

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 120 of 2004**

1. Manmohan (dead) through LRs:-

(1) Smt. Pushpa Harmukh, aged 57 years, Wd/o
Manomohan Harmukh

(2) Harish Harmukh, age 35 years, S/o Manmohan Harmukh

(3) Bhupesh Harmukh, aged 32 years, S/o Manmohan
Harmukh,

(4) Uvin Harmukh, aged 22 years, S/o Manmohan Harmukh

All R/o Gram & Post – Chandkhuri, PS- Poolgaon, Tahsil & Distt. Durg (C.G.)

2. Suresh, S/o Late Shri Parasram, aged about 41 years,

3. Vinod, S/o Late Shri Parasram, aged about 38 years,

4. Smt. Sharda Bai (dead)

5. Naveen Kumar, aged about 30 years, S/o Late Shri Bhushan Lal Harmukh

6. Vijay Kumar, aged about 26 years, Son of Late Shri Bhushan Lal
Harmukh,

7. Vinay Kumar, aged about 22 years,

8. Ku. Kanchan, aged about 14 years, minor through natural guardian
monther Smt. Sharda Bai,

All resident of Village Chandrakhuri, Patwari Halka No. 20, Tahsil & District
Durg (C.G.)

9. Smt. Radhabai, aged about 52 years, wife of Mohan Lal Deshmukh,
resident of Village Ruda, Tahsil & District Durg.

10. Smt. Vidyabai, aged about 45 years, W/o Shri Lavkush Deshmukh,
resident of Village Birejhar, Tahsil & District Durg.

11. Smt. Chhamabai, aged about 42 years, W/o Premsingh Dilliwar, resident
of Village Funha, Tahsil Dhamdha, District Durg (C.G.)

12. Smt. Ahilya Bai, aged about 40 years, s/o Shri Kedar Singh Belchandan,
resident of village Tiranga, District Durg.

13. Smt. Sarla Bai, aged 39 years, S/o Shri Vachan Singh Deshmukh, resident

of Village Chirchar, Tahsil Gunderdehi, District Durg (C.G.)

---- Appellants/Plaintiffs

Versus

1. State of Chhattisgarh, through Collector, Durg,
2. Additional Collector & Competent Officer (Agriculture Ceiling), Durg

---- Respondents/defendants.

For Appellants	:	Mr. Anand Kumar Gupta, Advocate.
For Respondents/State	:	Mr. Arun Shukla, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/07/2019

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs states as under:

“Whether both the Courts below were justified in dismissing the plaintiff’s suit holding it to be barred by Section 11(5) read with Section 46 of Madhya Pradesh Ceiling on Agricultural Holding Act, 1960 by recording a perverse finding ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The suit property was originally held by Late Parasram. Plaintiffs No. 1 to 3 are the sons of late Parasram whereas plaintiffs No. 9 to 13 are his daughters and defendant No. 4 is the widow of his son Bhushan Lal, who died on 10.09.1994. Parasram died in the year 1956 leaving behind the plaintiffs as his legal heirs.

(3) Two ceilings cases under the provisions of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (henceforth, ‘ the Act of 1960’) were initiated being Revenue

Case No. 358-A-91(3) of 1982-83 decided on 16.03.1983 and Revenue Case No. 7-A/90-B(3) of 1982-83 decided on 21.12.1982 declaring 142 acres of the land as surplus and also declaring the 112.94 acres of the land, respectively, by the aforesaid orders, the appellants/plaintiffs herein preferred appeal before the Additional Commissioner there-against, which was dismissed on 25.07.1983 and thereafter they preferred revision thereagainst before the Board of Revenue, which was dismissed on 2.2.1984, against which they preferred Misc. Petition No. 551 / 84 {***Bhusanlal (through his LRs) and others Vs. State of Madhya Pradesh and others***}, which was decided on 26.10.1994 and dismissed their writ petitions holding that the order passed by the Competent Authority on 16.03.1983 & 21.12.1982 under the Act of 1960 is in accordance with law and only thereafter, plaintiffs have preferred civil suit for declaring the orders passed by the competent authority under the Act, 1960 vide Ex.P-5 & P-6 are illegal and void.

(4) The trial Court dismissed the suit holding that suit is barred by Section 46 of the Act of 1960, which was affirmed by the first appellate Court, against which instant second appeal has been preferred by the appellant/plaintiffs in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(5) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in dismissing the suit as barred by Section 46 of the Act of 1960, which are liable to be dismissed.

(6) On the other hand, counsel for the respondent/State would support the judgment & decree passed by both the courts below.

(7) I have heard learned counsel appearing for the parties and considered their rival

submissions made hereinabove and went through the record with utmost circumspection.

(8) It is not in dispute that the order passed by the competent authority under Section 11 (5) of the Act of 1960 declaring the land held by original holder Parasram, of which the plaintiffs are successor in interest, was firstly challenged before the Additional Collector and, thereafter before the Board of Revenue and Board of Revenue finally by order dated 2.2.1984, dismissed the revision, against which the writ petition was taken before the High Court of Madhya Pradesh. The M.P. High Court in Misc. Petition No. 551/84 has considered the matter and held that daughters of late Parasaram had not agitated the matter before the competent authority and they were married prior to 7.3.1974 and they had gone to family of their husband and, therefore, they are not entitled to any land and it was also held that they have not preferred any appeal before the Additional Commissioner and, as such, order has become final.

(9) It is pertinent to mention here that Section 46 of the Act of 1960 creates a bar to maintain any civil suit. Section 46 of the Act of 1960 states as under: -

“46. Bar of jurisdiction of civil courts.—Save as expressly provided in this Act, no civil court shall have any jurisdiction-

(i) to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority;

(ii) to grant stay in any case under this Act.”

(11) A close reading of Section 46 of the Act of 1960 would show that civil court shall have no jurisdiction to decide the question, which has been decided by the competent authority under the Act of 1960.

(12) Section 4(3) of the Act of 1960 provides as under: -

“4. Transfers or partitions made after the publication of the Bill but before the commencement of this Act.—(1) xxx xxx xxx

(2) xxx xxx xxx

(3) Any person aggrieved by an order of the competent authority under this section may prefer an appeal against such order to the Board of Revenue. The decision of the Board and subject to the decision of the Board in appeal the decision of the competent authority shall be final.”

(13) The short question that needs consideration is, whether the order of the competent authority under the provisions of the Act of 1960 declaring the land to be surplus, which has become final by virtue of provisions contained in Section 4(3) of the Act of 1960, can be questioned in the civil court in view of the bar created under Section 46 of the Act of 1960 and in view of dismissal of their writ petition questioning that appellate and revisional order.

(14) Section 46 of the Act of 1960 clearly bars the jurisdiction of civil court in respect of the matter which has been settled by the competent authority under the Act of 1960. Like, in the present case, the order of the competent authority has attained finality under Section 4(3) of the Act of 1960, as challenge made by the holder of the land has failed in a writ petition filed before the High Court of Madhya Pradesh by plaintiffs.

(15) A Full Bench of the Madhya Pradesh High Court in the matter of **Vijaysingh and another v. Competent Authority, Sub-Divisional Officer, Tarana**¹, with reference to Section 46 of the Act of 1960 held that Section 46 bars the jurisdiction of the civil court, which are triable by the competent authority under the provisions of the Act of 1960 and observed as under: -

“4. ... This provision therefore bars the jurisdiction of the Civil Court only about questions which are triable by the competent authority under the provisions of this Act. The questions which are

1 AIR 1978 MP 72

not within the jurisdiction of the competent authority to decide cannot be held to be covered by the provisions of [Section 46](#). It is also clear from this provision that even about those questions which are within the jurisdiction of the competent authority, but in respect of which there is an express provision for going to the Civil Court, the Civil Court will have jurisdiction to try those questions.”

(16) In the matter of **Sooraj (Smt.) and others v. S.D.O., Rehli and others**², the Supreme Court has held that determination of surplus area of land by the competent authority, remedy of appeal and revision provided under the Act of 1960, civil suit is barred by operation of Section 46. Relevant portion of the report states as under: -

“6. ... Thereby, the legislative intention is that the proceedings initiated under the provisions of Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 shall be pursued only in the manner provided thereunder, namely, right of appeal and right of revision, and the jurisdiction of Civil Court has been barred to impugn any question settled or decision made or matter dealt with by the competent authority under the Act of 1960. Thereby the civil suit also has been barred by operation of [Section 46](#). Though none of these questions have been raised nor dealt with by the Courts below since they are pure questions of law untrammelled by any questions of facts we have adverted to and found that the suit is not maintainable for these reasons.”

(17) In the matter of **Bodhan Prasad and others v. State of Chhattisgarh**³, this Court also has held that the jurisdiction of civil court is barred once the matter is decided by the competent authority. Paragraph 10 of the report reads as under: -

“10. I have examined the matter on this line also. Section 46 of the Act creates a bar on jurisdiction of Civil Courts. As stated above, it provides that no Civil Courts shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the competent authority. Certainly, the grounds raised by the plaintiffs before the Civil Court were the grounds covered under the provisions of this Section as the plaintiffs had taken the ground of wrong description of the areas of lands in the revenue records and the competent authority being wrongly decided this matter on the basis of those description. In fact, it was a matter within the exclusive dominion of the competent authority and by virtue of Section 46 of the Act, no Civil Court was having jurisdiction to

2 1995 RN 121

3 2006(1) M.P.H.T. 75 (CG)

entertain a civil suit on the ground that the authority committed an error of law in deciding the claim of a party raised by him on the aforesaid ground. The First Appellate Court has rightly taken this view that the suit itself was not maintainable before the Civil Court.”

(18) It is well settled rule prescribed by Section 9 of the CPC that 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.

(19) In the matter of **Ramkanya Bai and another v. Jagdish and others**⁴, 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.

Paragraph 15 of the report states 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](#)⁵ 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

4 (2011) 7 SCC 452

5 AIR 1965 SC 1942

suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. ...

* * *

32. ... Whenever 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 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*. If 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."

(emphasis supplied)

(20) Similar principle of law has been laid down by the Supreme Court recently in the matters of **Robust Hotels Private Limited and others v. EIH Limited and others**⁶ and **Unichem Laboratories Limited v. Rani Devi and another**⁷.

(21) Keeping in view the provision of Section 46 of the Act of 1960 creating bar to the jurisdiction of civil court with respect to the matters triable by the competent authority under the Act of 1960 and following the principles laid down in the above-stated decisions and also considering the fact that the legislative intention in respect of the proceedings initiated under the provisions of the Act of 1960 shall be pursued only in the manner provided thereunder, namely, right to appeal and right of revision,

⁶ (2017) 1 SCC 622

⁷ (2017) 13 SCC 509

in the instant case, the order of competent authority was challenged declaring the land to be surplus land vide Ex.P-5 & P-6, before the appellate authority and revisional authority, and in that proceeding orders of competent authority were upheld and thereafter challenged in petition under Articles 226 / 227 of the Constitution of India before the High Court of Madhya Pradesh and the Madhya Pradesh High Court finally dismissed the writ petition vide Ex.P-9 upholding the order of competent authority and order dismissing the appeal and revision and, thereafter, the suit has been filed, which, in the opinion of this Court, has rightly been dismissed by the two courts below holding it to be barred by Section 46 of the Act, 1960. The concurrent finding recorded by two courts below that the suit is barred by Section 46 of the Act of 1960 is a finding of fact based on material available on record in which I do not find any illegality or perversity warranting interference under Section 100 of the Code of Civil Procedure.

(22) As a fallout and consequence of the aforesaid discussion, the substantial question of law is answered in favour of defendants and against the plaintiffs and second appeal is dismissed affirming the dismissal of suit by the Courts below. No order as to costs(s)

(23) Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

