State Of Uttarakhand (Prev.U.P.) vs Mohan Singh & Ors on 12 September, 2012

Equivalent citations: 2012 AIR SCW 6147, 2012 (13) SCC 281, 2012 (10) SCALE 360, (2014) 1 UC 90, AIR 2013 SC (CIVIL) 346, (2013) 118 REVDEC 9, (2012) 10 SCALE 360, (2013) 1 ALL WC 251, AIR 2013 SUPREME COURT 38

Bench: Dipak Misra, K. S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6479…. OF 2012
[Arising out of SLP (Civil) No. 26423 of 2009]

State of Uttarakhand
(Previously State of Uttar Pradesh) .. Appellant

Versus

Mohan Singh & Others .. Respondents

WITH

CIVIL APPEAL NO.6480…. OF 2012
[Arising out of SLP (Civil) No. 26426 of 2009]
AND
CIVIL APPEAL NO. 6481…. OF 2012
[Arising out of SLP (Civil) No. 28585 of 2009]

O R D E R

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel on either side.

4. Respondents herein had filed a suit, being Revenue Case No. 22/45 Year 1989-90, before the Sub Divisional Magistrate/Assistant Collector (SDM), under Section 229B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short 'U.P. Act') stating that they were in continuous cultivation and in possession of land measuring 0.515 hectare in Plot No. 137 of Khata No. 44 in village Itawa Tehsil Sitargunj, District Nainital, for over 20 years. Despite having adverse possession, their names had not been recorded as Bhumidars in the Revenue Records and hence a declaration was sought for to that effect.

5. The Court of the SDM, however, dismissed the suit vide judgment dated 19.03.1991 holding that the respondents could not establish adverse and continuous possession over the disputed land and that the land in question belonged to Tharu tribe and the Bhumidar right could not be obtained by non- Tharu tribe persons. Aggrieved by the said judgment, the respondents took up the matter in appeal before the Additional Commissioner (Judicial), Kumaon Division, Nainital under Section 331 of the U.P. Act.

6. The appeal was elaborately considered by the Additional Commissioner, on law as well as on facts, and he recorded a finding that the land in dispute belonged to original 'Kashtkar' (tillers) of the land, members of Tharu tribe and on their land the respondents could not claim any Bhumidar rights. Further, it was also held that the adverse possession of the respondents for prescribed period before 3.6.1981 could not be proved. Holding so, the appeal was dismissed vide judgment dated 12.07.1991 and the order of the SDM was confirmed.

7. The respondents again took up the matter in two separate appeals before the Board of Revenue under Section 331(4) of the U. P. Act and both the appeals were heard together. The respondents claimed that their rights had been perfected before the Act 20 of 1982 came into force by which the provision prohibiting the perfection of title on the land belonging to Scheduled Tribe was added.

8. The Board of Revenue took the view that the Lakhpal, examined on behalf of the State, had admitted the possession of the respondent's land and they were in continuous possession for over twenty years on the date of the institution of the suit and had perfected their title under Section 210 of the U.P. Act, before incorporation of the proviso by Act No. 20 of 1982. The Board of Revenue, therefore, allowed the appeals and decreed the suit vide its order dated 29.1.1992 and set aside the orders passed by the SDM and the Additional Commissioner.

9. State of Uttarakhand (previously State of Uttar Pradesh), through the District Collector, preferred Writ Petition (M/S) Nos. 4031 of 2001 and 4034 of 2001 etc., before the High Court of Uttarakhand at Nainital. The High Court dismissed both the writ petitions vide order dated 21.11.2008 following its earlier order dated 07.08.2008 passed in Writ Petition No. (M/S) 4035 of 2001. Aggrieved by the same, these appeals have been preferred by the State of Uttarakhand.

10. Smt. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand, submitted that the High Court and the Board of Revenue have committed an error in reversing the well considered judgments of the SDM and the Additional Commissioner. Learned counsel pointed out that they had come to the definite conclusion on facts that the respondents had not established any right under Section 210 of the U.P. Act. The Revenue record produced would clearly establish that the respondents had not perfected their title by adverse possession or otherwise. Further, it was also pointed that the Board of Revenue had failed to frame any substantial question of law as per Section 331(4) of the U. P. Act and under Section 100 C.P.C. as amended, consequently, committed a grave error in reversing the concurrent findings rendered by the SDM and the Additional Commissioner.

11. Shri Somnath Padhan, learned counsel appearing for the respondents, on the other hand, contended that the Board of Revenue had come to the right conclusion that the respondents had

perfected their title over the disputed land, since the documents produced by them had established that they were in possession for more than 20 years, but their names were not recorded in the Revenue records as Bhumidars. Further, it was also stated that the appeals filed by the respondents before the Board of Revenue were not properly contested by the defendants. Learned counsel also pointed out that Lakhpal, who was examined on behalf of the State, had also admitted the possession of the respondents and that the respondents had perfected their title under Section 210 of the U.P. Act before the incorporation of the proviso by Act 20 of 1982. Learned counsel also pointed out that the High Court has, therefore, rightly dismissed the writ petitions filed by the State.

12. Let us first examine whether the Board of Revenue has correctly appreciated the nature and scope of its power while entertaining a second appeal under Section 331(4) of the U. P. Act. Learned counsel appearing for the State, as already indicated, submitted that the Board of Revenue ought to have framed questions of law, if it was satisfied that the case involved substantial questions of law. Since the Board of Revenue failed to frame any substantial question of law, as per Section 100(4) C.P.C., the order passed by the Board of Revenue was illegal, consequently, the writ petitions filed by the State should have been allowed. Learned counsel appearing for the respondents submitted that though the Board of Revenue did not frame any question of law as such, it had considered all aspects of the matter and came to the correct conclusion that the respondents had proved their possession for more than 20 years and, therefore, entitled to get the benefit of Section 210 of the U.P. Act.

13. In order to examine the contentions raised by the counsel on either side, it is necessary to first examine the scope of Section 331 (3) and (4) and those provisions are extracted below for our easy reference:

> "331. Cognizance of suits, etc. under this Act.-
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> xxx xxx xxx
> xxx xxx xxx
>
> (3) An appeal shall lie from any decree or from an order passed under Section 47 of an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order XLIII, Rule 1 of the First Schedule to that Code passed by a court mentioned in column No. 4 of Schedule II to this Act in proceedings mentioned in column No. 3 thereof to the court or authority mentioned in column No. 5 thereof.
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> (4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Scheduled aforesaid."

14. Sub-section (4) of Section 331 also refers to Column 6 of Schedule II. Hence, the relevant portion of the Schedule is also extracted hereunder:

"SCHEDULE II (Section 331) |Serial |Section |Description of |Court of original|Court of | |No. | |proceedings |jurisdiction |First | | | | |Second | | | | |Appeal Appeal| |1 |2 |3 |4 | 5 | | | | |6 | |xxx |xxx |xxx |xxx | xxx | | | | |xxx | |34. |229, |Suit for |Assistant |Commissioner Board | | |229-B, |declaration of |Collector, 1st | | | |229-C |rights |Class | |

15. Sub-section (4) of Section 331 of U.P. Act states that a second appeal shall lie on "any of the grounds" specified in Section 100 C.P.C., 1908.

Section 100 C.P.C., as it stood prior to 1.2.1977, reads as follows:

"(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed ex parte." After Section 100 was substituted by the Act 104 of 1976 with effect from 1.2.1977, it reads as follows:

"100. Second appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex-parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

> (4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
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> (5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
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> Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

16. U.P. Act received the assent of the President on 24.1.1951. It was published in the U.P. Gazette (Extraordinary) dated 26.1.1951. Sub-section (4) of Section 331 has incorporated the unamended Section 100 C.P.C. The question that calls for consideration is whether sub-section (4) of Section 331 carries with it the amended Section 100 C.P.C. as well, consequently, making it obligatory for the Board of Revenue to frame substantial questions of law.

17. The question, therefore, calls for consideration is whether reference to Section 100 in sub-section (4) of Section 331 is by way of referential legislation or legislation by incorporation. A subsequent legislation often makes a reference to earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference.

18. The question how the above two principles operate came up for consideration in U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another (1998) 2 SCC 467 before a three-judge Bench of this Court and it was held as follows:

> "17. A subsequent legislation often makes a reference to an earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i), a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands

on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statue which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statue which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation. In the words of Lord Esher, M.R., the legal effect of such incorporation by reference "is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all." [See: Wood's Estate, Re, Ch D at 615.] As to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances. The legal position has been thus summed up by this Court in State of Madhya Pradesh v. M. V. Narasimhan: (SCR p. 14 : SCC p. 385, para 15) "where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

(a) Where the subsequent Act and the previous Act are supplemental to each other,

(b) where the two Acts are in pari materia;

(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

19. Law is, therefore, clear that a distinction has to be drawn between a mere reference or citation of one statute into another and incorporation. In the case of mere reference of citation, a modification, repeal or re- enactment of the statute that is referred will also have effect for the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute.

20. We need not further elaborate this point, since almost identical question came up for consideration before a three-judge Bench of this Court in Mahindra and Mahindra Ltd. v. Union of India and Another (1979) 2 SCC 529, wherein this Court dealt with the scope of Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 read with Section 100 C.P.C., which reads as

follows:

> "55. Appeals.- Any person aggrieved by any decision on any question referred to in clause (a), clause (b) or clause (c) of section 2A, or any order made by the Central Government under Chapter III or Chapter IV, or, as the case may be, or the Commission under section 12A or section 13 or section 36D or section 37, may, within sixty days from the date of the order, prefer an appeal to the Supreme Court on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908)."

21. This Court in the above mentioned case examined the scope of Section 55 read with Section 100 CPC, both amended and unamended. Section 55 provides inter alia that any person aggrieved by an order made by the Commissioner under Section 13 may prefer an appeal to this Court on "one or more of the grounds" specified in Section 100 C.P.C., 1908. When Section 55 was enacted, namely, 27.12.1969, being the day of coming into force of the Act, Section 100 C.P.C. specified three grounds on which a second appeal could be brought to the High Court on one of those grounds was that the decision appealed against was contrary to law. Therefore, if the reference in Section 55 was to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. The above aspects have been elaborately dealt with in Mahindra and Mahindra (supra). The relevant portion of the judgment is as follows:

> "8. ..... It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from 1st February, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides:
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> Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as

references to the provision so re- enacted.

and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law. We do not think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily letting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in the Collector of Customs, Madras v. Nathella Sampathu Chetty (1962) 3 SCR 786 and the New Central Jute Mills Co. Ltd. v. The Assistant Collector of Central Excise and Ors. (1970) 2 SCC 820. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. Lord Esher, M.R., while dealing with legislation in incorporation in In re. Wood's Estate (1886) 31 Ch.D. 607 pointed out at page 615 :

If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.

Lord Justice Brett, also observed to the same effect in Clark v. Bradlaugh (1881) 8 Q.B.D. 63, 69 :

...there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second.

22. The Judicial Committee of the Privy Council in Secretary of State for India in Council v. Hindustan Co-operative Insurance Society Ltd. 58 I.A. 259 also applied the same rule. The Judicial Committee pointed out that the provisions of the Land Acquisition Act, 1894 having been incorporated in the Calcutta Improvement Trust Act, 1911 and become an integral part of it, the subsequent amendment of the Land Acquisition Act, 1894 by the addition of Sub-section (2) in Section 26 had no effect on the Calcutta Land Improvement Trust Act, 1911 and could not be read into it. Sir George Lowndes delivering the opinion of the Judicial Committee observed at page 267:

In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second : see the cases collected in Craies on Statute Law, 3rd edn. pp. 349, 350. ..... The independent existence of the two Acts is, therefore, recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. x x x It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.

23. This Court in Ramswarup v. Munshi and Others (1963) 3 SCR 858 , held that since the definition of "agricultural land' in the Punjab Alienation of Land Act, 1900 was bodily incorporated in the Punjab Pre-emption Act, 1913, the repeal of the former Act had no effect on the continued operation of the latter. Rajagopala Ayyangar, J., speaking for the Court observed at pages 868-869 of the Report:

Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.

In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the latter Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it.

24. In Bolani Ores Ltd. v. State of Orissa (1974) 2 SCC 777, this Court proceeded on the same principle. There the question arose in regard to the interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as the Taxation Act). This section when enacted adopted the definition of 'motor vehicle' contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced before the Court was that the definition in Section 2(c) of the Taxation Act was not a definition by incorporation but only a definition by reference and the

meaning of 'motor vehicle' in Section 2(c) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. This argument was negatived by the Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939 as then existing was incorporation in Section 2(c) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. It is, therefore, clear that if there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not effect the provision as incorporated in the latter statute. The question is to which category the present case belongs.

25. In Mahindra and Mahindra (supra), after referring to the above mentioned judgment, this Court held as follows:

“We have no doubt that Section 55 is an instance of legislation by incorporation and not legislation by reference. Section 55 provides for an appeal to this Court on "one or more of the grounds specified in Section 100". It is obvious that the legislature did not want to confer an unlimited right of appeal, but wanted to restrict it and turning to Section 100, it found that the grounds there set out were appropriate for restricting the right of appeal and hence it incorporated them in Section 55. The right of appeal was clearly intended to be limited to the grounds set out in the existing Section 100. Those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to restrict the right of appeal. The Legislature could never have intended to limit the right of appeal to any ground or grounds which might from time to time find place in Section 100 without knowing what those grounds were. The grounds specified in Section 100 might be changed from time to time having regard to the legislative policy relating to second appeals and it is difficult to see any valid reason why the Legislature should have thought it necessary that these changes should also be reflected in Section 55 which deals with the right of appeal in a totally different context. We fail to appreciate what relevance the legislative policy in regard to second appeals has to the right of appeal under Section 55 so that Section 55 should be inseparably linked or yoked to Section 100 and whatever changes take place in Section 100 must be automatically read into Section 55. It must be remembered that the Act is a self-contained Code dealing with monopolies and restrictive trade practices and it is not possible to believe that the Legislature could have made the right of appeal under such a code dependent on the vicissitudes through which a section in another statute might pass from time to time. The scope and ambit of the

> appeal could not have been intended to fluctuate or vary with every change in the grounds set out in Section 100. Apart from the absence of any rational justification for doing so, such an indissoluble linking of Section 55 with Section 100 could conceivably lead to a rather absurd and startling result. Take for example a situation where Section 100 might be repealed altogether by the Legislature-a situation which cannot be regarded as wholly unthinkable. It the construction contended for on behalf of the respondents were accepted, Section 55 would in such a case be reduced to futility and the right of appeal would be wholly gone, because then there would be no grounds on which an appeal could lie. Could such a consequence ever have been contemplated by the Legislature? The Legislature clearly intended that there should be a right of appeal, though on limited grounds, and it would be absurd to place on the language of Section 55 an interpretation which might, in a given situation, result in denial of the right of appeal altogether and thus defeat the plain object and purpose of the section. We must, therefore, hold that on a proper interpretation the grounds specified in the then existing Section 100 were incorporated in Section 55 and the substitution of the new Section 100 did not affect or restrict the grounds as incorporated and since the present appeal admittedly raises questions of law, it is clearly maintainable under Section 55. We may point out that even if the right of appeal under Section 55 were restricted to the ground specified in the new Section 100, the present appeal would still be maintainable, since it involves a substantial question of law relating to the interpretation of Section 13(2). ....."
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> 26. We are of the view that the principle laid down in Mahindra and Mahindra and the judgments referred to earlier clearly apply when we interpret sub-section (4) of Section 331 of the U.P. Act. Sub-section (4), as we have already indicated, has used the expression "on any of the grounds" specified in Section 100 of the C.P.C. Consequently, the then existing Section 100 (i.e. section 100, as it existed in 1908 unamended) was incorporated in sub-section (4) of Section 331 and substitution of the new Section 100 does not affect or restrict the grounds as incorporated.

The right of appeal to the Board of Revenue under sub-section (4) of Section 331 clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to limit the right of appeal.

27. The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High Court. Further, we also notice that the Board of Revenue has not examined the provisions of the land record and Lekhpal Diary No., date and P.A. 10. The Additional Commissioner had specifically noticed that P.A.10 which had been filed pertaining to year 1976 did not bear any signature and the same was found to be doubtful, as to whether the original 'Kashtkar' (tillers) of the land in dispute belonged to Tharu tribe, was also not properly examined. Further, the Board of Revenue also should have examined whether the land belonged to Tharu tribe and the plaintiff could claim the benefit of

Section 210 of the U.P. Act. All these aspects are very vital for a proper and just adjudication of the dispute, which has not been done.

28. In such circumstances, we are inclined to allow the appeals and set aside the order passed by the High Court as well as that of the Board of Revenue and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. However, we are not expressing any opinion on the merits of the case, since we are remitting the matter to the Board of Revenue. The Board of Revenue will pass the final orders within a period of three months from the date of receipt of this order.

.....J. (K. S. Radhakrishnan) .....J. (Dipak Misra) New Delhi, September 12, 2012