

Gundaji Satwaji Shinde vs Ramchandra Bhikaji Joshi on 5 December, 1978

Equivalent citations: 1979 AIR 653, 1979 SCR (2) 586, AIR 1979 SUPREME COURT 653, (1979) 2 SCR 586 (SC), 1979 2 SCR 586, (1979) MAH LJ 283, 1979 (2) SCC 495

Author: D.A. Desai

Bench: D.A. Desai, P.N. Shingal

PETITIONER:
GUNDAJI SATWAJI SHINDE

Vs.

RESPONDENT:
RAMCHANDRA BHIKAJI JOSHI

DATE OF JUDGMENT 05/12/1978

BENCH:
DESAI, D.A.
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SHINGAL, P.N.

CITATION:
1979 AIR 653 1979 SCR (2) 586
1979 SCC (2) 495
CITATOR INFO :
RF 1980 SC2181 (119)
R 1984 SC1130 (42)
R 1984 SC1450 (6)
R 1989 SC 100 (12)
R 1989 SC1019 (7)
RF 1991 SC 101 (64)
RF 1991 SC 855 (52)
R 1989 SC2240 (11)

ACT:

Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. Act LXVII of 1948)-Ss. 63, 70, 85 & 85A-S. 70 made Mamlatdar authority to decide whether a person was an agriculturist-s. 85A barred jurisdiction of civil court questions arising under s. 70-Suit for specific performance of sale of agricultural land in civil court-Civil court whether competent to decide incidental question if vendee is an

agriculturist.

HEADNOTE:

Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 prohibits the sale of agricultural land to a person who is not an agriculturist. One of the duties of the Mamlatdar, under s. 70, of the Act, is to decide whether a person is an agriculturist and whether a transfer or acquisition of land is invalid being in contravention of the Act. Section 85 bars the jurisdiction of a civil court to settle, decide or deal with any question which is by or under the Act is required to be settled, decided or dealt with by the Mamlatdar, or the authority mentioned in the section

The Bombay High Court in a case coming before it on the interpretation of s. 85 held that where in a suit in a civil court an issue arises which has to be decided under the provisions of s. 70, the civil court should refer the parties to the competent authority under the Tenancy Act to get the question decided and such decision would be binding on the civil court. Taking note of this decision s. 85A was added to the Tenancy Act, enabling the civil court to refer the issue to the competent authority to decide which the jurisdiction of the civil court is barred under s. 85.

The plaintiff's suit for specific performance of a contract for sale of land was resisted by the defendant alleging that since he (the plaintiff), was not an agriculturist, he was prohibited by s. 63 of the Tenancy Act from purchasing agricultural land and the contract being contrary to the provisions of the Act is not capable of being specifically enforced.

The trial court dismissed the plaintiff's suit on the ground that he was not an agriculturist. It held that the issue whether or not the plaintiff was an agriculturist being incidental in a suit for specific performance of a contract the civil court had jurisdiction to decide such incidental issues. On appeal the High Court held that the civil court which had jurisdiction to entertain a suit for specific performance, it would have jurisdiction to decide the incidental issue whether the plaintiff was an agriculturist or not.

The question before the Supreme Court was where in a suit for specific performance, an issue arose whether the plaintiff was an agriculturist or not on the date of agreement whether the civil court would have jurisdiction to decide the issue or it is required to refer it to the Mamlatdar under s. 70 read with s. 85A. Allowing the appeal and remitting the case to the trial court for disposal.

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HELD: 1. The Legislature having expressly ousted the

jurisdiction of the civil court to settle, decide or deal with any question which is by or under the Tenancy Act required to be settled, decided or dealt with by any of the authorities therein mentioned the authority to decide the issue whether the vendee was an agriculturist would be the Mamlatdar as provided in s. 70(a). [592 G]

2 . The expression "any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act" in s. 85A would only mean that, if upon contest an issue which is required to be settled, decided and dealt with by the competent authority under the Tenancy Act arises, notwithstanding the fact that such an issue arises in a properly constituted civil suit cognizable by the civil court, it would have to be referred to the competent authority under the Tenancy Act. [594H-595 B]

3. Mere because jurisdiction is conferred on the Mamlatdar to decide whether a person is an agriculturist within the meaning of the Tenancy Act, it does not ipso facto oust the jurisdiction of the civil court to decide that issue if it arises before it in a civil suit. Unless the Mamlatdar is constituted an exclusive forum to decide the question, conferment of such jurisdiction would not oust the jurisdiction of the civil court. It is settled law that exclusion of jurisdiction of the civil court is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. [592 D-E]

Secretary of State v. Mask, 67 IA 222: referred to.

4. The finding of the competent authority under the Tenancy Act is made binding on the civil court. The jurisdiction of the civil court to settle, decide or deal with any issue which is required to be settled, decided or dealt with by any competent authority under the Act is totally ousted. This would lead to the conclusion that the Mamlatdar while performing the function and discharging his duties conferred on him by s. 70 would constitute an exclusive forum. Section 70(a) requires the Mamlatdar to decide whether a person is an, agriculturist. Therefore, if an issue arises in a civil court whether a person is an agriculturist within the meaning of the Tenancy Act, the Mamlatdar alone would have exclusive jurisdiction under the Act to decide the same and the jurisdiction of the civil court is ousted. The civil court, as required by s. 85A, will have to frame an issue and refer it to the Mamlatdar and on the reference being answered back, to dispose of the suit in accordance with the decision recorded by the competent authority. [593G, 594 C]

Dhondi Tukaram Mali v. Dadoo Piraji Adgale, 55 Bom. LR 663, Trimbak Sopana Girme v. Gangaram Mhataraba Yadav, 55 Bom. LR 56; approved.

Mussamiya Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai & Ors. [1969] 1 S.C.R. 785, explained.

Bhimaji Shanker Kulkarni v. Dundappa Vithappa Udupudi

, & Anr., [1966] 1 SCR 145 at 150; Ishverlal Thakorelal, Almaula v. Motibhai Nagjibhai, [1966] 1 SCR 367; Jambu Rao Satappa Kocheri v. Neminath Appayya Hanammannaver, [1968] 3 SCR 706; and Noor Mohd. Khan Ghouse Khan Soudagar v. Eakirappa Bharmappa Machenahalli & Ors., [1978] 3 SCC 188; referred to

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1280 of 1969.

Appeal from the Judgment and Order dated 7-9-1968 of the Bombay High Court in L.P.A. No. 117 of 1968.

U. R. Lalit, Nanjul Kumar and K. J. John for the Appellant.

R. B. Datar and Lalit Bhardwaj for Respondents 1-5 (d).

The Judgment of the Court was delivered by DESAI, J.-This appeal by certificate arises out of Special Civil Suit No. 39/66 filed by the appellant-original plaintiff for specific performance of a contract dated 15th December 1965 for sale of land admeasuring 45 acres 5 gunthas bearing Survey No. 25 situated in Sholapur Mouje Dongaon in Maharashtra State for a consideration of Rs. 42,000/- out of which Rs. 5,000/- were paid as earnest money and a further amount of Rs. 5,000/- was paid on 22nd April 1966 when the period for performance of the contract for sale was extended by six months, which suit was dismissed by the trial Court and the plaintiff's First Appeal No. 117/68 was dismissed by the Bombay High Court Plaintiff claimed specific performance of a contract dated 15th December 1965 coupled with supplementary agreement dated 26th April 1966 for sale of agricultural land. This suit was resisted by the defendant, inter alia, contending that the land which was the subject-matter of contract was covered by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act', for short) and as the intending purchaser, the plaintiff was not an agriculturist within the meaning of the Act, section 63 of the Tenancy Act prohibited him from purchasing the land and, therefore, as the agreement was contrary to the provisions of, the Tenancy Act the same cannot be specifically enforced. The plaintiff sought to repel the contention by producing a certificate Ext. 78 issued by the Mamlatdar certifying that the plaintiff was an agricultural labourer and the bar imposed by s. 63 of the Tenancy Act would not operate. Plaintiff also contended that if the Court does not take note of Ext 78, an issue on the pleadings would arise whether the plaintiff is an agriculturist and in view of the provisions contained in s. 70(a) read with ss. 85 and 85A of the Tenancy Act the issue would have to be referred to the Memlatdar for decision and the Civil Court would have no jurisdiction to decide the issue. The trial Court held that the certificate Ext. 78 had no evidentiary value and was not valid. On the question of the plaintiff being an agriculturist the trial Court itself recorded a finding that the plaintiff was not an agriculturist. On the question of jurisdiction to decide the issue whether the plaintiff is an agriculturist, the trial Court was of the opinion that it being an incidental issue in a suit for specific performance of contract, which suit the Civil Court has jurisdiction to try, it will also have jurisdiction to decide the incidental

or subsidiary issue and recorded a finding that the plaintiff was not an agriculturist. In accordance with these findings the plaintiff's suit was dismissed. In appeal by the plaintiff, the High Court agreed with the finding of the trial Court with regard to the validity of certificate Ext. 78. On the question of jurisdiction of the trial Court to decide the issue about the plaintiff being an agriculturist, the High Court agreed with the trial Court observing that Civil Court has undoubtedly jurisdiction to entertain a suit for specific performance, and while considering the main issue whether specific performance should be granted or not, civil Court will have to consider whether there are prima facie any facts on account of which granting of specific performance would result into a transaction forbidden by law and, therefore, civil Court will have jurisdiction to decide the subsidiary issue whether the plaintiff is an agriculturist. The High Court accordingly dismissed the appeal while agreeing with the trial Court that the plaintiff had failed to prove that he was an agriculturist and specific performance of contract for sale of agricultural land cannot be granted in his favour.

Mr. Lalit for the appellant did not invite us to determine the validity of certificate Ext. 78 certifying that plaintiff is an agricultural labourer. Therefore, the question which must engage our attention is whether Civil Court will have jurisdiction to decide an issue arising in a suit for specific performance of contract for sale of agricultural land governed by the provisions of the Tenancy Act that the person seeking specific performance was or was not an agriculturist and, therefore, ineligible to purchase the land in view of the bar imposed by s. 63 of the Tenancy Act. This necessitates examination of the relevant provisions of the Tenancy Act.

Section 2(2) of the Tenancy Act defines agriculturist to mean a person who cultivates land personally. The expression 'land' is defined in s. 2(8) to mean; (a) land which is used for agricultural purposes or which is so used but is left fallow and includes the sites of farm buildings appurtenant to such land; and (b) for purposes of sections including ss. 63, 64 and 84C (i) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses; (ii) the sites of structures used by agriculturists for allied pursuits. Section 63 which forbids transfer of agricultural land to non-agriculturists, reads as under:

"63. (1) Save as provided in this Act-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist or who being an agriculturist will after such sale, gift, exchange lease or mortgage, hold land exceeding two-thirds of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, or who is not an agricultural labourer;

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed". The next important section in this context is s. 70 which defines duties and prescribes function of the Mamlatdar, the relevant portion of which reads as under:

"70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar:

(a) to decide whether a person is an agriculturist;

x x x (mb) to issue a certificate under section 84A, and decide under section 84B or 84C whether a transfer or acquisition of land is invalid and to dispose of land as provided in section 84C".

Section 85 bars jurisdiction of the civil Courts to decide certain issues and s. 85A provides for reference of issues required to be decided under the Tenancy Act to the competent authority set up under the Tenancy Act. They are very material for decision of the point herein raised and they may be reproduced in extenso:

"85. (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question (including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him) which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation-For the purposes of this Section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act. 1906".

"85A. (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act, (hereinafter referred to as the "competent authority") the Civil Court shall stay the suit and refer such issues to such competent authority for determination. (2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

Explanation-For the purpose of this section a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906". There is no controversy that the land purported to be sold by the contracts for sale of land Exts. 82 and 83 is land used for agricultural purposes and is covered by the definition of the expression 'land' in s. 2(8) (a). The plaintiff thus by the contracts for sale of land Exts. 82 and 83 purports to purchase agricultural land. Section 63 prohibits sale of land inter alia, in favour of a person who is not an agriculturist. If, therefore, the plaintiff wants to enforce a contract for sale of agricultural land in his favour he has of necessity to be an agriculturist. The defendant intending vendor has specifically contended that the plaintiff not being an agriculturist he is not entitled to specific performance of the contract. Therefore, in a suit filed by the plaintiff for Specific performance of contract on rival contentions a specific issue would arise whether the plaintiff is an agriculturist because if he is not, the Civil Court would be precluded from enforcing the contract as it would be in violation of a statutory prohibition and the contract would be unenforceable as being prohibited by law and, therefore, opposed to public policy. .

The focal point of controversy is where in a suit for specific performance an issue arises whether the plaintiff is an agriculturist or not, would the Civil Court have jurisdiction to decide the issue or the Civil Court would have to refer the issue under s. 85A of the Tenancy Act to the authority constituted under the Act, viz., Mamlatdar.

Uninhibited by the decisions to which our attention was invited, the matter may be examined purely in the light of the relevant provisions of the statute. Section 70(a) constitutes the Mamlatdar a forum for performing the functions and discharging the duties therein specifically enumerated. One such function of the Mamlatdar is to decide whether a person is an agriculturist. The issue arising before the Civil Court is whether the plaintiff is an agriculturist within the meaning of the Tenancy Act. It may be that jurisdiction may be conferred on the Mamlatdar to decide whether a person is an agriculturist within the meaning of the Tenancy Act but it does not ipso facto oust the jurisdiction, of the civil Court to decide that issue if it arises before it in a civil suit. Unless the Mamlatdar is constituted an exclusive forum to decide the question hereinabove mentioned conferment of such jurisdiction would not oust the jurisdiction of the civil Court. It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied (see *Secretary of State v. Mask*) (1). However, by an express provision contained in s. 85 the jurisdiction of the Civil Court to settle, decide or deal with any question which is by or under the Tenancy Act required to be settled, decided or dealt with by the competent authority is ousted. The Court must give effect to the policy underlying the statute set out in express terms in the statute. There is, therefore, no escape from the fact that the legislature has expressly ousted the jurisdiction of the civil Court to settle, decide or deal with any question which is by or under the Tenancy Act required to be settled, decided or dealt with by any of the authorities therein mentioned and in this specific case the authority would be the Mamlatdar as provided in s. 70(a).

When the Tenancy Act of 1948 was put on the statute book, s. 85A did not find its place therein. A question arose while giving effect to the provisions contained in ss. 70 and 85 as to what should be done where in a suit in a civil Court an issue arises to settle, decide or (1) 67 I.A. 222.

deal with which the jurisdiction of the civil Court is ousted under s. 85. The Bombay High Court which had initially to deal with this problem, resolved the problem by holding that in such a situation the civil suit should be stayed and the parties should be referred to the competent authority under the Tenancy Act to get the question decided by the authority and on such decision being brought before the Civil Court, it will be binding on the civil Court and the civil Court will have to dispose of the suit in accordance therewith. While so resolving the problem immediately facing the Court, an observation was made that provision should be introduced in the Tenancy Act for enabling the civil Court to transfer the proceeding to the competent authority under the Tenancy Act having jurisdiction to decide the issue and in respect of which the jurisdiction of the Civil Court is barred (see *Dhondi Tukaram Mali v. Dadoo Piraji Adgale*) (1). The Legislature took note of this suggestion and promptly introduced s. 85A in the Tenancy Act by Bombay Act XIII of 1956. The legislative scheme that emerges from a combined reading of ss. 70, 85 and 85A appears to be that when in a civil suit properly brought before the Civil Court an issue arises on rival contentions between the parties which is required to be settled, decided or dealt with by a competent authority under the Tenancy Act, the Civil Court is statutorily required to stay the suit and refer such issue or issues to such competent authority under the Tenancy Act for determination. On receipt of such reference from the civil Court the competent authority shall deal with and decide such issues in accordance with the provisions of the Tenancy Act and shall communicate its decision to the civil Court and such errata shall; thereupon dispose of the suit in accordance with the procedure applicable thereto. To avoid any conflict of decision arising out of multiplicity of jurisdiction by civil Court taking one view of the matter and the competent authority under the Tenancy Act taking a contrary or different view, an express provision is made in s. 85(2) that no order of the competent authority made under the Act shall be questioned in any civil Court. To complete the scheme. sub-s. (2) of s. 85A provides that when upon a reference a decision is recorded by the competent authority under the provisions of the Tenancy Act and the decision is communicated to the civil Court, such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. Thus, the finding of the competent authority under the Tenancy Act is made binding on the civil Court. It would thus appear that the jurisdiction of the civil Court to settle, decide, or deal with any issue which is required to be settled, decided or dealt with by any competent authority under the Tenancy Act is totally ousted. This would lead to inescapable conclusion that the (1) 55 Bom. L.R. 663.

Mamlatdar while performing the function and discharging duties as are conferred upon him by s. 70, would constitute an exclusive forum, to the exclusion of the civil Court, to decide any of the questions that may arise under any of the sub-clauses of s. 70. Section 70(a) requires the Mamlatdar to decide whether a person is an agriculturist. Therefore, if an issue arises in a civil Court whether a person is an agriculturist within the meaning of the Tenancy Act, the Mamlatdar alone would have exclusive jurisdiction under the Tenancy Act to decide the same and the jurisdiction of the Civil Court is ousted. The Civil Court as required by a statutory provision contained in s. 85A, will have to frame the issue and refer it to the Mamlatdar and on the reference being answered back, to dispose of the suit in accordance with the decision recorded by the competent authority on the relevant issue. To translate it into action, if the Mamlatdar were to hold that the plaintiff is not an agriculturist, obviously his suit for specific performance in the Civil Court would fail because he is ineligible to purchase agricultural land and enforcement of such a contract would be violative of statute and, therefore, opposed to public policy.

The High Court was of the view that the jurisdiction of the Civil Court to settle, decide or deal with any question which arises under the Tenancy Act and which is required to be settled, decided or dealt with by the competent authority under the Tenancy Act would alone be barred under s. 85. Proceeding therefrom, the High Court was of the opinion that if an issue arises in a properly constituted civil suit which the civil Court is competent to entertain, an incidental or subsidiary issue which may arise with reference to provisions of the Tenancy Act, the jurisdiction of the Civil Court to decide the same would not be ousted because the issue is not required to be decided or dealt with under the Tenancy Act. This view overlooks and ignores the provision contained in s. 85-A. There can be a civil suit properly constituted which the Civil Court will have jurisdiction to entertain but therein an issue may arise upon a contest when contentions are raised by the party against whom the civil suit is filed. Upon such contest, issues will have to be framed on points on which parties are at variance and which have to be determined to finally dispose of the suit. If any such issue arises which is required to be settled, decided or dealt with by the competent authority under the Tenancy Act, even if it arises in a civil suit, the jurisdiction of the civil Court to settle, decide and deal with the same would be barred by the provision contained in s. 85 and the civil Court will have to take recourse to the provision contained in s. 85A for reference of the issue to the competent authority under the Tenancy Act. Upon a proper construction the expression "any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act" in s. 85A would only mean that if upon assertion and denial and consequent contest an issue arises in the context of the provisions of the Tenancy Act and which is required to be settled, decided and dealt with by the competent authority under the Tenancy Act, then notwithstanding the fact that such an issue arises in a properly constituted civil suit cognizable by the Civil Court, it would have to be referred to the competent authority under the Tenancy Act. Any other view of the matter would render the scheme of ss. 85 and 85A infructuous and defeat the legislative policy (see *Bhimaji Shanker Kulkarni v. Dundappa Vithappa Udupudi & Anr.*)(1) The construction suggested by the respondent that the bar would only operate if such an issue arises only in a proceeding under the Tenancy Act, could render s. 85A infructuous or inoperative or otiose. Neither the Contract Act nor the Transfer of Property Act nor any other statute except the Tenancy Act prohibits a non-agriculturist from buying agricultural land. The prohibition was enacted in s. 63 of the Tenancy Act. Therefore, if a person intending to purchase agricultural land files a suit for enforcing a contract entered into by him and if the suit is resisted on the ground that the plaintiff is ineligible to buy agricultural land, not for any other reason except that it is prohibited by s. 63 of the Tenancy Act, an issue whether plaintiff is an agriculturist would directly and substantially arise in view of the provisions of the Tenancy Act. Such an issue would indisputably arise under the Tenancy Act though not in a proceeding under the Tenancy Act. Now, if s. 85 bars the jurisdiction of the Civil Court to decide or deal with an issue arising under the Tenancy Act and if s. 85A, imposes an obligation on the civil Court to, refer such issue to the competent authority under the Tenancy Act, it would be no answer to the provisions to say that the issue is an incidental issue in a properly constituted civil suit before a civil Court having jurisdiction to entertain the same. In fact s. 85A comprehends civil suits which civil Courts are competent to decide but takes note of the situation where upon a contest an issue may arise therein which would be required to be settled, decided or dealt with by the competent authority under the Tenancy Act, and, therefore, it is made obligatory for the civil Court not only not to arrogate jurisdiction to itself to decide the same treating it as a subsidiary or incidental issue, but to refer the same to the competent authority under the

Tenancy Act. This is an inescapable legal position that emerges from a combined reading of ss. 85 and 85A. This can be clearly demonstrated by an illustration. Plaintiff may file a suit on title against a defendant for possession of land on the allegation that defendant is a trespasser. The (1) [1966]1 S.C.R. 145 at 150.

defendant may appear and contend that the land is agricultural land and he is a tenant. The suit on title for possession is clearly within the jurisdiction of the civil Court. Therefore, the civil Court would be competent to entertain the suit. But upon the defendant's contest the issue would be whether he is a tenant of agricultural land. Section 70(a)(ii) read with ss. 85 and 85A would preclude the civil Court from dealing with or deciding the issue. In a civil Suit nomenclature of the issue as principal or subsidiary or substantial or incidental issue is hardly helpful because each issue, if it arises, has to be determined to mould the final relief. Further, sections 85 and 35A oust jurisdiction of civil Court not in respect of civil suit but in respect of questions and issues arising therein and s. 85A mandates the reference of such issues as are within the competence of the competent authority. If there is an issue which had to be settled, decided or dealt with by competent authority under the Tenancy Act, the jurisdiction of the civil Court, notwithstanding the fact that it arises in an incidental manner in a civil suit, will be barred and it, will have to be referred to the competent authority under the Tenancy Act. By such camouflage of treating issues arising in a suit as substantial or incidental or principal or subsidiary, civil Court cannot arrogate to itself jurisdiction which is statutorily ousted. This unassailable legal position emerges from the relevant provisions of the Tenancy Act.

Turning to some of the precedents to which our attention Was invited, it would be advantageous to refer to the earliest decision of the Bombay High Court which had the opportunity to deal with the scheme of law under discussion in Trimbak Sopana Girime v. Gangaram Mhatarba Yadav(1). In that case plaintiff filed a suit against the defendant for actual possession on the allegation that the defendant was a trespasser and the defendant contested the suit contending that he was a protected tenant within the meaning of the Tenancy Act. 'the trial Court came to the conclusion that an issue would arise whether the defendant was a protected tenant and such an issue was triable by the Mamlatdar under s. 70(b) of the Tenancy Act, and the trial Court had no jurisdiction to try the issue. Accordingly the trial Court ordered the plaintiff to present the suit to the proper court. It may be noticed that at the relevant time s. 85A was not introduced in the Tenancy Act. In an appeal by the plaintiff the appellate court reversed the finding that a suit on title for possession alleging that the defendant was a trespasser was a properly constituted civil suit and if in such a suit defendant raises a contention that he is a protected tenant it would be a subsidiary issue and would not oust the jurisdiction of the (1) 55 Bom. L.R 56 Court because if the civil Court proceeding with the suit comes to the conclusion that the defendant is a trespasser it would be fully competent to dispose of the suit. The defendant carried the matter to the High Court and Chagla, C.J., analysing the scheme of ss. 70 and 85 of the Tenancy Act, held that in order to avoid the conflict of jurisdiction and looking to the scheme of the sections, the legislature has left to the Mamlatdar to decide the issue whether the defendant is a protected tenant or not and it implies that he must decide that the defendant is not a trespasser in order to hold that he is a tenant or protected tenant, and that he must also hold that he is a trespasser in order to determine that he is not a tenant or a protected tenant, and even while strictly construing the provisions of a statute ousting the jurisdiction of the civil Court, the

conclusion is inescapable that all questions with regard to the status of a party, when the party claims the status of a protected tenant, are left to be determined by the Revenue Court and the jurisdiction of the Civil Court is ousted.

This very contention kept on figuring before the Bombay High Court and J. C. Shah, J. in one of the Second Appeals before him analysed some conflicting decisions bearing on the interpretation of ss. 70 and 85 specifically with regard to the ouster of jurisdiction of civil court to settle, decide or deal with those questions which are required to be settled, decided or dealt with by the competent authority under the Tenancy Act, and referred the matter to a Division Bench. The Division Bench in Dhondi Tukaram Mali, (supra) while affirming the ratio in Trimbak Sopana Girme, (supra) further observed that the legislature should by specific provision provide for transfer of such suits where issues arise in respect one which the competent authority under the Tenancy Act is constituted a forum of exclusive jurisdiction so as to avoid the dismissal of the suit by the civil Court or being kept pending for a long time till the competent authority disposes of the issue which it alone is competent to determine. The legislature took note of this decision of the Bombay High Court and introduced s. 85A by Bombay Act XIII of 1956 which came into force from 23rd March 1956.

In Bhimaji Shanker Kulkarni, (supra) this very question arose in a suit filed by the plaintiff for possession of the suit property on redemption of a mortgage and taking of accounts on the allegation that defendant no. 1 was a usufructuary mortgagee under a mortgage deed, dated 28th June 1945. The defendants pleaded that the transaction of June 28, 1945 was an advance lease and not a mortgage, and they were protected tenants within the meaning of the Tenancy Act. The trial Court passed a decree holding that the transaction evidenced by the deed is a composite document comprising of a mortgage and a lease and on taking accounts of the mortgage debt it is found that plaintiff owed nothing to the defendants on the date of the suit and the mortgage stood fully redeemed. A further direction in the decree was that the plaintiff is at liberty to seek his remedy for possession of the suit lands in the revenue courts. The plaintiff carried the matter in appeal to the appellate court who partly allowed the appeal affirming that the mortgage is satisfied and nothing is due under the mortgage and the direction of the trial Court that plaintiff was at liberty to seek his remedy for possession of the suit lands in the revenue courts was confirmed and the rest of the decree, namely, that the document Ext. 43 evidencing the transaction was a composite document showing a mortgage and a lease was set aside and a direction was given that the record and proceedings do go back to the trial court who should give three months' time to the plaintiff for filing, proper proceedings in the Tenancy Court for determining as to whether defendant 1 is a tenant. Some consequential order was also made. The plaintiff carried the matter in second appeal to the High Court of Mysore which, while dismissing the appeal observed that the civil court had no jurisdiction to determine the nature of the transaction when the contention was that it evidenced advance lease followed by the tenancy of defendant no. 1 and, therefore, the only proper direction is the one given by the trial Court to refer the issue to the Mamlatdar as to whether the defendant is a lessee under Ext. 43 and Of the reference being answered back, the suit should be disposed of in accordance therewith. the plaintiff brought the matter before this Court. This Court in terms approved the decision of the Bombay High Court in Dhondi Tukaram Mali (supra) observing as under:

"In Dhondi Tukaram's case the Court expressed the hope that the legislature would make suitable amendments in the Act. The Bombay Legislature approved of the decision, and gave effect to it by introducing s. 85A by the amending Bombay Act III of 1956. Section 85A proceeds upon the assumption that though the Civil Court has otherwise jurisdiction to try a suit, it will have no jurisdiction to try an issue arising in the suit, if the issue is required to be settled, decided or dealt with by the Mamlatdar or other competent authority under the Act, and on that assumption, s. 85A provides for suitable machinery for reference of the issue to the Mamlatdar for his decision. Now, the Mamlatdar has jurisdiction under s. 70 to decide the several issues specified therein "for the purposes of this Act", and before the introduction of s. 85A, it was a debatable point whether the expression "for the purposes of this Act" meant that the Mamlatdar had jurisdiction to decide those issues only in some proceeding before him under some specific provision of the Act, or whether he had jurisdiction to decide those issues even though they arose for decision in a suit properly cognisable by a Civil Court, so that the jurisdiction of the Civil Court to try those issues in the suit was taken away by s. 85 read with s. 70, Dhondi Tukaram's case settled the point, and held that the Mamlatdar had exclusive jurisdiction to decide those issues even though they arose for decision in a suit properly cognisable by a Civil Court. The result was somewhat startling, for normally the Civil Court has jurisdiction to try all the issues arising in a suit properly cognisable by it. But having regard to the fact that the Bombay Legislature approved of Dhondi Tukaram's case and gave effect to it by introducing s. 85A, we must hold that the decision correctly interpreted the law as it stood before the enactment of s. 85A. It follows that independently of s. 85A and under the law as it stood before s. 85A came into force, the Courts below were bound to refer to the Mamlatdar the decision of the issue whether the defendant is a tenant".

It would thus appear that even when a properly constituted suit is brought to the civil Court having jurisdiction to try the same, prima facie on a contention being raised by the defendant an issue may arise which the Civil Court would not be competent to try and the legislature stepped in to avoid the conflict of jurisdiction by introducing s. 85A making it obligatory upon the Civil Court to refer such an issue to the competent authority under the Tenancy Act. Any controversy that such an issue is a primary issue or a subsidiary issue and hence triable by Civil Court must be said to have been resolved by laying down that the Civil Court will have, no jurisdiction to try the same even if such an issue arose in a properly constituted civil suit cognisable by the civil Court. And the ratio of the decision is that a contention raised by the defendant may have the necessary effect to oust the jurisdiction of the civil Court in respect of the contention which is to be disposed of before the suit can be disposed of one way or the other.

In *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai*, (1) the plaintiff appellant had filed a suit against the defendant respondent in the civil Court for possession of agricultural land and mesne profits. The defendant contended that he was a tenant who was entitled to the protection of the Tenancy Act in view of the proviso to s. 43C of the Tenancy Act (1) [1966] 1 S.C.R. 367.

despite the fact that at the relevant time the suit land was not governed by the provisions of the Tenancy Act. The trial Court decreed the suit but in first appeal the District Judge reversed the decree of the trial Court and dismissed the suit as in his view under the proviso to s. 43C incorporated in the Tenancy Act by Bombay Act XIII of 1956 the respondent continued to enjoy the protection of the Tenancy Act and the civil Court had no jurisdiction to grant a decree for possession of the land in dispute. A second appeal to the High Court by the original plaintiff was dismissed in limine and the matter came up before this Court by special leave. This Court first affirmed that whatever may have been the position before Act XIII of 1956, the legislature has unequivocally expressed an intention that even in a suit properly instituted in a civil Court, if any issue arises which is required to be decided by the revenue Court, the issue shall be referred for trial to that Court and the suit shall be disposed of in the light of the decision. The Legislature has clearly expressed itself that issues required under Act 67 of 1948, viz., Tenancy Act, to be decided by a revenue court, even if arising in a civil suit, must be decided by the revenue Court and not by the Civil Court. The view expressed by the Bombay High Court in Pandurang Hari v. .Shanker Maruti(1), and the Gujarat High Court in Kalicharan Bhayya, v. Rai Mahallaxmi & Anr.(2), that in such suit the civil Court is competent to adjudicate upon the issues which are by Act 67 of 1948 required to be decided by the revenue Court, was disapproved. This Court held that the question whether the defendant being a tenant on the day on which the Tenancy Act was put into operation and whether he retained the, protection in view of the proviso to s. 43C was within the exclusive jurisdiction of the Mamlatdar under the Tenancy Act and, therefore, the District Judge was in error in dismissing the suit. It was necessary for him to refer the very question for determination to the competent authority under the Tenancy Act and it was not open to him to dispose of the suit. Accordingly the appeal was allowed and the matter was remanded to the District Court with a direction that it should restore the appeal to its original number and proceed according to law. This decision does not depart from the ratio in Bhimji Shanker Kulkarni's case (supra).

It was, however, said that a suit for specific performance of a contract for sale of land is cognizable by the Civil Court and its jurisdiction would not be ousted merely because contract, if enforced, would violate some provisions of the Tenancy Act. If contract when enforced would (1) 62 Bom. L.R. 873.

(2) 4 Guj. L.R. 145.

violate some provisions of the Tenancy Act it may be that the competent authority under the Tenancy Act may proceed to take action as permissible under the law but the Court cannot refuse to enforce the contract. And while so enforcing the contract the Court need not refer any subsidiary issue to the competent authority under the Tenancy Act because if there is any violation of the Tenancy Act the same would be taken care of by the competent authority under the Tenancy Act in view of the power conferred upon the Mamlatdar under s. 84C of the Tenancy Act. In this connection reference was made to Naminath Appayya Hanammannavar v. Jambu Rao Satappa Kocheri. We need not examine this decision in detail because an appeal against the decision of Mysore High Court granting decree for specific performance was brought to this Court. A brief resume of the fact in Jambu Rai Satappa Kocheri v. Neminath Appayya Hanammannavar, is necessary to grasp the ratio of this decision. In a suit for specific performance the defendant

contended that if the contract is enforced it would violate s. 35 of the Tenancy Act in that the plaintiff's holding after the appointed day would exceed the ceiling and the acquisition in excess of the ceiling is invalid. A contention appears to have been raised that the question whether an acquisition in excess of the ceiling would be invalid would be within the exclusive jurisdiction of the Mamlatdar under s. 70(mb) and that the Civil Court cannot decide or deal with this question and a reference ought to have been made to the Mamlatdar. Negating this contention it was observed that the Civil Court had jurisdiction to entertain and decree a suit for specific performance of agreement to sell land. If upon the sale being completed it would violate some provision of the Tenancy Act an enquiry has to be made under s. 84C and s.84C provides that if an acquisition of any land is or becomes invalid under any of the provisions of the Tenancy Act, the Mamlatdar may suo motu inquire into the question and decide whether the transfer or acquisition is or is not valid. This inquiry has to be made after the acquisition of title pursuant to a decree for specific performance. It is in the context of these facts that it was held that even though civil Court has no jurisdiction to determine whether the acquisition would become invalid but there is nothing in s. 70 or any other provision of the Act which excludes the Civil Court's jurisdiction to decree specific performance of a contract to transfer land which would be anterior to the acquisition. While disposing of this contention this Court took note of the fact that the transfer may not be invalid at all because the purchaser may have already disposed of his prior holding and it was further observed that when the scheme of the Act is examined it becomes clear that the legislature has not declared the transfer or acquisition invalid, for s. 84C provides that the land in excess of the ceiling shall be at the disposal of the Government when an order is made by the Mamlatdar. The invalidity of the acquisition is, therefore, only to the extent to which the holding exceeds the ceiling prescribed by law and involves the consequence that the land shall vest in the Government. It would thus transpire that after the acquisition is completed, the question may arise whether ceiling has been exceeded and in that event the Mamlatdar in a suo motu inquiry can declare the transfer invalid to the extent the holding exceeds the ceiling. The distinguishing feature of the present case is that s. 63 bars purchase of agricultural land by one who is not an agriculturist and, therefore, the disqualification is at the threshold and unless it is crossed the Court cannot decree a suit for specific performance of contract for sale of agricultural land and in order to dispose of the contention which stands in the forefront a reference to the Mamlatdar under s. 70 read with ss. 85 and 85A is inevitable. Therefore, there is no conflict between the decision in Kulkarni's case and Jamburao's case (supra) nor the latter decision, overrules the earlier one. In fact, Kulkarni's case (supra) was not referred to in Jamburao's case (supra) because the question before the Court was entirely different from the one in Kulkarni's case (supra).

In *Mussamiya Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai & Ors.*, the question that came up for consideration of this Court was whether when in a suit in the civil Court for possession of agricultural land a contention is raised that defendant has become a statutory owner on the tillers' day under s. 32 of the Tenancy Act implying that he was a tenant on 1st April 1957, would the civil Court have jurisdiction to decide the question of past tenancy in the context of s. 70 of the Tenancy Act? The contention was negated observing that s. 70 imposes a duty on the Mamlatdar to decide whether a person is a tenant but the sub section does not cast a duty upon him to decide whether a person was or was not a tenant in the past, whether recent or remote. Approaching from this angle, it was held that the contention whether a defendant has become a statutory owner on the

tillers' day involving the question of past tenancy was not within the exclusive jurisdiction of the Mamlatdar and, therefore, the civil Court has jurisdiction to decide the question. In the context of the language employed in s. 70(b) which, as it then stood, did not confer jurisdiction on the Mamlatdar to decide the question of past tenancy, it can be said that the civil Court's jurisdiction to decide the same was not ousted. It appears that the question was argued in the context of s. 70 only and has been answered in the context of the language employed in s. 70(b) only. Otherwise, the question whether a person has become a statutory owner on the tillers' day, i.e. on 1st April 1957 which would imply whether the person so contending was a tenant of the land on 1st April 1957 and hence would become the owner of the land by operation of law, was exclusively within the purview of the Tribunal set up under s. 67 in chapter VI of the Tenancy Act. Section 67 imposes a duty on the State Government to set up Agricultural Land Tribunal for each taluka or mail or for such area as the State Government may think fit. Section 68 prescribes the duties of the Tribunal which inter alia include the duty to decide any dispute under ss. 32 to 32R (both inclusive). A dispute under s. 32 would comprehend whether the plaintiff was the owner of the land on the tillers' day i.e. 1st April 1957 and the person claiming to have become a statutory owner by operation of law on that day should of necessity be a tenant and that this question would be within the exclusive jurisdiction of the Tribunal as provided by s. 68. Section 85 refers to the Tribunal meaning Agricultural Land Tribunal to be a competent authority to settle, decide and deal with the question set out in s. 68 and it would have exclusive jurisdiction to settle, decide and deal with the same. No submission was made in Mussamiya's case (supra) with reference to the provisions contained in chapter VI and especially s. 68 and, therefore, that decision cannot lend support to the submission that past tenancy being a subsidiary issue, as such was within the competence of the Civil Court.

A question similar to the one under discussion in the context of provisions contained in ss. 132, 133 and 142(1)(a) of Mysore Land Reforms Act, 1961, came up before this Court very recently in Noor Mohd. Khan Ghouse Khan Soudagar v. Fakirappa Bharmappa Machenahalii & Ors. The majority decision, after approving Kulkarni, (supra) and distinguishing Mussamiya, (supra) and referring to Dhondi Tukaran, (supra) held that a question arose during the pendency of the suit and the execution proceeding whether by the final allotment of the land to the appellant, respondent no. 1 had ceased to be a tenant in view of s. 52 of the Transfer of Property Act. This question according to the opinion of the majority fell squarely and exclusively within the jurisdiction of the revenue authorities and the civil Court had no jurisdiction to decide it and a reference to the competent authority was inevitable, and no discretion was left in the Civil Court in this behalf. So observing, the majority upheld the decision of High Court which had set aside the decree of the trial Court awarding possession because in the opinion of the High Court no actual delivery of possession can be given against the person claiming to be a tenant unless the requirements of the Mysore Land Reforms Act, 1961, were satisfied. It may be noticed that the scheme of the provisions in Mysore Land Reforms Act, 1961, under discussion in the decision were in pari materia with the scheme of ss. 70, 85 and 85A of the Tenancy Act.

Thus, both on principle and on authority there is no escape from the conclusion that where in a suit properly constituted and cognizable by the Civil Court upon a contest an issue arises which is required to be settled, decided or dealt with by a competent authority under the Tenancy Act, the jurisdiction of the Civil Court to settle, decide or deal with the same is not only ousted but the civil

Court is under a statutory obligation to refer the issue to the competent authority under the Tenancy Act to decide the same and upon the reference being answered back, to dispose of the suit in accordance with the decision of the competent authority under the Tenancy Act.

If plaintiff sued for specific performance of a contract for sale of agricultural land governed by the provisions of the Tenancy Act in the Civil Court and the defendant appeared and raised a contention that in view of the provisions contained in s. 63 of the Tenancy Act the plaintiff being not an agriculturist he is barred from purchasing the land, the issue would arise whether the plaintiff is an agriculturist. Such an issue being within the exclusive jurisdiction of the Mamlatdar, it is incumbent upon the Civil Court to refer the issue to the competent authority under the Tenancy Act and the civil Court has no jurisdiction to decide or deal with the same. That issue arises in the suit from which the present appeal arises and both the trial Court and the High Court were in error in clutching at a jurisdiction which did not vest in them and, therefore, on this ground alone this appeal will succeed.

Accordingly this appeal is allowed and the decree of the trial Court dismissing the suit, affirmed by the High Court, is set aside and the suit is remanded to the trial Court to proceed further according to law in the light of the observations made in this judgment. Costs would abide the final outcome of the suit in the trial Court.

As the case is very old one, the trial Court and the competent authority to which a reference would be made pursuant to the direction in this judgment, should give top priority to the matter and dispose it of as expeditiously as possible.

N.V.K.

Appeal allowed.