

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 716 of 2014 (O&M)
Date of decision: July 20, 2015

Jaipal Singh

...Petitioner

Versus

Aman Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Kulbhushan Sharma, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

I Scope of revision

1. The revision petition is against the order dismissing an application filed for rejection of the plaint. The contention was that the suit filed by the plaintiffs seeking for prayer that the order of partition made by the Collector was illegal and null and void, could not have been brought before a civil court since the jurisdiction of the civil court is excluded by virtue of Section 158 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as '**the Act**'). The exclusion relates to every matter for which the revenue officer is empowered by the Act to dispose of and take cognizance and, according to him, an order making partition is a power conferred on the Collector under the Act of 1887 and hence suit was incompetent.

2. The court rejected the prayer on a contention raised by the plaintiffs that the Collector did not have, according to the plaintiffs, jurisdiction and that the property in the plaintiffs possession was not an agricultural land but *gairmumkin* over which constructions have been made. The court rejected the defendant's contention and allowed for further process in trial.

II Exclusion of jurisdiction of civil court shall not be lightly inferred.

3. I have gone through the relevant provisions and heard the arguments of both the sides. While on face of it, it might appear that a prayer for declaring an order passed by the Collector exercising jurisdiction under the Act would not be competent by virtue of Section 158 of the Act, it has to be inevitably seen in the context of pleadings. The plaintiffs' case is on a averment that the Collector did not had the jurisdiction and the parties had orally divided the properties in the year 1981 and they had also built a pucca house, a garage, a tin shed for storing agricultural implements and boundary walls in the area of 4 kanal 4 marlas in the year 1991 and such a property which was used otherwise than for agricultural and which was in possession could not have been a subject of partition by the Collector. Further averment is that the order had been passed without even personal inspection of the property in dispute and that the proceedings were vitiated.

4. Exclusion of the jurisdiction of the civil court, it has been held in several decision, cannot be lightly inferred. The Supreme Court in State of A.P. Versus Manjeti Laxmi Kantha Rao (D) by L.Rs and others 2000 AIR (SC) 2220 held as under:-

“The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by

them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.”

It cannot be denied that an assertion of right to immovable property which is necessary consequence of the prayer for annulling the Collector's order is a matter of civil nature to which Section 9 CPC would be applicable. Section 9 of the Code, however, qualifies the jurisdictional ambit of the civil court as beset of certain limitations of specific bar under the statute. The bar of civil court is surely fettered by Section 158 of the Act, but it shall be in respect of the matter which the Collector was competent to pass the order. If the competency of the order of the Collector itself is in question, then the civil court shall assume jurisdiction and consider the correctness of the order of the Collector to a limited extent of seeing whether the property that he was bringing about a division was capable of being divided or not at his instance. It has been held by a Division Bench decision of this court in Amar Khan and others Versus State of Punjab 2009 (1) RCR (Civil) 741 that revenue authorities have no jurisdiction to order partition of houses, Peerkhana and shops constructed over land.

III Jurisdiction of civil court, inspite of ouster clauses, shall be an action or order outside the provision of statute

5. The ouster of clauses in several enactments have been subject of several decisions and the courts have at all times considered that if there was lack of jurisdiction to a particular authority, the civil court would be competent to decide the nature of the order notwithstanding the ouster clauses. The Supreme Court in Firm Seth Radha Kirshan and others Vs. The Administrator, Municipal Committee, Ludhiana 1963 AIR (SC) 1547 observed that mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts. The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates a liability not existing before the gives a special and particular remedy for the aggrieved party, the remedy provided for the particular forum in which the said remedy could be had. Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always be to question the orders of a Tribunal created by a statute, even if its order is expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions. The same view is held by our court in Commissioner, Municipal Corporation, Ludhiana Versus Kashmiri Lal 2000 (3) RCR (Civil 442 and Municipal Corporation Faridabad Versus M/s Janta Steel and Metal Co-operative Industrial Society Limited 2009 (3) RCR (Civil) 692. There are surely jurisdictional issues in the suit and it will be wrong to knock off the plaintiffs' suit before trial.

IV Rejection of plaint will be considered taking the plaint averments to be correct and not on what is objected by defendant.

Rejection of plaint on bar of law must be tested only on what

the plaintiff says. It cannot be decided on what defence the defendants want the court to approve of. If the averments in the plaint makes a point that it was not subject of division being a *gairmumkin* property, it will be a matter for decision at the trial and cannot be prejudged for rejection. This issue is dealt with by the Supreme Court in Ram Prakash Gupta Versus Rajiv Kumar Gupta and others 2007 (10) SCC 59 and C. Natrajan Versus Ashim Bai and another 2007 (4) SCC 183 wherein it was observed that an application for rejection of the plaint can be filed, if the allegations made in the plaint at its face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by law or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.

V. Dispensation.

7. At this stage, learned counsel for the petitioner states that the matter relating to the jurisdiction be decided as a preliminary issue. It makes meaningless the entire exercise which I have undertaken. No such liberty will be given to the petitioner. The case has to go through the entire gamut of trial.

8. The impugned order is sustained. The revision petition is dismissed.

July 20, 2015
prem

(K.KANNAN)
JUDGE