therefore, dismissed with costs. In the result, the plaintiffs are entitled to a decree for permanent injunction as prayed.

Capoor,

J. S. B. CAPOOR, J.— I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

IRON TRADERS (PRIVATE) LTD., AND

OTHERS,—Appellants

versus

HIRA LAL MITTAL AND ANOTHERS.—Respondents.

Regular Second Appeal No. 92-D of 1961.

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Companies Act (I of 1956)—Section 155—Power of
December, 11th. directors to rectify the Register of Members—Transfer of