

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 31 of 2015**

1. Smt. Jency Leocadia Costa e Pereira,
daughter of late Shri Lourdes
D'Costa, widow of late Shri Agnelo
Gonsaga Domingos Santana Pereira,
of major age, housewife
r/o. H.No. 211, Sinquetim,
Navelim, Taluka Salcete, Goa
2. Shri Agnelo Gonsaga Domingos
Santana Pereira (deceased)
through lrs.
 - 2(a) Mrs. Glynis Pereira,
Daughter of late Shri Agnelo Gonsaga
Domingos Santana Pereira, major of
age, housewife and her husband,
 - 2(b) Mr. Xavier Rodrigues,
Major in age, employed, both
residents of H.No. -106, Ratmadem,
near church Carmona
 - 2(c) Mrs. Glena Pereira,
daughter of late Shri Agnelo Gonsaga
Domingos Santana Pereira, major of
age, housewife and her husband,
 - 2(d) Shri Stlenly Fernandes,
Major in age, employed,
both resident of H.No. 50, Durga
Chinchinim, Taluka, Salcete, Goa.
 - 2(e) Mr. Gyslène Pereira,
son of late Shri Agnelo Gonsaga
Domingos Santana Pereira, Major of
age, Employed and his brother.
 - 2(f) Mr. Gismon Pereira
Son of late Shri Agnelo Gonsaga
Domingos Santana Pereira, Major of
age, Employed and his sister.

2(g) Miss. Gressilda Pereira
Daughter of late Shri Agnelo Gonsaga
Domingos Santana Pereira, Major of
age, Employed,
r/o. H.No. 211,
Sinquetim, Navelim Taluka Salcete,
Goa. .. Appellants

V/s

1. Shri Aleixinho Fernandes (deceased)
through L.Rs.
 - (a) Shri Anthony I. Fernandes,
son of late Shri Aleixinho Fernandes,
Of major age, employed and his brother,
 - (b) Shri Roque Michael Fernandes,
Son of late Shri Aleixinho Fernandes
Of major age, employed and his sister
 - (c) Smt. Effie Fernandes
Daughter of late Shri Aleixinho
Fernandes, of major age, housewife
and her husband;
 - (d) Shri Darryl De Moore,
of major age, employed, all residents
H.No. 118, Novangully, Varca
Taluka Salcete, Goa.
2. Smt. Sylvia Fernandes
of major age, housewife,
both residing at HouseNo. 118,
Novangully, Varca, Taluka Salcete,
Goa.
3. Shri Caetano Menino Fernandes
son of Shri Rosario Fernandes,
of major age, Occupation plumber
and his wife;
4. Smt. Maria Avelina alias Ivy Fernandes

of major age, housewife, both residents of House No. 130A, Novangully, Varca, Taluka Salcete, Goa.

5. Smt. Alba Fernandes,
daughter of late Shri Rosario Fernandes, of major age,
housewife and her husband;
6. Shri Menino Braz
son of Shri Milagres Braz, of major age, Occupation seaman,
both residents of House No.325,
Reprovaddo, Varca, Taluka Salcete, Goa.
7. Smt. Natividade Fernandes
daughter of late Shri Rosario Fernandes,
of major age,
housewife and her son;
(since deceased represented
by following legal representatives)
(Amendment carried out as per order
dated 12.02.2014)
8. Shri Cariton Lawrence
son of Shri Jose Francisco Lawrence
of major age, employed Service,
and his sister,
9. Mrs. Felina Lawrence
of major age,
housewife and
her husband;
10. Shri Anthony Fernandes,
of major age, seaman,
both resident HouseNo. 387,
Mobor, Cavelossim, Salcete, Goa.
11. Smt. Ramita Lawrence,
of major age, housewife
and her husband
12. Shri Elvis Fernandes
of major age, employed

13. Miss Wendy Lawrence,
daughter of Shri Jose Francisco
Lawrence, of major age, Employed,
All residents H.No. 301A, Reprovado,
Varca Taluka Salcete, Goa.
14. Miss Sonia Lawrence,
daughter of Shri Jose Francisco
Lawrence, of major age, housework
r/o. H.No. 301(A) Reprovado, Varca
Taluka Salcete, Goa.
15. Smt. Zita D'Costa
daughter of late Shri Louredes
D'Costa, of major age, housewife
r/o. H.No. 91, No Bairro Primeiro,
Assolna Taluka Salcete Goa and her son;
16. Shri Nelson Almeida
son of Shri Raul Almeida
of major age, employed, and his wife;
17. Smt. Flaminia Almeida
of major age, housewife,
both r/o. H.No. 32,
Desterro Vaddo,
Behind Busy Bee School,
Vasco da Gama, Goa.
18. Smt. Ruta Almeida
daughter of late Shri Raul Almeida
of major age, employed, and her husband;
19. Shri Arthur Colaco
of major age, employed, both
r/o. Helena Apts., 1st
Floor, Near St. Andrew church,
Vasco da gama, Goa.
20. Smt. Eva Almeida
daughter of Shri Raul Almeida
of major age, employed and her husband;
21. Shri Jose Sapeco

of major age, businessman,
both rs/o. E-230, Sapeco Bldg.,
Near L.I.C. Office, Panaji Goa.

22. Shri Gabriel Almeida,
son of late Shri Raul Almeida,
of major age, landlord,
r/o. H.No. 91,
No Bairo Primeiro, Assolna Goa.
23. Shri Michael Almeida
son of late Shri Raul Almeida
of major age, employed and his wife;
24. Smt. Averl D'Silva
of major age, employed
both r/o. Nandanvan Apts.
Kurtarkar Real Estate, 1st
floor, Block A, Near Lourdes Chapel,
St. Inez, Panaji Goa.
25. Smt. Eunata D'Costa
daughter of late Shri Lourdes D'Costa
of major age, housewife and her
husband;
26. Shri Joao Valadares
of major age, businessman,
both residents of House No. 92,
"Ave Miram" Nagoa-Verna,
Taluka Salcete, Goa.
27. Smt. Irene (Olga) D'Costa
daughter of late Shri Lourdes D'Costa
of major age, housewife and her
husband;
28. Shri Raul Colaco
of major age, employed,
both residents of "Ave Miram"
Nagoa-Verna,
Taluka Salcete, Goa.
29. Shri Edgar D'Costa
son of late Shri Louredes D'Costa,

of major age, employed and his wife;

30. Smt. Nina D'Costa
of major age, housewife,
both residing at 2239, Norfolk Drive
Oakville Ontario
Canada L6H-6H4.
31. Smt. Violeta D'Costa.
Daughter of late Shri Lourdes D'Costa
of major age, housewife and her
husband;
32. Shri Olinda Ferrao
of major age, retired,
both residents of House No. 30,
Nagvado, Betalbatim,
Taluka Salcete Goa,
33. Smt. Flavia D'Costa
daughter of late Shri Louredes
D'Costa, of major age,
housewife and her husband;
34. Shri Crisologo Barreto,
of major age, unemployed,
both residing at House No. 455, Nagvado,
Betalbatim, Taluka Salcete, Goa.
35. Smt. Assumta D'Costa
daughter of late Shri Lourdes D'Costa
of major age, housewife and her
husband;
36. Shri Inacio Santano Santimano
of major age, businessman,
both residing at Santimano Bakery,
Near Hanuman Temple,
Fontainhas, Panaji Goa.
37. Shri Sebastiao D'Costa
son of late Shri Louredes D'Costa
of major age, and his wife;
38. Smt. Melky D'Costa

of major age, housewife,
both residing at House No. 110,
Novangully, Varca, Salcete Goa.
(Since deceased represented
by following legal representatives)
(Amendment carried out as
per order dated 12.02.2014)

- 38 (a) Miss Valencia D'Costa
Daughter of Shri Sebastiao D'Costa
Of major age, housework and her brother;
- (b) Shri Selzar D' Costa
Son of Shri Sebastiao D'Costa,
Of major age,
employed and his sister;
- (c) Smt. Linette D'Costa
Daughter of Shri Sebastiao D'Costa
of major age, housewife and her husband;
- (d) Shri Fredy Morais
Of major age, employed,
both r/o. H.No. Not known,
Veroda, Cuncolim
Taluka Salcete, Goa
- (e) Smt. Zorina D'Costa
daughter of Shri Sebastiao D'Costa
Of major age, housewife and her husband
- (f) Shri Newton Dias
Son of late Shri Antonio Dias, Of
major age, employed,
both r/o. Orlim, Salcete Goa.
- (g) Miss Mockfil D'Costa
daughter of Shri Sebastiao D'Costa
Of major age, employed and her sister
- (h) Miss Brezhnil D'Costa
Daughter of Shri Sebastiao D'Costa
Of major age, employed and her sister
- (i) Miss Shelma D'Costa,

Daughter of Shri Sebastiao D'Costa,
Of major age
employed and her sister;

(j) Miss Sharnifa D'Costa,
Daughter of Shri Sebastiao D'Costa,
of major age,
unemployed and her brother;

(k) Shri Menino D'Costa
Son of Shri Sebastiao D'Costa,
Of major age,
employed and his brother;

(l) Shri Yleason D'Costa
Son of Shri Sebastiao D'Costa
Of major age,
employed and his brother.

(m) Shri Bhelruck D'Costa,
Son of Shri Sebastiao D'Costa
of major age,
employed and his sister,

(n) Miss Zurieka D'Costa,
Daughter of Shri Sebastiao D'Costa,
Of major age
employed and her brother;

(o) Shri Branicks D'Costa,
Son of Shri Sebastiao D'Costa
Of major age,
employed, All residents of
House No- 110,
Novangully, Varca,
Taluka Salcete, Goa.

.. Respondents

Mr. J. J. Mulgaonkar, Advocate for the appellants.

Mr. C. A. Ferreira and Ms. Rechelle Almeida, Advocates for the respondents.

CORAM :- C. V. BHADANG, J.

Date : 28th July, 2015

JUDGMENT :

By this appeal, the appellants- original plaintiffs are challenging the judgment and order dated 20/12/2014 passed by the learned District Judge, South Goa, in Regular Civil Appeal No.68/2003, thereby confirming the dismissal of the Regular Civil Suit No.31/01/III by the learned Adhoc Senior Civil Judge, Margao.

2. On hearing the learned Counsel for the parties, I find that the following substantial questions of law arise in the appeal :

(i) Whether the Civil Court would have jurisdiction to entertain a suit for declaring the orders passed by the Mamlatdar under the Goa, Daman and Diu Mundkar (Protection from Eviction) Act, 1975 (the said Act) as null and void ?

(ii) Whether Section 31(2) of the said Act would bar jurisdiction of the Civil Court to entertain any suit, seeking a declaration that the orders passed by the Mamlatdar (or other authorities under the said Act) be declared as null and void ?

3. The parties were put to notice about the aforesaid substantial questions of law. The learned Counsel for the parties have advanced their arguments on the same. Accordingly, the appeal is being finally disposed of on merits.

4. The brief facts, necessary for the disposal of the appeal, may be stated thus :

That property better known as 'Novangully Dando' situated at village Varca, Taluka Salcete, District South Goa surveyed under Survey No.275/8 and more particularly described in paragraph 1 of the plaint, is the subject matter of dispute. The appellants filed the suit before the learned Civil Judge, Senior Division with the allegation that the suit property belongs to the father of the plaintiff no.1 by name Lourdes D'Costa, who expired on 17/06/1965. Smt. Maria Angelica Costa, the mother of the appellant no.1, expired on 11/09/1996. Lourdes D'Costa and Maria Angelica Costa left behind two sons namely Sebastio D'Costa (respondent no.37) and Edgar D'Costa (respondent no.29) and seven daughters, including the appellant no.1. According to the appellant no.1, after the death of her parents, she became the co-sharer of the suit property. The appellant no.1 was married to appellant no.2 (since deceased) Agnelo Domingos under the

regime of common enjoyment of the properties. The suit was filed by the appellant no.1 along with her husband appellant no.2 (since deceased). It was the material case that on 05/01/2001, when the appellant no.1 went to her parental house, which is situated on the western side of the suit property, the respondent no.1 started abusing her claiming that the appellant no.1 or any of her family members have no right to pass through the suit property, since they have purchased the suit property in the proceedings before the Mamlatdar. Further according to the appellants, on enquiry, it was found that the contesting respondent no.1 had moved an application for registration as mundkars in respect of the dwelling house. These proceedings were decided on 24/10/1981. Subsequently, an order for purchase of the mundkarial house was also passed on 18/08/1999. In both these proceedings, the appellant no.1 or her sisters were not made parties and the proceedings were only filed against the respondent no.37 Sebastio D'Costa and respondent no.29 Edgar D'Costa.

5. It was claimed that on 09/02/1981, Sebastio D'Costa had filed an application in the said case, bringing it to the notice of the Mamlatdar that the property is still undivided and his brother Edgar D'Costa, who was out of India, was one of the co-sharers and that all the legal representatives/ co-owners were not made

parties. In short, according to the appellants, the orders passed in the proceedings by the Mamlatdar were *ab-initio-void*. The suit came to be filed with the following prayers :

- “(a) a declaration be passed that Smt. Conceicao Divina Fernandes or the Defendant No.1 were not the mundkars of the suit property;*
- (b) that the order passed in Case No.JM/MUND/Varca/66/80 on 24/10/1981 by the Joint Mamlatdar of Salcete, be declared null and void;*
- (c) that the sanad issued in Case No.JM/I/MUND/Purchase /29/92 on 18/08/1991 by the Deputy Collector, Margao, be declared null and void;*
- (d) such other orders as this Hon'ble Court deems fit and proper, be passed. ”*

6. It appears that the original defendant nos. 1 to 5, 7 to 11 and 13 and 14 filed written statement *inter alia* raising a preliminary objection about the lack of jurisdiction in the Civil Court to try the suit. It was contended that the fact that the respondent no.1 had purchased the mundkarial plot through the proceedings before the Mamlatdar was well known to the appellants since the date of its purchase i.e. from 18/08/1991. All other adverse allegations were denied.

7. The learned Trial Court framed the following issues :

- “1. Whether the plaintiffs prove that there exists a*

property with the boundaries as described in para 3 of the plaint ?

2. Whether the plaintiffs prove that the father of the plaintiff no.1 allowed the mother of the defendant no.1 to stay in the suit house as a care-taker in order to take care of the said house ?

3. Whether the plaintiffs prove that the defendant is not a mundkar in the suit house and that the plaintiffs are entitled for a declaration that the defendant no. 1 is not the mundkar of the suit house ?

4. Whether the defendants prove that this Hon'ble Court has got no jurisdiction to entertain the suit as the issue raised by the plaintiffs is whether the defendant no.1 is a mundkar or not ? "

5. Whether the defendants prove that the suit is barred by limitation as the declaration sought is in respect of Orders dated 24/10/1981 and 18/08/1991 ?

6. Whether the defendants prove that the suit is bad for non joinder of necessary parties as the Mamlatdar and the Deputy Collector have not been joined as parties ?

7. Whether the defendants prove that the case for declaration of mundkarship was filed against the landlord or against the persons purporting to act as landlords ?

8. What relief ? What Order ?

8. The appellant no. 1 examined herself (PW1), while on behalf of the contesting defendants, Smt. Silvestrina Fernandes

came to be examined. Parties produced certain documents. The learned Trial Court held all issues as not proved and dismissed the suit, which was challenged in appeal before the learned District Judge. The learned District Judge framed the following points for determination:

- “1. Whether the plaintiffs proved that they are the co-owners of the suit property ?*
- 2. Whether the plaintiffs proved that Smt. Conceicao Divina Fernandes or the defendant no.1 were not the mundkars of the suit property and whether the order passed in the mundkar case by the Joint Mamlatdar of Salcete is null and void ?*
- 3. Whether the defendants proved that the suit is barred by law of limitation ?*
- 4. Whether the Judgment and Decree is illegal and therefore warrants interference in appeal?”*

9. The learned District Judge found that the suit was barred by law of limitation. The learned District Judge answered the point nos. 1, 2 and 4 in the negative and point no.3 in the affirmative and proceeded to dismiss the appeal. This how, the plaintiffs are before this Court.

10. I have heard Shri Mulgaonkar, the learned Counsel for the appellants and Shri Ferreira, the learned Counsel for the respondents.

11. The substantial questions of law as set out in paragraph 30(A) to 30(D) of the appeal memo are as under :

“A) Whether the learned Trial Court as well as the First Appellate Court ought to have held that the Mundkar Orders dated 24/10/1981 and 18/08/1999 obtained by the respondents are null and void as the same are passed without joining the appellants/ plaintiffs, who are co-owners of the suit property and therefore, bhatkars being the daughters of Shri Lourdes D'Costa and Maria Angelica D'Costa who were the original owners of the suit property and moreover since the fact that the said appellant is the daughter of the original owners and that she was not impleaded in the cases where the said orders were passed stands admitted and proved ?

B) Whether the learned Trial Court and the First Appellate Court failed to examine the documents at exhibit 70 and 71, which are the records of the cases wherein the above orders of Mundkarship were obtained and which clearly establish that the Appellants were neither made parties nor served notices in the said cases ?

C) The finding of the learned First Appellate Court at para 26 that the plaintiff being a married daughter of the original bhatkar was not required to be made a party to the Mundkar case as she was a married daughter ?”

D) Whether the finding of the First Appellate

Court that the Appellant was very much aware of the Mundkar proceedings and therefore the suit is barred by limitation is perverse for want of any reason for arriving at such a finding ?

12. The learned Counsel for the appellants submitted the following additional substantial questions of law during the course of arguments :

E) Whether having regard to the definition of Bhatkar under section 2(f) of the Goa Mundkar (Protection from eviction) Act, 1975 and admitted position that the plaintiffs are co-owners as the co-heirs of the original owners i.e. Late Lourdes D'Costa and Maria Angelica D'Costa in respect of which the order of Mundkar registration dated 24/10/1981 and the sanad for purchase of dwelling house dated 18/08/1991 pursuant to the same registration without joining the Appellants/ Plaintiffs as party respondents thereto are legally valid and not null and void ?

F) Whether the courts below committed illegality in declining to grant declaration that the Mundkar registration dated 24/10/1981 obtained by Defendant No.1 and the purchase of dwelling house vide sanad dated 18/08/1991 are null and void, despite the admitted position that the plaintiffs as co-heirs of the original owners of the property fall within the ambit of Section 2(f)/ of the Goa Mundkar (Protection from eviction) Act, 1975 and were admittedly not joined as parties in the said Mundkar proceedings ?

G) Whether the order of Mundkar registration dated 24/10/1981 and purchase dated 18/08/1991 are valid in law and binding on the Plaintiffs/Appellants as the admitted owners of the property and Bhatkars within the meaning of section 2(f) of Goa Mundkar (Protection from eviction) Act, 1975 ?

H) Whether the impugned judgment passed by the Appellate Court is not in compliance with Order 41 Rule 31 of the Civil Procedure Code on account of failure to frame the points for determination as regards legal validity of the Mundkar orders in respect of which declaration of nullity was sought in the suit ?

I) Whether the finding given by the First Appellate Court that the plaintiffs had not proved that the owners of suit property is perverse in view of there being no dispute as regards the status of the Plaintiffs as co-owners of the suit property ?

J) Whether the Appellate Court committed patent error of law in holding that the Plaintiff No.1 being the married daughter of original owner (Bhatkar) does not acquire any right in the suit property ?

K) Whether the finding of the First Appellate Court that the Defendants were aware of the Mundkar orders under challenge in the suit and the suit is therefore barred by law of limitation is bad and perverse there being no material at all to attribute such knowledge to the Appellant ?

13. It is submitted by Shri Mulgaonkar, the learned

Counsel for the appellants that the appellant no.1, as a married daughter, would be a co-sharer in the property of her deceased parents. It is submitted that DW1 has admitted that the property was belonging to Lourdes D'Costa. Lourdes D'Costa had left behind two sons and seven daughters, including the appellant no.1. It is submitted that admittedly, the appellant no.1 and her other sisters were not made parties in the proceedings for registration as well as proceedings for purchase of the Mundkarial property. It is submitted that these orders passed in the proceedings would be *ab-initio*, null and void, being against the principles of natural justice. It is submitted that the reasoning by the Appellate Court that being a married daughter, the appellant no.1 had no right in the property of her parents, is clearly illegal. It is submitted that the Civil Court would have jurisdiction to entertain a suit of the present nature, when the basic principles of natural justice have been violated. The learned Counsel has placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***Dhulabhai, etc. Vs. State of Madhya Pradesh***, reported in AIR 1969 SC 78 and the judgment in the case of ***Ram Prasad (Dead) By Lrs. And other Vs. Assistant Director of Consolidation and others***, reported in 1994 Supplement (2) 228, in order to submit that the jurisdiction of the Civil Court, in such a case, cannot be said to be barred.

14. On the contrary, it is submitted by Shri Ferreira, the learned Counsel for the respondents that Section 31(2) of the said Act would clearly bar the jurisdiction of the Civil Court to entertain a suit for declaration of the orders, passed by the Mamlatdar and or other authority under the said Act, as null and void. It is submitted that there is express bar created on the jurisdiction of the Civil Court in entertaining any such challenge. The learned Counsel has placed reliance on the decisions of this Court in the case of **Sagun Dipu Harmalkar and others Vs. Ramakant Ramnath Harmalkar and others**, reported in 1998(3) Bombay C. R. 846 and in the case of **Teresinha Coelho Vs. Dr. Inacio De Sa**, reported in 2000(2) GLT 318. Reliance is also placed on the decision of this Court in the case of **Daivadnya Brahman Samajotkarshak Saunsthana Vs. Vishveshwar Apa Bhat Raikar & others**, 1999(2) Bombay C R. 595, in order to submit that under a similar provision, namely Section 58(2) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Tenancy Act, for short), this Court had held that the Civil Court's jurisdiction is barred. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of **Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and others**, reported in (1991)2 Supplement 2 SC 228.

15. It is submitted that the appellants had filed proceedings before the Mamlatdar for a negative declaration under Section 8A of the said Act and that the contesting respondents are not the mundkars. That was dismissed by the Mamlatdar, which was challenged in appeal and the said appeal also came to be dismissed. It is then submitted that the appellants, having taken recourse to the appropriate remedy in terms of the said Act, cannot now turn around and claim declaration before the Civil Court.

16. At the outset, the learned Counsel for the appellant fairly submitted that a declaration at prayer clause (a), namely that Conceicao Divina Fernandes or the respondent no.1 (defendant no.1) were not mundkars of the property, would not lie before the Civil Court in view of a specific bar contained in Section 31(2) of the said Act. It is submitted that when the challenge is based on a basic infirmity such as non-compliance with the principles of natural justice, the jurisdiction of the Civil Court cannot be said to be barred.

17. In order to appreciate the rival contentions, it would be necessary to consider the scheme of the provisions of the said

Act. The said Act is enacted to provide for better protection to mundkars against eviction from their dwelling houses and for granting them the right to purchase such houses with the site, on which such houses have been built, at a reasonable price. Under section 2(f), a 'Bhatkar' means a person, who owns a land on which the mundkar has a dwelling house. Section 8A contemplates a declaration of a right of mundkar and it reads as under :

“8A. Declaration of right.— (1) If any person is entitled to any right under this Act he may move the Mamlatdar by an application for a declaration for such a right.

(2) On receipt of such an application, the Mamlatdar may after holding such enquiry as may be prescribed, pass such order as he considers fit.”

18. Section 15 provides for right of the mundkar to purchase the dwelling house and Section 16 provides for the procedure for purchase under Section 15.

19. Section 24, which provides for an appeal, reads thus :

“24. Appeal.— From every original order, other than an interim order, passed by the Mamlatdar or the Collector under this Act, an appeal shall lie to the Collector or the Administrative Tribunal respectively and the order of the Collector or the Administrative

Tribunal, as the case may be shall subject to revision if any, under section 25 of this Act, be final.

Explanation.— (1) For the purpose of this section “interim order” shall not include injunction order and such orders shall be subject to appeal and revision.”

20. Section 31(2) and Section 32 of the said Act, which are material for the purpose, read thus :

“31. Protection of action taken under the Act and bar of jurisdiction of Courts.—

(1)

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.

32. Suits involving issues required to be decided under this Act.— *(1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act, the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.*

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions

of this Act and shall communicate his decisions to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof. ”

21. Section 38 of the said Act would show that the said Act has an overriding effect on other laws and it says that the provisions of the said Act shall have effect notwithstanding any other law or any custom or usage or decree or order of a Court or any agreement or contract, express or implied, in consistent with the provisions of the said Act.

22. It can, thus, be seen that if in any suit, issues, which are required to be settled, decided, dealt with or determined by the Mamlatdar or the Collector under the said Act, are involved, the Civil Court is obliged to stay the suit and refer such issues to Mamlatdar or the Collector as the case may be for determination. On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of the said Act and shall communicate his decision to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable. Subsection (2) of Section 31 creates an express bar on the jurisdiction of the Civil Court to settle, decide or deal with any

question or to determine any matter, which is by or under the said Act, required to be settled, decided, dealt with or to be determined by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authorities under the said Act, shall be questioned in a Civil or Criminal Court.

23. It is clear that under prayers (b) and (c), of the plaint, as reproduced above, the prayer is essentially for a declaration that the order passed on 24/10/1981 by the Mamlatdar and the Sanad issued by the Deputy Collector on 18/08/1991 are null and void. It is, thus, obvious that in this case, apart from lack of jurisdiction under subsection (2) of Section 31, the bar in the later part of subsection (2) of Section 31 of the said Act (as regards any order passed by such authority under the said Act, being questioned in any Civil Court) would come into play.

24. In the case of ***Dhulabhai*** (supra), the question was whether the jurisdiction of the Civil Court would be barred in entertaining a suit for declaration that the provisions of law relating to assessment of sales tax and for refund of the tax illegally collected, under Section 17 of the M.B. Sales Tax Act. The Hon'ble Apex Court, after taking a survey of the decisions, laid

down the following principles relating to exclusion of jurisdiction of Civil Court :

“(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular

Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit, does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply : Case law discussed."

It can, thus, be seen that the exclusion of jurisdiction of the Civil Court is not to be readily inferred unless the conditions as set out above apply. Such an exercise in ascertaining whether the jurisdiction of the Civil Court would be barred, would envisage

to distinct situations : (i) in which the jurisdiction of the Civil Court is expressly barred by the Statute concerned and (ii) where such jurisdiction can be said to be impliedly barred. Where there is an express bar of jurisdiction, the examination of the scheme of the particular Act to find the adequacy or sufficiency of the remedy as provided may be relevant, but is not decisive. In the latter case, the examination of the scheme of the particular Act to find out intendment becomes necessary and the result of such an enquiry may be decisive. Similarly in the latter case (of an implied bar), it is necessary to see if the Statute creates a new right or liability and provides for the determination of the right or liability and further lays down that all the questions about such right and liability shall be determined by the Tribunal so constituted and whether remedies normally associated with the action of the Civil Court are prescribed by the Statutes or not.

25. In the present case, the provisions of Section 31(2) would show that the jurisdiction of the Civil Court to settle, decide or deal with any question or to determine any matter, which is by or under the said Act, required to be settled, decided or dealt with or to be determined by the Mamlatdar or the Collector or the Government or the Administrative Tribunal, is expressly barred. The provisions of subsection (2) of Section 31 of the said Act goes

a step further in declaring that any such order passed by such authority under the said Act shall not be questioned in any Civil or Criminal Court. Section 32 of the said Act would show that wherever such an issue, which is required to be settled, decided or dealt with or determined by any such authorities under the said Act arises before a Civil Court, the Civil Court shall stay its hands and refer the issue to such authority and the Civil Court shall abide by the decision on such issue by such authority. A conjoint reading of Section 31(2) and Section 32 of the said Act would make it clear that the jurisdiction of the Civil Court in respect of the matters, which are required to be settled, decided, dealt with or determined by any such authorities under the said Act, is expressly barred. In that view of the matter, as held by the Hon'ble Apex Court in the case of **Dhulabhai** (supra), the examination of the scheme of the said Act, in order to find out adequacy or sufficiency of the remedies provided, may only be relevant, but not decisive to sustain the jurisdiction.

26. The scheme of the said Act, as noticed earlier, would show that it is enacted for the better protection to mundkars against eviction from their dwelling houses and for granting them the right to purchase the same at a reasonable price. The said Act is a piece of beneficial legislation, aimed at improving the service

conditions, so to say, of the mundkars, particularly when the said Act aims at abolishing the system of free service rendered by mundkar and to turn it into a remunerated one. Thus, the scheme of the said Act would show that it creates special rights in favour of the mundkars and the corresponding liabilities on the Bhatkar. The said Act confers jurisdiction on the Mamlatdar, the Collector, the Administrative Tribunal and the Government for purposes of carrying out the object of the said Act. Section 8A of the said Act specifically provides for declaration of a right as a mundkar by persons entitled to any such right under the said Act. Section 15 provides for right of a mundkar to apply for purchase of the dwelling house at the price to be determined in accordance with the said provisions. Section 24 provides for an appeal from every original order passed by the Mamlatdar to the Collector and from an order passed by the Collector to the Administrative Tribunal, which is further subject to a revision under Section 25 of the said Act. It further provides that the order of the Collector or the Administrative Tribunal, as the case may be, subject to revision, if any, shall be final. Section 27 of the said Act confers powers of a Civil Court on the Mamlatdar while conducting enquiries and proceedings under the said Act. Thus, it is evident that the said Act not only creates such rights and liabilities, but also constitutes machinery for redressal of such a right and enforcement of

liability / duties. The said Act also provides for a hierarchy of authorities before which the matters can be carried, either in appeal or in revision. In that view of the matter, the said Act is a complete Code in itself. This, if considered in juxtaposition with the bar created under Section 31(2) and Section 32 of the said Act, would make it explicit that the jurisdiction of the Civil Court in respect of the matters, which are required to be dealt with or determined by such authorities under the said Act, would stand excluded.

27. In the case of ***Dhulabhai*** (supra), a suit was instituted for a declaration that the provisions of the M. B. Sales Tax Act relating to assessment were *ultra-vires* and for the consequent relief of refund of the tax illegally collected. The question was examined in the context of the provisions of Section 17 of M. B. Sales Tax Act which reads thus :

“17. Bar to certain proceedings.- Save as is provided in S. 13, no assessment made and no order passed under this Act or the rules made thereunder by the assessing authority, appellate authority or the Commissioner shall be called into question in any Court, and save as is provided-in sections 11 and 12 no appeal or application for revision shall lie against any such assessment or order.”

In the face of the provisions of Section 17, it was held on facts that the jurisdiction of the Civil Court would not be barred.

28. Strong reliance is placed on behalf of the appellants on the principle culled out in paragraph 32(1) of the judgment in the case of ***Dhulabhai*** (supra), in order to submit that when the statutory Tribunal has not complied with or has not acted in conformity with the fundamental principles of judicial procedure, the jurisdiction of the Civil Court cannot be said to be barred. In this regard, it may be mentioned that the principles laid down by the Hon'ble Apex Court in the case of ***Dhulabhai*** (supra) have to be read as a whole in the context of various questions, namely whether it is a case of express or an implied bar and after examining the scheme of the said Act. In my considered view, when the said Act provides for an express bar and the scheme of the said Act also shows that it creates special rights and liabilities and provides for machinery for its redressal, with an hierarchy of appeals and revision and attaches finality to such orders, coupled with further bar on the Civil Court, not to entertain any such challenge, the legislative intent is clear that in such cases, the jurisdiction of the Civil Court would stand excluded. The principles apart, however on facts, in my humble opinion, the case

of **Dhulabhai** (*supra*), would be distinguishable, as it arose in the context of the provisions of Section 17 of the M. B. Sales Tax Act.

29. In the case of **Ram Prasad** (*supra*), the question was about the maintainability of a Civil Suit in the context of Section 242 and Section 59 of the U. P. Tenancy Act. It was held on facts that a relief in the nature of declaration that the decree for co-tenancy granted under Section 59 was vitiated by fraud and collusion and was held not to be competent before the Revenue Courts and in such circumstances, the suit was held to be maintainable.

30. In the case of **Teresinha Coelho** (*supra*), following question was referred to the Division Bench in the face of difference of opinion between two learned Single Judges of this Court :

“Whether the decision of the Mamlatdar under Section 32(2) of the Goa, Daman and Diu Mundkar (Protection from Eviction) Act, 1975 (herein after referred to as “Mundkar Act or Act” as context may require) on an issue being referred to it under Section 32(1) of the said Mundkar Act is subject to an Appeal under Section 24 of the said Act or not? In other words, whether the decision given by the Mamlatdar attains finality as the Civil Court is bound by it and

later on, so far as right of appeal is concerned, it having been given under the Code of Civil Procedure in respect of all the issues that might be arising in the suit, the decision of the Mamlatdar even under the said Mundkar Act can also be decided by an appeal by appropriate forum under Code of Civil Procedure. ("C.P.C." for short)".

In that case, the view taken by the learned Single Judge in the case of **Suresh Shirodkar & Others vs Administrative Tribunal**, reported in [1998]2 GLT 94 was confirmed. In the case of **Suresh Shirodkar** (supra), it was held that the findings recorded by the Mamlatdar on reference made by the Civil Court, were treated as final, subject to provisions of appeal and revision.

31. In the case of **Sagun Dipu Harmalkar** (supra), the decision of the Mamlatdar having been confirmed upto the Tribunal, holding that the applicant was not a mundkar, it was held that same point cannot now be agitated before the Civil Court.

32. In the case of **Daivadnya Brahman Samajotkarshak Saunsthana** (supra), the question was whether the jurisdiction of

the Civil Court, determining tenancy rights of an agricultural land, was barred in view of Section 58(2) of the Tenancy Act. It was held that the jurisdiction to decide the said case rests with the Mamlatdar and not with the Civil Court. The impugned judgment was set aside for lack of jurisdiction.

33. Turning to the present case, apart from the fact that jurisdiction of the Civil Court would stand excluded, it also needs to be mentioned here that the appellants have not challenged the order dated 24/10/1981 and 18/08/1991 before the authorities, before whom the appeal / revision would lie under the provisions of the said Act. The appellants had filed independent proceedings for negative declaration, which was rejected by the Mamlatdar and confirmed in appeal by the Collector. In such circumstances, the suit as framed and filed, would be clearly barred and the Civil Court would lack jurisdiction to entertain the same. In that view of the matter, the substantial question of law framed at serial no.2(i) is answered in the negative and 2(ii), in the affirmative. In the result, no interference is called for and the appeal is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

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