

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.1101, 1168 AND 1207 OF 2018

COMMON ORDER

The petitioner in these three revision petitions under Article 227 of the Constitution is the first defendant in O.S.Nos.152, 153 and 154 of 2015 on the file of the learned Principal District Judge, Ranga Reddy District at L.B.Nagar. The said suits were filed by different sets of individuals, impleaded as respondents in these revision petitions, seeking declarations that they were the absolute owners and possessors of the suit schedule properties apart from declarations to the effect that the sale deeds executed in favour of the first defendant in respect of the suit schedule properties were null, void and not binding upon them. They also sought perpetual injunctions restraining the defendants from interfering with their possession and enjoyment over the suit schedule properties.

While so, the petitioner-first defendant filed I.A.s in the three suits under Order 7 Rule 11(d) CPC seeking rejection of the plaints therein on the ground that the suits were barred by law under Section 29 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (*for brevity*, 'the Act of 1955'). By separate orders dated 23.08.2017, the trial Court dismissed all three I.As. Aggrieved thereby, the petitioner-first defendant is before this Court.

C.R.P.No.1207 of 2018 arises out of the dismissal of I.A.No.1400 of 2016 filed in O.S.No.152 of 2015 while C.R.P.No.1101 of 2018 relates to the dismissal of I.A.No.1401 of 2016 in O.S.No.153 of 2015 and C.R.P.No.1168 of 2018 pertains to the dismissal of I.A.No.1402 of 2016 in O.S.No.154 of 2015.

Heard Sri K.G.Krishna Murthy, learned senior counsel appearing for Sri K.Rama Mohan, learned counsel for the petitioner-first defendant, and Sri Vedula Srinivas, learned counsel appearing for Sri J.Govardhan Reddy, learned counsel on caveat for the GPA holder of the plaintiffs in the suits, as reflected in the cause titles of the orders under revision.

Parties shall hereinafter be referred to as arrayed in the suits.

The claim of the first defendant in the three suits was that as the suit schedule properties were inam lands and an Occupancy Rights Certificate had been issued in his favour, the suits were not maintainable in terms of Section 29 of the Act of 1955. He asserted that if the plaintiffs were aggrieved by the order passed by the Collector under the Act of 1955, it could only be challenged before the High Court and as the plaintiffs were, in effect, questioning the grant of occupancy rights in his favour, the suits were barred by law.

The plaintiffs contested this plea, pointing out that in so far as grant of occupancy rights under the Certificate dated 06.12.2001 was concerned, appeals were filed by them before the Joint Collector-II, Ranga Reddy. They further pointed out that they were not aggrieved by any order passed by the Collector and asserted that their suits were comprehensive ones, not only seeking declaration of their title but also nullification of the sale deeds, under which the first defendant claimed rights, apart from perpetual injunctions. They asserted that these reliefs could not be granted by any authority under the Act of 1955 and their suits were therefore maintainable.

Upon consideration of the rival pleadings and the material on record, the trial Court took note of the fact that the suit prayers were not in relation to any order passed by the Collector or a Tribunal constituted

under the Act of 1955. Opining that the provisions of the Act of 1955 would have to be construed strictly for the purpose for which it was enacted, i.e., to adjudicate disputes between the inamdar on the one hand and his lessees/assignees on the other, so as to determine their rights *inter se*, the trial Court concluded that as the suits were based on the alleged possession of the plaintiffs over the suit properties and as they had sought perpetual injunctions to protect the same, apart from seeking declarations, the reliefs would not fall within the jurisdiction of any authority under the Act of 1955 and therefore, the suits were maintainable. In the result, the trial Court dismissed the I.As.

It would be apposite at this stage to note the scheme and structure of the Act of 1955. Under Section 10 of the Act of 1955, the 'Collector' is required to examine the nature and history of the lands in respect of which the inamdar; kabiz-e-kadim; permanent, protected or non-protected tenant; seeks to be registered as an occupant under Sections 4, 5, 6, 7 or 8, as the case may be, and decide in whose favour and in respect of which inam lands, such claims should be allowed, apart from the land revenue and the premium payable in respect of such lands. As the definition of 'Collector' under Section 2(1)(a) of the Act of 1955 includes the Deputy Collector, i.e., the Revenue Divisional Officer, he would be the primary authority under Section 10 of the Act of 1955.

Similarly, it is the 'Collector' who has to determine, as per Section 17 of the Act of 1955, the total compensation payable in respect of an inam in accordance with Sections 12 to 16 thereof. Section 18 of the Act of 1955 provides that the 'Collector' must follow the procedure prescribed therein and give due notice to all the persons interested in the compensation or in claiming a share thereof. Again, reference to the

‘Collector’ in these provisions would mean the primary authority, i.e., the Revenue Divisional Officer. As against such determination, an appeal lies to the High Court under Section 27 of the Act of 1955. However, under Section 25 thereof, the Collector may, for reasons to be recorded in writing, either *suo motu* or on an application, refer any case relating to apportionment of such compensation to the Special Tribunal for its decision. As regards an order passed by the Special Tribunal, be it under Section 25 or under Section 26 of the Act of 1955, an appeal lies to the High Court under Section 27.

As regards claims for occupancy rights under Sections 4, 5, 6, 7 or 8 of the Act of 1955 dealt with by the Revenue Divisional Officer as the primary authority under Section 10 of the Act of 1955, an appeal would lie to the ‘prescribed authority’ under Section 24(1) thereof. Further, whenever a question arises as to whether a building or land falls within the scope of Section 9 of the Act of 1955, which deals with vesting of private buildings and inam lands used for non-agricultural purposes, it has to be referred to the ‘prescribed authority’ under Section 24(2) of the Act of 1955. Though the term ‘prescribed authority’ is not defined in the Act of 1955 in the context of Sections 24(1) and 24(2), Rule 18 of the Andhra Pradesh (Telangana Area) Abolition of Inam Rules, 1975, sheds light and indicates that the District Collector is the prescribed authority for the purpose of Section 24(1) and the Special Tribunal is the prescribed authority for the purpose of Section 24(2) of the Act of 1955.

In the light of this statutory scheme, Section 29 of the Act of 1955, which is sought to be pressed into service by the first defendant may be examined. Section 29 of the Act of 1955 reads as under:

‘29. Savings:.. – Save as otherwise provided in this Act, no order passed by the Collector or by the Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid or be questioned in any Court of law.’

The above provision stipulates to the effect that no order passed by the Collector or by the Special Tribunal under the Act of 1955 shall be liable to be cancelled or modified, except by the High Court either in exercise of appellate jurisdiction under Section 27 or revisionary jurisdiction under Section 28 of the Act of 1955, or be questioned in any Court of law. Therefore, the jurisdiction of the civil Court is barred only as regards orders passed by the ‘Collector’ or the ‘Special Tribunal’, which are amenable to correction only by the High Court in exercise of appellate or revisionary jurisdiction. In this regard, it may be noted that neither an order passed by the ‘Collector’ nor by the ‘Special Tribunal’ under the Act of 1955, amenable to the appellate or revisionary jurisdiction of this Court, finds mention in the plaint prayers in the subject suits. Declaration as to ownership over the suit schedule properties is wider in its ambit and would not be limited to any claim in relation to occupancy rights under the Act of 1955. Therefore, the contention of the first defendant in the suits that the suits were barred by Section 29 of the Act of 1955 does not stand to reason and cannot be accepted.

In *PUSHPAGIRI MATH V/ s. KOPPARAJU VEERABHADRA RAO*¹, the Supreme Court was dealing with a case arising under the Andhra Pradesh Inams Abolition and Conversion into Ryotwari Act, 1956. It was held that by statutory operation of the provisions of the said Act, the pre-existing right or interest held by the inamdar stood extinguished and the conferment of ryotwari patta under Section 7 read with Section 3 became conclusive between the parties and therefore, the jurisdiction of

¹ (1996) 9 SCC 202

the civil Court to declare the title to inam land stood excluded by necessary implication. The scheme of the Andhra Pradesh Inams Abolition and Conversion into Ryotwari Act, 1956, being essentially different from that of the Act of 1955, in relation to recognition of occupancy rights, the *ratio* laid down in this judgment cannot be extended to the cases on hand *ipso facto*. Further, in the case before the Supreme Court, there were no multiple prayers unrelated to the Act which excluded the jurisdiction of the civil Court. This judgment is therefore of no avail.

In IBRAHIM KHAN V/ s. GOWRAM KONDAIAH², a learned Judge of this Court was dealing with the Act of 1955 and exclusion of the jurisdiction of the civil Court. Adverting to Section 9 CPC, the learned Judge observed that as Section 33 of the Act of 1955 provided that nothing in the Act of 1955 shall, in any way, be deemed to affect the application of the provisions of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, to any inam, a dispute between the successors-in-interest of a permanent lessee and the tenants could not be entertained by the civil Court. This judgment also did not deal with Section 29 of the Act of 1955 or suit prayers on the lines as in the cases on hand.

In MANDALA JAYA SYAMALA RAO V/ s. SRI RADHAKANTHASWAMI³, a Division Bench of this Court was considering the Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948, and observed as under:

'26. ... The relief of possession is only incidental to the grant of relief of declaration of title. It is not the main nor independent relief. If it is found on enquiry under Section 11 that the appellant is entitled to a ryotwari patta, then his possession cannot be held to be illegal. Therefore, the relief of possession and

² 2002 (5) ALD 422

³ 1984 (1) ALT 286 (DB)

mesne profits are solely consequential to the first relief of declaration that it is an inam land and the deity had title to it as sought for. Since it is held that the jurisdiction of the civil Court is ousted, the civil Court, as a necessary corollary, cannot grant any of the reliefs. As a result, the suit is not maintainable.'

Again, this judgment related to construction of another enactment and cannot be extended *mutatis mutandis* to the cases on hand.

Section 9 CPC provides that civil Courts shall try all suits, unless barred. Order 7 Rule 11(d) CPC would apply only where it is patently clear that the operation of any law in force bars the suit.

In NAHAR INDUSTRIAL ENTERPRISES LTD. V/ s. HONG KONG & SHANGHAI BANKING CORPN.⁴, the Supreme Court observed that the jurisdiction of the civil Court is plenary in nature and unless the same is ousted, expressly or by necessary implication, it would have jurisdiction to try all types of suits. Earlier, in DHULABHAI V/ s. STATE OF M.P.⁵, the Supreme Court held thus:

‘(2) 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.’

In S.VANATHAN MUTHURAJA V/ s. RAMALINGAM ALIAS KRISHNAMURTHY GURUKKAL⁶, the Supreme Court observed:

⁴ (2009) 8 SCC 646

⁵ AIR 1969 SC 78

⁶ (1997) 6 SCC 143

‘3. ... 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 that 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. ... After the advent of independence, the land reforms was one of the policies of the Government abolishing feudal system of land tenures and conferment of the ryotwari patta on the tiller of the soil. Thereby, the land reform laws extinguish pre-existing rights and create new rights under the Act. The Act provides for the jurisdiction of the tribunals in matters relating thereto and hierarchy of appeals/revisions are provided thereunder giving finality to the orders passed thereunder. Thereby, by necessary implication, the jurisdiction of the civil court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded giving not only the finality to the decisions of the tribunal but also ensuring disposal of the matters by the tribunal and making the ryotwari patta granted to the tiller of the soil conclusive. Under the normal course of civil procedure, the jurisdiction for the trial of the civil suits, in relation to the matters covered under the Acts, being time-consuming and tardy, and there being the lack of financial resources or otherwise incapacity to defend or want of knowledge of the parties as to their rights, energy-sapping civil suits with hierarchy of appeals are intended to be avoided. Obviously, therefore, the civil suits by necessary implication stand excluded unless the fundamental principles of procedure are followed by the tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires tribunals to enquire into the rival claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil court stands excluded.’

In the light of the aforestated legal principles, the oblique attack on the maintainability of the subject suits by the first defendant on the ground that the ownership claim of the plaintiffs over the suit schedule properties would also entail examination of the Occupancy Rights Certificate granted under the Act of 1955 is too long drawn a connection

to sustain his plea for rejection of the plaints under Order 7 Rule 11(d) CPC. It may also be noted that the suit claims were not limited to just declaration of title but also included prayers for nullification of registered documents and for perpetual injunctions against the defendants in the suits. These prayers are obviously not relatable to the Act of 1955.

On the above analysis, this Court finds that the trial Court did not err in denying the plea of the first defendant in the suits that the plaints warranted rejection at the threshold.

The civil revision petitions are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, in these CRPs shall also stand dismissed. No order as to costs.

8th JUNE, 2018

PGS



SANJAY KUMAR, J