

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA. No. 354 of 2004**

Smt.Subhadra Devi W/o. Late Hanuman Prasad Jaiswal, Aged about 67 years, Occupation-Housewife, R/o. Patna, Tahsil Baikunthpur, Distt. Koriya, C.G.

---- Appellant**Versus**

1. Devendra Pal S/o. Late Jagdev Singh, Aged about 47 years, Occupation- Agriculture, R/o. Village Patna, Tahsil Baikunthpur, District Koriya, G.G.
2. Krishna Kumar Singh, S/o. Late Harbhajan Singh, Caste – Rajgond, Aged about 44 years, Occupation- Agriculture, R/o. Village Patna, Tahsil Baikunthpur, District Koriya, G.G.
3. Ishwardayal S/o. Late Kawlaprasad, Caste – Rajgond, Aged about 42 years, Occupation- Agriculture, R/o. Village Patna, Tahsil Baikunthpur, District Koriya, G.G.
4. Deleted.
5. Ku. Shashi D/o. Late Hanuman Prasad Jaiswal, Aged about 34 years, R/o. Village Patna, Tahsil Baikunthpur, District Koriya, G.G.
6. Smt. Shail Kumari, D/o. Late Hanuman Prasad Jaiswal W/o. Rambahadur, Aged about 40 years, R/o. Jhalariya, PS. Balrampur, Tahsil -Ramanujganj District. Surguja, C.G.
7. Smt. Shradha Kumari, D/o. Late Hanuman Prasad, Aged about 30 years, R/o. Nagpur, Tahsil Manendragarh, District. Koriya, C.G.
8. State of Chhattisgarh, Through Collector, Koriya Baikunthpur, C.G.

---- Respondents

- For Appellant : Shri Ashok Kumar Shukla, Advocate.
 For Respondent Nos.1 to 6 : None.
 For State/Respondent No.8 : Shri Ashish Surana, Dy.GA.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****01/11/2018**

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 ?”

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

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

(1). Plaintiff Subhadra Devi and her husband Hanuman Prasad both filed a civil suit for declaration of title stating inter alia that the order passed by the Sub-Divisional Officer, Baikunthpur under Section 170(B) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code of 1959') dated 12.09.1993 and the order passed by the Additional Collector, dated 26.06.1995 are null and void and also the order passed by the S.D.O, Revenue, Baikunthpur, dated 29.06.1996 is null and void. It was further pleaded that the order reverting land by the S.D.O, Revenue is bad in law as the plaintiffs have purchased the suit land by registered sale deed dated 25.01.1964 in which defendants No. 1 to 3 filed an application under order 7 Rule 11 of C.P.C stating inter alia that the suit is barred under Section 257(L-1) of the Code.

(ii). Trial Court after considering and granting the application under Order 7 Rule 11 of C.P.C by order dated 03.04.2001 dismissed the suit finding that the jurisdiction of the civil Court is barred under Section 170 (B) of the Code of 1959.

(iii). Being dissatisfied with the judgment and decree passed by the trial Court, first appeal was preferred. The First Appellate Court dismissed the first appeal and affirmed the judgment and decree passed by the trial Court.

(iv). The second appeal has been preferred in which the substantial question of law has been framed and set out in opening paragraph of this judgment.

3. Mr. Ashok Kumar Shukla, learned counsel for the appellant/plaintiff would submit that the trial Court as well as First Appellate Court is absolutely unjustified in dismissing the suit as it is to be barred under Section 257(L-1) of the Code of 1959.
4. I have heard learned counsel for the appellant, perused the judgment and decree impugned and records of both the Courts below with utmost circumspection.
5. The State is formal party and considered the rival submissions.
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. 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.
8. In the case of Ramkanya Bai and another vs. Jagdish and others¹, 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 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

1 (2011) 7 SCC 452

try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.....

* * *

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."

9. 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. 15.12.1995 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 15.12.1995 then certainly it has to be held that the suit was maintainable and Civil Court was competent to entertain the suit.

10. Section 257 of the Code provides that 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 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.

11. 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.

12. 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 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

2 (1968) 3 SCR 662

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.

(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.

(vii) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

13. 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 others³, wherein the decision of Dhulabhai² (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 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.”

14. 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 **Dhulabhai² (supra)** and case must fall within the parameter of the tests mentioned in case of **Dhulabhai² (supra)** and **State of Andhra Pradesh³ (supra)**.

³ (2000) 3 SCC 689

15. While considering this question in the matter of 170-B of the Code Madhya Pradesh High Court in Dhumaniya Vs. Harisingh and others⁴, reported in Revenue Nirvana, 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.”

16. 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 the civil Court has 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,

4 2001 RN 85

it is held that the civil Court has jurisdiction to entertain such suit upto the aforestated extent.

17. Reverting to the facts of the present case in the light of principles of law laid down in above stated judgments (supra), it is quite vivid that both the Courts below have absolutely unjustified in holding that the jurisdiction of the civil Court is completely barred. The civil Court has jurisdiction to entertain the suit to the extent indicated hereinabove.
18. Consequently, the second appeal is allowed and substantial question of law is answered in favour of the 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, it is liable to be and is hereby set aside. The matter is remitted to the trial Court for deciding the suit afresh.
19. Since the suit was filed on 13.01.1997, the trial Court is directed to conclude the trial within six months after noticing all the parties and to proceed in accordance with the law.
20. Record be send back forthwith. No cost(s).

Sd /-
(Sanjay K. Agrawal)
Judge