

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.473 of 2003

1. Bhuishi Singh W/o Late Ram Singh, Aged about 60 years, Village-Koteya, P.S. Darima, Tahsil Ambikapur, District Surguja (CG)
2. Muni W/o Aitwar Sai, Aged about 45 years, Village-Kalgasa, P.S. Darima, Tahsil Ambikapur, District Surguja (CG)
3. Pramila W/o Ramnarayan, Aged about-43 years, Village Koteya, P.S. Darima, Tahsil Ambikapur, District Surguja (CG)
4. Taramuni W/o Tejan, Aged about-40 years, Village-Motipur (Bhatapara), P.S. Darima, Tahsil Ambikapur, District Surguja (CG)
5. Parvati W/o Tapeswar Singh, Aged about – 38 years, R/o Village-Koteya (Imlipara), P.S. Darima Tahsil Ambikapur, District-Surguja (CG)

---- Appellants

Versus

- 1A. Fanjan Aged about 25 years, S/o Late Khutal,
- 1B. Santu Aged about 23 years, S/o Late Khutal,
- 1C. Amrit Aged about 20 years (dead), S/o late Khutal,
- 1D. Smt. Puti, Aged about 50 years, Wd/o Late Khutal, No.1A to D All R/o Village Semra, Tahsil Surajpur, District Sarguja (CG)
- 1.B. Nandu S/o Buddhu, Aged about 30 years
- 1.C Warna S/o Buddhu, Aged about 28 years
- 1.D. Doctor S/o Buddhu, Aged about 25 years
- 1.E. Smt. Salakahin, Wd/o. Budhhu, Aged about 50 years,
2. Devnath Minj Aged about 30 years, S/o Jangsai Occupation Service
- 3.A Kendi Bai Wd/o Kunwar Sai, Aged about-58 years, Village-Sukharisapna (Chor Maati) P.S. Jainagar, Tahsil & Disrict-Surajpur (CG)
- 3.B Chamru S/o Late Kunwar Sai, Aged about-46 year R/o Village-Hariharpur, Police Station – Darima,

Tahsil Ambikapur, District-Surguja (CG)

3.C. Bechan S/o Late Kunwar Sai (Occupation-Driver), Aged about - 40 year, R/o Village-Kendai Nawapara, Police Station-Mogra, Tahsil Podi Uroda, District Korba (CG)

4.A. Sonamati W/o Karan Sai Aged about 50 years, Village-Sonvahi, P/o Latori, P.S. Jainagar, District-Surguja (CG)

4.B Suni W/o Nandu, Aged about 28 years, R/o Village- Parsapali, Police Out Post-Manipur, Police Station-Ambikapur, Tahsil-Ambikapur, District-Surguja (CG)

4.C. Butaru S/o Late Dharmu Aged about 13 years,

4.D. Julmen D/o Late Dharmu Aged about 10 years

Through guardian (Uncle) Jali S/o Sabal Aged about 47 years, R/o Village Baherapara (Parsapali) Police Out Post-Manipur, Police Station-Ambikapur, Tahsil-Ambikapur, District-Surguja (CG)

4.E. Shukhmaniya D/o Lal Sai Aged about 21 years, R/o Village Maheshpur (Bahara Para), Police Station - Udaypur, Tahsil - Udaypur, District - Surguja (CG)

5.A. Phul Kunwar W/o Late Chhatrapal Kushwaha, Aged about 57 years

5.B. Naresh Kushwaha S/o Late Chhatrapal Kushwaha, aged about 32 years,

5.C. Sunil Kushwaha S/o Late Chhatrapal Kushwaha, Aged about 20 years

Res. No.5A to 5C. R/o Village-Shivpur, Police Station - Darima, P.O. Karjee, Tahsil-Ambikapur, District-Surguja (CG) (Legal heirs of Shivpal Ram)

5.D. Devmaniya Bai W/o Late Shivpal Ram, Aged about 56 years,

5.E. Baleshwar Kushwaha, S/o Late Shivpal Ram, Aged about 40 years,

5D & 5E R/o Village Shivpur, Police Station Darima Post Office-Karjee, Tahsil-Ambikapur, District-Surguja (CG)

5.F. Smt. Vimla Kushwaha W/o Shri Geeta Prasad Kushwaha, Aged about 38 years, R/o Village - Karjee, Police Station Darima, P.O.-Karjee, Tahsil-Ambikapur, District-Surguja (CG)

5.G. Smt. Meena Kushwaha W/o Shri Omprakash Kushwaha, Aged about 35 years, R/o Village - Kharsura, Post-Karnji, Tahsil & District-Surajpur (CG)

5.H. Mani Prakash S/o Late Shivpal Ram, Aged about 27 years, R/o Village Shivpur, Police Station - Darima, P.O. Karjee, Tahsil Ambikapur, District Surguja (CG)

5.I. Dirpal Ram Kushwaha S/o Ramnarayan, Aged about 55 years, R/o Village-Shivpur, Post-Karjee, Police Station - Darima, Tahsil Ambikapur, District Surguja (CG)

5.J. Premchand Kushwaha S/o Ramanarayan, Aged about 46 years, R/o Village Shivpur, Post Karjee, Police Station-Darima, Tahsil Ambikapur, District Surguja (CG)

5.K(1) Chameli Bai W/o Late Shri Bhuneshwar Prasad Kushwaha, Aged about 50 years, R/o Village Shivpur, Post Karjee, Police Station - Darima, Tahsil-Ambikapur, District Surguja (CG)

5.K(2) Shiv Prasad Kushwaha S/o Late Shri Bhuneshwar Prasad Kushwaha, Aged about 34 years, R/o Village Shivpur, Post Karjee, Police Station - Darima, Tahsil- Ambikapur, District Surguja (CG)

5.K(3) Ramesh Kumar Kushwaha S/o Late Shri Bhuneshwar Prasad Kushwaha, Aged about 30 years, Village Shivpur, Post Karjee, Police Station - Darima, Tahsil- Ambikapur, District Surguja (CG)

5.L. Smt.Leelawati W/o Shri Suraj Kushwaha, Aged about 40 years, R/o Village Shivpur, Post Karjee, Police Station - Darima, Tahsil- Ambikapur, District Surguja (CG)

6. The State of Chhattisgarh, Through the Collector, District Surguja (CG)

---- Respondents

For Appellants : Mr.Devesh G. Kela, Advocate

For Private Respondents : Mr.Bhupendra Singh, Ms
Hamida Siddiqui and Mr.Virendra Verma,
Advocates

For Respondent No.6: Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

08/10/2018

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

“Whether the learned Court below was justified in holding that the Civil Suit is barred in view of provision contained in Section 257 of the C.G. Land Revenue Code ignoring that the suit was filed much prior to coming into force of bar created by way of amendment under Section 257 of the Land Revenue Code ?”

[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 original plaintiff-Ram Singh filed a civil suit for declaration of title and perpetual injunction stating inter-alia that the order passed by the Commissioner dated 29.9.1988 reversing the order of the Sub Divisional Officer (Revenue) dated 30.6.86 and the order passed by the Board

of Revenue dated 30.4.90 be declared null and void.

(ii) Defendants No3 to 5 filed their written statement stating inter-alia that the jurisdiction of the Civil Court is barred under Section 257 of the M.P. Land Revenue Code, 1959 (hereinafter called as "Code).

(iii) The trial Court after appreciating oral and documentary evidence available on record held the Civil Suit to be maintainable under Section 257 of the Code and decreed the suit in favour of the plaintiff.

(iv) On an appeal being preferred by the defendants, the First Appellate Court held that the civil suit was barred under Section 257 of the Code and dismissed the suit by granting appeal.

(v) 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 by the appellants, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr. Devesh G. Kela, learned counsel for the appellants, would submit that the First Appellate Court is absolutely unjustified in holding that the suit was barred under Section 257 (L-1) of the Code in view of a decision rendered by this Court in **Rameshwar Ram & others v. Dwarikaram & Others**¹.

4. On the other hand, Mr. Bhupendra Singh, Ms Hamida Siddiqui and Mr. Virendra Verma, learned counsel for the respective respondents, would however support the impugned judgment and decree.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above 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

¹ 2017 (2) C.G.L.J. 146

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, Ambikapur on 30.6.86 in favour of the plaintiff, but the Commissioner has reversed the order passed by the Sub Divisional Officer on 29.9.1988 and the Board of Revenue has affirmed the order passed by the Commissioner and thereafter the suit was filed by the plaintiff on 26.6.91, therefore, the question would be whether on 26.6.91

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**², 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 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

² (2011) 7 SCC 452

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 26.6.91 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 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.

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. The trial Court held the Civil Suit to be maintainable under Section 257 of the Code and decreed the suit in favour of the plaintiff. However, the First Appellate Court has committed legal error in holding that the suit filed on 26.6.91 was barred by the provisions contained in Section 257 (L-1) of the Code and dismissed the suit.

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.**³ 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 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

³ (1968) 3 SCR 662

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.

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**⁴, wherein the decision of Dhulabhai (supra) has

⁴ (2000) 3 SCC 689

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.”

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**⁵, 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

⁵ 2001 RN 85

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 170-B of the Code in their exclusive jurisdiction even then 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 26.6.91 challenging the order passed by the

Commissioner dated 29.9.1988 and order passed by the Board of Revenue dated dated 30.4.90. 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 plaintiff and against the defendants and it is held that the finding recorded by the First Appellate Court dismissing the suit barred under the provision contained in Section Section 257 1) of the Code is perverse and contrary to well settled law, it is liable to be and is hereby set aside. First appeal is restored to the file of First Appellate Court for hearing and disposal in accordance with law as appeal was not decided on merits.

20. Since the suit was filed on 26.6.91, the First Appellate Court is directed to expedite the trial of appeal

and conclude it within six months from the date of receipt of certified copy of this order. Registry is directed to send back the record to the First Appellate Court. Parties are represented, they are directed to appear before the First Appellate Court on **12.11.2018**. No fresh notice would be necessary. No cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-