

Before J. M. Tandon, J.

CHANDGI and another,—Plaintiffs-Appellants.

versus

NIHAL SINGH and others,—Defendants-Respondents.

Second Appeal From Order No. 7 of 1976.

January 23, 1979.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 13—Jurisdiction of a Civil Court barred—Such bar—Whether applicable to appeals.*

*Held*, that section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 does not bar the suits alone. It is specifically made applicable to Civil Courts inasmuch as they have been debarred from entertaining or adjudicating 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 the Panchayat under the Act. Section 13 of the Act is applicable to a Civil Court. The appellate Court hearing an appeal against the decree of the trial Court is a Civil Court. If the issue under consideration before the appellate Court is covered by section 13 of the Act, the appellate Court being a Civil Court is thus debarred from adjudicating upon that issue. (Paras 12 and 13).

*Second Appeal from the Order of the Court of Shri Ramesh Chand Jain, Senior Sub-Judge with enhanced Appellate Powers, Hissar, dated 12th February, 1976, reversing that of Shri D. D. Yadav, Sub-Judge, 2nd Class, Hansi, dated 21st April, 1973, holding that the judgment & decrees under appeal are without jurisdiction and directing that the present controversy shall stand transferred, to the Assistant Collector of the 1st Grade who has jurisdiction in the village wherein the property in dispute is situated and giving opinion that the mere fact that the suits are for injunction, is also in consequential as section 13(a) and 13(b) do not make any distinction between the suits for injunction and other suits and directing that the plaintiffs may start fresh proceedings before the Assistant Collector of the 1st Grade who has jurisdiction in the village where the property in dispute is situate in terms of section 13-B, if so advised and making no order as to costs.*

B. S. Gupta, Advocate and R. C. Dhaiya, Advocate with him, for the appellants.

D. S. Bali, Advocate, for the Respondents.

## JUDGMENT

J. M. Tandon, J.

(1) This order will dispose of two appeals, S.A.O. No. 7 of 1976 *Chandgi and another v. Nihal Singh and others* and S.A.O. No. 8 of 1976 *Sardar Singh and another v. Nihal Singh and others*, involving similar points of fact and law.

2. The appellants in both the appeals filed two separate suits against the respondents in each case alleging that in their village Dhanderi, Tehsil Hansi, district Hissar, there was a Chowk (vacant site) adjacent to their houses and it was utilised for common purposes of the village, like play-ground for the children and resting of animals. Respondents Nos. 1 to 4, who are the same in two appeals, wanted to encroach upon it in collusion with the Sarpanch of the village. They prayed that respondents Nos. 1 to 4 be restrained from making any encroachment upon the Chowk.

3. The suits were resisted by respondents Nos. 1 to 4. The trial Court framed the issues of which issues Nos. 1 and 6 read:—

(1) Whether the land in suit is common property of the villagers ? If so, to what effect ?

(6) Whether the Civil Court has no jurisdiction ?

It was found under issue No. 1 that the Chowk is the common property of the village. Issue No. 6 was also found in favour of the appellants. The trial Court consequently decreed the two suits in favour of the appellants on April 21, 1973, against respondents Nos. 1 to 4.

4. Respondents Nos. 1 to 4 preferred two appeals on September 30, 1974, against the two decrees passed against them on April 21, 1973. The learned Senior Subordinate Judge, Hissar, in his consolidated order dated February 12, 1976, held under issue No. 6 that in view of the provisions contained in section 13 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter called the Act), the civil Court has no jurisdiction to try the suits as the question involved therein is whether the vacant site in dispute vests or does not vest in the Panchayat. The appeal was a continuation of the suits and was hit by section 13 of the Act. The

Chandgi and another v. Nihal Singh and others (J. M. Tandon, J.)

learned Senior Subordinate Judge consequently found that the point in issue could be adjudicated upon by the Assistant Collector Ist Grade having jurisdiction in the village where the property in dispute is situate. It was left to the appellants to start fresh proceedings before him. The judgments and decrees under appeals were thus stamped without jurisdiction. The appeals were ordered to be disposed of in these terms which obviously mean that they were accepted, the judgments and decrees under appeal set aside and suits of the plaintiffs-appellants dismissed. It is against these two orders of the Senior Subordinate Judge that the present appeals are directed.

5. Section 13 of the Act, before its substitution,—vide Act No. 34 of 1974, which came into force on November 12, 1974, read:—

“No civil Court shall have any jurisdiction over any matter arising out of the operation of this Act.”

In *Amar Nath and others v. Gram Panchayat etc.*, (1), it was held that where the question involved was one of title, that is, whether a particular piece of land is *shamilat deh* and vests in the Gram Panchayat or not, it could only be decided by a civil Court. Applying this ratio to the present cases, it is evident that they did involve question of title and the civil Court had jurisdiction to decide them under the old section 13 of the Act. The learned counsel for the respondents argued that the suits filed by the appellants did not involve question of title and, therefore, the jurisdiction of the civil Court was barred under old section 13 of the Act. There is no merit in this contention. The appellants claimed in their suits that the Chowk in dispute was used for common purposes whereas the respondents took the stand that it was their private property. They joined issue on the title of the Chowk. The trial Court found that it was not the private property of the respondents and it was used for common purposes. It is not disputed that in the event of the Chowk being used for common purposes, it shall be covered by the definition of ‘*shamilat deh*’ as given in section 2(g) of the Act and shall vest in the Panchayat under section 4 thereof. The Amending Act No. 34 of 1974, which substituted section 13 of the Act, came into force on November 12, 1974. The trial Court consequently had jurisdiction to pass the decrees on April 21, 1973. The respondents filed appeals against the decrees of the trial Court on September 30, 1974.

(1) 1967 Curr. L.J. 548.

6. The Act No. 34 of 1974 substituted section 13 and added section 13-B to the Act, which read as under:—

“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 taken or any matter decided by any authority empowered to do so under this Act.

13B. Transfer of pending suits and institution of fresh proceedings:—

All suits pending in any civil Court in respect of any land or other immovable property wherein relief has been claimed on the ground of its being excluded from *shamilat deh* under clause (g) of section 2 or on any of the grounds mentioned in sub-section (3) of section 4 against the panchayat, shall stand transferred to, and the fresh proceedings for seeking relief on the aforesaid grounds shall be instituted before, the Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is situate, who shall dispose of the same in the manner laid down in sub-sections (5) and (7) of section 13-A.

7. The point for consideration is whether the term “civil Court” used in section 13 of the Act would include the appellate Court or not. In other words, whether section 13 of the Act would apply to the appeals or not.

8. The contention of the learned counsel for the appellants is that section 13 of the Act has no application to the appeals and it is

Chandgi and another v. Nihal Singh and others (J. M. Tandon, J.)

restricted to the Court of first instance. It is not specifically provided in section 13 that it shall apply to appeals. The function of the appellate Court is only to see what was the decree which the Court of first instance should have passed. The *intra vires* decrees passed by the trial Court would thus remain immune from section 13 of the Act when under consideration in the appellate Court. Another argument advanced is that an appeal is not a continuation of suit in the context of section 13B of the Act. It has been so held in *The Karnal Co-operative Farmers Society Ltd., Pehowa v. Gram Panchayat, Pehowa and others*, (2). The appeals consequently cannot be transferred to the Assistant Collector of the first grade under that section. A finding that section 13 applies to the appeals as well would tantamount to the transfer of the appeals to the Assistant Collector of the first grade and it cannot be so.

(9) Raliance has been placed on *Thakur Madho Singh and another v. Lt. James R. R. Skinner and another*, (3) and (*Bhai*) *Kirpa Singh v. Nagalidar Ajaipal Singh and others*, (4). In *Thakur Madho Singh's* case (supra) it was held that a vendee can defeat the right of the pre-emptor by improving his status at any time before the passing of the decree in the pre-emption suit by the trial Court, as the rights of parties are adjudicated upon by the trial Court alone and the function of the court of appeal is only to see what was the decree which the Court of first instance should have passed. The ratio of this authority has no application to the facts of the present case. The point for determination in the instant case is if the appellate Court, while hearing an appeal against the decree of the trial Court, is a civil Court or not. This point was neither *sub judice* nor considered in *Thakur Madho Singh's* case (supra). In (*Bhai*) *Kirpa Singh's* case (supra), the impact of Sikh Gurdwara Act (Punjab Act 8 of 1925) on the appeals pending in the High Court was considered and it was found that the procedure laid down in section 32 thereof is applicable to "suits" or "proceedings" *ejusdem generis* pending in a Court of first instance and does not govern a pending appeal even if all or some of the matters mentioned in that section arise for decision in the appeal. This authority is again off the mark on the point now under consideration. Section 13 has been made applicable to a civil Court and not to "suits" or "proceedings".

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

(3) 1941 Lahore 433.

(4) A.I.R. 1928 Lahore 627.

(10) In *Lal Singh and another v. Gram Sabha Neja Dalla Kalan and others*, (5), a similar situation arose. Gram Sabha Neja Dalla Kalan filed a suit for permanent injunction against three individuals and Waqf Board praying that they be restrained from removing Kikar trees on the land in dispute. The defendants raised a plea that the land vested in the Waqf Board and not in the Gram Sabha. The trial Court dismissed the suit on July 4, 1972. The Gram Sabha preferred an appeal and it was pending when Act No. 34 of 1974 came into force on November 12, 1974. The appellate Court held that it shall have to adjudicate upon the question as to whether the land in dispute and the trees thereon vested or not in the plaintiff. Gram Sabha and section 13 as substituted by Act No. 34 of 1974 barred the jurisdiction of civil Court to make any such adjudication. The words "civil Court" appearing in section 13 also mean the appellate Court. It was significant that it had not been mentioned in section 13 that a civil Court of original jurisdiction shall have no jurisdiction and on the other hand it has been provided that no civil Court shall have jurisdiction. The appeal was allowed and the decree of the trial Court was held without jurisdiction. It was further directed that proceedings in the controversy shall stand transferred to the Assistant Collector of the Ist Grade who has jurisdiction over village Neja Dalla Kalan in terms of section 13B of the Act. The defendants filed R.S.A. No. 768 of 1976 and the same was decided on March 3, 1977. They did not challenge the finding of the first appellate Court that the civil Court had no jurisdiction to try the suit obviously in view of section 13 of the Act. Their grievance was that section 13B did not apply and after having found the decree of the trial Court without jurisdiction the lower appellate Court should have ordered the return of the plaint to the plaintiff i.e. Gram Sabha Neja Dalla Kalan. The prayer was accepted by the High Court and the first appellate Court was directed to return the plaint to the Gram Sabha. In this judgment, the finding of the first appellate Court that the words "civil Court" covered the appellate Court as well was not challenged and it was maintained in the High Court.

(11) The learned counsel for the appellants has argued that the import of section 13 of the Act is that the suits involving 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 the Act stand barred. An

Waryam Singh and another v. The Financial Commissioner,  
Taxation, Punjab and others (S. S. Sandhawalia, C.J.)

appeal is not a continuation of the suit and, therefore, stands on a different footing. Section 13 of the Act, therefore, cannot be made applicable to appeals. The argument is without merit and it is also based on fallacious assumption. Section 13 does not bar the suits alone. It is specifically made applicable to civil Courts inasmuch as they have been debarred from entertaining or adjudicating 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 the Panchayat under the Act. An appeal is a continuation of the suit and it was so held in *The Karnal Co-operative Farmers Society Ltd., Pehowa v. Gram Panchayat, Pehowa and others*, (supra). It was further clarified that a suit could not be held to include an appeal in the context of section 13B of the Act. In the instant case, the implications of section 13B of the Act are not under issue. Even otherwise, in view of the fact that section 13 of the Act bars the jurisdiction of the civil Court the point whether an appeal is a continuation of the suit or not loses all relevance.

(12) Section 13 of the Act is applicable to a civil Court. The appellate Court hearing an appeal against the decree of the trial Court is a civil Court. The issue under consideration before the lower appellate Court is covered by section 13 of the Act. The appellate Court being a civil Court is thus debarred from adjudicating upon that issue. Under these circumstances, the lower appellate Court was right in holding that the appeals as well were hit by section 13 of the Act and consequently in setting aside the decrees under appeals being without jurisdiction and leaving the aggrieved party to seek remedy from the appropriate forum.

(13) In view of discussion above, both the appeals fail and are dismissed with no order as to costs.

S.C.K.

Before S. S. Sandhawalia C.J. and Harbans Lal J.

WARYAM SINGH and another,—Petitioners.

versus

THE FINANCIAL COMMISSIONER, TAXATION PUNJAB and  
others,—Respondents.

Civil Misc. No. 139 of 1978 in

Civil Writ No. 7524 of 1975.

January 29, 1979.

*Constitution of India 1950—Articles 136 and 226(3)—Remedy by way of special leave to appeal to the Supreme Court—Whether bars the maintainability of a writ petition under Article 226(3).*