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IN THE HIGH COURT OF MANIPUR AT IMPHAL

CRP No. 1 of 2023 With MC(CRP) No. 1 of 2023

Shri Thangjam Yaima Singh, aged about 59 years, S/O Late Th. Tomba Singh, resident of Top Khongnangkhong P.O. & P.S. Porompat, Impal East District, Manipur.

....Petitioner

- Versus -

Shri Soram Ibohal Singh, aged about 69 years, S/O Late S. Bokul Singh, resident of Segaroad Takhellambam Leikai, Imphal West District, Manipur.

...Respondent

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	:	Mr. H. Manglem, Advocate & Mr. H. Pari, Advocate.
For the respondent	:	Mr. T. Rajendra, Sr. Advocate, assisted by Mr. S. Rabindra, Advocate & Mr. Bikash Sharma, Advocate.
Date of Hearing	:	20.04.2023 & 24.04.2023
Date of Judgment & Order	:	04.07.2023

JUDGMENT AND ORDER **(CAV)**

[1] The petitioner who is the judgment debtor/defendant in Execution Case No. 11 of 2021 with reference to Original Suit No. 59 of 2018 has filed the present revision petition under Section 115 of CPC challenging

the impugned order dated 04.11.2022 passed by the learned Civil Judge (Senior Division), Imphal East in Judl. Misc. Case No. 201 of 2021(Ref: Execution Case No. 11 of 2021). The petitioner herein filed an application being Judl. Misc. Case No. 201 of 2021 under Section 47 read with Section 151 of CPC praying for dismissal of the execution case as in-executable. By the impugned order, learned Executing Court rejected the application with a cost of Rs. 2,000/- (Rupees two thousand).

[2] The following points for determination are involved in the present petition:-

I. Whether the civil court, while passing a decree in a suit for declaration of title, eviction and possession, can also issue a direction to conduct demarcation of the suit land before eviction in exercise of power conferred under Order VII Rule 7 of CPC?

*II. Whether jurisdiction of civil court to issue a direction to conduct demarcation of the suit land before eviction of the defendant while passing a decree in a suit for declaration of title, eviction and possession, is barred by Section 159 of Manipur Land Revenue & Land Reforms Act, 1960 as held in the case of **Shamurailatpam Premananda Sharma v. Ayekpam Lokeshwor Singh reported as 2015 (4) GLT (MN) 584?***

III. Whether the objection to the inherent lack of jurisdiction of the civil court is within the scope of Section 47 CPC?

[3] The brief fact of the present case is that the respondent/decreed holder as plaintiff instituted a suit being O.S. No. 59 of 2018 in the Court of learned Civil Judge (Senior Division), Imphal East, against the petitioner/judgment debtor/defendant, inter-alia claiming for declaration of title over the suit land, eviction of the defendant and also for delivery of the suit land in his favour. It is stated that the respondent/DH/plaintiff is the absolute owner and recorded pattadar of the suit land under Patta No. 288, 294 ansh (Old), 1073/1203 (New) covered by C.S. Dag No. 1308/1323 measuring an area of 0.07 acres situated at Village No. 29 – Top Naoria, Porompat Sub-Division, Imphal East District, Manipur. It is further stated that the suit land having an area of 0.07 acres was purchased from the petitioner/JD/defendant by the respondent/DH/plaintiff on 13.09.2017 by a registered Sale Deed out of the total area of 0.11 acres for a consideration amount of Rs. 1,53,000/- (Rupees one lakh fifty three thousand) and registered in the Sub-Registrar Office, Porompat on the same day. It is stated that in the month of October and November, 2017, the respondent/DH/plaintiff went to the residence of the petitioner/JD/defendant to ask him to vacate the suit land purchased by him and the petitioner/JD/defendant refused and threatened the plaintiff of dire consequences. On 10.08.2018, the respondent herein sent a Legal Notice to the petitioner to vacate the suit land within 10 days and informed to file an appropriate proceeding against him. On refusal by the defendant to vacate from the suit land, the respondent/plaintiff filed a suit being O.S. No. 59 of

2018 in the Court of learned Civil Judge (Senior Division), Imphal East, with the following reliefs:-

"(a) By a decree for ejectment in favour of the plaintiff and against the defendant including any one claiming through or under them be evicted from the premises (suit land) a piece of homestead land under Patta No. 288, 294 angsh (Old), corresponding to New Patta No. 190/1073 1073/1203 (New) covered by C.S. Dag No. 1057/1308 measuring an area of 0.07000 acres out of 0.11000 acres of Ingkhol Class on the eastern portion of the Dag which is situated at Village No. 29 – Top Naoria, Porompat Sub-Division, Imphal East District, Manipur which is more specifically detailed and bounded at the foot of this plaint describe in the schedule below and referred to as suit land and after eviction the plaintiff be put in factual physical possession over the same.

(b) A decree directing the defendant to deliver possession of the suit land to the plaintiff.

(c) Grant appropriate mesne profit to the plaintiff for wrongful occupation of the suit land.

(d) A Decree for declaration that the plaintiff is the absolute owner of the suit land as against the defendant.

(e) Pass any other and further reliefs which this Hon'ble Court may deem fit and proper, in the interest of justice.

(f) Cost of the suit be awarded to the plaintiff."

[4] The petitioner/defendant entered into appearance on 01.10.2019 after service of summon. However, during the pendency of the suit, learned counsel for the defendant filed an application being Judl. Misc. Case No. 500 of 2018 for determining him from being a counsel and after determination of the counsel on 23.12.2018, none appeared on behalf of the defendant and the present suit was proceeded ex parte on 10.01.2019 against the defendant. On 25.01.2021, the learned Civil Judge (Senior Division), Imphal East, framed five points for determination as follows:

"1. Whether the defendant sold out the suit land to the plaintiff by executing a valid registered Sale Deed dated 13.09.2017 in favour of the plaintiff or not?

2. Whether the plaintiff's name legally entered in the relevant record of Jamabandi vide Mutation and Partition or not?

3. Whether the defendant is under illegal possession of the suit land or not?

4. Whether there is a cause of action or not?

5. Whether the plaintiff is entitled to the reliefs claimed?"

[5] The plaintiff exhibited six documents and produced two witnesses including himself. Vide order dated 19.03.2019 in O.S. No. 59 of 2018, the learned Civil Judge held that that defendant sold out the suit land to the plaintiff by a valid registered Sale Deed dated 13.09.2017 and the plaintiff's name was legally entered into the Jamabandi vide Mutation and Partition proceedings. The defendant was in illegal possession of the suit land and passed the decree and order in favour of the plaintiff declaring that the plaintiff is the owner of the suit land and for eviction of the defendant from the suit land after proper demarcation. Decree and order dated 19.03.2019 is reproduced below:

"1. the plaintiff is the owner of the suit land under patta No. 1073/1203 covered by CS Dag No. 1308/1323 measuring an area of 0.07 acre of Village No. 29 Top Naoria, issued by SDC, Porompat, Imphal East recorded in the name of the plaintiff;

2. a demarcation of the suit land under patta No. 1073/1203 covered by CS Dag No. 1308/1323 measuring an area of 0.07 acre of Village No. 29 Top Naoria, issued by SDC, Porompat, Imphal East recorded in the name of the plaintiff be done by giving prior notice of at least 2 days to the defendant and other adjoining landowners/pattadars. Pegs/marks clearly identifying the suit land

be fixed/painted. The SDC, Porompat along with his staffs is to conduct the demarcation process with the assistance of O.C. Porompat P.S.

3. after completion of the demarcation process, the defendant, his men, agents and privies or/and other person claiming through or under defendant be evicted from the suit land. All structures standing thereon the suit land be demolished/removed either on his own volition by the defendant or with the use of manpower engaged by the plaintiff. The Bailiff of District Judge, Imphal East is to execute the eviction of the defendant and his men from the suit land with the help of the O.C. Porompat P.S.

4. after eviction of the defendant from the suit land, khas possession of the suit land be given to the plaintiff.

5. the defendant, his men, agents and privies or/ and any other person claiming through or under defendant are also permanently enjoined from entering into the suit land after being given khas possession to the plaintiff and also from causing any sort of disturbance/obstructions in the peaceful enjoyment of the suit land by the plaintiff.

6. all subsequent transfer(s) of the suit land after the execution of the aforesaid registered Sale Deed being registration No. 2322 dated 13.09.2017, if any are declared null and void.

There will be no cost."

[6] The learned Sub-Deputy Collector, Porompat, Imphal East, submitted an Enquiry/Demarcation Report dated 17.05.2019 to the Court of learned Civil Judge (Senior Division), Imphal East, as directed in the Judgment & Decree dated 19.03.2019 in O.S. No. 59 of 2018 along with the field measurement. In the measurement, both the plaintiff and defendant signed to mark their presence. It is stated in the Demarcation Report that a residential house (semi-pucca) building was found in the suit land possessed by Thingujam Yaima Singh i.e., the petitioner/defendant.

[7] The petitioner/defendant filed an application being Judl. Misc. Case No. 376 of 2019 for setting aside the ex-parte decree dated 19.03.2019 passed by the learned Civil Judge (Senior Division), Imphal East in O.S. No. 59 of 2018. There was a delay of 71 days in filing the application for setting aside the ex-parte order. As the petitioner/defendant could not explain the delay of 71 days in filing the application for setting aside the ex-parte decree, the learned Civil Judge (Senior Division), Imphal East, rejected the application. Against the order dated 21.10.2020 in Judl. Misc. Case No. 376 of 2019 and the decree dated 19.03.2019 in O.S. No. 59 of 2018 passed by the learned Civil Judge (Senior Division), Imphal East, the petitioner/defendant did not file any revision or appeal before a higher forum challenging the same and thus the decree dated 19.03.2019 attained finality.

[8] Thereafter, the respondent/DH/plaintiff filed execution case being Execution Case No. 11 of 2021 in the Court of Civil Judge (Senior Division), Imphal East, to realize the judgment & decree dated 19.03.2019 passed in O.S. No. 59 of 2018 in his favour. During the pendency of the execution case, the petitioner/JD/defendant filed an application being Judl. Misc. Case No. 201 of 2021 under Section 47 read with Section 151 of CPC for dismissing the present execution case as the same is not executable. The main grounds for alleging the decree as in-executable are: (1) The Trial Court has no inherent power or jurisdiction to pass decree; (2) The power of demarcation as provided under Section 52 of the Manipur Land Revenue and Land Reforms Act (MLR & LR Act), 1960 is conferred to the Revenue Officers

and as such the jurisdiction of the Civil Court is ousted by Section 159 of MLR & LR Act; (3) Order VII Rule 7 CPC does not confer any power, authority or jurisdiction to modify or alter or amend or add any relief claimed by plaintiff in his plaint or by the defendant in his written statement; (4) The decree that are found in Serial Nos. 3, 4 & 5 of the decree dated 19.03.2019 cannot be called a decree in its true sense as the same depends upon on happening of certain events.

[9] The respondent/DH/Plaintiff filed a written statement to the application (i.e., Judl. Misc. Case No. 201 of 2021) filed by the petitioner/JD/defendant. It is stated that the decree is executable and the Executing Court has power to pass an appropriate decree. Civil/Trial Court could issue orders for demarcating the suit land in its own capacity as the suit land was defined and ascertained already and it is only for confirmation. It is also stated that the power of Revenue Officials under MLR & LR Act, 1960 are normally executive power and the Trial Court does not commit any error in ordering for confirmation of the boundary before eviction. It is denied that the decree with respect to para Nos. 3, 4 & 5 are contingent and in-executable with respect to contents of serial No. 1 to 6 of the decree. They are part and parcel of the decree and cannot be termed as in-executable.

[10] Vide order dated 04.11.2022 in Judl. Misc. Case No. 201 of 2021, the learned Civil Judge (Senior Division), Imphal East, dismissed the application. It was held that the decree cannot be challenged in an execution on the ground that the decree is not a decree in true sense and subject to

happening of certain events. It has been observed that limited jurisdiction under Section 47 of CPC for challenging decree is only on the ground of lacking inherent jurisdiction of the Court, or defendant was dead at the time of the suit, or some other ground which effects the jurisdiction of the Court. It is held that Section 47 of CPC is not a substitute for appeal. Regarding the bar of ouster of jurisdiction of Civil Courts by Section 159 of MLR & LR Act, it has been held that Section 159 of MLR & LR Act has ousted the jurisdiction of the Civil Courts if the dispute is solely a boundary dispute. It is held that the present suit is one for declaration of title and eviction and not of purely boundary dispute. Merely because a direction has been given to the Revenue Officer to ascertain boundary of the suit land before eviction will not itself make the suit one of purely boundary dispute. It is held that Civil Court has jurisdiction. Accordingly, the application was rejected with cost of Rs. 2,000/- (Rupees two thousand only).

[11] Being aggrieved by the impugned order dated 04.11.2022 in Judl. Misc. Case No. 201 of 2021 (Ref: Execution Case No. 11 of 2021), the petitioner/JD/defendant preferred the present revision petition under Section 115 of the CPC inter alia on the ground that:

"(i) For that the Ld. Executing court while passing the impugned order has erroneously held that the suit of the plaintiff was for declaration of title and eviction but by mere direction of the court to the Revenue officers to cause demarcation for ascertaining the boundary of the suit land before eviction will not make the suit a boundary dispute. But the Ld. Executing court has failed to understand that the trial court has no inherent jurisdiction to pass any order directing the Revenue Authorities to cause demarcation.

(ii) For that the Executing court has failed to understand that the trial court has not inherent jurisdiction to direct the Revenue Authorities to cause any sorts of demarcation as the power of demarcation of survey number and fields is exclusively within the domain of Revenue Authority under the provisions of MLR&LR Act, 1960, However, the trial court without any jurisdiction has directed the Revenue Authorities to cause demarcation of the suit land. Therefore, the direction issued in the decree is ultra vires and non est.

(iii) For that the inherent jurisdiction of the Court under Section 47 of C.P.C. will not be determined by the nature or form of the suit but it should be determined by the means which he had taken resort by the trial court or procedure adopted by the said trial court in reaching a finding. In the instance case the executing court has failed to understand that the Ld. Trial court has no inherent jurisdiction to direct any Revenue Authority to demarcate the suit land in its decree.

(iv) For that, if the trial court felt it necessary to demarcate the suit land, he cannot take resort under the provisions of MLR&LR Act, 1960 but he can take resort under the provision of Section 75 of C.P.C. However, the Ld. Court has failed to understand it.

(v) For that the Ld. Trial court has no inherent jurisdiction to pass or issue any direction to the Revenue Authorities for causing demarcation inasmuch as such power to cause demarcation is within the domain of the Revenue Authorities. But the Ld. Executing court has lost sight of it.

(vi) For that the Ld. Court ought to have held that the procedure adopted by the trial court is barred by Section 159 of the MLR&LR, Act, 1960.

(vii) For that modification or moulding the relief is a discretionary power of the court given by the provisions of Order VII Rule 7 of the code of civil procedure, 1908. However, while exercising the discretionary/general power, the Ld. Trial court cannot override any provision of a statute. But the Ld. Executing court while passing the impugned order has failed to understand that the trial court had passed the decree for demarcation in complete violation of the provisions of Section 159 of the MLR&LR, Act, 1960.

(viii) For that orders issuing directions for demarcation or inquiry to find out respective shares of the parties in the suit are incidental and interim orders and that he same can be passed at any time as when such matter arises. And as such the report for such demarcation or inquiry cannot be a decision/Decree of the court which had determined the right of the parties conclusively.

(ix) For that the Ld. Executing court has failed to see that the trial court has no inherent jurisdiction to pass the decree.

(x) For that the Ld. Executing court ought to have held the decree dated 19/3/2019 passed by the trial court in O.S. No. 59 of 2018 is in executable.

(xi) For that the Ld. Executing court has failed to exercise the jurisdiction given by law.

(xii) For that the impugned order passed by the Executing court is otherwise bad in law.”

[12] It is prayed that the impugned order be set aside and in the interim further proceeding of the Execution Case No. 11 of 2021 be stayed till the disposal of the revision petition. Along with the revision petition, the petitioner has also filed an application being MC(CRP) No. 1 of 2023 under Section 115(3) of CPC praying for staying further proceeding of the Execution Case No. 11 of 2021 which is pending in the Court of learned Civil Judge (Senior Division), Imphal East.

[13] The respondent/DH/plaintiff has filed counter affidavit to the revision petition filed by the petitioner herein. It is reiterated that the petitioner filed an application being Judl. Misc. Case No. 376 of 2019 before the learned Civil Judge (Senior Division), Imphal East for setting aside the ex-parte decree dated 19.03.2019 passed in O.S. No. 59 of 2018 and vide order dated 21.01.2020, the application was rejected as delay could not

properly be explained. The said order is not challenged before any other higher forum. It is stated that the decree and judgment dated 19.03.2019 in O.S. No. 59 of 2018 has attained its finality. Moreover, the registered Sale Deed is not disputed by the petitioner herein in any forum. It is submitted that the application filed by the petitioner under Section 47 read with Section 151 of CPC for dismissing the execution case is ill-conceived and the same is abuse of process of the Court. It is stated that it is an undisputed fact that O.S. No. 59 of 2018 was for declaration of title and other reliefs including ejectment of the defendant, recovery of possession for mesne profit etc. and the learned Trial Court simply passed a direction for demarcation of the boundary of the suit land to ascertain the same before eviction and the same cannot be stated that the dispute is purely boundary dispute and the said direction does not amount to modifying the relief. The jurisdiction of the Civil Court is not barred by Section 159 of MLR & LR Act.

[14] Heard Mr. H. Manglem and Mr. H. Pari, learned counsel for the petitioner; and Mr. T. Rajendra, learned senior counsel assisted by Mr. S. Rabindra and Mr. Bikash Sharma, learned counsel on behalf of the respondent; perused the materials on record and relevant case law cited by the parties.

[15] Mr. H. Pari, learned counsel for the petitioner/JD/defendant, submits that the decree dated 19.03.2019 passed by the learned Civil Judge (Senior Division), Imphal East in O.S. No. 59 of 2018 is in-executable as the Trial Court has no jurisdiction to pass the same in view of the provisions of

Section 159 of MLR & LR Act, 1960 which has ousted the jurisdiction of the Civil Court in a matter arising under and provided for by this Act except where question of title of the disputed property is involved. Learned counsel draws attention of this Court to direction No. 2 in the decree dated 19.03.2019 to conduct demarcation of the suit land by Sub-Deputy Collector (SDC) prior to the eviction of the defendant. It is stated that demarcation is provided under Section 52 of the MLR & LR Act and upon finding of the demarcation proceeding, the encroacher is liable to be evicted under Sub Section 2 of Section 53 of the MLR & LR Act. It is emphasized that demarcation of a plot of land and the eviction of the encroacher as per the finding of the demarcation proceeding are provided by the provisions of Sections 52 & 53 of MLR & LR Act and such jurisdiction is exclusively within the ambit of the Revenue Courts. Mr. H. Pari, learned counsel for the petitioner has pointed out that the jurisdiction of the Civil Court in matter exclusively within the domain of the Revenue Court is ousted by the provision of Section 159 of the MLR & LR Act and accordingly, learned Civil Judge Senior Division, Imphal East has no jurisdiction to pass a decree of demarcation and eviction of the petitioner/defendant from the suit land.

[16] Mr. H. Pari, learned counsel for the petitioner, relies upon a judgment of this Court in the case of **Shamurailatpam Premananda Sharma vs. Ayekpam Lokeshwor Singh** reported in **2015 (4) GLT (MN) 584** at para 19 holding that as per MLR Act & LR Act all dispute relating to determination of village boundaries (i.e. demarcation) is provided under

Section 52 of the Act and any suit before Civil Court will be barred in view of the provisions under Section 159 of the Act. Accordingly, learned counsel submits that the learned Civil Judge (Senior Division), Imphal East has no jurisdiction to pass a decree with respect to demarcation of the suit land.

[17] Mr. Pari, learned counsel for the petitioner, further submits that any decree passed without jurisdiction can be challenged in an execution proceeding by an application under Section 47 of CPC. He refers to the provisions of Section 47 CPC which mandates that the Executing Court has to determine all questions arising between the parties to the suit and relating to the execution, discharge, or satisfaction of the decree in the execution proceeding itself and not by a separate suit. It is submitted that the question of jurisdiction of the Trial Court is an issue to be determined by the Executing Court and such question have to be answered in the execution proceedings itself. Mr. H. Pari, learned counsel, relies on a judgment of the Hon'ble Supreme Court in the case of **Urban Improvement Trust: Jodhpur vs. Gokul Narayan** reported as **AIR 1996 SC 1819** para 15 which held that a decree passed by a Court without jurisdiction is a nullity, is a non est and its invalidity can be setup whenever it is sought to be enforced at the stage of the execution or collateral proceeding. The defect of jurisdiction strikes at the authority of a Court to pass a decree which cannot be cured by consent or waiver of the party. Accordingly, learned counsel has submitted that the Executing Court was wrong in dismissing the application filed by the petitioner/defendant for setting aside the execution proceeding as the Trial

Court has no jurisdiction to pass the decree with respect to demarcation of the suit property and the eviction in view of the ouster clause of Section 159 of MLR & LR Act, 1960 read with Sections 52 and 53 of the Act.

[18] Further, Mr. H. Pari, learned counsel for the petitioner, submits that the Trial Court was wrong in molding the relief by exercising powers under Order VII Rule 7 CPC directing for demarcation in complete violation of the provisions of Section 159 of MLR Act. It is submitted that there is no prayer for demarcation in the relief claimed by the respondent/ plaintiff in the suit filed by him. It is submitted that the Trial Court has granted a relief not prayed for by the plaintiff and the same is barred by the provisions of Order VII Rule 7 CPC.

[19] Per contra, Mr. T. Rajendra, learned senior counsel for the respondent/plaintiff, has pointed out that decree dated 19.03.2019 has attained finality as the application being Judl. Misc. Case No. 376 of 2019 filed by the petitioner/defendant for setting aside ex-parte decree was dismissed on 21.01.2020 as barred by limitation. The decree dated 19.03.2019 and the order dated 21.01.2020 have not been challenged before any higher forum and as such the same cannot be challenged belatedly in an execution proceeding under the provision of Section 47 CPC. Mr. T. Rajendra, learned senior counsel, has further pointed out that the reliefs as prayed for in the suit filed by the respondent/plaintiff is not for demarcation of boundary dispute simpliciter as provided under Section 52 of the MLR & LR Act. He draws the attention of this Court to the reliefs prayed for by the

respondent/plaintiff in the suit, i.e., - Prayer (a) is for decree for ejectment of the defendant from the suit land; prayer (b) is for decree of delivery of suit land to the plaintiff; prayer (c) is grant of mense profit; prayer (d) is for declaration of the plaintiff as the absolute owner of the suit land; and other consequential reliefs. Mr. T. Rajendra, learned senior counsel, has highlighted that the prayer in the suit is not for boundary dispute at all and the same is mainly for declaration of the title and the eviction. It is also clarified that direction No. 2 in the decree for demarcation by SDC is only to ascertain the exact area of the respondent/plaintiff prior to eviction and the same cannot be treated as a demarcation proceeding in its strict sense within the ambit of Sections 52 & 53 of the MLR & LR Act. Accordingly, it is submitted that the jurisdiction of the Civil Court in directing the Revenue Officer to conduct demarcation of the suit land prior to eviction is not a substantive relief prayed for by the plaintiff and the same has been passed by the Trial Court in exercise of power conferred under Order VII Rule 7 CPC for molding reliefs and to facilitate in the eviction proceeding. Mr. T. Rajendra, learned senior counsel, has reiterated that the provisions of Sections 52, 53 & 159 of MLR & LR Act are not attracted in the present case and the Trial Court has jurisdiction to pass the decree and the same cannot be faulted.

[20] Mr. T. Rajendra, learned counsel, has also pointed out that the Trial Court framed 5 points for determination and the bar of jurisdiction under the provision of Section 159 of the MLR & LR Act was not an issue in the

trial. Moreover, the demarcation report submitted by SDC, Porompat has not been challenged by the petitioner/defendant and the same was conducted with his consent and participation. Even if the demarcation was directed to be done by the SDC, Porompat, the same can be construed as directed under Section 75 read with Order XXVI Rule 9 CPC. It is submitted that there is no illegality in directing the revenue officer to conduct demarcation prior to eviction.

[21] Learned senior counsel for the respondent/plaintiff refers to the provisions of Section 115 CPC which enable the High Court to examine the order passed by the Civil Court by way of a revision if the Court- (a) have exercised a jurisdiction not vested on it; or (b) have failed to exercise a jurisdiction so vested; or (c) have exercised the jurisdiction illegally or with material irregularity. It is submitted that the present revision petition filed by the defendant does not fall within any of the circumstances as provided under Section 115 CPC and the same is liable to be dismissed on this ground also.

[22] Mr. T. Rajendra, learned senior counsel for the respondent, relies upon the following case law:

(i) **E. Achuthan Nair Vrs. P. Narayanan Nair; AIR 1987 SC 2137:**

A suit for demarcating the boundary of a property is maintainable.

(ii) **Aradhana Das Vrs. Karuna Kanta Hazarika; 2007 (2) GLT 519:**

A suit for demarcation of land for identification of boundary between owners

of two adjacent plots of land is a civil nature and the Civil Court has jurisdiction to decide such dispute in view of Section 9 of CPC.

(iii) **Thanda Bala Choudhury Vrs. Birendra Kumar Choudhury; 2002(2) GLT 712:** Dispute relating to title and interest over immovable property is a civil dispute and Section 154(1) of the Assam Land Revenue and Regulation does not debar a Civil court from entering a suit based on title of the property.

(iv) **Gajendra Kr. Dhar Vrs. Nani Gopal Ghosh & ors. ; 1999(1) GLT 39:** Decree can be executed on the basis of the identification of the land as done by the Survey Commissioner.

(v) **Nabaran Sarkar and Ors. vs. Sudhir Chandra Roy and Ors.: (2004) 2 GLT 10:** The civil court who passed a decree for title based on well-defined boundary is with jurisdiction and such objection cannot be raised for the first time in execution proceeding when the defendant did not contest the suit and proceeded exparte.

[23] It will be fruitful if the relevant provisions of law and settled propositions of law involved in the present petition are reproduced for easy analysis.

Manipur Land Revenue & Land Reforms Act, 1960:

Section 52: Determination of village boundaries:- The boundaries of villages, survey numbers, sub-divisions and fields shall be fixed and all disputes relating thereto shall be determined by survey officers or by such other officers as may be appointed by the State Government for the purpose, in accordance with rules made in this behalf.

Section 53: Effect of settlement of boundary:-

(1) The settlement of a boundary under this Chapter shall be determinative:-

(a) of the proper position of the boundary line or boundary marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

(2) Where a boundary has been so fixed, the Deputy Commissioner may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims."

Section 159: Jurisdiction of civil courts excluded- No suit or other proceedings shall unless otherwise expressly provided for in this Act or in any other law for the time being in force, lie or be instituted in any civil court with respect to any matter arising under and provided for by this Act:

Provided that if in a dispute between parties a question of title is involved, a civil suit may be brought for the adjudication of such question:

Provided further that the civil court shall have jurisdiction to decide any dispute to which the Government is not a party relating to any right or entry which is recorded in the record of rights."

Civil Procedure Code, 1908

Section 47: Questions to be determined by the Court executing decree:

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) ...(omitted)

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I - For the purpose of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II - (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

[24] While interpreting the provision of Section 159 of MLR & LR Act, a Single Judge of this Court held in the case of **Shamurailatpam Premananda Sharma v. Ayekpam Lokeshwor Singh reported as 2015 (4) GLT (MN) 584: MANU/MN/0147/2014 @ Para 19**: that the jurisdiction of civil court is barred under Section 159 of the Act to decide disputes relating to determination of boundary only as such jurisdiction is conferred to revenue officers under Section 52 of MLR & LR Act. Para 19 is reproduced below:

19. As per MLR and LR Act, all disputes relating to the determination of village boundaries, survey numbers, sub-divisions and fields shall be determined by survey officers or by such other officers as may be appointed by the State Government for the purpose, in accordance with rules made in this behalf as provided under Section 52 of the MLR and LR Act. In other words, if there be any dispute regarding the boundary of any field it has to be settled by the survey officers as mentioned above. Therefore, if the suit involves dispute regarding the boundary of land, any such suit before the civil Court will be barred in view of provision under Section 159 of the MLR and LR Act. Accordingly, to that extent, framing of the issue whether the suit is barred by sections of the MLR and LR Act is in order and also ought to have been decided at the first instance before proceeding with the suit. Though it may be said as contended by the respondents that the impugned orders have been passed by the learned trial court in order to decide the said issue, this Court is of the view that the Court could not have proceeded in the manner it sought to do by passing the impugned orders. The Court could have treated this issue as preliminary issue and asked the parties to lead their evidence in support or against the issue framed and if after hearing the parties, the trial Court felt it necessary, it could have passed orders for appointment of local commission by invoking powers under Section 75 of the CPC read with Order XXVI. While Section 75 of

the CPC provides the substantive power of the Court to issue commission, the procedure has been laid down in Order [XXVI](#). This Court is of the view that the trial Court could have appointed commission to make local investigation for elucidating any matter in dispute as provided under Order XXVI Rule [9](#) of the CPC. However, such appointment could be made only after the Court forms an opinion in that regard of such requirement. It, therefore, follows that if the Court has to form an opinion in that regard that appointment of a local commission is required, it has to be done only after hearing parties in that regard and thereafter forming such an opinion. However, the orders do not indicate that the Courts after hearing the parties of the requirement of appointing the commission, had issued the said orders. In fact none of the parties has stated that such orders were passed after hearing the parties. In normal course, the hearing of the parties would be after necessary applications by either of the parties have been filed in that regard. In the present case, the Court had issued the order for appointment of commission suo moto. Though the ultimate purpose for passing the impugned orders may be to aid the Court in deciding the aforesaid issue of jurisdiction of the civil court as provided under Section [159](#) of the MLR & LR Act, this Court is of the view that the manner in which the trial Court had proceeded does not find support in any of the provisions of the CPC.

[25] In the case of **Sapam Ongbi Loidang Devi and Ors. vs. Takhelkumbam Ongbi Rajkumari Monosana Devi and Ors. (05.03.2004 - GUHC) : MANU/GH/0331/2004: AIR 2005 Gau 101 @ Para 26**, a Single Judge of Gauhati High Court held that the jurisdiction of civil court to decide the rights and title and eviction suit based on title is not ousted by Section 159 of MLR & LR Act. Relevant portion of Para 26 is reproduced to have a clear idea.

"26. A simple reading of the sections quoted above will show that Section 125 would have no application here and the suit being mainly of partition suit, the provision of Section 159 will not be attracted. In the view admission in the plaint that defdt. No. 7 was, the tenant in so far as the land under item No. VII of Schedule 'B' of the plaint, the question of application of Section 119 of the Act of 1960 may require consideration of this Court. Section 119 will not oust the jurisdiction of the Civil Court. It only mentions the grounds under which a tenant may be evicted and

such order can be passed only by the competent authority. It is not clear who is the competent authority as per the Act of 1960. **Moreover, the bar imposed by Section 159 is with respect to any matter arising under and provided for by that Act and it has never ousted the inherent jurisdiction of Civil Court in deciding the rights and title and eviction suit consequent to the declaration of title will, therefore, be competent to be entertained by Civil Court. ..."**

[26] In the case of **Nongthombam Ibeton Devi v. Nongthombam Shyam Kishore Singh** reported as **MANU/GH/0622/2004: 2005(Suppl) GLT 609**, a Single Bench of Gauhati High Court (Imphal Bench, now High Court of Manipur) held that jurisdiction of the civil court to decide title suit is not ousted by the provision of Section 159 of MLR & LR Act. Relevant para are reproduced for ready reference.

"6. After disposal of the Misc. Case No. 60/2000, the suit was taken up by the trial Court framing 4 (four) issues. Issue No. 1, which relates to jurisdictional matter was again taken up as preliminary issue for discussions and decision and it reads as follows:

1. Whether the jurisdiction of this Court to take up the present case is barred by Section [159](#), M.L.R. and L.R. Act?

7. For the sake of ready reference and convenience, it will be appropriate to reproduce the sections of law agitated by the revision Petitioner in order to challenge the jurisdiction of the trial Court. These provisions in the Act are as quoted below:

CHAPTER V-A

Partition

51-A.

Definition

....

....

(d) 'Partition' means the division of a holding into two or more such holdings each separately liable for the revenue assessed thereon.

51-B. Petition for partition.- (1) A landowner may at any time, by applying in writing to the Deputy Commissioner, claim partition of the holding.

51-C. Partition in accordance with finding of Civil Court.- The Deputy Commissioner shall be guided by the decision of the Civil Court of competent jurisdiction on the question of title and the proceedings stayed under Sub-section (3) and Sub-section (5) of Section 51-B shall be disposed of when the decision of the Civil Court is communicated to the Sub-Deputy Collector by an interested party and after notice has been given to the other parties.

159. Jurisdiction of Civil Courts excluded.- No suit or proceeding shall, unless otherwise expressly provided for in this Act or in any other law for the time being in force, lie or be instituted in any Civil Court with respect to any matter arising under and provided for by this Act:

Provided that if in a dispute between parties a question of title is involved, a civil suit may be brought for the adjudication of such question:

Provided further that the Civil Court shall have jurisdiction to decide any dispute to which the Government is not a party relating to any right or entry which is recorded in the record of rights.

(emphasis supplied)

8. A plain reading of the laws given in the aforesaid sections of laws will make it clear that the sections provide and give jurisdiction to Deputy Commissioner for effecting partition for the limited purpose of assessment of revenue as revealed from the provision of Sub-section (d) of Section 51-A which defines 'partition'. Section 51-B clearly states that the petition for partition can be submitted by the landowner. Naturally, it will mean that there is no disputed title when such application is made. Position is made more clear by the provision of Section 51-C which provides that the Deputy Commissioner will be guided by the decision of the competent Civil Court on the question of title. **Thus, there cannot be any dispute that it is only the competent Civil Court which can adjudicate on the question of disputed title and revenue Court has nothing to do with it. The question will be more clear if one carefully goes through the two proviso (one and two) appended to Section 159 of the Act. The first proviso says that in case of disputed title, civil suit will lie for adjudication of the same and the second proviso further confirms by stating that civil suit will also lie relating to**

any right or entry recorded in the record of rights where the Government is not a party. So, there is absolutely no question of ousting the jurisdiction of the Civil Court in deciding the title. Rather Civil Court is the only competent Court to decide title and revenue Court will take up the follow-up action by affecting partition of revenue estate/holding in consonance with such findings of Civil Court on the extent of interest of the contesting parties. It appears that law has been mis-conceived by the Petitioner. It is unfortunate that the Petitioner is agitating the same matter again and again without due regard to the law, procedure and propriety."

[27] In the case of **E. Achuthan Nair v. P. Narayanan Nair: (1987) 4 SCC 71**, Hon'ble Supreme Court held that civil court has jurisdiction to decide boundary dispute in view of the mandate of Section 9 of CPC which confers jurisdiction to try all suits except those barred expressly or impliedly.

2. The only question argued before us by the learned Counsel for the appellant was that a suit for demarcating the boundary of a property was not maintainable when the plaintiff himself was uncertain about the precise boundary. He placed reliance upon a judgment of the High Court of Bombay in *Kavasji Jamsetji v. Hormasji Nassarvanjishet*¹ and a judgment of a learned Single Judge of the Kerala High Court in *Rayappan v. Yagappan Nadar*². In these two cases, the learned Judges purported to follow the statement of Lord Keeper Henley in *Wake v. Conyers*³ decided in 1759 where he had said "the court has, in my opinion (and if parties are not satisfied, they have resort elsewhere), no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties, as some particular circumstance of fraud, or confusion, where one party has ploughed too near the other, or the like; nor has this Court a power to issue such commissions of course, as here prayed". We do not think that we will be justified in importing into our jurisprudence the technicalities of English law and the distinction made by the English courts between legal estates and equitable estates. In India, the question whether a suit is cognizable by a civil court is to be decided with reference to Section 9 of the Civil Procedure Code. If the suit is of a civil nature, the court will have

jurisdiction to try the suit unless it is either expressly or impliedly barred. A dispute regarding identification of boundary between two adjacent land owners is certainly a dispute of a civil nature and it is not barred either expressly or impliedly.

1. ILR 29 Bom 73
2. 1958 Ker LT 955

[28] In the case of **Thanda Bala Choudhury and Ors. vs. Birendra Kumar Choudhury: MANU/GH/0210/2002: 2002 (2) GLT 712**, Gauhati High Court, while dealing with Section 154 of the Assam Land Revenue Regulation (similar to Section 159 of MLR & LR Act) which bars the jurisdiction of civil court in matter concerning the revenue court, held that the jurisdiction of civil court to decided title and recovery of possession is not ousted. Para 19 is reproduced.

19. Keeping in view the above cited authorities relating to the jurisdiction of Civil Court under Section 154 of the Regulation and also on ordinary reading of the provisions of Section 154 as well as Section 62 which is also a saving clause as noted above, it can be safely said that **the legal position is well settled that Civil Court has the jurisdiction to agitate upon the matter relating to title over the property. It is correct that if any claim is made as regards perfect partition, no Civil Court shall exercise its jurisdiction as envisaged under Section 154(1)(d) of the Regulation. Section 154 of the Regulation provides that except where otherwise expressly provided in this Regulation or in Rule framed thereunder, no civil court shall exercise the jurisdiction in any matter mentioned in the various clauses under the Section including Clause (d) which relates to claim of person to perfect partition. Revenue Court has been vested with the power to effect the partition whether perfect or imperfect, of the revenue paying properties. But at the same time, jurisdiction of the Civil Court to determine the right of the parties to the properties in dispute as well as the shares of which they are entitled to has not been taken away by the Regulation.** In the instant case though the matter was earlier agitated before the Revenue

Court for effecting perfect partition, the Petitioners, having failed to get adequate relief, approached the Civil Court by filing suit in question for declaration of right, title and interest over the suit land. In such premises I do not find any reason how this Section 154 can debar the Petitioners claiming to the title of the land in question from approaching the Civil Court. Section 62 also clearly vests a right upon the person to prefer a suit to the Civil Court for declaration of his right to any property. Therefore, I find sufficient force in the submission of the learned counsel for the Petitioner and accordingly, I am disinclined to approve the views expressed by the learned Civil Judge in the Impugned orders, I am of the considered view that the Civil Court is the absolute authority to adjudicate a dispute relating to the title and interest over the immovable property.

[29] In Aradhana Das vs. Karuna Kanta Hazarika and Ors.:

MANU/GH/0204/2007: 2007 (2) GLT 519, Gauhati High Court held that a suit for demarcation, being a civil dispute, is maintainable under Section 9 of CPC.

6. In India, it is not uncommon to describe a property only with respect to a neighbour's property. In such a case, demarcation of the boundary of such a property may become necessary in order to fix the boundaries of the properties conveyed or allotted. If a neighbour does not co-operate to the demarcation of the land, a dispute may result and for resolution of such a dispute, which is civil in nature, a suit is triable under Section 9 of the CPC. In short, whenever there is a dispute between two parties as regards location of a boundary separating their neighbouring properties and if one of the parties go to the civil Court seeking demarcation of the boundary of his or her land and also declaration of title to the land, which may be so demarcated, the civil Court cannot close its door by simply saying that the plaintiff does not know as to where lies his or her land. See *E. Achuthan Nair v. P. Narayanan Nair and Anr.* AIR 1983 SC 137.

7. The present one is one of those cases, where the plaintiff has come to the Court seeking declaration of title to the land, which she has purchased in the name of her school, namely, Children's Paradise School. In a suit of this nature and, particularly, in the facts of the present case, it is the duty of the Court to determine

as to what the real controversy between the parties is. If the plaint is carefully read, what transpires is that according to the plaintiff, she has purchased a plot of land, covered by Dag No. 723 (old)/1254 (new), in the year 1994, in the name of her educational institution, namely, Children's Paradise School and, before the purchase was made by her, the land was demarcated by the settlement office. The averment, so made by the plaintiff, may or may not be true. The fact, however, remains that the plaintiff's claim is that she took over the possession of the land as shown by the settlement staff, but could not fence the same, because of the fact that the southern and western side of the land was low-lying and remains under water throughout the rainy season. It is also the case of the plaintiff that she had not been able to fence her land, which she had bought in the name of her educational institution, up to the actual boundary of the land on its western and southern sides.

[30] On plain reading of Section 159 MLR & LR Act, 1960, it is clear that the jurisdiction of the civil court is ousted in any matter arising out of the Act, unless the question of determination of title dispute is involved. Demarcation has been provided for under Section 52 and similarly partition is defined under Chapter V-A of the Act. If the dispute is simply the one provided under the Act of 1960, the jurisdiction of civil court is ousted by Section 159 of the Act. However, with respect to the dispute relating to title of the suit land, the civil court will have jurisdiction as per first proviso to Section 159 of the Act.

[31] In the case of **Sh. Premananda Sharma (supra)**, this Court held that suit for demarcation (boundary dispute) simpliciter before a civil court will be barred by the provision of Section 159 of MLR & LR Act, 1960 as jurisdiction of demarcation is conferred to revenue officers in view of the mandate of Section 52 of the Act. Similarly, in the case of **Sapam Ongbi**

Loidang Devi (supra) and **Nongthombam Ibeton Devi (supra)**, it has been held that the bar imposed by Section 159 has never ousted the jurisdiction of the civil court to decide question of title and subsequent relief of partition, eviction, etc. in the suit. In **Thanda Bala Choudhury (supra)**, it is held in similar provision in Assam, the jurisdiction of civil court is not ousted to decide dispute relating to title of the suit land.

[32] From the above discussed decisions, it will be safe to conclude that the bar under Section 159 MLR & LR Act, 1960 is with respect to any matter provided under the Act, such as, demarcation, partition, eviction, etc. when such dispute does not involve question of title of suit land. However, the first proviso to Section 159 of the Act provides that only the civil court is competent to decide the question title. However, this Court is of the view that the ratios of the cases of **E. Achuthan Nair (supra)** and **Aradhana Das (supra)** to the effect of maintainability of a civil suit for demarcation under Section 9 of CPC, will not be applicable to the facts of the present case, as such jurisdiction has been ousted by Section 159 of MLR & LR Act, 1960 read with Section 52 of the Act.

[33] In the case of **Urban Improvement Trust, Jodhpur v. Gokul Narain: (1996) 4 SCC 178**, Hon'ble Supreme Court held that a decree passed by a court without jurisdiction is a nullity and its invalidity can be raised even at the stage of execution or in collateral proceedings. Para 15 is reproduced below:

15. The question then is: whether the objections can be raised in execution? This controversy is no longer res integra. In *Sushil*

*Kumar Mehta v. Gobind Ram Bohra*¹⁶ a three-Judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973) the building was governed by the provisions of the said Act. The civil court granted decree of eviction. When objection was raised in execution the executing court rejected the same. On appeal, this Court had held that a decree passed by a court without jurisdiction over the subject-matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. If the court has jurisdiction but there is any defect in its exercise of jurisdiction it does not go to the root of its authority. Such a defect like territorial jurisdiction could be waived by the party which could be corrected only by way of an appeal or revision. In that case it was held that since the decree was a nullity the validity was upheld in execution.

16. (1990) 1 SCC 193

[34] In the case of **Nabaran Sarkar and Ors. vs. Sudhir Chandra Roy and Ors.**: **MANU/GH/0242/2004: (2004) 2 GLT 10**, a Single Bench of Gauhati High Court (Agartala Bench) held that the civil court who passed a decree for title based on well-defined boundary is with jurisdiction and such objection cannot be raised for the first time in execution proceeding when the defendant did not contest the suit and proceeded *ex parte*.

"3. While dealing with this revision, it is of prime importance to note that the revision-petitioners did appear as defendants in the said suit, but they chose not to file any written statement and/or contest the suit. The effect was that the statements made in the plaint and the evidence adduced by the plaintiff remained uncontroverted and undisputed. Situated thus, there can be no escape from the conclusion that the fact that the plaintiffs had laid their claims of declaration of their rights, title and interest in

respect of the land mentioned in the Schedule to the plaint and that this was the land in respect of which the decree was, eventually granted, cannot be disputed. In short, the fact that the suit land was identifiable as per the plaint was not in dispute in the suit and such a dispute cannot be raised, for the first time in executing proceeding by persons, who were defendants in the suit.

4. Coupled with the above, the Court, which granted the decree had, undisputedly, the jurisdiction to decide the suit.

In the face of the facts indicated herein-above, it is abundantly clear that the decree granted in the suit was with jurisdiction and the same could not have been treated as a nullity in the eyes of law. Hence, no case for the decree being inexecutable could be made out by the judgment-debtors-petitioners.

5. Considering, therefore, the matter in its entirety, I am firmly of the view that this revision petition is wholly without merit and the impugned order needs no interference.”

[35] In the case of **Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan: (2017) 5 SCC 371**, Hon’ble Apex Court explained the difference between an erroneous decree and a decree without jurisdiction. It was held that Section 47 CPC mandates the executing court for determination of a dispute between parties in an execution regarding inexecutable of decree due to lacking inherent jurisdiction. It was further held that an executing court does not sit as an appellate court and cannot go beyond the decree. Relevant para are reproduced to have a clear understanding of the matter.

20. It is no longer *res integra* that an executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It is only in the limited cases where the decree is by a court lacking inherent jurisdiction or is a nullity that the same is rendered non est and is thus unexecutable. An erroneous decree cannot be

equalled with one which is a nullity. There are no intervening developments as well to render the decree unexecutable.

21. As it is, Section 47 of the Code mandates determination by an executing court, questions arising between the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same. A decree of court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

22. Judicial precedents to the effect that the purview of scrutiny under Section 47 of the Code qua a decree is limited to objections to its executability on the ground of jurisdictional infirmity or voidness are plethoric. This Court, amongst others in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*⁵ in essence enunciated that only a decree which is a nullity can be the subject-matter of objection under Section 47 of the Code and not one which is erroneous either in law or on facts. The following extract from this decision seems apt: (SCC pp. 672-73, paras 6-7)

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction."

5. *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*, (1970) 1 SCC 670 : AIR 1970 SC 1475 : (1971) 1 SCR 66

[36] In the case of **Sneh Lata Goel v. Pushplata: (2019) 3 SCC 594**, Hon'ble Supreme Court held that it is only in the case of lack of jurisdiction over the subject-matter, the decree passed by such court is a nullity. Objection to such decree can be raised in execution proceedings.

20. In *Harshad Chiman Lal Modi v. DLF Universal Ltd.*⁸, this Court held that an objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity. If it is not raised at the earliest, it cannot be allowed to be taken at a subsequent stage. This Court held thus : (SCC pp. 803-04, para 30)

"30. ... The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

21. In *Hasham Abbas Sayyad v. Usman Abbas Sayyad*¹⁰, a two-Judge Bench of this Court held thus : (SCC pp. 363-64, para 24)

"24. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

22. Similarly, in *Mantoo Sarkar v. Oriental Insurance Co. Ltd.*¹¹, a two-Judge Bench of this Court held thus : (SCC p. 249, para 20)

"20. A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case

where the Tribunal had no jurisdiction in relation to the subject-matter of claim ... in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

23. The objection which was raised in execution in the present case did not relate to the subject-matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*¹², the petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the defendant tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant tenant raised an objection that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three-Judge Bench of this Court, reversed the judgment of the High Court and held thus : (SCC pp. 672-73, paras 6 & 8)

"6. A court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

8. ... If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding."

8. *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791

10 . *Hasham Abbas Sayyad v. Usman Abbas Sayyad*, (2007) 2 SCC 355

11. *Mantoo Sarkar v. Oriental Insurance Co. Ltd.*, (2009) 2 SCC 244

12 . *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman*, (1970) 1 SCC 670

[37] From the above cited decisions, it is ample clear that under the provision of Section 47 CPC, the executing court has to decide all the questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree and not by a separate suit. In such proceeding, objection as to the in-executability of the decree due to lack of inherent jurisdiction in the subject-matter can also be raised. However, the executing court cannot sit and act as an appellate court to decide other objections. Such other objections have to be raised in the appellate or revisional courts and not before the executing court. This ratio is laid down in the cases of **Brakewel Automotive Components (supra)** and **Sneh Lata Goel (supra)**. In short, the objection to in-executability of the decree should touch the inherent lack of jurisdiction regarding the subject-matter, decree against the dead defendant, barred by statute, and similar aspects. Any other objection cannot be raised with regard to in-executability of the decree.

[38] In the case of **Ganesh Shet v. C.S.G.K. Setty (Dr): (1998) 5 SCC 381**, Hon'ble Supreme Court held that under the provisions of Order VII Rule 7 CPC, the court can grant reliefs which are consistent with both the pleadings and proof, even if such reliefs are not specifically prayed for.

22. Yet another aspect of the matter is whether in a suit for specific performance the plaintiff can be given relief under the *general prayer* "such other relief as this Hon'ble Court may deem fit to grant in the circumstances of the case", in the light of Order 7 Rule 7 CPC. Order 7 Rule 7 CPC reads as follows:

"7. Relief to be specifically stated.—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the

court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.”

(emphasis supplied)

Mulla (CPC) Vol. 2, (15th Edn., p. 1224) says that such relief may always be given to the same extent as if it had been asked for, provided it is *not inconsistent with that specifically claimed*, and with the case raised in the pleading. [See *Cargill v. Bower*¹⁶ (Ch D at p. 508); *Kedar Lal Seal v. Hari Lal Seal*¹⁷.]

23. It is stated in *Corpus Juris Secundum* (Vol. 81-A, Specific Performance), (para 189) as follows:

“In accordance with general rules, the relief awarded in a suit for specific performance would be based on the issues raised by the pleadings and supported by the proof. More specifically, relief awarded for the plaintiff must be authorised by or be in conformity with his pleading *in respect of the contract to be enforced* and the parties thereto.”

24. As to the “general relief” in suits for specific performance it is stated:

“In accordance with the general rules and its qualifications and limitations where the bill or complaint in a suit for specific performance contains a prayer for *general relief*, the court may grant relief *consistent with the facts pleaded and proved* and the court may in some cases grant or award partial relief.”

In other words, other relief to be granted must be consistent with both pleading and proof, in suits for specific performance. The principles stated above under (a) and (b) appear to us to be the broad principles which are to be borne in mind while dealing with exercise of discretion in cases of specific performance. We decide Point 3 accordingly.

16. (1878) 10 Ch D 502 : 47 LJCh 649

17. 1951 SCC 1189 : AIR 1952 SC 47 : 1952 SCR 179

[39] In the present case, the objection of the petitioner/defendant is that the decree is without jurisdiction, because the direction to conduct demarcation cannot be given by a civil court in view of the ouster clause under Section 159 of the MLR & LR Act, 1960 read with Section 52 of the Act. The civil court cannot exercise such jurisdiction and the decree is a nullity

and the objection in this regard can be raised in the execution proceeding as provided under Section 47 of CPC. However, this contention is without any force and substance. In the present case, the main prayer in the suit is for declaration of title and eviction of the defendant. The plaintiff has not prayed for any relief for conducting the demarcation. But, the trial court, while passing the decree for declaration of title and eviction of the defendant, passed a direction for conducting demarcation of the suit land in exercise of power under Order VII Rule 7 CPC. This Court is of the firmed view that by such direction for demarcation, the suit cannot be said to be one for demarcation only so as to oust the jurisdiction of civil court under Section 159 of MLR & LR Act. The fact of the present case is different from that of the case of **Sh. Premananda Sharma (supra)**, where the relief was basically for demarcation in a suit for injunction. The fact of present case is similar to those of **Sapam Ongbi Loidang Devi (supra)** and **Nongthombam Ibeton Devi (supra)** which held that the bar imposed by Section 159 has never ousted the jurisdiction of the civil court to decide question title and subsequent relief of partition, eviction, etc. in a suit.

[40] In view of the discussion above, it is held that trial court can mold the relief and pass a direction to conduct demarcation in a suit of declaration of title and eviction, prior to eviction so as to confirm the schedule of suit land given in the plaint and as such the additional relief is not in contradiction with the pleadings and evidence. Since the suit is not for demarcation simpliciter, the jurisdiction of the civil court to adjudicate the

question of the title is not ousted by Section 159 of MLR & LR Act and such jurisdiction is protected by the first proviso. As the objection raised by the petitioner/JD/defendant does not pertain to the lack of jurisdiction of the civil court pertaining the subject-matter, learned Civil Judge (Senior Division), Imphal East has rightly rejected the application filed under Section 47 of CPC.

[41] In the result, the revision petition is dismissed being devoid of any merit. The impugned order dated 04.11.2022 passed by the learned Civil Judge (Senior Division), Imphal East in Judl. Misc. Case No. 201 of 2021 [Ref: Execution Case No. 11 of 2011 and OS No. 59 of 2018] is upheld. The Executing Court shall continue the execution proceeding as per law. All applications are disposed of in terms of the above directions and observations. Parties are to bear their own costs.

[41] Send a copy of this order to learned Civil Judge (Senior Division), Imphal East for information.

JUDGE

FR/NFR

Indrajeet