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PREMLATA @ SUNITA

v.

NASEEB BEE & ORS.

(Civil Appeal Nos. 2055-2056 of 2022)

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MARCH 23, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Approbate and reprobate – Plaintiff-appellant instituted proceedings before the Revenue Authority under s.250 of the MP

- C *Land Revenue Code, 1959 (MPLRC) – Defendants-respondents disputed jurisdiction of Revenue Authority to deal with the matter – The Tehsildar dismissed application under s.250 holding that the dispute was with respect to title and, therefore, the Revenue Authority would not have jurisdiction under MPLRC – The said order was affirmed by Appellate Authority – Thereafter, appellant instituted suit before the civil court where respondents just took a contrary stand than what was taken by them before Revenue Authority and filed application under Or.7 r.11 for dismissing the suit on the ground that the civil court would not have jurisdiction to entertain the suit – Civil court rejected the application – However, on revision, High Court allowed the application under Or.7 r.11 and held that in view of s.257 of the MPLRC the jurisdiction of civil court is barred – On appeal, held: Respondents cannot be permitted to take two contradictory stands before two different authorities/courts – They cannot be permitted to approbate and reprobate once their objection that the Revenue Authority would have no jurisdiction was accepted by Revenue Authority/Tehsildar and the proceedings under s.250 of the MPLRC were dismissed – Thereafter, it was not open for the respondents to take an objection that suit before the civil court would also be barred in view of s.257 of the MPLRC – If the submission on behalf of the respondents is accepted, in that case, the appellant would be remediless – In the facts and circumstances of the case, civil court rightly refused to reject the plaint – Suit restored on the file of civil court – Code of Civil Procedure, 1908 – Or.7 r.11 – MP Land Revenue Code, 1959 – s.250.*

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Allowing the appeals, the Court

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HELD: The High Court has not at all appreciated the fact that when the appellant-original plaintiff approached the Revenue Authority/Tehsildar, he was non-suited on the ground that Revenue Authority/Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property. Thereafter, when the suit was filed, the respondents-defendants took a contrary stand that even the civil suit would be barred. In that case the original plaintiff would be remediless. In any case the respondents – original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority. Therefore, in the facts and circumstances of the case, the trial Court rightly rejected the application under Order 7 Rule 11 CPC and rightly refused to reject the plaint. The High Court committed a grave error in allowing the application under Order 7 Rule 11 CPC and rejecting the plaint on the ground that the suit would be barred in view of Section 257 of the MPLRC. The impugned judgment and order passed by the High Court is unsustainable and is liable to be set aside. [Para 4][830-A-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2055-2056 of 2022.

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From the Judgment and Order dated 27.11.2019 of the High Court of Madhya Pradesh at Jabalpur in C.R. No.385 of 2019 and Order dated 10.08.2020 in R.P. No.725 of 2020.

Ameet Deshpande, Sr. Adv., Akshat Shrivastava, Advs. for the Appellant.

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Veer Vikrant Singh, DAG, Dr. J. P. Dhanda, Ms. Raj Rani, Sunny Choudhary, Sushil Tomar, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.11.2019 passed by the High Court of Madhya Pradesh at Jabalpur in Civil Revision Application No.385 of 2019 by which the

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- A High Court has allowed the said Revision Application and has quashed and set aside the order passed by the learned trial Court dismissing the application under Order 7 Rule 11 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') preferred by the respondents herein – original defendants and consequently allowed the said application under Order 7 Rule 11 CPC and has rejected the plaint on the ground that the suit would be barred under the provisions of Section 257 of M.P. Land Revenue Code, 1959 (hereinafter referred to as the 'MPLRC'), the original plaintiff has preferred the present appeal.
 - 2. The facts leading to the present appeals in nutshell are as under:
- C 2.1 That the appellant herein – original plaintiff initially filed the original proceedings before the Revenue Authority/Tehsildar under Section 250 of MPLRC. The respondents herein - original defendants raised the objection against the maintainability of the application under Section 250 of the MPLRC and the jurisdiction of the Revenue Authority/Tehsildar. The Tehsildar rejected the said application accepting the objection raised on behalf of the respondents and held that as the question involved in the matter relates to title, hence provisions under Section 250 of the MPLRC shall not be attracted. Thereafter the appellant herein preferred an appeal before the SDO under Section 44 of the MPLRC challenging the order passed by the Tehsildar. However, during the pendency of the said appeal, the appellant filed the present suit before the learned trial Court for recovery of the possession and injunction. Having been served with the notice of the suit, the respondents – defendants filed an application under Order 7 Rule 11 CPC and requested to reject the plaint on the ground that the suit before the Civil Court would be barred considering Section 257 of the MPLRC. The learned
- D Civil Court rejected the said application and refused to reject the plaint in exercise of powers under Order 7 Rule 11 CPC. Against the said rejection the respondents – defendants preferred Civil Revision Application No.385 of 2019 before the High Court.
- G 2.2 By the impugned judgment and order the High Court has allowed the revision application and has set aside the order passed by the learned trial Court and consequently has allowed the application under Order 7 Rule 11 CPC and has rejected the plaint by holding that in view of Section 257 of the MPLRC the jurisdiction of the Civil Court is barred.
- H 2.3 That as during the pendency of the revision application the appeal filed by the plaintiff rejecting application under Section 250 of the

MPLRC came to be dismissed which was not pointed out at the time of final hearing of the revision application by the High Court, the appellant herein filed a review application before the High Court. The said review application has been dismissed.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in Civil Revision Application No.385 of 2019 and also the order passed in Review Petition No.725 of 2020, the original plaintiff has preferred the present appeals.

3. We have heard learned counsel for the respective parties at length.

4. At the outset, it is required to be noted and it is not in dispute that the plaintiff instituted the proceedings before the Revenue Authority under Section 250 of the MPLRC. These very defendants raised an objection before the Revenue Authority that the Revenue Authority has no jurisdiction to deal with the matter. The Tehsildar accepted the said objection and dismissed the application under Section 250 of the MPLRC by holding that as the dispute is with respect to title the Revenue Authority would not have any jurisdiction under MPLRC. The said order passed by the Tehsildar has been affirmed by the Appellate Authority (of course during the pendency of the revision application before the High Court). That after the Tehsildar passed an order rejecting the application under Section 250 of the MPLRC on the ground that the Revenue Authority would have no jurisdiction, which was on the objection raised by the respondents herein – original defendants, the plaintiff instituted a suit before the Civil Court. Before the Civil Court the respondents – original defendants just took a contrary stand than which was taken by them before the Revenue Authority and before the Civil Court the respondents took the objection that the Civil Court would have no jurisdiction to entertain the suit. The respondents – original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/ Tehsildar and the proceedings under Section 250 of the MPLRC came to be dismissed and thereafter when the plaintiff instituted a suit before the Civil Court it was not open for the respondents – original defendants thereafter to take an objection that the suit before the Civil Court would also be barred in view of Section 257 of the MPLRC. If the submission

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- A on behalf of the respondents – defendants is accepted in that case the original plaintiff would be remediless. The High Court has not at all appreciated the fact that when the appellant – original plaintiff approached the Revenue Authority/Tehsildar he was non-suited on the ground that Revenue Authority/Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property. Thereafter when the suit was filed and the respondents - defendants took a contrary stand that even the civil suit would be barred. In that case the original plaintiff would be remediless. In any case the respondents – original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority. Therefore, in the facts and circumstances of the case, the learned trial Court rightly rejected the application under Order 7 Rule 11 CPC and rightly refused to reject the plaint. The High Court has committed a grave error in allowing the application under Order 7 Rule 11 CPC and rejecting the plaint on the ground that the suit would be barred in view of Section 257 of the MPLRC. The impugned judgment and order passed by the High Court is unsustainable and is liable to be set aside.
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- E 5. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court dated 27.11.2019 in Civil Revision Application No.385 of 2019 allowing the same and setting aside the order passed by the learned trial Court and consequently rejecting the plaint under Order 7 Rule 11 CPC is hereby quashed and set aside. The order passed by the learned trial Court rejecting the application under Order 7 Rule 11 CPC is hereby restored and the suit is restored on the file of the learned trial Court. Now the suit to be proceeded further in accordance with law and on its own merits.
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Present appeals are accordingly allowed. In the facts and circumstances of the case there shall be no orders as to costs.

Devika Gujral

Appeals allowed.