

Kanshi Ram v. Narain Singh (R. N. Mittal, J.)

damage thereby. The section is an exception to that rule. It prescribes that the Advocate-General, or two or more persons without proving special damage and with the leave of the Court, can file a suit for appropriate relief regarding a public nuisance. Under sub-section (2), an individual can also maintain a suit for relief regarding such nuisance by proving special damage. However, the section is applicable to public nuisances and not to breach of individual right of a person. In the present case, the plaintiff has not filed a suit for removal of any public nuisance. Rather, he is claiming a right for himself over a public street. Therefore, it is not necessary for him to prove special damage. In the above view, I get force from the observations of a Full Bench of Bombay High Court in *Chandu Sajan Patil and others v. Nyabalchand Panamchand and others*, (1) wherein it was observed by Chagla, C. J. speaking for the Bench, that every citizen or a community or section of a community has an inherent right to conduct a non-religious procession through a public road and has, therefore, also a right to file a declaratory suit without proof of special damage. It was further observed that such inherent right is however subject to the rights of other citizens also to use the same in lawful manner. In the present case, the claim of the plaintiff is for passage for himself which is a lesser right than that of conducting a non religious procession. Therefore, in my view, the learned appellate Court has erred in holding that the suit is not maintainable by the plaintiff as he failed to prove special damage.

(7) For the aforesaid reasons, I accept the appeal, set aside the judgment and decree of the appellate Court and restore those of the trial Court. No order as to costs.

H. S. B.

Before R. N. Mittal, J.

KANSHI RAM,—Petitioner.

versus

NARAIN SINGH,—Respondent.

Civil Revision No. 2030 of 1979.

May 13, 1983.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961) as amended by Punjab Village Common Lands (Regulation)*

(1) AIR 1950 Bombay 192.

*Haryana Amendment Act (XXIII of 1973)—Section 2(g) clause (4-a)—Clause (4-a) inserted by amendment Act in section 2(g) of Principal Act—Amendment made thereby in the definition of Shamlat Deh—Land earlier not Shamlat Deh now included in the definition—Insertion of such clause—Whether to operate retrospectively.*

Held, that by section 2 of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1973, clause (4-a) has been inserted in the Punjab Village Common Lands (Regulation) Act, 1961. The language of section 2 of the Amendment Act, however, does not show that the legislature wanted to give clause (4-a) retrospective effect. It is well settled that the provisions of an enactment creating or taking away substantive rights are ordinarily prospective; they are retrospective only if the legislature by express or implied words makes them so. The intention of the legislature is to be gathered from the words used by it, giving them their plain meanings. Therefore, it cannot be held that clause (4-a) came into operation retrospectively.

(Para 6).

*Petition under Section 115 of the C.P.C. for revision of the order of the Court of Shri R. N. Batra, Senior Sub-Judge, Rohtak, dated 7th August, 1979 succeeding the objection petition and holding that the impugned decree dated 7th November, 1970 as amended on 10th May, 1971 cannot be executed as the same has become inexecutable and leaving the parties to bear their own costs.*

R. S. Mittal, Sr. Advocate with N. K. Khosla, Advocate, for the petitioner.

P. S. Jain, Sr. Advocate with S. K. Jain, Advocate, for the Respondents.

#### JUDGMENT

*Rajendra Nath Mittal, J, (Oral)*

(1) This revision petition has been filed by Kanshi Ram decree-holder against the judgment of the executing court dated 7th August, 1979, holding that the final decree has become inexecutable.

(2) The case has got a chequered history. The suit for partition of Shamlat land was filed in the Court of the Senior Subordinate Judge, Rohtak, in January, 1948. Ultimately, a final decree for partition was passed by him on 7th November, 1970. An appeal against that decree was dismissed by the District Judge, Rohtak,

Kanshi Ram v. Narain Singh (R. N. Mittal, J.)

on 2nd August, 1972. The second appeal (R. S. A. No. 1664 of 1972) to this Court was also dismissed on 18th August, 1978. During the pendency of second appeal, C.M. No. 97-C of 1978 was filed wherein an objection was taken that the decree had become inexecutable on account of insertion of clause (4a) in sub-section (g) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter referred to as the Act. The said sub-section defines 'shamilat deh'. That application was also dismissed along with the second appeal.

(3) After the dismissal of the second appeal, the decree-holder started execution proceedings. Again, an objection petition was filed by Narain Singh, respondent, that the property vested in the Gram Panchayat by virtue of clause (4a) *ibid* and the decree had become inexecutable. The objection was contested by the decree-holder who *inter alia* pleaded that the rights of the parties had been determined while passing of the final decree and, therefore, the objection petition was liable to be dismissed.

(4) The learned executing court came to the conclusion that clause (4a) in sub-section (g) of section 2 of the Act inserted on 23rd June, 1973, had retrospective effect and, therefore, by virtue of that clause read with section 4(2) of the Act, the property in dispute vested in the Gram Panchayat. Consequently, it accepted the objection and held that the decree was inexecutable. Kanshi Ram decree-holder has come up in revision against the said judgment to this Court.

(5) It is contended by the learned counsel for the petitioner that the rights of the parties had been determined on 7th November, 1970, when final decree was passed and, therefore, by virtue of clause (4a) *ibid* read with section 4 of the Act, the property does not vest in the Panchayat Deh. He also submits that clause (4a) *ibid* is not retrospective as interpreted by the executing Court.

(6) I have given due consideration to the argument of the learned counsel and find force in it. Clause (4a) was inserted by section 2 of the Punjab Village Common Lands (Regulations) Haryana Amendment Act, 1973. Section 2 reads as follows:—

“2. Amendment of section 2 of the Punjab Act 18 of 1961.—  
After sub-clause (4) of clause (g) of section 2 of the Punjab

Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the principal Act), the following sub-clause shall be inserted namely:—

“(4a)—vacant land situate in abadi deh or gora deh not owned by any person.”

The language of the section does not show that the Legislature wanted to give clause (4a) retrospective effect. It is well-settled that the provisions of an enactment creating or taking away substantive rights are ordinarily prospective; they are retrospective only if the Legislature by express or implied words makes them so. The intention of the Legislature is to be gathered from the words used by it, giving them their plain meanings. Therefore, it cannot be held that clause (4a) came into operation retrospectively. The finding of the learned executing Court to the contrary is erroneous and is liable to be set aside. The rights of the parties in this case had been determined by the final decree. The parties thereafter were to be delivered possession of the plots allotted to them. Consequently, after the final decree, Shamilat land ceased to be Shamilat and the areas allotted to the parties became vested in them. Therefore, clause (4a) *ibid*, which came into operation in 1973, will not effect their rights. It is also not out of place to point out that an application containing similar objections was filed during the pendency of the appeal in this Court and it was dismissed. Therefore, the objection was also not available to the respondent. After taking into consideration all the aforesaid circumstances, I am of the view that the executing Court misdirected itself in holding that the decree was inexecutable.

(7) For the aforesaid reasons, I accept the revision petition with costs, set aside the order of the executing Court and direct it to execute the decree in accordance with law. The parties are directed to appear before the executing Court on 10th June, 1983.

H.S.B.