AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.143 of 2002

1. Rameshwar Ram, S/o Guran Ram, aged about 48 years,
2. Bhajman Ram, S/o Ammin Ram, aged about 43 years.
3. Rajendra Ram, S/o Ammin Ram, aged about 38 years.

All caste : Nagesiya, Agriculturist, R/o : Village Bada Banai, Patwari Halka No.25, Jashpurnagar, Tahsil : Jashpurnagar, Distt.: Jashpur (Chhattisgarh)

---- Appellants

Versus

1(a). Dwarikaram, son of Late Holaram, aged about 50 years,

1(b). Mahaveer, son of Holaram, aged about 45 years,

Both are resident of Village and Post Sakardagga, P.S. (Chowki) Aara, Tehsil and District Jashpur (Chhattisgarh)

2. Mathura Ram, S/o Buranga Ram, aged about 38 years, Caste Urawan, Agriculturist, R/o : Village Sakardegga, Tahsil and Distt.: Jashpurnagar (CG)

3(a). Premram Bhagat, son of Budhram, aged about 53 years,

3(b). Mukund Bhagat, son of Budhram, aged about 50 years,

Both are resident of Village and Post Sakardagga, P.S. (Chowki) Aara, Tehsil and District Jashpur (Chhattisgarh)

4(a). Mahashankar Singh, son of Late Samrath Singh, aged about 50 years

4(b). Kunti Bai, widow of Samrath

Both are resident of Village Badabani, Post Office Portenga, P.S. Lodaam, Tehsil and District Jashpur (Chhattisgarh)

5. Ghamad Ram (died and deleted)

6. The State of Chhattisgarh, through the Collector, Jashpur (Chhattisgarh)

---- Respondents

For Appellants	: Mr.P.P.Sahu, Advocate
For Res.No.1(a), (b) & 2	: Mr.A.K.Prasad, Advocate
For Res.No.3(a) & (b)	: None present
For Res.No.4 (a) & (b)	: Mr.A.N.Pandey, Advocate
For Respondent No.6	: Mr.O.P.Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

07/10/2016

1. The substantial question of law involved, formulated and to be answered in the plaintiff's second appeal is as under:-

> "Whether findings of both the courts below regarding bar of jurisdiction as provided under Section 257 (L-1) of CG Land Revenue Code, 1959 is perverse ?"

[In this appeal the parties will be referred hereinafter as per their status shown in the plaint before the trial Court.]

2. The essential facts required to be noticed in order to answer the substantial question of law are as under:-

(i) The appellants/plaintiffs herein filed a suit for declaration of their title over the suit land and also sought declaration that the order passed by the Sub Divisional Officer (Revenue), Jashpurnagar dated 15.6.1994 be declared null and void and the defendants be restrained from interfering with their peaceful possession over the suit land. It was also pleaded that order passed by the Sub-Divisional Officer (Revenue), Jashpurnagar under Section 170-B of the MP Land Revenue Code, 1959 (hereinafter called as “Code') is without jurisdiction and without authority of law as the transaction is valid and legal and it could not have been declared illegal by the Sub Divisional Officer (Revenue).

(ii) The defendants filed their written statement and also raised a plea that the Civil Court has no jurisdiction in view of the provisions contained in Section 257 (L-1) of the Code barring jurisdiction of the civil Court as the revenue Courts have exclusive jurisdiction in the matter.

(iii) The trial Court by its order dated 12.5.2000 taken up the issue No.5 relating to jurisdiction of the Court as preliminary issue and reached to the conclusion that the order passed by the Sub Divisional Officer (Revenue), Jashpurnagar under

Section 170B of the Code has been challenged in the suit, as such jurisdiction of the civil Court is expressly barred by the provisions contained in Section 257 (L-1) of the Code and thereby rejected the plaint.

(iv) Feeling aggrieved against the order of the trial Court rejecting the plaint, the plaintiffs preferred Civil Appeal No.9A/2000 before the First Appellate Court.

(v) The First Appellate Court after hearing the appeal affirmed the order passed by the trial Court rejecting the plaint holding that the trial Court has rightly held that the Civil Court has no jurisdiction over the matter in the light of provisions contained in Section 257 (L-1) of the Code

(vii) Questioning the judgment and decree of the First Appellate Court, this second appeal under Section 100 of the Code of Civil Procedure has been filed, in which substantial question of law framed has been incorporated in the opening paragraph of this judgment.

3. Mr. P.P.Sahu, learned counsel appearing for the

appellants, would submit that the trial Court as well as the First Appellate Court have committed substantial legal error in applying the provisions contained in Section 257 (L-1) of the Code to the facts of the present case for the reason that order was passed by the Sub Divisional Officer (Revenue), Jashpurnagar under Section 170B of the Code on 15.6.1994 and the suit seeking declaration of that order of the SDO as null and void was instituted on 18.8.1994, whereas the provisions contained in Section 257 (L-1) of the Code came into statute book w.e.f. 15.12.1995, which cannot be applied with retrospective effect to the facts of the instant case and therefore, both the Courts below have committed illegality in holding that the jurisdiction of the Civil Court was barred. He would alternatively submit that despite bar contained in Section 257 (L-1) of the Code, even then, the Civil Court will have jurisdiction to entertain and consider the matter to the extent whether the authority concerned has complied with the procedure prescribed or not while holding an enquiry and passing the order though such jurisdiction is limited, therefore, order passed by the trial Court rejecting the plaint and affirming by the First Appellate Court deserves to be set aside and the matter be remitted to the trial Court for hearing the suit on merits.

4. On the other hand, Mr.A.K.Prasad, Mr.A.N.Pandey and Mr.O.P.Sahu, learned counsel appearing for the respondents, would however support the judgment and decree impugned.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the records with utmost circumspection.

6. In order to consider a plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 257 (L-1) of the Code, which reads as under:-

> "**257. Exclusive jurisdiction of revenue authorities**- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:
>
> xxx xxx xxx

(L-1) any matter covered under section 170-B."

It entails special bar on the jurisdiction of the Civil Court to entertain a dispute which requires to be decided by the Sub Divisional Officer under Section 170-B of the Code. The said provision was brought into the statute book w.e.f. 15.12.1995. Therefore, it is quite vivid that prior to 15.12.1995, the jurisdiction of the Civil Court in the cases falling under Section 170-B of the Code was not expressly barred.

7. In the present case, order under Section 170-B of the Code was passed by the Sub Divisional Officer (Revenue), Jashpurnagar on 15.6.1994 and suit was filed on 18.8.1994, therefore, the question would be whether on 18.8.1994 when the suit was filed and when the jurisdiction of the Civil Court was not barred expressly, whether the suit can be held to be not maintainable in view of the subsequent amendment which came into force w.e.f. 15.12.1995 by which Section 257 (L-1) was inserted in the Code ?

8. It is well settled the Rule prescribed by Section 9 of the Code of CPC, the Courts shall, subject to the provisions contained therein, have jurisdiction to try all

suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would take cognizance of it. Therefore, the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being the every presumption would be made in favour of the existence of a right and remedy in a democratic set-up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded.

9. In the case of **Ramkanya Bai and another vs. Jagdish and others**[1], the Supreme Court has clearly held that the Civil Court can entertain any suit of civil nature except those, cognizance of which is expressly or impliedly barred. Para 15 provides as under:-

> "15. Having regard to Section 9 of the Code of Civil Procedure, a civil court can entertain any suit of civil nature except those, cognizance of

[1] (2011) 7 SCC 452

which is expressly or impliedly barred. In Kamala Mills Ltd. v. State of Bombay [AIR 1965 SC 1942] this court held : (AIR pp. 1946-47 & 1952, paras 13 & 32).

> 13........the normal rule prescribed by Section 9 of the Code of Civil Procedure is that the courts shall (subject to the provisions contained in the Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.........
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> *   *   *
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> 32. .... Whether it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil Courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. It appears that a

> statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not."

10. Section 257 of the Code confers exclusive jurisdiction to the revenue Courts in respect of certain matters as enumerated in the Section and in some of the matter in which the jurisdiction of the Civil Court has not been expressly barred then the Civil Court will have jurisdiction to entertain the suits. It is more particularly clear from the insertion of sub-clause (L-1) in Section 257 w.e.f. 15.12.95 that any matter covered under Section 170-B of the Code no Civil Court shall exercise jurisdiction thereon. This also clearly indicates that prior to 15.12.1995 there was no express bar on the jurisdiction of the Civil Court and therefore it is clear that on 18.8.1994 the jurisdiction of the Civil Court was not expressly barred. Thus, as a necessary corollary it has to be held that prior to 15.12.1995 for considering the cases falling

under Section 170-B of the Code, which was introduced by M.P. Act No.15 of 1980 w.e.f. 24.10.1980, the jurisdiction of the Civil Court was not excluded. If there was no clear provision in Section 257 to debar the jurisdiction of the Civil Court prior to 15.12.95 then certainly it has to be held that the suit was maintainable and Civil Court was competent to entertain the suit.

11. Section 257 of the Code provides that except as otherwise provided in this Code, or in any other enanctment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or other on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the matters mentioned in this section. Even the language of sub-section (3) of Section 170-B of the Code does not say in clear terms that the jurisdiction of the Civil Court is either explicitly expressed or clearly implied as barred.

12. Therefore, in view of the above-stated crystallized

legal position, it is quite vivid that in cases falling under Section 170-B of the Code, the jurisdiction of the Civil Court, if any, was barred w.e.f. 15.12.1995 and before coming into force of the said provision, the jurisdiction of the Civil Court was not barred. Therefore, the trial Court has committed legal error in holding that the suit filed on 18.8.1994 questioning the order dated 15.6.1994 passed by the Sub Divisional Officer (Revenue), Jashpurnagar was barred by the provisions contained in Section 257 (L-1) of the Code and the First Appellate Court repeated the illegality by affirming the judgment and decree of the trial Court.

13. The matter can be considered from one more angle. The question for consideration would be as to what extent in a provision of exclusive jurisdiction any interference can be made by the civil Court. The Supreme Court in the case of **Dhulabhai Vs. State of M.P.**[2] has laid down several test with regard to interference by civil court in provision relating to exclusive jurisdiction by the Special Tribunal/Revenue Authorities and held as under:-

> (i) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil

[2] (1968) 3 SCR 662

courts 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.

(ii) 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.

(iii) 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.

(iv) 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.
>
> (v) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.
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> (vi) 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.
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> (vii) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

14. The same principles are again enunciated by the Supreme Court in the case of State of **Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (Dead.) by LRs. and others**[3], wherein the decision of Dhulabhai (supra) has been noticed. Para 5 of the said report, which is relevant, succinctly states as under:-

> “5. 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

3 (2000) 3 SCC 689

> be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a 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. In Dhulabhai v. State of M.P., it was noticed that where a statute gives finality to the orders of the Special Tribunals, jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and 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."

15. Thus, in such cases civil Court has to examine only to the extent whether basic fundamental principles of the judicial process have been followed or not by the competent authority while passing the order impugned and the jurisdiction of the civil Court is limited as laid down in the case of **Dhulabhai** (supra) and case must fall within the parameter of the tests mentioned in case of **Dhulabhai** (supra) and **State of Andhra Pradesh**

(supra).

16. While considering this question in the matter of 170-B of the Code Madhya Pradesh High Court in **Dhumaniya Vs. Harisingh and others**[4], reported in Revenue Niryana, held as under:-

> 22. The civil Court has gone into the questions which were required to be decided by the SDO and as a matter of fact, decided by the SDO. The matters which are required to be decided by the SDO are not final as against the order of the SDO there is further appeal and revision provided under the Code. The orders thus passed are final and the jurisdiction of civil Court is barred u/s. 257(1-1) of the Code. Thus, the Courts below could have seen only to the extent whether basic fundamental principles of the judicial process have been followed or not by the competent authority passing the order and the jurisdiction of the civil court is limited as laid down in the case of Dhulabhai (supra) and case must fall within the parameter of the tests mentioned in para 19 of this order. The Courts below have not considered the material such as the voters list which was referred to by the SDO and also the lease deed filed by the respondent, granted to Luraiya Sahariya."

17**.** In view of the aforesaid legal position inspite the bar created under section 257(1)(L-1) of the Code against orders passed by the Revenue Authorities under Section 170B of the Code in their exclusive jurisdiction even then

[4] 2001 RN 85

the civil Court had jurisdiction to entertain and consider the matter up to the extent whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order. But such jurisdiction is limited as laid down in the case of **Dhulabhai** (supra). The civil Court cannot consider the questions decided by such revenue authorities on merits under their exclusive jurisdiction. Thus, it is held that the civil Court has jurisdiction to entertain such suit upto the aforestated extent.

18. In view of the aforesaid analysis, firstly it is held that the provision contained in Section 257 (L-1) barring the matter covered under Section 170-B of the Code came into force w.e.f. 15.12.1995, whereas the suit was filed on 18.8.1994 challenging the order passed by the Sub-Divisional Officer (Revenue), Jashpurnagar dated 15.6.1994. The express bar was not applicable on the date of institution of suit. Secondly, the Civil Court has jurisdiction to entertain and consider the matter covered by the provisions contained in Section 257 (L-1) of the Code to the extent whether the revenue authority has complied with the procedure prescribed or not while holding an enquiry and passing the order, but the Civil

Court has limited jurisdiction as laid down by the Supreme Court in the matter of **Dhulabhai** (supra).

19. Consequently, the second appeal is allowed and substantial question of law is answered in favour of the appellants/plaintiffs and against the defendants. It is held that the finding recorded by both the Courts below dismissing the suit as barred by the provisions contained in Section 257 (L-1) of the Code is perverse and contrary to the well settled law in this regard, it is liable to be and is hereby set aside.

19. Since the suit was filed on 18.8.1994, the trial Court is directed to expedite the trial of suit and conclude suit within six months from the date of receipt of record from Registry of this Court. Parties are represented, they are directed to appear before the trial Court on **21.11.2016**. No fresh notice would be necessary. Parties are directed to co-operate in the trial as the suit is of old one. No cost(s). Decree be drawn accordingly.

Sd/-

(Sanjay K Agrawal)
Judge

B/-