NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 265 of 2003

1. Khora through Lrs.

1(A) Samundri Bai, W/o Khora, aged about 60 years.

1(B) Prabhu Ram, S/o Khora, aged about 35 years,

1(C) Rajbaba, S/o Khora, aged about 18 years,

All R/o Mohalla Mayapur, Ambikapur, P.S. and Tahsil Ambikapur, Distt. Surguja (Ambikapur) C.G.

1(D) Smt. Shakuntala, aged about 40 years,

1(E) Smt. Reena, aged about 38 years.

2. Anand, S/o Late Phulchand Cherwa, Aged about 50 years, (Defendant No.-2)

Both are resident of – Mohalla Mayapur Nagar, P.S./Teh- Ambikapur, Distt: Surguja (C.G.)

---- Appellants/Defendants

Versus

1. Mohar Sai, S/o Rupsai Gond, R/o – Pratappur, Tehsil – Surajpur, Distt- Sarguja (C.G.) (Plaintiff)

2. Channulal Gupta, S/o Baijnath Prasad Gupta, R/o- Mohalla Paradand Nagar, P.S./Teh- Ambikapur, Distt- Surguja (C.G.)

3. State of Chhattisgarh through Collector Sarguja, Ambikapur

(Defendant No- 4).

---- Respondents

For Appellants : Mr. Ravindra Agrawal, Advocate.
For Respondent No. 1 : Ms. Rashmi Sen, Advocate on behalf of Mrs. Hamida Siddiqui, Advocate.
For Respondent No. 3/State : Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/08/2018

(1) This is defendants' second appeal questioning the judgment & decree of the first appellate court affirming the judgment & decree of the trial Court decreeing the suit the of the plaintiff/respondent No.1.

(2) The plaintiff instituted a suit for declaration of title and permanent injunciton stating *inter alia* that he has purchased the suit property by registered sale deed dated 02.04.1981. It was further pleaded that order passed by the Sub Divisional Officer (Revenue) declaring the transaction to be void and contrary to Sections 165 (6) & 170-B of the Chhattisgarh Land Revenue Code, 1959 (henceforth "Code")

(3) The trial Court decreed the suit holding that the subject transaction is not violative of Section 165 (6) and 170 (B) of the Code and held that plaintiff is entitled for declaration of title in his favour and also permanent injunction and which has been affirmed by the first appellant Court.

(4) Mr. Ravindra Sharma, learned counsel appearing for the appellants/defendants would submit that both the courts below have committed a legal error in holding that the civil suit is maintainable in view of the bar created under Section 250 (L-1) of the Code and, as such, it involves substantial question of law for determination.

(5) I have heard learned counsel appearing for the plaintiffs, considered his submissions carefully and perused the records of both the courts below including judgment and decree impugned.

(6) The provision of section 257(L-1) of Code reads thus:

> **"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:
>
> XX XX xxx
>
> (L-1) any matter covered under section 170B.

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 170B of the Code.

(7) The short question that arises for consideration 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**., AIR 1969 SC 78 : (1968) 3 SCR 662 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.
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> (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.
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> 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.
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> (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.
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> (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.
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> (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.

(8) 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, (2000) 3 SCC 689, wherein the decision of Dhulabhai, AIR 1969 SC 78 : (1968) 3 SCR 662 (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."

(9) Thus, in such cases civil court has to see 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 AIR 1969 SC 78 : (1968) 3 SCR 662 (supra) and case must fall within the parameter of the tests mentioned in case of Dhulabhai, AIR 1969 SC 78 : (1968) 3 SCR 662 (supra) and State of Andhra Pradesh, , (2000) 3 SCC 689 (supra).

(10) While considering this question in the matter of 170-B of the Code Madhya Pradesh High Court in Dhumaniya Vs. Harisingh and others 2001 RN 85, 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."

(11) 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 170A and 170B 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** AIR 1969 SC 78 : (1968) 3 SCR 662 (supra) (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.

(12) Reverting the facts of the present case in light of the principles of law laid down in the above-stated judgments; it is held that civil court has jurisdiction to a limited extent in the matters covered by Section 170-B of the Code despite bar created under Section 257(L-1) of the Code to see whether the authority concerned has complied with the prescribed procedure or not while holding the enquiry and passing the order, as such, both the courts below are justified in negativing the plea of bar of jurisdiction to the civil court and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(13) Thus, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-