

The question posed at the threshold is answered in the affirmative. We however make it clear that we have only upheld the power of Gram Panchayat to change the user of *shamilat deh* vested in it and transfer thereof for purposes mentioned in Rule 3(2). This, however, does not mean that orders of the Gram Panchayat cannot be challenged even in a suitable case on the ground that it is passed *mala fide* or is based on extraneous considerations or it is otherwise against law.

(11) This writ petition is liable to be dismissed on merits also. It is clear from the impugned orders that the private respondents had pleaded before authorities that the Chaupal was being constructed by the Gram Panchayat with funds received from the State Government, for the benefit of the residents of the village. The land beneath and the Chaupal remains the property of the Gram Panchayat; the private respondents had no concern with it; the land had not been transferred to them and they were not in possession thereof. The private respondents have taken the same stand in their written statement to the writ petition. They have reiterated that the Chaupal is being constructed by the Gram Panchayat for the residents of the village; the Gram Panchayat is the owner of the Harijan Chaupal, as well as the disputed land. They were only assisting the Gram Panchayat in the construction of the Harijan Chaupal. So it cannot be stated that the private respondents were in unauthorised occupation of the land in dispute. The authorities had rightly reached this conclusion that they were not in an unauthorised possession of the land in dispute. The application under Section 7 of the Act for eviction of the private respondents had been rightly dismissed.

(12) For the foregoing reasons we find no merit in this writ petition and dismiss the same but with no order as to costs.

N.K.S.

Before R. N. Mittal, J.

AJAIB SINGH,—Petitioner.

versus

BALDEV SINGH,—Respondent.

Civil Revision No. 2781 of 1985

December 2, 1985

Civil Procedure Code (V of 1908)—Section 21(1)—Written statement filed by defendant in answer to the plaint—No objection

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regarding territorial jurisdiction taken in the written statement—Trial Court framed issues and recorded evidence of parties—Defendant filing application on the date of arguments for amendment of written statement in order to take objection regarding territorial jurisdiction of court—Trial court allowing amendment—Order of trial court—Whether legal.

Held, that sub-section (1) of section 21 of the Code of Civil Procedure, 1908 provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. It is evident from a reading of the sub-section that an objection regarding the territorial jurisdiction of a Court should be raised before the settlement of the issues and not thereafter.—Even if a plea regarding jurisdiction has been taken in the written statement, but it is not pressed at the time of settlement of the issues, normally it is deemed to be waived and the defendant cannot be allowed to raise the objection thereafter. However, in an exceptional case he may be allowed to take the objection if he shows that failure of justice would be caused if he was not allowed to raise the objection. It is a salutary provision and has been enacted so that the defendant by raising the objection at a late stage may not be able to delay the decision of the case. Though the section applies to the appeals and revisions, but the principle enunciated therein is also applicable to the suits. It is true that the written statement can be allowed to be amended at a late stage. However, an objection regarding territorial jurisdiction cannot be allowed to be raised by way of amendment of the written statement at a late stage. As such the order of trial court allowing the amendment is not legal.

(Paras 4 & 5).

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri H. P. S. Mahab P.C.S., Sub-Judge, 2nd Class, Jalandhar, dated the 5th day of September, 1985 allowing the application of the defendant for amendment of the written statement.

Vijay Jhanji, Advocate, for the Petitioner.

Ravinder Seth, Advocate, for the Respondent.

JUDGMENT

R. N. Mittal, J. (Oral):

(1) This revision petition has been filed against the order of the Subordinate Judge, II Class Jalandhar, dated 5th September,

1985 allowing the defendant to amend the written statement and incorporate therein that the cause of action had arisen in village Kala Singh, situated in District Kapurthala and therefore, the Court at Jalandhar had no jurisdiction to try the suit.

(2) Briefly, the facts are that the plaintiff instituted a suit for the recovery of Rs. 3,500, as principal and interest on the basis of a pronote. The suit was contested by the defendant who denied the execution of the pronote and the receipt. He did not raise any objection regarding the territorial jurisdiction of the Court at Jalandhar. The Court framed issues in the case and recorded evidence of the parties. 24th August, 1985 was fixed for arguments when the defendant made an application for amendment of the written statement incorporating therein that the cause of action had arisen at village Kala Singha, District Kapurthala and, therefore, the Civil Court at Jalandhar had no jurisdiction to try the suit. The amendment application was allowed by the learned Subordinate Judge. Consequently, the plaintiff has come up in revision petition to this Court.

(3) It is contended by the learned counsel for the petitioner that the defendant did not take any objection in the written statement regarding the jurisdiction of the Court at Jalandhar. On the other hand, he specifically admitted therein that the Civil Court at Jalandhar had the jurisdiction to try the suit. Thereafter the issues were framed and evidence was concluded by the parties. In these circumstances, he should not have been allowed to amend the written statement at that late stage.

(4) I find force in the submission of Shri Jhanji. Sub-section (1) of section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. It is evident from a reading of the sub-section that an objection regarding the territorial jurisdiction of a Court should be raised before the settlement of the issues and not thereafter. Even if a plea regarding jurisdiction has been taken in the written statement, but it is not pressed at the time of the settlement of the issues, normally it

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is deemed to be waived and the defendant cannot be allowed to raise the objection thereafter. However, in an exceptional case he may be allowed to take the objection if he shows that failure of justice would be caused if he was not allowed to raise the objection. It is a salutary provision and has been enacted so that the defendant by raising the objection at a late stage may not be able to delay the decision of the case. Though the section applies to the appeals and revisions, but the principle enunciated therein is also applicable to the suits. In the above said view, I am fortified by the observations of the Madras High Court in *Nanak Chand v. T. T. Electricity Supply Co.*, (1). It was observed by the Division Bench therein that the section speaks of a rule of prudence as well as a rule of guidance. The guidelines make it imperative that such an objection has to be raised at the earliest opportunity and in all cases where issues are settled at or before such settlement. If by an act of omission or commission the defendant having raised the plea as to jurisdiction does not even ask for trial of the issue on such question as a preliminary issue and allows the trial to go on in the usual course on all the issues, he should be deemed in such circumstances to have waived his objection as to jurisdiction. I am in respectful agreement with the above observations.

(5) It is true that the written statement can be allowed to be amended at a late stage. However, an objection regarding the territorial jurisdiction of the Court cannot be allowed to be raised by way of amendment of the written statement at a late stage. In the present case, the respondent has also not been able to show any prejudice to him or failure of justice on account of the trial of the case having been held in the Court at Jalandhar.

(6) For the foregoing reasons, I accept the revision petition with costs and set aside the order of the subordinate Court. Counsel fee Rs. 200.

(7) The parties through their counsel are directed to appear before the trial Court on 20th September, 1895.

H. S. B.

(1) A.I.R. 1975 Madras 103.