

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 51 OF 2005

Shrimant Chhatrapati Udyanraje
Pratapsinhmaharaj Bhosale & Anr. .. Petitioners
VS.
Shrimant Chhatrapati Vijaysinhraje
Shahumaharaj Bhosale & Ors. .. Respondents

Mr. S. S. Patwardhan for Petitioners.
Mr. V. D. Patil for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 18 April 2015

Date of Pronouncing the Judgment : 27 April 2015

JUDGMENT :-

1] This Civil Revision Application challenges order dated 22 February 2005 made by Joint Civil Judge, Senior Division, Satara, holding that it has jurisdiction to try the suit instituted by the respondent no. 1 – original plaintiff.

2] The petitioner – original defendant no. 1 relying *inter alia* upon the Bombay Rent-Free Estates Act, 1852 (Bombay Act XI of 1952), the Exemptions from Land Revenue (I) of 1863 (Bombay Act No.II of 1863) and Exemptions from Land Revenue (No. II) Act, 1863 (Bombay Act VII of 1863), by his application dated 5 July 2003, had urged that the jurisdiction of the Civil Courts was

expressly, or in any case impliedly barred, since the suit properties which form the subject matter of Special Civil Suit No. 16 of 2003 were '*Saranjam Properties*' and raised questions as to entitlement thereof. A preliminary issue was framed under Section 9A of the CPC (as applicable to the State of Maharashtra) and by the impugned order dated 22 February 2005, the Civil Court, has answered the same against the petitioner – defendant no. 1. Hence, the present Civil Revision Application.

3] Mr. Patwardhan, the learned counsel for the petitioners made the following submissions in support of the Civil Revision Application:-

(A) Since the plaint itself admits that the suit properties are '*Saranjam Properties*' granted by the State to the father of the petitioner late Maharaja Pratapsinha Raje under the Bombay Saranjam, Jahagir and other Inams of Political Nature Resolution Rules, 1952, any disputes with regard to adjudication of title to said properties have to be necessarily resolved under the provisions of Bombay Act II of 1852, Bombay Act II of 1863, Bombay Act VII of 1863. The said Acts, which continue in force, not only expressly bar the jurisdiction of the Civil Court, but also provide for adjudicatory mechanism to investigate and determine such issues in

respect of '*Sanjam Properties*'. Statutory finality is accorded to the decisions of Authorities under the said Acts. Accordingly, the jurisdiction of the Civil Court to entertain a suit of such nature is expressly barred or in any case impliedly barred.

(B) In any case, the suit as instituted, raises disputes arising out of treaties, agreements or sanads to which the Government of Dominion of India or its predecessor and the Ruler of an Indian State is a party. Therefore, under Article 363 of the Constitution of India, there is a constitutional bar to interference by any Courts to entertain any dispute in respect of any right accruing under such treaty, agreement and sanad. In this regard, reliance was placed upon the decisions of the Hon'ble Apex Court in the cases of *Dr. Karan Singh vs. State of J & K & Anr.*¹ and *Draupadi Devi & Ors. vs. Union of India & Ors.*²

4] Mr. Vijay Patil, the learned counsel for the respondent no. 1 – plaintiff, at the outset submitted that the submission by reference to Article 363 of the Constitution of India was never raised by the petitioners, either in the application seeking framing of preliminary issue or, in the course of submissions before the learned Civil Judge, which culminated into making of the impugned order dated

1 (2004) 5 SCC 698

2 (2004) 11 SCC 425

22 February 2005. In any case, Mr. Patil submitted that the dispute as raised in the suit, does not pertain to any rights or obligations arising out of any treaty, agreement or sanad. Further and in any case, the "*State of Satara*" does not answer the definition of the expression of "*Indian State*" as contained in Article 363 (2)(a) of the Constitution of India. Mr. Patil made reference to the '*Doctrine of Lapse*' in this regard. Accordingly, Mr. Patil submitted that there is no question of the bar under Article 363 of the Constitution of India, even remotely being attracted to the facts and circumstances of the case.

5] Mr. Patil, further submitted that the provisions of the Bombay Act VII of 1863 are not at all applicable to the properties involved in the suit. Further, there is nothing in the provisions contained in Bombay Act XI of 1852 and Bombay Act II of 1863, which, either expressly or impliedly bars the jurisdiction of the Civil Court. The Bombay Act XI of 1852 concerns claims against the Government on account of Inams and other Estates wholly or partially exempt from payment of land revenue and Bombay Act II of 1863 regulates succession to and transfer of, lands wholly or partially exempt from the payment of land revenue. The two enactments are not at all attracted to the disputes raised in the suit and in any case, the two enactments bar, neither expressly nor impliedly, the jurisdiction of

the Civil Courts to try disputes of the nature raised by the respondent no.1 in the plaint.

6] Mr. Patil made reference to several decisions in the matter of determination as to whether there is any express or implied exclusion of jurisdiction of the Civil Courts under Section 9 of the CPC and reference shall be made to some such decisions, in the course of this judgment and order.

7] Rival contentions, now fall for determination.

8] The issue as to whether the Civil Court has jurisdiction to try the suit instituted by the respondent no. 1 – plaintiff shall have to be decided on the basis of the averments in the plaint. In the plaint, there is no dispute that the suit properties are '*Saranjam Properties*'. In fact in the suit there is no challenge as such to the grants made in respect of of the suit properties. The plaint, in fact, relying upon such grants, urges that the same are grants made to the family members – descendants of late Chattrapati Shivaji Maharaj and consequently, the plaintiff and defendant nos. 8 and 9 as co-parceners along with defendant no. 1, are entitled to such properties and shares of profits arising therefrom. In this context, the plaintiff, has *inter alia* applied for a declaration that the suit

properties are political Saranjams of the plaintiff, defendant nos. 1, 8 and 9 and that the defendant no. 1 is only the head of the family. In the light of the averments set out in the plaint and the relief sought therein, the crucial question is whether the Bombay Act XI of 1852, the Bombay Act II of 1863 and the provisions contained in Article 363 of the Constitution of India, bar the jurisdiction of the Civil Courts, either expressly or impliedly.

9] The Bombay Rent-free Estates Act, 1852 (Bombay Act XI of 1852) is an act for adjudication of title to certain estates claimed to be wholly or partially rent free in the Presidency of Bombay. Its preamble provides that in the territories of Dekkhan, Khandesh and Southern Maratha Country, and in other Districts more recently annexed to the Bombay Presidency, claims against the Government on account of Inams and other estates wholly or partially exempt from payment of land revenue are excepted from the cognizance of the ordinary Civil Courts and whereas it is desirable that the said claims should be tried and determined without further delay. The expression *“and incapable of being justly disposed of under the Rules for the determination of Titles and the Rules of Procedure contained in Chapter IX and X of Regulation XVII of 1827 of the Bombay Code and their Supplements”* appearing in preamble, after the expression *“ordinary Civil Courts”* was repealed by the repealing

Act of 1894.

10] The preamble, as aforesaid, indicates that the Bombay Act XI of 1852 was enacted to provide an appropriate adjudicatory machinery to adjudicate claims against the Government on account of Inams and other estates wholly or partially exempt from payment of land revenue. There is no express provision in Bombay Act XI of 1852, which bars the jurisdiction of the Civil Court. Such provision was the earlier contained in Section 7 of Bombay Act XI of 1852 which provided that no decision or order of the Inam Commissioner or any of his Assistants, or of the Governor in Council under the provisions of the enactment, so long as the same shall be in force under such provisions, shall be questioned or avoided in any Court of Law; and no Commissioner, or Assistant Commissioner, or other person acting under the provisions of the enactment shall be liable to be sued in any Civil Court for any act *bona fide* done, or ordered to be done, by him in pursuance of the provisions of the said enactment. However, by repealing Act of 1876, even this provision contained in Section VII of the Act XI of 1852 came to be repealed.

11] The Act XI of 1852, vide Section 2 thereof provides that the Provincial Government may appoint in any zila or other division of

the territories subject to the Presidency of Bombay, which were not brought under the general Regulations of Government by Regulation XXVIII of 1827, Inam Commissioner with so many assistants and such subordinate establishment as may be necessary for the purposes mentioned in the enactment. Section 3 provides the duties of each Inam Commissioner and its Assistants shall be discharged in accordance with the rules in Schedule A annexed to the enactment. Section 4 provides that any adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to the enactment. Section 5 provides that each Inam Commissioner and its Assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by law vested in the ordinary Civil Courts, and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts and other like matters connected with cases under cognizance by any of the said officers, his office shall be held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zila or district in which his office from time to time shall be established. The proviso to this section provides that all complaints against, or appeals from, the proceedings of the Inam Commissioner or any of his Assistants in exercise of the authority conferred on them, shall be made under

the second rule of Schedule 'A' annexed to the enactment and shall not be cognizable by any other authority or in any other manner than as therein specified. Section 6 provides for punishment of misconduct of officers of the commission.

12] The Schedule-A appended to Act XI of 1852 provides rules for defining the duties of each Inam Commissioner. Clause (1) thereof provides that the duty of the Inam Commissioner and his Assistants shall be to investigate, in the manner prescribed by the said enactment, the titles of persons holding or claiming against the Government the possession or enjoyment of inams or jagirs, or any interest therein, or claiming exemption from the payment of land revenue, and generally to act according to instructions of the Provincial Government in all matters not specifically provided for in the said Act. Clause (2) provides for appeals from orders of Assistant Commissioners or from proceedings of Inam Commissioners to the Tribunal constituted under Section 296(2) of the Government of India Act, 1935. The Clauses (3) to (14), provide *inter alia*, the procedure to be adopted by the Assistant Inam Commissioners or the Inam Commissioners in the proceedings that may be initiated. Schedule- B appended to Act XI of 1852 provides the rules for adjudication of the title to Estate claimed as Inam or exempt from the payment of land revenue.

13] Mr. Patwardhan, learned counsel for the petitioners, laid particular emphasis upon the preamble to Act XI of 1852 as also Clause (1) of Schedule-A thereto. The preamble, as noted earlier, makes reference to the exclusion of cognizance by ordinary Civil Courts in matters of claims against the Government on account of Inams and other Estates wholly or partially exempt from the payment of land revenue and provides that Act XI of 1852 was enacted, because it was desirable that the such claims should be tried and determined without any further delay. Thus, the object for enactment of Act XI of 1852 was primarily to try and determine without any delay "*claims against the Government*" on account of Inams and other Estates wholly or partially exempt from the payment of land revenue, since cognizance of such claims was expected from the ordinary Civil Courts. Clause (1) of Schedule-A to the Act XI of 1852 defines duties of Inam Commissioners and his Assistants. The Clause *inter alia* provides that the duties of Inam Commissioners and his Assistants shall be to investigate the titles of persons "*holding or claiming against Government*" the possession or enjoyment of inams of jagirs or any interest therein, or claiming exemption from the payment of land revenue. The expression "*holding or claiming*", has to be read and construed in juxtaposition to the following expression namely "*against*

Government". Such construction, is fortified by the express phraseology employed in the preamble to Act XI of 1852. Thus, construed, it cannot be said that the provisions contained in Act XI of 1852 either expressly or impliedly bar the jurisdiction of the Civil Courts to decide the disputes of the nature raised in the suit in the present instance. The disputes as raised in the suit, are primarily, *inter se*, disputes between two sets of claimants to the suit properties, which may be '*Saranjam Properties*'. Upon holistic as well as meaningful reading of the plaint, it is clear that the plaintiff has not raised any claim against the Government on account of Inams and other Estates wholly or partially exempt from the payment of land revenue. In such circumstances, applying the well established principles, in interpreting ouster clauses, to which reference shall be made hereinafter, it is not possible to accept the contention of Mr. Patwardhan that the provisions of Act XI of 1852 either expressly or impliedly bars the jurisdiction of the Civil Court in matters of disputes of present nature.

14] Since, Mr. Patwardhan then made reference to the provisions of Exemptions from Land Revenue (No.II) Act, 1863 (Bombay Act II of 1863), reference is required to be made to some provisions thereof, in order to examine whether any ouster of the jurisdiction of the Civil Courts, either expressed or implied, can at all be spelled

out in the context of the suit instituted by respondent No.1. The Bombay Act II of 1863 was an act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land revenue, and to regulate the succession to, and transfer of, lands wholly or partially exempt from the payment of such revenue in those parts of the Bombay Presidency which were subject to the operation of Act XI of 1852 of the Legislative Council of India. The preamble provides that it was deemed expedient to provide for the final adjustment, summarily, of unsettled claims to exemption from the payment of land revenue, and to fix the conditions which shall secure, in certain cases, the recognition of titles to such exemption with respect to succession and transfer in those districts of the Bombay Presidency to which the operation of Act XI of 1852 of the Legislative Council of India extends. At least, from the preamble to Bombay Act II of 1863, it cannot be said that the provisions of the said Act are in any manner concerned with or attracted to the dispute, as raised in the plaint. Besides, there is nothing in the preamble, which even remotely indicates ouster of jurisdiction of the Civil Courts whether expressly or impliedly to adjudicate into the disputes as raised in the plaint.

15] Mr. Patwardhan, however, made specific reference to Clause (1) of Sections 6, 9 and 10 of the Bombay Act No.II of 1863 to submit that there is indeed ouster of the jurisdiction of the Civil Courts. The Clause 1st of Section 6 provides that when lands are held wholly or partially exempt from the payment of land revenue, upon the title to which exemption there has not been any formal adjudication, the holders asserting a right to such exemption shall be at liberty, on the conditions hereinafter described, to claim a trial of, and adjudication upon, their title, according to Act XI of 1852, so far as the same is not altered, modified or superseded by, or inconsistent with, the provisions of this Act. Section 9 invests Officers to carry out inquiries under the said enactment, with the authority of Inam Commissioners and their Assistants in terms of the provisions contained in Act XI of 1852. Section 10 is concerned with burden of proof in cases of inquiries under Section 6. Incidentally, the provisions contained in Section 10 provides that whensoever any person, holding lands wholly or partially exempt from the payment of land revenue, upon the title to which exemption, there has not been any formal adjudication, shall demand an inquiry under Section 6 into such title, the burden of proof of such title shall, in every instance, lie and be cast exclusively upon the person or persons holding, or claiming to hold, such lands so wholly or partially exempt from the payment of land

revenue, notwithstanding any existing usage law, Regulation, Act or Statute in anywise to the contrary and it shall not be lawful for any Civil Court to place the burden of proof upon the Crown or upon the Officer or Officers representing the Crown, of a right to levy the ordinary land revenue upon the lands the subject of any such inquiry as aforesaid, and it shall in every instance be presumed, until the contrary is distinctly proved, that the Crown has the right to levy such ordinary land revenue upon the lands the subject of any such inquiry as aforesaid.

16] From the aforesaid provisions contained in Sections 6,9 and 10, again, it is clear that the said provisions are in no manner concerned with or apply to the disputes raised in plaint by respondent No.1. In any case, the provisions neither expressly nor impliedly bar the jurisdiction of the Civil Court to try the disputes of the nature as have been raised in the plaint by respondent No.1. The attempt of the petitioner, perhaps has been to read some stray provisions or phrases from out of the Bombay Act XI of 1852 and Bombay Act II of 1863 and on the said basis confer some degree of respectability to the submission that the jurisdiction of the Court is either expressly or impliedly barred to try and entertain the disputes raised in the plaint. There was, however, hardly any clarity or lucidity in elaborating upon such submissions in the context of two

enactments of ancient vintage. It is well settled that the legislative enactments have to be read and construed in a holistic manner and with reference to the context in which they came to be enacted. It is not permissible to make reference to some stray provisions or stray expressions totally unconnected with the context and on the basis of the same to urge that the same apply or that the same oust, the otherwise untrammelled jurisdiction of the Civil Courts to entertain a dispute of civil nature.

17] In so far as, the Exemptions from Land Revenue (II) Act, 1863 (Bombay Act VII of 1863) is concerned, the same applies for summary settlement of claims to exempt from the payment of Government land revenue, and for regulating the terms upon which such exemption shall be recognized in the future, in those parts of Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Legislative Council of India. Since, it is case of the petitioners that the properties, which are involved in the present suit are subject to the operation of Act XI of 1852 of the Legislative Council of India, obviously, the Bombay Act VII of 1863 will not apply. This position, was not seriously disputed by Mr. Patwardhan, the learned counsel for the petitioners, though attempt was made to refer to the provisions contained in Clause 1st which concerns the power to authorise and guarantee the continuance, in perpetuity, of

the said land in certain districts to holder on terms and conditions agreed to. Again, the Clause, is totally extraneous to the dispute raised in the plaint by respondent No.1. Accordingly, there is no merit that the provisions of Bombay Act VII of 1863 in any manner, oust the jurisdiction of the Civil Courts in the context of the present suit.

18] In the application objecting to the jurisdiction of the Civil Court, the petitioners, had made no reference to the submission based upon Article 363 of the Constitution of India. However, it does appear that some submissions were made before the Civil Court in this regard, which find reflection in the impugned order dated 22 February 2005. Mr. Patwardhan urged that since this is an issue of law, the petitioners should be permitted to urge the same before this Court as well, particularly since a ground to this effect has been raised in the memo of Revision Application. There is a vague reference to Article 363 of the Constitution of India in ground 'N' of the memo of Revision Application.

19] Mr. Patwardhan may not be right in his submission that the objection as raised constitutes a pure question of law. This is because, there are no pleadings that the erstwhile State of Satara indeed answers the definition of "*Indian State*" within the meaning

assigned to this term under Article 363 (2) (a) of the Constitution of India. This is in the context of the submission made by Mr. Patil that by applying *doctrine of lapse*, the erstwhile State of Satara had merged with the British Dominion and was never recognized before the commencement of the Constitution by His Majesty or the Government of Dominion of India as being such a State. Be that as it may, there is even otherwise no reason to accept the objection premised upon the provisions of Article 363 of Constitution of India.

20] Article 363 of the Constitution of India, reads thus:

Article 363. (1) *Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.*

(2) *In this article -*

(a) *Indian State means any territory recognised before the commencement of this Constitution by*

His Majesty or the Government of the Dominion of India as being such a State; and

(b) Ruler includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State

21] The bar under Article 363(1) of the Constitution of India is attracted only if the dispute “*arises out of*” or in any dispute “*in respect of*” any of the provisions of a treaty, agreement, covenant, engagement, *sanad* or other similar instruments, which were entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which a Dominion of India or any of its predecessor Government was a party and which has or has been continued in operation after such commencement. In the present case, from the plain reading of the plaint, it cannot be said that the dispute raised therein is one “*arising out of*” any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument of the type referred to in Article 363 (1) of the Constitution of India. Similarly, there is absolutely no material to suggest that the dispute is “*in respect of*” any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or similar instrument. In fact, the petitioners, in their application objecting to the jurisdiction

of the Civil Courts have made reference to the Bombay Saranjams, Jhagirs and other Inams of Political Nature Resumption Rules 1952. Such Rules, are obviously Rules made after coming into force of the Constitution of India. At the stage of deciding whether the jurisdiction of the Civil Courts is ousted, the basic material to be taken into consideration is the plaint and the dispute raised therein. However, if we are to take into consideration material other than the plaint, even then, it cannot be said that the dispute as raised, is of the type as envisaged under Article 363(1) of the constitution of India.

22] In a situation where an individual claims certain civil rights, which are not affected by or are independent of any treaty, agreement, covenant, engagement, sanad or other similar instruments referred to under Article 363(1) of the Constitution of India, such individual is not barred from enforcing his legal rights in the court. In the case of *Dr. Karan Singh* (supra), the Hon'ble Apex Court was concerned with a writ petition under Article 226 filed by the son of Ex Ruler of Jammu and Kashmir claiming that certain articles in question were the private properties of the Ruler family, since, in the instrument of accession of Jammu and Kashmir executed by the ex-Ruler in the year 1947 and correspondence which ensued in the year 1949 between the ex-Ruler and Union of

India, the Ruler had given a list of his private properties without mentioning therein the articles in question. In such circumstances, the Hon'ble Apex Court held that such transaction constituted an 'agreement' within the meaning of Article 363 (1) and therefore, the applicability of bar under Article 363(1) and consequent maintainability of the writ petition would depend upon the finding whether the said agreement covers the articles in question or not. Further, in the case of *Dr. Karan Singh* (supra), the Apex Court, went on to observe that if, on basis of material on record, the court comes to the conclusion that the articles in question are not covered by the correspondence, Article 363 would be inapplicable and such factual aspect is required to be considered while examining other questions. No such issue or for that matter issue analogous thereto can be said to be involved in the suit with which we are concerned.

23] In the case of *Draupadi Devi* (supra), the Hon'ble Apex Court has held that dispute whether a particular property was or was not recognised as a private property of the Ruler, was itself a dispute arising out of the terms of the covenant dated 5 May 1948 entered into between Kapurthala and the Government of India, and therefore, by virtue of Article 363, was not justiciable in municipal courts. Again, no such issue arises in the present case even if we

are to take into consideration the defence of the petitioner.

24] Accordingly, in the facts and circumstances of the present case, it cannot be said that the suit as instituted cannot be tried by the Civil Courts or that the jurisdiction of the Civil Courts to try such suit is either impliedly or expressly barred under the enactments referred or for that matter the provisions contained in Article 363 (1) of the Constitution of India. It is settled position in law that a litigant having a grievance of a civil nature has, independent of any statute, a right to institute a suit in some courts or the other unless its cognizance is either barred expressly or impliedly. The exclusion of such a right, cannot be easily inferred because there is a strong presumption that civil Courts have jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference, the same should be in favour of the jurisdiction of the Court rather than at its exclusion.³ Even the provision of law ousting the jurisdiction of the Civil Courts, is required to be strictly construed. The onus lies on the party, seeking to oust the jurisdiction, to establish his right to do so.⁴ The expression “*civil nature*” is wider than the expression ‘*civil proceedings*’. Accordingly, provisions contained in Section 9 of the CPC would be available in a case where the dispute has a characteristic of affecting ones

3 AIR 2002 SC 2308 = (2002) 5 SCC 510 ITI Ltd. vs. Siemens Public Communications Network Ltd.

4 AIR 1966 SC 1718 Abdul Waheed Khan vs. Bhawani & Ors.

rights, which are not only civil but of civil nature.⁵ Further, the jurisdiction of the Civil Court is not ousted, unless the entire suit, as brought, is barred. The mere fact that a portion of the claim is excluded from the jurisdiction of the Civil Courts is not a bar to the trial, particularly of the remaining portion of the same suit which is not so excluded.⁶ Where a jurisdiction which is vested in the court is attempted to be ousted, there must be a clear provision or clear intentment by the legislature. If there is any doubt about the ouster of a jurisdiction of an existing courts, the courts will lean to an interpretation which would maintain the existing jurisdiction.⁷

25] In the case of *Sayed Mohomed Baquir El-Edroos (dead) by Lrs. vs. State of Gujarat*⁸, the question arose as to whether the Civil Court has jurisdiction to entertain a suit seeking declaration whether a grant under the Bombay Personal Inams Abolition Act, 1953 was a personal Inam. Section 2(e) of the said Act defined the expression “*personal inam*” and the explanation I thereto provided that if any question arises whether any grant is a personal inam, such question shall be referred to the State Government and the decision of the State Government shall be final and the entry, if any, in respect of such grant, in the alienation register kept under Section 53 of the

5 AIR 1995 SC 2001 Most. Rev. P.M.A. Metropolitan & Ors, etc. etc. vs. Moran Mar Marthoma & Anr. etc. etc.

6 AIR 2003 SC 1043 = (2003) 2 SCC 412 State of Karnataka vs. Vishwabharathi House Building Coop. Society & Ors.

7 AIR 1968 SC 271 The Pabbojan Tea Co. Ltd. Etc. vs. The Deputy Commissioner, Lakhimpur & Ors

8 AIR 1981 SC 2016

Code shall be deemed to have been amended accordingly. Despite such provision, the Hon'ble Apex Court held that Civil Courts has jurisdiction to decide a question whether the grant in the said case is an inam or not and it is not correct to say the Government alone is competent to decide the question and that the jurisdiction of the Civil Courts is excluded. The Apex Court held that the finality of the decision of the Government as contemplated by the explanation to Section 2(1)(e) cannot exclude the jurisdiction of the Civil Courts, particularly as the Act in question did not give details about scope of enquiry by the Government. No appeal had been provided for. Even where there is express bar of jurisdiction of the Court, the examination of the scheme of the particular Act to find out the adequacy or sufficiency of remedies provided may be relevant. In these circumstances, the Apex Court went on to hold that the use of expression "*finality of the decision of the Government*" in the explanation to Section 2(1)(e) cannot be held, as any bar to the jurisdiction of the Civil Courts. To the same effect, are the observations in the case of *State of Tamil Nadu vs. Ramalinga Samigal Madam*⁹.

26] Upon consideration of the disputes as raised in the plaint together with the provisions contained in the enactments on basis of which ouster of Civil Courts jurisdiction was claimed, as discussed

9 (1985) 4 SCC 10

earlier, it is clear that there is no such ouster, either express or implied. The preliminary objection raised by the petitioners, which, the petitioners were unable to substantiate either before the Civil Court or this Court, was, therefore, rightly rejected. There does appear to be substance in the submission of Mr. Patil that the sole objective behind raising such objection to the jurisdiction of the Civil Court was to create confusion and to unduly delay adjudication of issues arising in the suit. The suit in the present case was instituted in the year 2003. The objection was also raised in the same year, but was decided by the impugned order 22 February 2005. From the year 2005, the proceedings in the civil suit have remained stayed. Accordingly, based upon such objection, which the petitioners, have not at all been successful in elaborating, the trial in the suit has been avoided for an unprecedented period of over twelve years, thereby perhaps, achieving the main objective behind raising of such preliminary objection. In such circumstances, it is only appropriate that the petitioners are saddled with exemplary costs.

27] Accordingly, it cannot be said that the impugned order is in excess of jurisdiction or that the learned Civil Judge, in the exercise of his jurisdiction, has acted with any material irregularity. This revision application is accordingly dismissed with costs assessed at

Rs.50,000/- (Fifty Thousand) . The interim order, stands vacated. Further, since the suit relates to the year 2003, the learned Civil Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of two years from the date of this judgment and order.

28] All parties to act on basis of an authenticated copy of this judgment and order.

Chandka

(M. S. SONAK, J.)