

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5597 of 2015

ORDER:

The civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 05.10.2015 passed in I.A.No.338 of 2015 in O.S.No.1014 of 2015 by the IX Junior Civil Judge, City Civil court, Hyderabad, whereby the petition filed under order VII Rule 11 (a) and (d) and Order XII Rule 6 read with Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petitioner/defendant No.3 filed I.A.No.338 of 2015 in O.S.No.1014 of 2015 to reject the plaint on the ground that the Civil Court lacks jurisdiction since the plaintiff claimed declaratory relief to declare that the eviction notice dated 27.04.2015 issued under Section 6 of the A.P. Land Encroachment Act III of 1905 (for short "the Act") by the defendant No.2 is null and void and not binding on the plaintiffs as it is hit by Section 14 of the Act.

Respondents/plaintiffs filed counter denying material allegations *inter alia* contending that the suit schedule property, which is subject matter of O.S.No.2050 of 2013 is different from the property of respondents/plaintiffs as respondent No.1 and her property are not bound by the orders passed in the suit. It is also contended that the suit schedule property is private property and not Government Property as alleged by the defendants and prayed to dismiss the petition.

The trial court upon hearing argument of both the counsel concluded that this suit cannot be rejected on any of the grounds raised in the written statement or petition filed for rejection of the

plaint, dismissed the petition without going into the merits of the case regarding cause of action etc.

Aggrieved by the order of the Court below, the present revision is filed by the unsuccessful petitioner/defendant raising specific ground that in view of Bar under Section 14 of the Act the jurisdiction of the Civil Court is ousted, thereby the suit questioning the notice issued under Section 6 of the Act, is not maintainable.

During hearing, learned counsel for the petitioner would draw the attention of this Court to Section 14 of the Act to contend that the jurisdiction of the Civil court is taken away when the proceedings are initiated under the Act and requested this Court to consider the bar on jurisdiction of Civil Courts and requested to pass appropriate orders setting aside the order passed by the Court below.

Learned counsel for the respondents contended that the property is private property and the authorities under the Act are incompetent to issue notice under Section 6 of the Act, thereby the trial Court passed reasoned order holding that at this stage the Court cannot reject the plaint exercising power under Order VII Rule 11 (a) and (d) and under Section 151 of C.P.C.

Considering rival contentions, perusing the material available on record, the point that arises for consideration is:

Whether the jurisdiction of the Civil Court is ousted, in view of the bar under Section 14 of the A.P.Land Encroachment Act, if so, whether the plaint is liable to be rejected?

P O I N T:

Admittedly the defendant Nos.1 and 2 in the main suit issued impugned notice dated 27.04.2015 exercising power under Section 6 of the Act contending that the respondents herein are the

encroachers within the definition of the Act while claiming that the land belongs to the Government. The plaintiffs filed the suit claiming following reliefs:

“(1) To declare that the eviction notice dated 24.04.2015 under Section 6 of A.P.Land Encroachment Act III of 1905 issued by the defendant No.2 is null and void and not binding on the plaintiffs.

(2) Perpetual injunction may be granted restraining the defendants, their men, agents, subordinates and anybody else claiming on their behalf from interfering and dispossessing the plaintiffs from the suit schedule “A” and “B” properties which are fully described in the schedule of properties.

(3) Cost of the suit may be awarded.

(4) pass any further order or orders in the circumstances of the case in the interest of justice and equity.”

The relief claimed in the plaint is nothing but questioning the act done by the authorities under the Act and such act of the respondents in issuing notice under section 6 of the Act cannot be questioned in a civil court as a machinery is provided under the special enactment i.e. appeal to the Revenue Divisional Officer.

Section 14 of the Act made it clear that no decision made or order passed or proceeding taken by any officer or authority or the State Government under this Act, not being a decision, order or proceeding affecting the title to the land of a person, shall be called in question before a civil court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by such officer or authority or State Government in pursuance of any power conferred by or under this Act.

Section 14 of the Act has taken away the jurisdiction of the Civil Court since separate machinery is provided under the Act by way of appeal and revision to the authorities concerned. When the Civil Court lacks inherent jurisdiction, the Court cannot entertain the suit and proceed to try the same. Section 9 of C.P.C. permits the

Courts to try and decide all suits of civil nature except those are barred.

Here, in this case the acts done by the respondent Nos.3 and 4 herein were challenged in the suit and in view of the bar under Section 14 of the Act, the jurisdiction of the Civil Court is ousted from exercising jurisdiction over the subject matter, it would not affect the title of the parties.

An identical question came up before the Apex Court in in **M/s Kamala Mills Limited v. State of Bombay**¹ held as follows:

“Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court shall consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of express bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute.”

In **Dhulabai Vs. State of Madhya Pradesh**², the Apex Court laid down the following seven guide lines to determine jurisdiction of Civil Court, they are as follows:

- “(1) *Whether the statute gives finality to the orders of the special tribunals the Civil Court’s 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.*
- (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*

¹ AIR 1965 SC page 1942

² AIR 1969 Supreme Court page 78

of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and scheme of 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 the 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.

- (3) *Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*
- (4) *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.*
- (5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.*
- (6) *Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order 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.

(7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”*

When machinery is provided for redressal of grievance of the parties under a special statute and competent to grant relief which the Civil Court can grant, the jurisdiction of the Civil Court is ousted. Therefore in view of the bar under Section 14 of the Act *pram facie* the Civil Court has no jurisdiction to declare the eviction notice dated 27.04.2015 issued under Section 6 of the Act by defendant No.2 is null and void.

Order VII Rule 11 (d) of C.P.C. permits the Courts to reject the plaint on the ground that the plaint is barred by any law that includes the provisions of Statute and also Judge made law.

Here, the jurisdiction of civil Court is taken away by Section 14 of the Act. In “**Bharvagi Constructions v. Kothakapu Muthyam Reddy**”³ the Apex Court held that when there is statutory bar to entertain suit against the action taken by the authorities, the Civil Court cannot entertain the suit for the relief extracted above. Thus, the suit is barred by law, which attracts Order VII Rule 11 (d) of C.P.C., and such power can be exercised at any stage of the suit or proceedings.

But the trial Court without looking into the relief claimed in the suit and allegations made in the plaint, dismissed the petition on the ground that based on the written statement and allegations made in the petition, the plaint cannot be rejected at the threshold. Even if the relief claimed in the petition and the allegations made in

³ JT 2017 (8) SC 586

the plaint are taken into consideration, the suit questioning the notice of eviction issued under Section 6 of the Act is not maintainable in view of the bar under Section 14 of the Act. Therefore, the Civil Court lacks inherent jurisdiction, but the trial Court did not exercise its jurisdiction properly and committed grave error in dismissing the petition. Hence, I find that it is a fit case to reject the paint by exercising power under Order VII Rule 11 (d) of C.P.C. Hence, the present civil revision petition is liable to be allowed and the plaint in O.S.No.1014 of 2015 on the file of IX Junior Civil Judge, City Civil Court, Hyderabad is rejected.

In the result, the civil revision petition is allowed setting aside the order dated 05.10.2015 passed in I.A.No.338 of 2015 in O.S.No.1014 of 2015 by the IX Junior Civil Judge, City Civil court, Hyderabad and the plaint in O.S.No.1014 of 2015 is hereby rejected allowing the I.A.No.338 of 2015. No costs. However, the respondents/plaintiffs are at liberty to prosecute their grievance before appropriate authority or forum.

The miscellaneous petitions pending in all the three revisions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

23.02.2018
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