AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.276 of 2004

Mojahir S/o Muinuddin, aged about 44 years, r/o. Village Kusmi, Tehsil Samri, Distt. Surguja, C.G.

----Appellant

Versus

1. Smt. Shanti w/o Rangtu, age 37 years, r/o Village Kusmi, Tehsil Samri, Distt. Surguja (CG)
2. The State of Chhattisgarh, through the Collector Surguja, At & Post Ambikapur, Distt. Surguja (CG)

---- Respondents

For Appellant : Mr.A.K.Prasad, Advocate

For Respondent No.2 : Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/09/2018

1. The plaintiff filed a suit for declaration of title, permanent injunction and also sought relief that order dated 5.4.94 passed by the Sub Divisional Officer reverting the land in favour of defendant No.1 under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code') is unsustainable and bad in law. The trial Court dismissed the suit holding that the plaintiff has purchased the suit property from husband of defendant No.1, but he has failed to establish the order dated 5.4.94 is null and void, which has been affirmed by the First Appellate Court in an appeal filed by the appellant/plaintiff.

2. Mr.A.K.Prasad, learned counsel for the appellant/plaintiff, would submit that the provision contained in Section 170-B of the Code is not at attracted in the facts of the present case, as such, the order dated 5.4.94 passed by the Sub Divisional Officer is null and void and both the Courts below have committed error in dismissing the suit, as

such, substantial questions of law as proposed in memo of appeal arises for consideration in this second appeal and it be framed accordingly.

3. I have heard learned counsel for the appellant on the question of admission and perused the impugned judgment and decree.

4. By virtue of the provisions contained in Section 257 (l-1) of the Code, the jurisdiction is barred in the matter covered under Section 170-B of the Code.

5. The question for consideration is whether the suit as framed and filed was maintainable.

6. The provision of section 257(1-1) 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:
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> XXX XXX XXX
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> (1-1) any matter covered under section 170B."

It entails special bar on the jurisdiction of the Civil Court to entertain a dispute which is required to be decided by the Sub Divisional Officer under Section 170-B 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 matter of **Dhulabhai Vs. State of M.P.**[1] 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:

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[1] AIR 1969 SC 78

“(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 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.

8. The same principles are again enunciated by the Supreme Court in the matter of **State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (Dead.) by LRs. and others**[2], wherein the decision of **Dhulabhai** (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 (supra) and case must fall within the parameter of the tests mentioned in the matter of **Dhulabhai** (supra) and **Manjeti Laxmi Kantha Rao** (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**[3], reported in Revenue Niryana, held as under:-

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[2] (2000) 3 SCC 689
[3] 2001 RN 85

> "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 settled legal position that despite the bar created under section 257(1)(L-1) of the Code against orders passed by the Revenue Authorities under section 170-A and 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) followed in **Dhumaniya** (supra). Thus, 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 limited jurisdiction to entertain such suit upto the aforestated extent.

12. Reverting to the facts of the present case, the plaintiff's case is that the provision contained in Section 170-B of the Code is not at all attracted in the facts of the present case and by that, the plaintiff is seeking to consider merits of the order dated 5.4.94 passed by the Sub-Divisional Officer under Section 170-B of the Code. Since jurisdiction of the Civil Court is barred under Section 257(1) (L-1) of the Code as the matter is covered by the provisions of Section 170-B of the Code, the civil Court can only look into whether the authority

concerned (Sub-Divisional Officer (R.)) has complied with the prescribed procedure or not while holing the enquiry and while passing the order and the jurisdiction of the civil Court is limited as laid down by the Supreme Court in **Dhulabai** (supra) and as such, merits of the order passed by the Sub-Divisional Officer (R.) cannot be looked into by the civil Court. In view of that, both the authorities are absolutely justified in holding that order dated 5.4.94 is in accordance with law. I do not find any illegality or perversity in the said finding. No substantial question of law is involved in this second appeal for determination.

13. Accordingly, the second appeal is dismissed in *limine.* No cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-