

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.1084 of 1996

1. Smt. Usha Rani, W/o Kaushal Kumar Dubey, aged 32 years, R/o Brahmanpara, Raipur (M.P.) (now C.G.)
2. Smt. Keja Bai (Died and deleted)
3. Ramkali Bai (Died and deleted)

(Plaintiff)
---- Appellant

Versus

1. Competent Authority Ceiling Act, Additional Collector (Bhu Abhilekh), Raipur (M.P.) (now C.G.)
2. Smt. Uma Deevan (Died and deleted)
3. Ravindrathar Deevan, S/o late Shri Sanehidhar Deevan, aged 43 years, R/o Village Piparidih

(Defendants)
---- Respondents

For Appellant:	Mr. Yashwant Tiwari, Advocate.
For Respondent No.1 / State: -	Mr. Arun Sao, Deputy Advocate General and Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

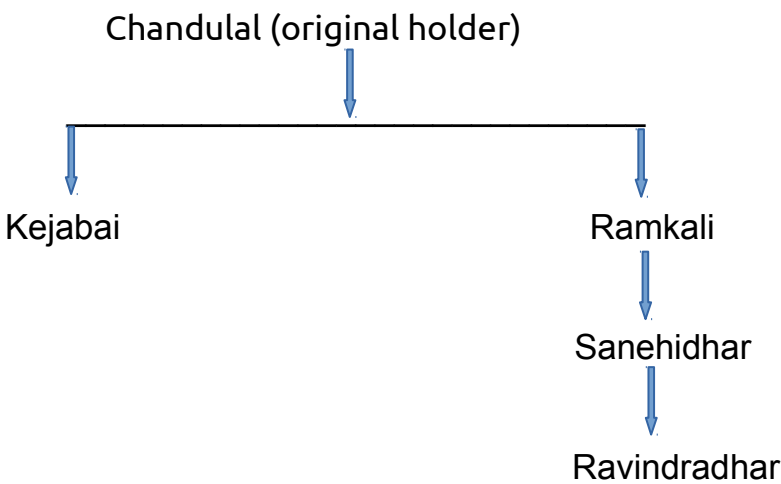
Judgment On Board

28/08/2018

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

“Whether the court below was justified in holding that the land in question was surplus and particularly when the proceedings in accordance with the Ceiling Act have not been complied with before declaring the land surplus?”

2. Following genealogical tree will demonstrate the relationship amongst the parties:



3. Two daughters of Late Shri Chandulal Diwan and the daughter of defendant No.2 filed a civil suit for bare declaration of title that the order passed by the competent authority under the provisions of the M.P. Ceiling on Agricultural Holdings Act, 1960 (for short, 'the Act of 1960') is illegal and bad in law, as the subject land declared surplus i.e. 38.24 acres, was allotted to them on mutual settlement and partition after the death of Chandulal Diwan and defendant No.2 had no right and title over the said land, and alternatively, it was claimed that it was given to plaintiff / appellant No.1 Usha Rani during her marriage as a gift. It was further claimed that the plaintiffs are in possession of the said land and are continuing in possession, as such, the order of the competent authority under the Act of 1960 in Ceiling Case No.8-A-90 B(3) 78-79 dated 26-6-1980 declaring the land surplus holding defendant No.2 as holder of the land, is unsustainable and bad in law.
4. The defendants filed written statement stating inter alia that the proceeding initiated and concluded by the competent authority is strictly in accordance with law and the plaintiffs are not entitled for any relief.
5. The trial Court by its judgment & decree dismissed the suit holding

that the proceeding initiated and concluded under the Act of 1960 was not illegal, as the plaintiffs have failed to prove that the land in dispute was gifted to them in accordance with the provisions of the Indian Registration Act. Questioning legality, validity and correctness of the judgment & decree passed by the trial Court, the plaintiffs preferred first appeal under Section 96 of the Code of Civil Procedure, 1908, that has also been dismissed affirming the decree of the trial Court resulting into filing of the instant second appeal in which the substantial question of law formulated has been set out in the opening paragraph of this judgment.

6. Mr. Yashwant Tiwari, learned counsel appearing for the appellant/plaintiff, would vehemently submit that both the Courts below have committed grave legal error in not declaring the order dated 26-6-1980 as null and void, as it is contrary to law and the plaintiffs were coparceners in the suit property and were entitled for partition, that has not been taken care of by the learned competent authority under Section 6(ii) of the Act of 1960 and share has to be allotted under Section 7 of the said Act. Therefore, the substantial question of law be answered in favour of the plaintiff and the suit be decreed with cost throughout.
7. Mr. Arun Sao, learned State counsel, submits that both the Courts below have rightly held that the land was declared surplus in accordance with law, even the plaintiffs have not cared to file the copy of the order of the competent authority dated 26-6-1980 of which the declaration has been sought to be illegal and no evidence has been brought on record except oral evidence to prove either

the partition or the gift. He further submits that the suit as framed and filed was apparently barred by law by virtue of the provisions contained in Section 46 of the Act of 1960, as such, the second appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions and also went through the records with utmost circumspection.
9. The plaintiffs filed the instant suit for declaration that the order passed by the competent authority under the Act of 1960 is null and void stating inter alia that on partition and settlement, the suit land ad-measuring 38.24 acres declaring surplus land under the provisions of the Act of 1960, was allotted to them. They also took an alternative plea of subject land having been gifted in their favour at the time of marriage of plaintiff No.1. The trial Court disbelieved the plea of partition as well as the plea of gift in absence of registered instrument brought on record to prove the fact of gift. The above-stated finding has been affirmed by the first appellate Court affirming the same. The said finding has been questioned on the ground that the plaintiffs being the coparceners have birth right in the suit lands and therefore the trial Court ought to have decreed the suit.
10. It is pertinent to mention here that Section 46 of the Act of 1960 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;

(ii) to grant stay in any case under this Act.”

11. 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.

12. Section 4(3) of the Act of 1960 provides as under: -

“4. Transfers or partitions made after the publication of the Bill but before the commencement of this Act.

—(1) xxx xxx xxx

(2) xxx xxx xxx

(3) Any person aggrieved by an order of the competent authority under this section may prefer an appeal against such order to the Board of Revenue. The decision of the Board and subject to the decision of the Board in appeal the decision of the competent authority shall be final.”

13. In the instant case, the schedule suit land was declared to be surplus land by the competent authority under the Act of 1960 on 26-6-1980, as it has not been brought on record any challenge to the order of the competent authority before the Board of Revenue.

14. 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 under Section 4(3) of the Act of 1960, can be questioned in the civil court in view of the bar created under Section 46 of the Act of 1960?

15. 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. Like, in the present

case, the order of the competent authority has attained finality under Section 4(3) of the Act of 1960, as challenge made by the holder of the land remained unsuccessful.

16. A Full Bench of the Madhya Pradesh High Court in the matter of **Vijaysingh and another v. Competent Authority, Sub-Divisional Officer, Tarana**¹, 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.”

17. In the matter of **Sooraj (Smt.) and others v. S.D.O., Rehli and others**², the Supreme Court has held that determination of 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

1 AIR 1978 MP 72

2 1995 RN 121

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.”

18. In the matter of **Bodhan Prasad and others v. State of Chhattisgarh**³, 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 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.”

19. 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

3 2006(1) M.P.H.T. 75 (CG)

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.

20. In the matter of Ramkanya Bai and another v. Jagdish and others⁴, 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. 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 Bombay⁵ 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

4 (2011) 7 SCC 452

5 AIR 1965 SC 1942

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

(emphasis supplied)

21. Similar principle of law has been laid down by the Supreme Court recently in the matters of Robust Hotels Private Limited and others v. Elh Limited and others⁶ and Unichem Laboratories Limited v. Rani Devi and another⁷.
22. Keeping in view the provision of Section 46 of the Act of 1960 creating bar to the jurisdiction of civil court with respect to the matters triable by the competent authority under the Act of 1960 and following the principles laid down in the above-stated decisions and also considering the fact that the legislative intention in respect of the proceedings initiated under the provisions of the Act of 1960 shall be pursued only in the manner provided thereunder, namely, right to appeal and right of revision; it is held that the jurisdiction of civil court to impugn the order dated 26-6-1980 passed by the competent authority under the Act of 1960 is barred by virtue of the provisions contained in Section 46 of the Act of 1960. The

6 (2017) 1 SCC 622

7 (2017) 13 SCC 509

concurrent finding of fact recorded by both the courts below holding the suit land to be surplus and vesting the same with the State is a finding of fact based on the evidence on record and jurisdiction of civil court is barred under Section 46 of the Act of 1960. The plaintiffs have even not cared to file the copy of the order dated 26-6-1980 nor filed the copy of proceedings recorded by the competent authority under the Act of 1960 to demonstrate any illegality, as such, the trial Court as well as this Court has no advantage to look into the same.

23. As a fallout and consequence of the aforesaid discussion, the substantial question of law is answered in affirmative and the second appeal is dismissed affirming the dismissal of suit by the Courts below. No order as to cost(s).

24. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge