

Hari Ram Vs. Jyoti Prasad and Anr., (Decided on 27.01.2011) Supreme Court Of India : Public Property

The limitation for encroachment of a public property by any person is a continuing cause of action.

Held, the records placed disclosed that a plea was taken in the written statement that the suit is barred by limitation. However, despite the said fact no issue was framed nor any grievance was made by the Appellant for non-framing of an issue of limitation. Such a plea is seen to have been made before the High Court and the same was considered at length by the High Court, which held that although such a plea was not raised either before the Trial Court or before the Appellate Court, the same could be raised before the High Court in view of the provisions of Section 3 of the Limitation Act which places an obligation upon the Court to discuss and consider such a plea despite the fact that no such plea was raised and argued before the Trial Court as also before the First Appellate Court.

The High Court after considering the aforesaid plea held that the suit cannot be said to be barred by limitation as an encroachment on a public street is a continuing wrong and therefore, there exists a continuing cause of action. It was further held that the dispute between the parties could be better resolved if a proper civil suit is filed and when evidence is led with regard to the disputed questions of fact. Immediately thereafter the suit was filed seeking issuance of a mandatory injunction. In view of the aforesaid facts and also in view of the fact that encroachment on a public street by any person is a continuing cause of action, contentions raised held to be devoid of merits.

Any act of encroachment is a wrong committed by the doer. Such an encroachment when made to a public property like encroachment to public road would be a graver wrong, as such wrong prejudicially affects a number of people and therefore is a public wrong. So long any obstruction or obstacle is created to free and unhindered access and movement in the road, the wrongful act continues thereby preventing the persons to use the public road freely and unhindered. Therefore, that being a continuing source of wrong and injury, cause of action is created as long as such injury continues and as long as the doer is responsible for causing such injury.

An aggrieved person, who's right to use Public Street of 10 feet width was prejudicially affected, filed the suit. Since affected person himself has filed a suit, therefore, the suit cannot be dismissed on the ground of alleged non-compliance of the provisions of Order I Rule 8 of the CPC.

Dont encroach public property.