

Before S. S. Sandhawalia, C.J. & P. C. Jain, J.

BHIM SINGH,—Appellant.

versus

GRAM PANCHAYAT OF VILLAGE KHARKHERI and others,—Respondents

Regular Second Appeal No. 1710 of 1973.

April 7, 1983.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 13—Decree passed by a Civil Court—Appeal pending against such decree—Jurisdiction of Civil Court barred retrospectively—Effect of.*

*Held*, that a perusal of section 13 shows that after the enforcement of the aforesaid provision, a Civil Court has no jurisdiction to entertain or adjudicate upon any question relating to the *shamlat* nature of the land. Merely this fact that a decree was passed by a Civil Court before the enforcement of Act 2 of 1981 by which Section 13 was substituted would not make any difference as a Court of appeal is also a civil Court and has the same powers and performs as nearly as may be, the same duties as are conferred and imposed by the Code of Civil Procedure on Courts of original jurisdiction. It is well settled proposition of law that once a decree passed by a Court had been appealed against the matter becomes *sub-judice* again and thereafter the appellate Court has seisin of the whole case. It is also well established proposition of law that the hearing of an appeal is under the procedural law of this country, in the nature of a re-hearing and that the Court of appeal is entitled to take into account even the facts and events which have come into existence after the decree appealed against. Under section 13 of the Act, a Civil Court has been debarred from not only entertaining a suit but also from adjudicating upon any question relating to the *shamlat* nature of the land. In case the appellate Court, which is a Civil Court, is allowed to determine the controversy one way or the other, then it would be permitting the Civil Court to determine and adjudicate upon a matter on which it has no jurisdiction. This is not legally permissible. In this view of the matter, I hold that in cases where the Civil Court decree has not become final and the matter is still pending in appeal, then on the question whether land is or is not *shamlat deh* the Civil Court would have no jurisdiction to entertain and adjudicate upon that question. (Para 6).

(Case referred by Hon'ble Mr. Justice Prem Chand Jain to the Larger Bench on 17th March, 1983 for decision of an important question of law involved in this case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Prem Chand Jain finally decided the case on 7th April, 1983).

Regular Second Appeal from the decree of the court of Shri Rajender Lal Garg, Additional District Judge, Gurgaon, dated the 26th September, 1973 affirming that of Shri Man Singh Saini, Sub-Judge, 1st Class, Gurgaon.

dated the 17th April, 1973 dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.

N. C. Jain, Advocate with S. S. Jain, Advocate, for the Appellants.

M. S. Liberhan, Advocate, for the Respondent.

### JUDGMENT

*Prem Chand Jain, J.—*

(1) Bhim Singh and others, plaintiffs, filed a suit for injunction restraining the defendants from interfering in their possession over the plot comprised in Killa No. 25 min of Rectangle No. 11 situate in village Kharkheri, Tehsil and District Gurgaon. The suit was contested by the Gram Panchayat on the allegation that the property in dispute vested in the Gram Panchayat and the Civil Court had no jurisdiction to try the suit. The trial Court, on consideration of the entire matter, held that the suit land did vest in the Gram Panchayat. However, on the question of jurisdiction, the trial Court recorded a finding that as the plaintiffs did not admit that the suit land was *shamlat deh*, therefore, the question being of title, the Civil Court had jurisdiction to try the suit. As the plaintiffs were not found to be the owner of the property in dispute, the suit was dismissed by the trial Court on 17th April, 1973.

(2) Feeling aggrieved from the judgment and decree of the trial Court, the plaintiffs preferred an appeal which was dismissed by the learned Additional District Judge, Gurgaon, on 26th September, 1973. Still dissatisfied the present regular second appeal has been filed by the plaintiffs.

(3) The appeal came up for final hearing before me on 17th February, 1983. The only contention that was raised by Mr. N. C. Jain, Senior Advocate, learned counsel for the appellant, was that Civil Court had no jurisdiction to adjudicate upon the question whether the suit land is *shamlat deh* and had vested in the Gram Panchayat or not. In this situation, according to the learned counsel, the judgments and decrees of the Courts below had to be set aside and the plaint had to be returned to the plaintiffs for presenting the same before the Assistant Collector, 1st Grade, under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act). As the decision of the

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aforesaid contention depended upon the interpretation of a Division Bench judgment of this Court in *Bajinder Singh and another v. The Assistant Collector 1st Grade, Guhla* (1), I decided to refer the matter for decision to a larger Bench. That is how we are seized of the matter.

(4) It may be observed at the outset that the aforesaid contention of Mr. N. C. Jain, learned counsel for the plaintiff, was not controverted by Mr. M. S. Liberhan, learned counsel appearing for the respondents. However, we have considered the contention of the learned counsel for the appellant independently also and find merit in the same.

(5) In order to decide the contention properly, it is necessary to trace the legislative history of this provision. As originally enacted, section 13 of the Act prescribed that no Civil Court shall have any jurisdiction over any matter arising out of the operation of the said Act. Apparently, as a result of the interpretation placed by the Courts with regard to the nature of the bar to the jurisdiction of Civil Courts, the Legislature chose to make an amendment therein by the Punjab Village Common Lands (Regulation), Haryana Act 34 of 1974, which came into force on 12th November, 1974. By virtue of this amendment, the original section 13 was substituted and two new sections, namely, sections 13-A and 13-B were added to the Act. These amendments were challenged in this Court in *The Karnal Co-operative Farmers Society Ltd. v. Gram Panchayat Pehowa and others* (2). The Division Bench in an exhaustive judgment came to the conclusion that sub-section (3) of section 13-A was *ultra vires* and since the other provisions of the said section revolved around the same, therefore, the whole of the section was unconstitutional and was consequently struck down. It was noticed in that judgment that no challenge to the *vires* of section 13-B of the Act had been made. The State of Haryana apparently accepted the said judgment and did not appeal against the same. However, as a necessary consequence, it enacted the Punjab Village Common Lands (Regulation) Haryana Amendment Act No. 2 of 1981, whereby substantial changes in the existing section 13 were made and as already noticed, these were sought to be introduced retrospectively i.e., from 4th May, 1961. Similarly, the existing sections 13-A and

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(1) 1983 P.L.J. 116.

(2) 1976 P.L.J. 237.

13-B were omitted from the Statute Book with effect from 12th November, 1974, and new sections 13-A, 13-B, 13-C and 13-D were inserted retrospectively with effect from 4th May, 1961. The result of such fictional substitution from 4th May, 1961, was that all decrees validly passed by a Court of competent jurisdiction stood annulled. Consequently the constitutional validity of section 13 to the extent it resulted in retrospective abrogation of the jurisdiction of the Civil Court validly exercised came up for consideration in *Bajinder Singh's case* (supra). On consideration of the entire matter, the Bench struck down the provisions of Section 13 so far as the retrospective nature of the same was concerned. The relevant observations read as under :—

“For the detailed reasons aforesaid the retrospective abrogation of the jurisdiction of Civil Courts validly exercised by them from 1961 onwards by the impugned section 4 of the Punjab Village Common Lands (Regulation) Haryana Amendment Act of 1981, clearly amounts to a trenching upon the judicial power by the legislature. Consequently, the relevant part of the aforesaid section fictionally substituting section 13 with effect from the 4th day of May, 1961, and thereby giving retrospectivity thereto from the said date, is held to be unconstitutional and is hereby struck down.”

(6) The question that now needs determination is as to what is the effect of Section 13 on a decree which has been validly passed by a Civil Court but against which an appeal has been preferred. The plain answer on the language of section 13 and in the light of various judicial pronouncements to which our attention was drawn, is that the Civil Court ceases to have jurisdiction to adjudicate on such matters. Section 13 of the Act reads as under:—

“13. Bar of jurisdiction — No civil court shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether—
  - (i) any land or other immovable property is or is not shamlat deh;
  - (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;

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- (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."

A bare perusal of the aforesaid Section would show that after the enforcement of the aforesaid provision a Civil Court would have no jurisdiction to entertain or adjudicate upon any question relating to the *shamlat* nature of the land. Merely this fact that a decree was passed by a Civil Court before the enforcement of Act 2 of 1981 by which Section 13 was substituted would not make any difference as a Court of appeal is also a Civil Court and has the same powers and performs as nearly as may be, the same duties as are conferred and imposed by the Code of Civil Procedure on Courts of original jurisdiction. It is well settled proposition of law that once a decree passed by a Court had been appealed against the matter becomes *sub judice* again and thereafter the appellate Court has seisin of the whole case. It is also well established proposition of law that the hearing of an appeal is under the procedural law of this country, in the nature of a re-hearing and that the Court of appeal is entitled to take into account even the facts and events which have come into existence after the decree appealed against. See in this connection the Supreme Court judgment in *Amarjit Kaur v. Pritam Singh and others* (3). As earlier observed, under Section 13 of the Act, a Civil Court has been debarred from not only entertaining a suit but also from adjudicating upon any question relating to the *shamlat* nature of the land. In case the appellate Court, which is a Civil Court, is allowed to determine the controversy one way or the other, then it would be permitting the Civil Court to determine and adjudicate upon a matter on which it has no jurisdiction. This is not legally permissible. In this view of the matter, I hold that in cases where the Civil Court decree has not become final and the matter is still pending in appeal, then on the question whether land is or is not *shamlat deh* the Civil Court would have no jurisdiction to entertain and adjudicate upon that question. This view of mine finds support from a Division Bench judgment in *Gram Sabha Balad Kalan and*

another v. Sarwan Singh and others (4) and Single Bench judgments in Lalji Singh and others v. Gram Sabha, Lahli and others (5) and Gram Panchayat Sadhraur v. Baldev Singh and others (6).

(7) No other point arises for consideration.

(8) For the reasons recorded above I allow this appeal, set aside the judgments and decrees of the Courts below and direct that the plaint be returned to the plaintiffs for presenting the same before the competent authority constituted under the Act. In the circumstances of the case, I make no order as to costs.

S. S. Sandhwalia, C.J.—I agree.

S.C.K.

Before S. S. Kang & G. C. Mital, JJ.

RISHI DUTT GULATI and another,—Petitioners.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 474 of 1983.

April 11, 1983.

*Punjab Town Improvement Act (IV of 1922) (as amended by Punjab Act 18 of 1982)—Sections 3, 3-A, 4 and 103—New trust proposed to be created but no notification yet issued under section 3-A—Municipal Committee, however, asked to elect three members as trustees to the proposed trust but the Municipal Committee not so electing—Notification under section 3-A issued creating a new trust—Municipal Committee not given an opportunity to elect the trustees after the creation of the trust—Government appointing three trustees under section 4(4) for the alleged omission of the Committee to elect such trustees—Appointment of trustees by the Government—Whether invalid.*

(4) 1981 P.L.J. 311.

(5) 1982 P.L.J. 140.

(6) 1983 P.L.J. 19.