applicable as it does not cover property which a female vendor acquires otherwise than by succession through her father, brother, husband or son and the right to pre-empt the sale has to be determined in accordance with the provisions of sub-section (1) of that section. It cannot be disputed that under the latter provision Shrimati Bhagwati, being co-sharer, was competent to pre-empt the sale.

As a last resort, Shri J. N. Seth, attempted to argue that even though the property had come into the possession of Shrimati Bhagwati, under a gift deed, the circumstances indicated that it was in the nature of acceleration of succession, thus attracting the provisions of sub-section (2) of section 15. Again, I do not find any substance in this submission. There is clear evidence on the record, including the statement of Shrimati Bhagwati, D.W. 5, that besides the land which was gifted by her mother, she possessed a house. That house was not gifted along with the land. From this it is clear that the gift in favour of Shrimati Bohti and Shrimati Bhagwati was not of the entire estate held by Nihali, but only a part thereof. In such circumstances it could not operate as acceleration of succession. It was a pure and simple gift under which Shrimatis Bohti and Bhagwati, obtained half share each of the agricultural land is, accordingly, dismissed with costs.

For all these reasons, I do not find anything wrong with the decree under appeal, and affirm the same. The appeal is, accordingly, dismised with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

AMRIK SINGH,—*Petitioner*

versus

B. S. MALIK AND OTHERS,—*Respondents*

Civil Writ No. 2587 of 1964

1965

September, 28th.

Punjab Gram Panchayat Act, 1952 (IV of 1953) as amended by Punjab Act XXVI of 1962—Ss. 13-B and 13-C—Gram Panchayat Election Rules (1953)—Rules 44 and 45—Single election

petition calling in question the election of Sarpanch and various Panches held on a single day—Whether maintainable—Code of Civil Procedure (Act V of 1908)—Order 2, rules 3 and 6—Whether applicable—Suit and election petition—Difference between the two pointed out.

Held, that—

(i) one composite petition under sections 13-B and 13-C of the Punjab Gram Panchayat Act calling in question the election of the Sarpanch on the one hand and four Panches on the other is not competent and that the finding of the prescribed authority on that score is correct in law;

(ii) in view of the above finding, rule 6 of order 2 of the Code of Civil Procedure has no application to the case as it is settled law that the said rule can apply only when it is open to a plaintiff to combine several causes of action in one suit and that it does not apply to a case of misjoinder of causes of action;

(iii) rule 3 of Order 2 of the Code has no application to this case as the action was not against a single respondent or a single set of respondents against whom a joint cause of action had arisen. The cause of action aginst each elected candidate was independent of every other.

Held further, that one fundamental difference between a suit and an election petition has to be borne in mind. A civil suit for a claim involved therein, subject to limitation and any other legal bar, can be filed in a competent Court as a matter of right. An election petition is the creature of a statute and unless one is provided for by an Act or statutory rules, no election petition lies. When a special statutory action like an election petition is provided, it has to strictly comply with the statutory provisions and the rules prescribed for its presentation and trial.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari or any other appropriate writ, order or direction be issued setting aside the order of the Prescribed Authority dated 18th September, 1964.

PURAN CHAND, ADVOCATE, for the Petitioner.

ACHHRA SINGH, ADVOCATE, for the Respondents.

ORDER

Narula, J. NARULA, J.—The important question of law, which calls for a decision in this case is whether an election-petitioner

under sections 13-B and 13-C of the Punjab Gram Panchayat Act, 1953, as amended by Punjab Act 26 of 1962, can maintain one single petition calling in question the election of a Sarpanch and various Panches of a Gram Panchayat held on a single day.

The facts relevant for the decision of this case are not in dispute. Gram Panchayat, Mehtabgarh, consistsr of two villages, namely, Mehtabgarh and Bhua Khera. The petitioner was admittedly an elector of the Gram Sabha area Mehtabgarh. In accordance with an election programme issued by the Deputy Commissioner, Patiala, in December, 1963, for holding the election of a Sarpanch and four Panches of the above-said Panchayat, nomination papers were filed as below:—

(1) For the post of the Sarpanch by Amrik Singh, petitioner, by Charan Singh, respondent No. 2 and by Babu Singh, respondent No. 3.

(2) For the four seats of Panches by Inder Singh and 5 others, respondents Nos. 4 to 9.

At the time of scrutiny of the nomination papers the Returning Officer rejected the papers of the petitioner and of Babu Singh, respondent No. 3, so far as the election of the Sarpanch was concerned. Out of the nomination papers filed for the election of the four seats of Panches the Returning Officer accepted the nomination papers of respondents Nos. 4 to 7 and 9, but rejected that of Tara Singh, respondent No. 8.

The elections in question were held on December 30, 1963. Charan Singh, respondent No. 2, was declared elected as Sarpanch and Inder Singh, Kaka Singh, Pritam Singh and Mohinder Singh, respondents Nos. 4 to 7, were declared elected as Panches.

The petitioner by an election petition under section 13-B, *supra*, called in question the election of Charan Singh, respondent No. 2, as well as the election of Inder Singh and others, respondents Nos. 4 to 7, by way of a composite election petition. Naturally he deposited only one set of security of Rs. 100 required under rule 44 of the Gram Panchayat Election Rules, 1960 (hereinafter referred to as

Amrik Singh
v.
B. S. Malik
and others

Narula, J.

the election rules). A preliminary objection on behalf of the contesting respondents in the election petition was taken to the maintainability of the petition on the ground that such a composite petition calling in question the election of a Sarpanch and various Panches could not be filed. This objection prevailed with the prescribed authority (who acted as the Election Tribunal). As a result the election petition of the petitioner was dismissed by that authority by an order (copy annexure 'A' to the writ petition), dated September 18, 1964. On November 28, 1964, this writ petition was filed by Amrik Singh, petitioner, for quashing and setting aside the above-said order of the prescribed authority by a writ in the nature of *certiorari*. In reply to the writ petition respondents Nos. 3, 8 and 9 have filed a written statement, dated January 11, 1965, admitting all the allegations of the petitioner and also admitting that the petitioner is entitled to the relief claimed by him in this writ petition. Respondents Nos. 2, 4, 5, 6 and 7 have, however, filed a separate joint written statement in which all the material facts as stated above have been admitted but it has been averred that the writ petition should be dismissed as the election of a Sarpanch and of Panches had nothing in common except that the same had been held on the same day in the same manner as elections to Parliamentary and State Assembly seats are held on the same day and that, therefore, the order of the prescribed authority is correct. It has further been pointed out in the said written statement that the constituency in question is a single member one so far as the election of the Sarpanch is concerned while it is a multi-member constituency so far as the election to the seats of the Panches is concerned. It is again pointed out by the contesting respondents that the wrongful rejection or acceptance of the nomination papers of a candidate for being elected as a Sarpanch did not in any way affect the election of Panches and *vice versa*. Great emphasis has been laid by Shri Achhra Singh, the learned counsel for the respondents, on the fact that only one set of security amounting to Rs. 100 was deposited by the petitioner at the time of filing his election petition and that the object of the provision for furnishing security will be completely obliterated if a petitioner was allowed to call in question various elections by furnishing one set of security.

By the impugned order of Shri B. S. Malik, Sub-Divisional Officer, Bassi (Prescribed authority), dated 18th

September, 1964, the election petition of the petitioner was dismissed with costs on the solitary ground that by a single petition only the election of either a Sarpanch or a Panch could be challenged and that both the elections could not be challenged by one composite petition. On a consideration of the wordings of sections 13-B and 13-C of the Act and the relevant election rules the prescribed authority held that one single petition in this respect was not maintainable.

Shri Puran Chand, the learned counsel for the petitioner, raised only two contentions before me. His first argument is that there is nothing in the Act or the election rules prohibiting the filing of a composite petition like this. The only other argument advanced by the learned counsel in this case is that even if such a prohibition could be spelt out from any of the provisions of law, the prescribed authority had no jurisdiction to dismiss the election petition, but should have allowed the petitioner an opportunity to exercise his choice so as to continue to prosecute the election petition against the election of either the Sarpanch or the Panches and that in the absence of the petitioner exercising such a choice, the authority should have himself struck off one set of claim in the case. In short the second argument is to the effect that no provision in the Act or in the Code of Civil Procedure allows an Election Tribunal or a Court to dismiss an election petition or a suit on the ground on which the prescribed authority has proceeded to dismiss the petitioner's election petition.

It is common case of both the parties that the procedure for trial of the election petition had to be one prescribed by the Code of Civil Procedure as provided by section 13-G of the Act which reads as follows:—

> "13-G. (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the prescribed authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908), to the trial of suits:
>
> Provided that the prescribed authority shall have the discretion to refuse for reasons to be recorded in writing to examine any witness .....".

Amrik Singh
v.
B. S. Malik
and others

Narula, J.

The argument of Shri Puran Chand is that rule 9 of Order 1 of the Code provides that no suit shall be defeated by reason of misjoinder or non-joinder of parties and it is the duty of a Court to deal with the matter in controversy in every suit so far as regards the rights and interests of the parties appearing before it. He has also referred to the provisions of rule 6 of Order 2 of the Code, whereunder it is prescribed that when it appears to a Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient. The argument relating to the necessity of giving the petitioner a choice of electing to proceed against the election of either the Sarpanch or the Panches is based on the above-said rule.

Three questions appear to arise on the answers to which the fate of this petition would depend. The first question is whether the law allows such a composite election petition to be filed. If the answer to this question is in the affirmative, no other matter would arise and the petitioner must succeed. If, however, the answer to the first question is in the negative, the next question would be whether in the absence of a plea to that effect the prescribed authority was bound to afford an opportunity to the petitioner to exercise his option for proceeding with one set of claim in the election petition. The third question that has to be kept in view in deciding this case is whether there is any error of law so apparent on the face of the impugned order as should call for the interference of this Court in exercise of its writ jurisdiction, if it is found that the impugned order is otherwise within the jurisdiction of respondent No. 1. Sections 13-B and 13-C of the Act read as follows:—

> "13-B. No election of a Sarpanch or Panch shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.
>
> 13-C. (1) Any member of the Sabha may, on furnishing the prescribed security in the prescribed manner,—
>
> (a) where an election was held after the 12th August, 1960 and before the 27th September, 1962, within thirty days of the latter date; or

(b) where an election is held after the 27th September, 1962, within thirty days of the date of announcement of the result thereof;

present on one or more of the grounds specified in sub-section (1) of section 130 to the prescribed authority *an election petition in writing against the election of any person as a Sarpanch or Panch.*

(2) The election petition shall be deemed to have been presented to the prescribed authority—

(a) when it is delivered to the prescribed authority—

(i) by the person making the petition; or

(ii) by a person authorised in writing in this behalf by the person making the petition; **or**

(b) When it is sent by registered post and is delivered to the prescribed authority.

(3) An election petition pending before the prescribed authority immediately before the 27th September, 1962, shall be decided and disposed of by the prescribed authority in accordance with the provisions of this Chapter after affording to the person who presented the election petition an opportunity to amend the petition."

Rule 44 and 45 of the Election Rules are in the following terms:—

"44. (1) At the time of, or before, presenting an election petition, the petitioner or petitioners shall deposit in the treasury or sub-treasury a sum of rupees one hundred in cash or in Government promissory notes of equal value, as security for all costs that may become payable by him or them.

(2) If the petitioner by whom the deposit referred to in sub-rule (1) withdraws his election petition, and, in any other case, after final orders have been passed on the election petition, the

Amrik Singh
v.
B. S. Malik
and others

Narula, J.

deposit shall, after such amount as may be ordered to be paid as costs, charges and expenses has been deducted, be returned to the petitioner by whom it was made, and if the petitioner dies during the course of the enquiry into the election petition, any such deposit, if made by him, shall, after the amount of such costs as may be ordered to be paid, have been deducted, be returned to his legal representative.

(3) All applications for the refund of a deposit shall be made to the Deputy Commissioner, who shall pass orders thereon in accordance with these rules.

45. If any of the provisions of rules 42(1) and 44(1) have not been complied with, the Illaqa Magistrate shall pass an order dismissing the election petition and such orders shall be final."

A reading of the above-said provisions of the Act and the rules makes it clear that it is only one election, may be of a Sarpanch or a Panch, that can be called in question by way of one election petition and each such petition is entitled to be tried only if the petitioner has furnished the prescribed security in respect of each such election. The object of furnishing security is to avoid the botheration of the contesting respondent in recovering the costs of the trial of the election petition if costs are awarded to him. It is on an estimated basis of the expenses incurred by the respondents in such cases that the appropriate Government has fixed Rs. 100 as the amount of the security. If the interpretation sought to be placed on the above-said provision of law by the learned counsel for the petitioner is accepted, the amount of costs available to the respondents by way of security may be reduced to a ridiculous extent. One fundamental difference between a suit and an election petition has to be borne in mind. A civil suit for a claim involved therein subject to limitation and any other legal bar can be filed in a competent Court as a matter of right. An election petition is the creature of a statute and unless one is provided for by an Act or statutory rules, no election petition lies. When a special statutory action like an election petition is provided, it has to strictly comply with the statutory provisions and the

rules prescribed for its presentation and trial. The only contingencies in which an election petition under this Act could be rejected in *limini* are those contained in rule 45 reproduced above because in every other case where it is found that the petition is not maintainable or that no valid petition has been presented, the prescribed authority has to dismiss it.

The general principle is that a single action can normally embrace only one cause of action against one defendant or one joint cause of action against various defendants. Any other view can result in innumerable complications in the trial of the action. Setting aside the election of a candidate at any election is an independent cause of action against every one of the elected candidates whose election is intended to be called in question. In this particular case, there is nothing in common between the election of respondent No. 2 on the one hand and respondents Nos. 4 to 7 on the other except that their elections were held on the same day by a common electorate. The petitioner was not even a candidate for being elected as a Panch. Though he may have had a right to file an election petition under the Act, he would probably have no right to maintain a writ petition for calling in question the election of the Panches.

In respect of each successful candidate different grounds may have to be taken for setting aside their election. In the instant case though it is not clear from the record before me, it is admitted by the learned counsel appearing for both sides that the ground on which the nomination papers were rejected was that the candidates in question were lessees of the Gram Panchayat and were, therefore, disqualified from contesting the elections in question. In respect of each candidate whose nomination paper was rejected and which rejection is called in question in the election petition, the prescribed authority would have to find out on a separate set of evidence whether the candidate in question was or was not a lessee of the Gram Panchayat concerned. The votes cast for the Sarpanch and Panches were separate. In such a situation, there is no doubt that normally there should be separate petitions calling in question the election of each of the Panches and of the Sarpanch.

Amrik Singh
v.
B. S. Malik
and others

Narula, J.

In section 13-B itself the words used are "election of a Sarpanch or Panch". The words "Sarpanch" and "Panch" are not joined by the word "and", but by the word "or". The use of the singular in sections 13-B and 13-C relating to the election of a Sarpanch or a Panch or referring to the election petition cannot, in the context of these provisions, be deemed to include the plural.

Whenever it is intended that a composite election petition should be maintainable in respect of an election of more than one person, a statutory provision in this respect has to be made. An illustration of the same is contained in section 23(2)(a) of the U.P. Municipalities Act, 11 of 1916, which reads as follows:—

> "(a) two or more persons whose election is called in question may be made respondents to the same petition and their case may be tried at the same time, and any two or more election petitions may be heard together; but so far as is consistent with such joint trial or hearing, the petition shall be deemed to be a separate petition against each respondent."

There is no such provision in the Punjab Act or the election rules. On a consideration of all the above provisions I hold:

(i) that one composite petition under sections 13-B and 13-C of the Act calling in question the election of the Sarpanch on one hand and four Panches on the other is not competent and that the finding of the prescribed authority on that score is correct in law;

(ii) in view of the above finding, rule 6 of Order 2 of the Code of Civil Procedure has no application to the case as it is settled law that the said rule can apply only when it is open to a plaintiff to combine several causes of action in one suit and that it does not apply to a case of misjoinder of causes of action;

(iii) rule 3 of Order 2 of the Code has no application to this case as the action was not against a single respondent or a single set of respondents against

whom a joint cause of action had arisen. The cause of action against each elected candidate was independent of every other.

This brings me to the second contention of the learned counsel for the petitioner. It is not disputed that when an objection as to the non-maintainability of the election petition on the above-said score was taken up by the contesting respondents before the prescribed authority, no such choice was sought to be exercised by the petitioner. Nor, does it appear that any such prayer was made to the prescribed authority at the time of hearing of arguments on the preliminary issue. What is significant is that this point has not been specifically taken even in the writ petition. Shri Puran Chand, the learned counsel for the petitioner, states that the following ground taken up by him in para 11(e) of the writ petition covers this ground:—

> "That the order of respondent No. 1 dismissed the election petition on the preliminary question is untenable in law and is liable to be quashed."

It has been held by a Division Bench of this Court, (Falshaw, C.J., and Mehar Singh, J.) on 13th September, 1965, in L.P.A. No. 137 of 1965, *Nathu Ram* v. *the State of Punjab*, that the law of pleadings applies to writ petitions and that any point not specifically taken up in a writ petition cannot be allowed to be urged at its hearing. I am, therefore, not inclined to allow this new point to be raised at this stage. In *Inderjeet and others* v. *Sub-Divisional Officer, Math, district Mathura and others* (1), a Division Bench of that Court did not allow a question of this type to be raised. The learned Judges held:—

> "It was also contended by the learned counsel, in the alternative that the court below should have permitted the petitioners to choose against which of the defendant-respondents they wished to proceed and after such choice had been indicated, should have proceeded to decide the petition against that candidate alone and should not have dismissed it. But such a ground had not been taken in the writ petition nor is this

(1) (1963) 61 A.L.J. 15.

Amrik Singh
v.
B. S. Malik
and others

Narula, J.

a matter of jurisdiction. It was open to the petitioners, when the question of validity of the election petition was raised on this ground, to have prayed for amendment of their petition so that it remained a petition against one of the successful candidates only. This not having been done, it cannot be said that the impugned order is invalid in law."

A writ petition is not, like an appeal, the continuation of the original cause. It is not a rehearing of the election petition and I cannot be asked to perform the supposed functions of the election Tribunal.

In this view of the matter, consideration of the effect of the provisions of rule 9 of Order 1 of the Code does not arise in this case.

What has influenced me most in dismissing this writ petition is the consideration of the extraordinary jurisdiction of this Court under Article 226 of the Constitution. The right to have an election set aside is a purely technical statutory right. The contesting respondents have been in office by now for more than 18 months. The only question which I have not allowed to be raised, had not been raised before the prescribed authority. I have found that the decision of the prescribed authority on the main question is correct. Even after hearing the lengthy arguments of the learned counsel for the petitioner, I have not been persuaded to hold to the contrary. Even if my decision on the main point is legally incorrect, I think that an alleged error of law of this type is not such as would call for the interference of this Court by a writ in the nature of certiorari. It is only a question on which no two opinions are possible that can be treated as an error apparent on the face of the record to justify interference in exercise of writ jurisdiction in a case where the jurisdiction of the authority passing the impugned order is not questioned. In this case it is admitted that respondent No. 1 had the jurisdiction to decide the preliminary issue in question.

In these circumstances, I am unable to interfere with the impugned order and would, therefore, dismiss this writ petition, but make no order as to costs.

B.R.T.