

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.639 of 1997

Judgment reserved on: 24-10-2018

Judgment delivered on: 16 -11-2018

1. State of M.P. (now State of C.G.), through the Collector, Durg.
(Defendant No.1)
2. The Sub Divisional Officer, Sub Division Shaja, District Durg.
---- Appellants

Versus

1. Smt. Keja Bai, W/o Madhuvandas, aged 40 years.
2. Jagdish, S/o Madhubandas, aged 44 years.
3. Tarkeshwar, S/o Madhubandas, aged 12 years.
4. Ku. Hemlata, D/o Madhubandas, aged 9 years.
5. Ku. Damyanti, D/o Madhubandas, aged 7 years.

No.2 to 5 minor, through the next friend mother Smt. Keja Bai.

All R/o Gram Ghotwana, Tehsil Bemetra, Distt. Durg.
(Plaintiffs)

6. Madhubandas (Died and deleted)
---- Respondents

For Appellants/State: Mr. Arun Sao, Deputy Advocate General.
For Respondents No.1 to 5: -
Miss Sharmila Singhai, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in this defendant No.1's/appellant's second appeal is

as under:-

“Whether the first appellate Court is justified in entertaining and decreeing the suit of the plaintiffs challenging the order of the competent authority under Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 ignoring the bar contained in Section 46 of the Act, 1960 by recording a finding which is perverse to record?”

(Parties will hereinafter be referred as per their status shown in the suit before the trial Court.)

2. The dispute relates to the property which was declared surplus by the competent authority under the provisions of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (for short, 'the Act of 1960'). The competent authority by order dated 25-8-1975 (Ex.P-1) declared 48.38 acres of land to be surplus under the Act of 1960 and vested the same with the State Government under the Act of 1960. Defendant No.2 was the original holder of the suit land. Thereafter, on 14th of June, 1976 wife, sons and daughters of defendant No.2 i.e. the plaintiffs filed suit for declaration and injunction before the trial Court stating inter alia that the plaintiffs preferred an objection before the competent authority under Section 11(3) of the Act of 1960 which was rejected on 22-5-1976 and cause of action for the suit arose when the objection was rejected on 22-5-1976 and claimed that the plaintiffs are co-owners and had $\frac{3}{4}$ th interest in the suit land and also entitled to hold 30 acres each in their own rights independently of defendant No.2 and the plaintiffs are entitled to

the entire aforesaid land by succession, as defendant No.2 has become "Sanyasi" and also prayed injunction to restrain defendant No.1 from executing the order dated 25-8-1975 (Ex.P-1) by which suit land was declared surplus.

3. The defendant State filed written statement stating inter alia that the suit is barred by Section 46 of the Act of 1960 and the suit is liable to be dismissed.
4. The trial Court dismissed the suit finding no merit. However, the first appellate Court in an appeal preferred by the plaintiffs, allowed the first appeal and held that bar of jurisdiction under Section 46 of the Act of 1960 is subject to Section 11(4) of the Act of 1960 and therefore jurisdiction of civil court was not barred and decreed the suit accordingly. In second appeal preferred by the defendant State, substantial question of law has been framed in this second appeal which has been set-out in the opening paragraph of this judgment.
5. Mr. Arun Sao, learned Deputy Advocate General appearing for the State / defendant No.1 / appellants herein, would submit that during the ceiling proceeding before the competent authority, in response to the notice under Section 11(3) of the Act of 1960, no dispute with regard to title was raised by the plaintiffs and after affording due opportunity of hearing to the original holder—defendant No.2, the competent authority has passed the order

dated 25-8-1975 (Ex.P-1) declaring 48.38 acres of land to be surplus land and vested the same with the State Government. He would further submit that the order passed by the competent authority dated 25-8-1975 was never challenged by the original holder and therefore by virtue of Section 11(5) of the Act of 1960, the order of the competent authority has attained finality. He would also submit that the order dated 22-5-1976 has also attained finality, therefore, the jurisdiction of civil court was rightly held to be barred under Section 46 of the Act of 1960 which has erroneously been interfered with by the first appellate Court and as such, the judgment & decree passed by the First Appellate Court deserves to be set aside by restoring the decree of the trial Court.

6. Miss Sharmila Singhai, learned counsel appearing for the plaintiffs, would submit that suit for declaration of title and injunction filed by the plaintiffs claiming share in the suit land was clearly maintainable, as the order dated 25-8-1975 (Ex.P-1) is null and void, as the competent authority has failed to follow the mandatory provisions contained in Sections 9, 10 and 11 of the Act of 1960 and the finding recorded invalidating the order dated 25-8-1975 was never challenged by the State by filing appeal before the first appellate Court and the plaintiffs were not party to the proceeding initiated by the competent authority. She would further submit that the jurisdiction of civil court must be either

expressly or impliedly barred and would rely upon a Full Bench decision of the M.P. High Court in the matter of **Vijaya Singh v. Competent Authority (Sub-Divisional Officer), Tarana**¹. She would also submit that since the competent authority has not decided the question of title under Section 11(4) of the Act of 1960, the civil court has jurisdiction to try the suit filed by the plaintiffs, as such, the second appeal deserves to be dismissed answering the substantial question of law against the defendants and in favour of the plaintiffs.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.
8. It is the case of the plaintiffs that one of the plaintiff preferred an objection before the Competent Authority under Section 11(3) of the Act, that was rejected on 22-05-1976 and thereafter, the civil suit was filed on 14-06-1976 claiming to be purportedly under Section 11(5) of the Act of 1976. The order rejecting objection has been filed as Ex.P/2 by the plaintiffs which states as under :-

"अनावेदक उपस्थित/आक्षेपकर्ता श्री पाठक द्वारा । अनावेदक ने आपत्ति प्रस्तुत किया कि उसे प्रश्नाधीन भूमि अपने पिता से प्राप्त हुई है तथा जगदीश्वर, तारकेश्वर उसके पुत्र एवं केजाबाई उसकी पत्नी है एवं हेमलता कुमारी, दम्यन्ती कुमार उसकी पुत्री है । ये सभी नाबालिग हैं । इस तरह उसके परिवार में वह उसकी पत्नी, 02 अव्यस्क पुत्र, 02 अव्यस्क पुत्री हैं और उसका परिवार एक सिलिंग परिवार है तथा सिलिंग परिवार में वह

1 1977 M.P.L.J. 614

मध्यप्रदेश कृषि खातों की अधिकतम सीमा अधिनियम 1960 की धारा 7 एक-ग की श्रेणी में आता है जो कि वह 73.00 एकड़ भूमि धारण कर सकता है। उसका आक्षेप निराधार है अतः निरस्त किया जाता है। अन्तिम प्रकाशन किया जावे।

सही/-
अनुविभागीय अधिकारी
बेमेतरा"

A careful perusal of the Ex.P/2 would show that Defendant No.2 (Madhubandas) filed objection before the competent authority as plaintiffs, except plaintiff No. 1, were minor at that time.

9. The question was whether order rejecting objection preferred under Section 11(3) of Act and rejected under Section 11(4) of Act of 1960, civil suit would be maintainable under Section 11(5) of the Act of 1960.

10. Section 11(5) of the Act of 1960, (unamended) provides as under :-

S. 11(5)-The order of competent authority under Section(4) shall not be subject to appeal or revision, but any party may, within three months from date of such order, institute a suit in the civil court to have the order set aside, and decision of such court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of competent authority shall be final and conclusive.

11. Thus, it is quite vivid that against the order of the competent

authority, civil suit would be maintainable provided that person aggrieved must seek relief to set aside the order passed by the competent authority under Section 11(5) of the Act. In the instant case, the plaintiffs sought for the following reliefs in the plaint which states as under :-

- (i) Declare that the plaintiffs (1) to (3) are co-owners and hold 3/4th interest in the land detailed in schedule (A) and that they are, therefore, entitled to hold 30 acres each in their own rights, independently of the defendant No. (2);
- (ii) Or, declare that the plaintiffs are entitled to the entire land aforesaid by succession, the defendant No.(2) having become a "Sanyasi" and are entitled to hold the same to the extent of 30 acres each independently in their own rights;
- (iii) Restrain the defendant No. (1) from executing the order dated 25.08.1975 and taking possession of the alleged surplus land;
- (iv) Award cost of the suit, and
- (v) Award any other relief deemed just and expedient.

12. A close perusal of the above stated reliefs claimed by the plaintiffs, it would be evident that plaintiffs did not claim to set aside the order of competent authority under Section 11(4) of the Act of 1960 rejecting the objections dated 22-05-1976 (Ex. P/2) preferred by defendant No. 2 and claimed other reliefs, though

claimed consequential relief of injunction restraining execution of order dated 25-08-1975 (Ex. P/1) by which competent authority directed vesting of land with the State Government. Section 11(5) clearly provides subject to the result of suit under Section 11(5) of the Act of 1960 order of the competent authority shall be final and conclusive, as such the order of competent authority (Ex.P/1) dated 25-08-1975 has become final and conclusive in absence of challenge by the plaintiffs by virtue of provisions contained in Section 11(5) of the Act of 1960.

13. Now, the question is whether first Appellate is justified in interfering with the finding of trial Court dismissing the suit to be barred by Section 46 of the Act.

14. It is pertinent to mention here that Section 46 of the Act of 1960 (unamended) creates a bar to maintain any civil suit. Section 46 of the Act of 1960 states as under :-

“46. Bar of jurisdiction of civil courts.—Save as expressly provided in this Act, no civil court shall have any jurisdiction-

(i) to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority;

15. A close reading of Section 46 of the Act of 1960 would show that civil court shall have no jurisdiction to decide the question, which has been decided by the competent authority under the Act of 1960.

16. The short question that needs consideration is, whether the order of the competent authority under the provisions of the Act of 1960 declaring the land to be surplus, which has become final can be questioned in the civil court in view of the bar created under Section 46 of the Act of 1960?
17. Section 46 of the Act of 1960 clearly bars the jurisdiction of civil court in respect of the matter which has been settled by the competent authority under the Act of 1960.
18. A Full Bench of the Madhya Pradesh High Court in the matter of **Vijaysingh and another v. Competent Authority, Sub-Divisional Officer, Tarana**², with reference to Section 46 of the Act of 1960 held that Section 46 bars the jurisdiction of the civil court, which are triable by the competent authority under the provisions of the Act of 1960 and observed as under: -

“4. ... This provision therefore bars the jurisdiction of the Civil Court only about questions which are triable by the competent authority under the provisions of this Act. The questions which are not within the jurisdiction of the competent authority to decide cannot be held to be covered by the provisions of [Section 46](#). It is also clear from this provision that even about those questions which are within the jurisdiction of the competent authority, but in respect of which there is an express provision for going to the Civil Court, the Civil Court will have jurisdiction to try those questions.”

19. In the matter of **Sooraj (Smt.) and others v. S.D.O., Rehli and others**³, the Supreme Court has held that determination of

² AIR 1978 MP 72

³ 1995 RN 121

surplus area of land by the competent authority, remedy of appeal and revision provided under the Act of 1960, civil suit is barred by operation of Section 46. Relevant portion of the report states as under: -

“6. ... Thereby, the legislative intention is that the proceedings initiated under the provisions of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 shall be pursued only in the manner provided thereunder, namely, right of appeal and right of revision, and the jurisdiction of Civil Court has been barred to impugn any question settled or decision made or matter dealt with by the competent authority under the Act of 1960. Thereby the civil suit also has been barred by operation of [Section 46](#). Though none of these questions have been raised nor dealt with by the Courts below since they are pure questions of law untrammelled by any questions of facts we have adverted to and found that the suit is not maintainable for these reasons.”

20. In the matter of **Bodhan Prasad and others v. State of**

Chhattisgarh⁴, this Court also has held that the jurisdiction of civil court is barred once the matter is decided by the competent authority. Paragraph 10 of the report reads as under: -

“10. I have examined the matter on this line also. Section 46 of the Act creates a bar on jurisdiction of Civil Courts. As stated above, it provides that no Civil Courts shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority. Certainly, the grounds raised by the plaintiffs before the Civil Court were the grounds covered under the provisions of this Section as the plaintiffs had taken the ground of wrong description of the areas of lands in the revenue records and the competent authority being wrongly decided this matter on the basis of those description. In fact, it was a

4 2006(1) M.P.H.T. 75 (CG)

matter within the exclusive dominion of the competent authority and by virtue of Section 46 of the Act, no Civil Court was having jurisdiction to entertain a civil suit on the ground that the authority committed an error of law in deciding the claim of a party raised by him on the aforesaid ground. The First Appellate Court has rightly taken this view that the suit itself was not maintainable before the Civil Court.”

21. It is well settled rule prescribed by Section 9 of the CPC that 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.

22. In the matter of **Ramkanya Bai and another v. Jagdish and others**⁵, the Supreme Court has clearly held that the civil court can entertain any suit of civil nature except those, cognizance

5 (2011) 7 SCC 452

of which is expressly or impliedly barred. Paragraph 15 of the report states 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](#)⁶ 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. ...

* * *

32. ... Whenever 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*. If 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

6 AIR 1965 SC 1942

associated with actions in civil courts are prescribed by the said statute or not."
(emphasis supplied)

23. Similar principle of law has been laid down by the Supreme Court recently in the matters of **Robust Hotels Private Limited and others v. EIH Limited and others**⁷ and **Unichem Laboratories Limited v. Rani Devi and another**⁸.
24. Reverting to the facts of the present case, in the light of the finding recorded hereinabove and legal principles enunciated qua Section 46 of the Code, it is quite vivid that plaintiffs did not question the order dated 22-05-1976 (Ex.P/2) by filing the instant suit though it was permissible as per unamended provisions contained in Section 11(5) of the Act and allowed the order dated 22-05-1976 to become final and conclusive, however, ought to be challenged collaterally by filing the suit taking aid of Section 11(5) of the Act of 1960, which is clearly and evidently barred by Section 46 of the Act of 1960. Likewise the order dated 25-08-1975 (Ex. P/1) passed by the competent authority vesting the land with the State Government has also become final. As such, First Appellate Court is absolutely unjustified in reversing the well merited finding of the trial Court dismissing the suit holding it to be barred by Section 46 of the Act of 1960.

⁷ (2017) 1 SCC 622

⁸ (2017) 13 SCC 509

25. As a fallout and consequence of the above-stated discussion, the impugned judgment and decree of the First Appellate Court is set aside and as such, the plaintiff's suit stands dismissed in toto. No cost(s).
26. The appeal is allowed in part. No order as to costs.
27. Decree be drawn accordingly.

SD/-

(Sanjay K. Agrawal)
Judge