areas in line with the policy laid down in the Act, the entire population of those areas including the dealers, is bound to benefit or enjoy the services sought to be rendered to them. With the development of the rural areas, better communications, building of the roads from fields to the markets and with the betterment of the lot of the agricultural labour residing in those areas, not only the cherished goal of 'growing more' is likely to be achieved, but it is bound to benefit the dealers dealing in the agricultural produce, that is, the petitioners directly. Besides being thus directly served by the expending of the fund in the manner suggested in the Act, the dealers are also likely to benefit indirectly as members or a part of the general mass of the population habitating the market areas which as already pointed out above, constitute about 80 per cent of the population of the State. Anyway, we find it is not a case where the payers or dealers can complain that there is not even a casual relationship as opined by the Supereme Court in *The City Corporation of Calicut's* case (supra) between the fee paid and the services rendered to them. We thus reverse the conclusion of the learned Single Judge, as recorded in the impugned judgment.

(13) In order to put the records straight we may also mention here that at one stage, Mr Sibal, learned Advocate General for the State of Haryana, sought to sustain the vires of the Act or the imposition of the cess even as a tax in the light of Entry No. 52 in List II of the VII Schedule to the Constitution of India, but soon realising the futility of the argument he gave up. We thus do not feel called upon to examine that aspect of the matter; more so, in the light of the conclusions recorded by us above.

(14) For the reasons recorded, while allowing this appeal, we set aside the judgment of the learned Single Judge and dismiss the petition as also the other connected petitions, but with no order as to costs.

N.K.S.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

BHAGU AND OTHERS,—*Appellants.*

versus

RAM SARUP AND ANOTHER,—*Respondent.*

Regular Second Appeal No. 2282 *of* 1980.

April 17, 1985.

Code of Civil Procedure (V of 1908)*—Section* 9*—Punjab Village Common Land (Regulations) Act (XVIII of* 1961) *as amended by*

Haryana Act No. 2 *of* 1981—*Sections* 13—*Plaintiff filing suit for injunction against private persons claiming right of way over Shamilat land vesting in the Panchayat—No dispute raised by the plaintiff against the Panchayat regarding nature or title to the land—Civil Court—Whether has the jurisdiction to entertain the suit—Section* 13—*Whether ousts the jurisdiction of the Civil Court in such cases.*

Held, that reading of section 9 of the Code of Civil Procedure, 1908 a litigant having a grievance of a civil nature undoubtedly has a right to institute a suit in some Court or the other unless its congnizance is either expressly or impliedly barred. Reading of section 13 and 13-A of the Punjab Village Common Land (Regulations) Act, 1961 as amended by Haryana Act No. 2 of 1981 would show that the jurisdiction of the Civil Court is excluded upon the questions stated in section 13 of the Act when the *lis* is between a private person and the panchayat. In a nut shell, the whole implication of section 13 of the Act is that the jurisdiction of the Civil Court is taken away when the *lis* is between the Gram Panchayat and the private person and it relates to any of the questions specified in the said section. It appears clear that the said section would not be operative when the *lis* or the dispute is between two private individuals. To take a contrary view would mean that the jurisdiction of the Civil Court can be ousted in any and every suit relating to any property or interest therein by raising a wholly frivolous plea that the subject matter of the litigation is *Shamilat Deh* or Panchayat property. Where, however, it is not the claim of the plaintiff that either the suit property be declared as *Shamilat* or included or excluded from *Shamilat* and only a dispute has been raised regarding a thoroughfare which is admittedly *Shamilat,* any finding eitherway would not affect the interest or title of the panchayat to the land in question. In this view of the matter, the Civil Court has the jurisdiction to entertain the suit. (Paras 4 & 5)

Lehri and others *vs.* Arjan Dass and others, 1981 P.L.J. 52.

OVERRULED.

Regular Second Appeal from the decree of the Court of the District Judge, Jind, dated the 9th day of August, 1980, *affirming with costs that of the Sub Judge Ist Class, Safidon, dated the 3rd day of April,* 1980, *passing a decree with costs for permanent injunction restraining the defendants from interferring into the possession of plot No.* 208 *and further ordering that the wall by means of which defendants have blocked the street No.* 212 *be demolished and the sare-am street to be made clear.*

Mr. Balraj Bahl, Advocate with A. L. Bahl, Advocate, *for the Petitioner.*

Hari Mittal, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) The short but question of some complexity raised in this Second Appeal relates to the jurisdiction of the Court. It arises on the following facts.

(2) Plaintiff-respondent Ram Sarup filed the present suit on 18th July, 1978 with the allegations that out of the two plots Nos. 208 and 212 situated in village Dhadoli, Tehsil Safidon, district Jind, the first one is owned by him and the latter is a public street. He and the proforma defendants in the suit were utilising this street as an approach to their houses for the last more than 30 years. The defendant-appellants being head-strong people not only threatened to dispossess him from plot No. 208 but had actually constructed a 6′ high wall in the thoroughfare, i.e. on plot No. 212 and, thus, caused obstruction in the free passage to his house and also to the houses of other defendants. Thus, he sought a permanent injunction restraining the appellants from raising any construction or interference in his possession over plot No. 208 and prayed for a mandatory injunction directing these appellants to demolish the wall and the other construction and to restore the thoroughfare to its original position. The appellants contested the suit denying the above-mentioned allegations. The parties were put to trial on the following issues: —

(1) Whether plaintiff is owner in possession of the disputed plot No. 208 ? OPP.

(2) Whether this Plot No. 212 has been used by the plaintiff for the last more than 30 years as street ? OPP.

(3) Whether defendants have blocked the street No. 212 prior to filing the suit dated 1st July, 1978? OPP.

(4) Whether the suit is not maintainable in the present form ? OPD.

(5) Whether plaintiff has no *locus-standi* to file the present suit ? OPD.

(6) Relief.

Having come to the conclusion that the plaintiff was the owner in possession of Plot No. 208 and that Plot No. 212 was a thoroughfare and was being used as a passage by the plaintiff for more than 30 years and the defendant-appellants had actually blocked the same

by raising the construction in question, the reliefs prayed for were granted. Under issues Nos. 4 and 5 it was held that the suit was maintainable in the present form and the plaintiff had the locus-standi to file the same. In appeal, though the above-noted findings of the trial Court have been affirmed by the District Judge, Jind, yet one of the contentions raised before him and repeated before us is that the Civil Court had no jurisdiction to try the suit as it involved the determination of the question whether the land forming part of Plot No. 212 being a thoroughfare did vest or not in the Panchayat. This, according to their learned counsel, could not be done by the said Court in view of the provisions of section 13 of the Punjab Village Common Land (Regulation) Act, 1961 (for short, the Act) as in force on the date of filing of the suit and as now substituted by Haryana Act No. 2 of 1981 with effect from February, 12, 1981. The earlier section read as follows:—

> "13. Bar of jurisdiction.—No Civil Court shall have jurisdiction:—
>
> (a) to entertain or adjudicate upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act; or
>
> (b) in respect of any other matter which any officer is empowered by or under this Act to determine; or
>
> (c) to question the legality of any action or any matter decided by any authority empowered to do so under this Act."

This section along with sections 13-A and 13-B was later substituted by the present section during the pendency of this appeal. This, however, to our mind does not make any material difference to the fate of this case as the learned counsel for the parties are agreed that the bar of jurisdiction brought in by the Haryana Amending Act No. 2 of 1981 applies to pending appeals even. The newly substituted section reads as follows:—

> 13. Bar of jurisdiction—No Civil Court shall have jurisdiction—
>
> (a) to entertain or adjudicate upon any question whether:—
>
> (i) any land or other immoveable property is or is not *Shamilat-deh*,

(ii) any land or other immoveable property or any right, title or interest in such land or other immoveable property vests or does not vest in Panchyat under this Act.

(b) in respect of any matter which any revenue Court, officer or authority is empowered by or under this Act to determine, or

(c) to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under this Act."

In support of his above noted stand, the learned counsel for the appellants placed firm reliance on a Single Bench judgment of this Court reported as *Lehri and others v.* Arjan Dass and others, 1981 wherein almost on similar facts it has been held by the learned Judge that the matter is incapable of being adjudicated upon by the Civil Court. Since I felt some difficulty in reconciling myself with the opinion expressed in this judgment, I referred the matter to a larger Bench. This is how the appeal is now before us for disposal.

(3) Though in the pleadings of the parties, the land in question is not described as *Shamilat Deh* and all that has been said and denied is that it is a "*Gali Sheh-re-aam*", yet this factual position is supported by the entries in the *Jamabandi* for the year 1976-77 (Exhibit P.7). As per this record of rights, the land is owned by the Nagar Panchayat. Undisputably streets and lanes within the *Abadi Deh* or *Gora Deh* of a village fall within the definition of "*Shamilat Deh*" as per the provisions of section 2(g) (4) of the Act and vest in the Panchyat.

(4) The answer to the controversy raised is apparently dependant on knowing of the true content and scope of the present section 13 of the Act. In the first flush, the language of the section undoubtedly appears to support the stand of the counsel for the appellants, yet on a deeper consideration we find that the same is untenable.

(5) In the light of section 9 of the Code of Civil Procedure, a litigant having a grievance of a civil nature undoubtedly has, independently of any statute, a right to institute a suit in some Court or the other unless its cognizance is either expressly or impliedly barred. Though the proposition of law that in interpreting a statute

(1) 1981 PLJ 52.

barring the jurisdiction of the Civxil Court one should not necessarily make an attempt to abridge its operation or cut down or modify its objectives with a view to give effect to the rule of interpretation that the ousting of jurisdiction should not be readily inferred is well settled, yet equally well established is the principle that a statute ousting the jurisdiction of a Civil Court must be strictly construed (See A.I.R. 1966 S.C. 1718). It is in the light of these principles that the scope and content of section 13 of the Act needs to be examined. The need for the substitution of the present section,—*vide* Haryana Amending Act No. 2 of 1981 is stated in the following words in the Statement of Objects and Reasons:—

> "In many places the *Shamlat Deh* has been occupied unlawfully by unscrupulous persons, acting some times in collusion with the representative of the Gram Panchayats. To combate this evil certain amendments were made to the Punjab Village Common Lands (Regulation) Act, 1961, in 1974. However, when tested in the High Court of Punjab and Haryana, certain of these provisions were struck down,—*vide* judgment of the Court. The present Bill seeks to remedy the infirmities found by the High Court. It also proposes to make some incidental changes to the Punjab Village Common Lands (Regulations) Act, 1961, to make some of its provisions more explicit so as to ensure more effective implementation."

This amendment was apparently brought about with a view to save and protect Panchayat lands from collusive decrees or to prevent usurpation of *Shamilat* lands. Further, in order to achieve this object rather quickly or in the shortest possible time, the Legislature thought it proper to exclude the jurisdiction of the Civil Court to try questions stated in clauses (a) and (b) of this section. What sort of adjudication is envisaged by this section is also well-indicated by the next following section 13-A. It is clearly discernible from a combined reading of these two sections that the jurisdiction of the Civil Court is excluded from entertaining or adjudicating upon the questions stated in Section 13 when the *lis* is between a private person and the Panchyat. In other words, it is only when the contest is between the Panchayat and a private person for the determination or adjudication of the questions specified in clauses (a) and (b) of Section 13 that the jurisdiction of the Civil Court is barred. It is obvious that the right, title or claim of a private person to a particular land or immoveable property vis-a-vis the Gram Panchayat cannot factually and effectually be settled in the absence of the

Panchayat being impleaded as a party to the litigation. Any decree obtained by an individual in his favour, collusively or after a contest, about the properties vesting or deemed to have vested in the Panchayat can never bind the Gram Panchayat in the absence of its being a party to the litigation. The very implication of the word adjudication is to finally determine the rights of the two contestants vis-a-vis the subject-matter of dispute judicially or in a judicial manner.

One of the essential traits of "adjudication" is *proprio vigore* binding on and creates rights and obligations between the parties. This can never be done unless the dispute is between the Panchayat and a private individual *qua* the *Shamilat Deh* or any other land or immoveable property or any right, title or interest therein and unless the Panchayat is the real party to the litigation. Though the word "entertain" as occurring in the opening part of clause (a) of this Section may generally mean"to receive on file or keep on file" yet in the context in which it occurs only means that the Civil Court cannot dispose of the suit or the claim on merits and has to reject it as not maintainable if it relates to any of the questions specified in the Section. This is so said by the Supreme Court in *Samarth Transport Company* v. *The Regional Transport Authority*, (2) in the context of Section 68-F of the Motor Vehicles Act, 1939 wherein it is laid down that the Regional Transport Authority may by order "refuse to entertain" any application for the renewal of any other permit. So, in nutshell the whole implication of Section 13 of the Act is that the jurisdiction of the Civil Court is taken away when the *lis* is between the Gram Panchayat and a private person and it relates to any of the questions specified in this Section. It appears clear that the Section would not be operative when the *lis* or the dispute is between two private individuals. In case the contention of the learned counsel for the appellants is to be accepted and taken to its logical end, or Section 13 of the Act is to be subjected to the interpretation suggested by him, then the jurisdiction of the Civil Court can be ousted in any and every suit relating to any property or interest therein by raising a wholly frivolous plea in the written statement that the subject-matter of the litigation is *Shamilat Deh* or Panchayat property. In the face of such a plea, according to the learned counsel, even if the subject-matter of dispute is an urban property or a property with which the Panchayat is not even remotely concerned, the jurisdiction of the Civil Court stands ousted. In a

(2) A.I.R. 1961 S.C. 93.

nutshell, according to him, the Civil Court will have no jurisdiction to try any suit *qua* any property in which the defendant has pleaded on how so ever frivolous or mischievous grounds that the property in dispute is or is not *Shamilat Deh* or Panchayat property. If this argument is to be accepted, then practically all Civil Courts stand *divested of their jurisdiction on the basis of the above-noted frivolous plea of the defendant. We do not think that even was the intention of the Legislature in incorporating the present section or earlier section 13 in the statute. In the instant case, it is not the claim of the plaintiff that either the suit properly (Plot No. 212) be declared as *Shamilat Deh* or included or excluded from *Shamilat Deh*. All that has been stated by him in the plaint is that the suit land is a "*Gali Sheh-re-aam*" which is only a statement of fact. The denial of this fact by the defendant led to the settlement or determination of the question whether the land in dispute of the a *Galli Sheh-re aam* or a throughfare which was being used by the plaintiff as an approach to his house for the last about 30 years. This determination by the trial Court was only ancillary to the prayer or the relief sought by the plaintiff. Any finding either way is not to effect the interest or title of the Panchayat to the land in question. In the light of this we find it difficult to endorse the view expressed in *Lehri's* case (supra) or some other Single Bench Judgements of this Court to which a reference was made by the learned counsel for the appellants as in none of those cases the above noted aspect of the matter was taken into account and thus overrule the same.

(6) We thus find no merit in this appeal and dismiss the same but with no order as to costs.

H.S.B.

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