

In The High Court at Calcutta

Civil Appellate Jurisdiction

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Kausik Chanda

S.A.T. 106 of 2003

With

CAN 3 of 2020 (Old No. CAN 1075 of 2020)

Smt. Chabi Rani Pal and Others

...Appellants/Plaintiffs.

Versus

State of West Bengal and Another

...Respondents/Defendants.

For the appellants : Mr. Syed Shamsul Arefin, Advocate.

Hearing concluded on : 09/12/2020

Judgment on : 03/03/2021

Kausik Chanda, J.:- This appeal is directed against a judgment and order dated July 13, 2002, passed by learned Civil Judge, Senior Division, 2nd Additional Court, Burdwan in Title Appeal No. 25 of 1998 affirming the judgment and decree dated November 29, 1997 passed by the learned Civil Judge, Junior Division, 3rd Court at Burdwan dismissing the Title Suit No. 147 of 1994.

(2) The aforesaid suit was filed by one Biseswar Pal, since deceased, the predecessor-in-interest of the plaintiff against the State of West Bengal and the Revenue Officer, Guskara, Burdwan, impleading his two sons namely Nemai Chandra Paul and Brojo Nath Paul as Proforma Defendants.

(3) It is averred in the plaint that the plaintiff owned total 12.80 acres of land as described in schedule "A" of the plaint. In the year 1968, the said Biseswar (the plaintiff) and his wife Gayatri, by an oral family settlement, separated the said two sons from the family and transferred the property described in the Schedule-B to the plaint. A memorandum was also prepared to that effect. After such separation the family of the plaintiff comprised of six members: Biseswar himself, his wife and four daughters. As per Section 14M of West Bengal Land and Land Reforms Act, 1955 (Land Reforms Act for short) the plaintiff was entitled to retain 14.52 (12.36+1.40 + .76) acres of agricultural lands in irrigated area. Gayatri Bala, expired before 1971 and the plaintiff married for the second time. From his second wife his son, Prosanto, and

daughter, Chandana, were born. The concerned Revenue Officer, who had been impleaded as Defendant No. 2 in the suit, started a suo motu case in 1994 against the plaintiff and without giving him any opportunity of being heard, vested the agricultural lands as mentioned in the Schedule “C” of the plaint. It was the case of the plaintiff that he had no land in excess of ceiling limit and the Revenue Officer, by treating the ‘B’ Schedule lands as the lands of the plaintiff, had passed the vesting order.

(4) In the backdrop of the aforesaid pleadings, the plaintiff filed the suit praying for the following reliefs:-

“ a) according to the averments in the plaint your honour would be graciously pleased to declare the right of the plaintiff to the (c) schedule land to retain within his ceiling and that the A schedule land is possessed by the plaintiff within his ceiling limit and lands in B schedule are not of the plaintiff to be included within his ceiling but the proforma defendants no. 3 & 4 are the owners of the same and your honour would be graciously pleased to promulgate a permanent injunction against defendant no. 1 & 2 restraining from treating B schedule land within the ceiling of the plaintiff and be restrained from ousting and distributing lands in (c) schedule to any person which has been illegally declared as excess land of the plaintiff by the Revenue officer in a suo moto proceeding.

b) all costs of the suit be decreed in favour of the plaintiff against defendants no. 1 & 2;

c) decree for any other relief or reliefs if the plaintiff is entitled to under law and equity.”

(5) Though an issue as to the of the maintainability of the suit was framed by the learned Trial Judge in view of Section 14X of the Land Reforms Act,

none of the parties pressed the issue and as such the learned Trial Judge did not adjudicate the said issue. Before the appeal court below also the bar to entertain the suit arising out of Section 14X of the Land Reforms Act was neither raised nor considered.

(6) In our view, since this was a jurisdictional issue relating to competence of the court to receive the plaint, the question of maintainability of the suit should have been decided by the courts below at the first instance before dealing with the other issues relating to the merit of the case even though the said issue was not pressed by the parties. In this second appeal we are inclined to decide the said issue since it travels to the root of the jurisdiction of the civil court.

(7) In this regard paragraph 6 of the case reported at **(1995) 2 SCC 45 (Sooraj (Smt) -versus- S.D.O., Rehli)** may be relied upon.

“6. Section 46 of the Madhya Pradesh Ceiling on Agricultural Holdings Act creates a bar to maintain any civil suit which reads thus:

"Save as expressly provided in this Act, no civil court shall have any 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."

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. 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.”

(emphasis supplied)

(8) The law relating to jurisdiction has been enunciated by the Constitution Bench of the Supreme Court reported at **AIR 1969 SC 78 (Dhulabhai – Versus– State of Madhya Pradesh)** taking into consideration the diverse views expressed in a number of cases. The Supreme Court has laid down, inter alia, the following propositions:

“(1) 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 court 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 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.

.....

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

(9) It has been held by the Supreme Court in the case reported at **AIR 1965 SC 1942 (M/s. Kamala Mills Ltd. -versus- State of Bombay)** as follows:

“The normal rule prescribed by S. 9 of the Code of Civil Procedure is that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. ... 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.”

(10) In the present case, the plaintiff in substance sought to challenge a vesting order passed under Section 14M of the Land Reforms Act. Authority to pass such vesting order upon fixation of ceiling limit under Chapter-IIB of the said Act was within the domain of the Revenue Officer. A plain reading of the plaint and the prayer made therein makes it absolutely clear that such a challenge as carried in the plaint could not have been adjudicated by the learned trial court in view of Section 14X of the West Bengal Land Reforms Act, 1955.

(11) Section 14X of the West Bengal Land Reforms Act, 1955 reads as follows:-

“14X. Bar of jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Chapter required to be decided or dealt with or to be determined by the Revenue Officer or other authority specified therein and no orders passed or proceedings commenced under the provisions of this Chapter shall be called in question in any Civil Court.”

(12) Against a vesting order passed by a Revenue Officer, appellate remedy has been provided under Section 54 of the Land Reforms Act. Section 54 is set out below:

“54. Appeals.—(1) Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below –

- (a) to a Collector, when the order is made by a Revenue Officer or revenue authority below the rank of a Collector;
- (b) to the Commissioner of the Division, when the order is made by the Collector of a district within the Division; and
- (c)

(2) Where, at the commencement of section 22 of the West Bengal Land Reforms (Amendment) Act, 1971, any appeal is pending before the Member, Board of Revenue, such appeal shall, notwithstanding anything contained in sub-section (1) be disposed of by such Member.

(3) After any appeal is preferred to a Collector, he may transfer the appeal to any officer subordinate to him as may be prescribed:

Provided that the officer to whom the appeal is transferred is superior in rank or position to the officer or authority making the order appealed against.

(4) An order passed in appeal shall be final.

(5) Notwithstanding anything contained elsewhere in this Act, the State Government may, on its own motion, correct any erroneous decision passed by the Revenue Officer or by any officer in an appeal under the foregoing provisions of this section and any such order passed by the State Government shall be final and shall not be called in question in any court.”

(13) A civil court, therefore, neither can fix the ceiling limit under the Land Reforms Act usurping the jurisdiction of the Revenue Officer nor can it

entertain a challenge with regard to the validity of a vesting order passed by a Revenue Officer.

(14) Under the scheme of Land Reforms Act, specific adjudicative mechanism including forum of appeal has been provided. Therefore, it cannot be said that the relief sought for by the appellants before the civil court could not be granted by the adjudicative mechanism provided under the Land Reforms Act. In that view of the matter, the exclusion of the jurisdiction of the civil court can safely be inferred insofar as the case made out in the plaint is concerned.

(15) It has been submitted by the appellants that at the relevant point of time the Tribunal constituted under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 was not in place and as such it was not possible for the plaintiff to approach the Tribunal for redressal of his grievance.

(16) We find no substance in such argument inasmuch as though the Tribunal was not set up at the relevant point of time, the validity of the vesting order, could have been challenged before the appellate authority under Section 54 of the Land Reforms Act. It was also open for the appellants to invoke the jurisdiction of this High Court under Article 226 of the Constitution of India. The appellants could not have approached the civil court to challenge the vesting order as the jurisdiction of civil court to entertain such challenge has been specifically excluded by operation of Section 14X of the Land Reforms Act.

(17) Both the courts below, after detailed discussion, discarded the alleged settlement of 1968 by the plaintiff and dismissed the suit on that ground. In our view, since the trial court had no jurisdiction to entertain the suit, it was not permissible for the trial court as well as the appeal court below to delve into the merit of the case. For the same reason, being the court of second appeal, we also refrain ourselves from saying anything on the merit of the case and dismiss the appeal holding that suit was not maintainable for lack of jurisdiction of the civil court.

(18) Accordingly, S.A.T. 106 of 2003 is dismissed. In view of the dismissal of the main appeal itself, the pending application being CAN 3 of 2020 (Old No. CAN 1075 of 2020) is also dismissed.

(19) Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree.

(Harish Tandon, J.)

(Kausik Chanda, J.)