

Supreme Court of India

Sraswati vs Lachanna on 8 December, 1993

Equivalent citations: 1994 SCC (1) 611, JT 1993 (6) 629

Author: S N.P.

Bench: Singh N.P. (J)

PETITIONER:

SRASWATI

Vs.

RESPONDENT:

LACHANNA

DATE OF JUDGMENT 08/12/1993

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

SAHAI, R.M. (J)

BHARUCHA S.P. (J)

CITATION:

1994 SCC (1) 611 JT 1993 (6) 629

1993 SCALE (4) 616

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- This appeal is on behalf of the defendants. The suit in question was filed for redemption of the suit property by the plaintiffs/respondents. It was alleged in the plaint that the property mentioned in the schedule of the plaint had been mortgaged through a registered deed, in favour of the father of the original defendant and possession had been also delivered to him. As the defendants refused to surrender possession of the lands in question, after accepting the amount due, necessitated, filing of the suit.

2. Apart from other defence, a plea was taken on behalf of the defendants that the civil court had no jurisdiction to try the suit in question. The trial court came to the finding that the plaintiffs had right to redeem the mortgage, and the civil court had jurisdiction to entertain the suit. On the aforesaid findings, the suit was decreed. On appeal being filed by the defendants, the learned District Judge, affirmed the aforesaid findings of the trial court, including in respect of the jurisdiction of the civil

court to entertain the suit. It was held that the suit was not barred by Section 99 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Tenancy and Agricultural Lands Act"). The second appeal filed on behalf of the appellants, before the High Court was also dismissed, affirming the findings of the trial court and the court of appeal, including in respect of the maintainability of the suit before the civil court.

3. The learned counsel, appearing for the defendants/appellants, did not question the findings of the courts below on merit, but, according to him, in view of Section 99 of the Tenancy and Agricultural Lands Act, which bars the jurisdiction of the civil court with regard to certain proceeding, the suit for redemption of a mortgage could not have been entertained by the civil court and the dispute should have been left to be determined and to be dealt with in accordance with the provisions of the said Act. It was pointed out that in view of Section 8(2) of the Prevention of Agricultural Land Alienation Act (No. III of 1349 Fasli), even a mortgagor had to approach the Talukdar for redemption of mortgage and the civil court had no jurisdiction to entertain the suit. Although the aforesaid Agricultural Land Alienation Act was repealed by the Tenancy and Agricultural Lands Act, even then in view of Section 99 civil court shall have no jurisdiction to settle, decide and deal with any question which is by or under the said Act required to be settled, decided or dealt with by the Tahsildar, Tribunal, Collector, the Board of Revenue or the Government, Section 99 says:

"99. Bar of Jurisdiction.- (1) Save as provided in this Act no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government. (2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any Civil or Criminal Court."

From a plain reading of the aforesaid section, it is apparent that a civil court shall have no jurisdiction to settle, decide or deal with any question "which is by or under this Act required to be settled, decided or dealt with by the Tahsildar.....In other words, the jurisdiction of the civil court has been ousted only in respect of such questions which are required to be decided or dealt with under the provisions of the Tenancy and Agricultural Lands Act. In view of the express and unambiguous language of Section 99, it cannot be disputed that if it is found that even a suit for redemption has to be decided and to be dealt with under the provisions of the Tenancy and Agricultural Lands Act, then Section 99 will operate as a bar on the power of a civil court to entertain a suit for redemption.

4. The different sections of the Tenancy and Agricultural Lands Act vest power in Tahsildar to entertain disputes in connection with the possession of the lands. But, the learned counsel, appearing for the appellants had to concede that none of the provisions of the Act prescribe that even a suit for redemption can be entertained under the provisions of the said Tenancy and Agricultural Lands Act by the Tahsildar. Faced with this situation, a stand was taken on behalf of the appellants, that even if, there is no provision under the Tenancy and Agricultural Lands Act, to entertain a suit relating to redemption of the mortgage, in view of Section 103 which has repealed the Prevention of Agricultural Land Alienation Act, a proceeding for redemption of a mortgage

which had been executed when the said Prevention of Agricultural Land Alienation Act was in force, can be entertained only by the Tahsildar or Talukdar.

5. Section 103 repeals Prevention of Agricultural Land Alienation Act. Sub-section (2) is as follows:

"Notwithstanding anything contained in the second proviso to subsection (1), clause (c) of sub-section (2) of Section 10 of the Prevention of Agricultural Land Alienation Act (111 of 1349 F) shall for the purposes of the said proviso have effect as though for the said clause the following clause was substituted, namely:

'(c) if the amount received by the mortgagee from the mortgagor in case of a simple mortgage or the value of the benefits realised by the mortgagee from the possession of land together with the amounts paid by the mortgagor to the mortgagee in case of an usufructuary mortgage is less than the amount due, the Collector shall, on the mortgagor paying the amounts due in cash, terminate the mortgage by an order in writing and if the mortgagee is in possession of the land, he shall place the mortgagor in possession thereof. If the mortgagor fails to pay the amount due, the Collector shall order that the land, if it is already in the possession of the mortgagee shall continue to be in his possession for such period not exceeding 10 years, as may be considered by the Collector reasonable for the payment of the amount due after the expiry of which the land shall be restored to the possession of the mortgagor.' "

It was submitted that in view of sub-section (2) of Section 103, a mortgagor can still approach the Collector for possession of the lands mortgaged, on payment of the amounts due. A reference was made to a judgment of the Andhra Pradesh High Court, in the case of Gollapalli Lingam v. Vadla Mallammal. In that case, the respondent before the High Court had initiated a proceeding for redemption of the mortgage executed by him in the year 1944, before the Collector. An objection was taken on behalf of the mortgagee, who was the petitioner before the High Court, that after the repeal of Prevention of Agricultural Land Alienation Act, such application could not be entertained by the Collector. The High Court pointed out that there was no provision in the Tenancy and Agricultural Lands Act for creating a usufructuary mortgage, as was the case under the repealed Act. But then it was said After referring to sub- section (2) of Section 103 of the Tenancy and Agricultural Lands Act, that it clearly showed an intention to save accrued rights under Act III of 1349-F; the rights, privileges and obligations conferred under Act III of 1349-F were of a special nature and were designed to prevent a class of persons from alienating their lands 1 1959 (2) Andh WR 497 without following certain procedure. The rights, privileges and obligations, as well as the procedure for enforcing and determining those are specified under the Act. The Tenancy and Agricultural Lands Act which repealed Act III of 1349-F did not lay down any special procedure to work out the rights, privileges and obligations already accrued under the repealed Act. It was held that an application which had been filed for redemption before the Collector under the provisions of the repealed Act was maintainable. A similar view was expressed in the case of Rangaraj Gangaram v. Govt. of A. P.2 saying that although Section 103 of the Tenancy and Agricultural Lands Act repeals the earlier Act, but it saves the rights acquired or accrued and also saves the remedy, which was available in order to enforce that accrued or acquired right.

6. In the case of *Abdulla Bin Ali v. Galappa*<sup>3</sup> the plaintiff had filed a suit for possession and mesne profits against the defendants describing them as trespassers. Before filing of the suit a proceeding had been initiated under the provisions of the Tenancy and Agricultural Lands Act alleging that the defendants were the tenants and had defaulted the payment of rent for the lands in question. In that proceeding, the defendants disputed the title of the plaintiff to receive rent. Thereafter the suit in question was filed. In this suit a plea was taken by the defendant that in view of Section 99 aforesaid, such suit was not maintainable before the civil court. That plea was negated by saying that it was no doubt true that the plaintiffs had alleged that defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs- appellants, they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.

7. Where a particular Act creates a right and also provides a forum for enforcement of such right and bars the jurisdiction of the civil court then ouster of the civil court jurisdiction has to be upheld. But the situation will be different where the statute neither creates the right in question nor provides any remedy or having created any right or liability no forum for adjudication of any dispute arising out of such right or liability is provided. In such a situation, the ouster of the civil court's jurisdiction is not to be easily inferred. Recently this Court, in the case of *Shiv Kumar Chadha v. Municipal Corpn. of Delhi*<sup>4</sup> has examined the aforesaid question in detail.

8. In the present case, it is an admitted position that in the Tenancy and Agricultural Lands Act neither there is any provision for seeking permission of any revenue authority before execution of a usufructuary mortgage nor a forum has been provided for adjudication of a dispute relating to any usufructuary mortgage. Section 99 which ousts the jurisdiction of the civil court, says in clear and unambiguous words that such civil court shall have no jurisdiction to settle or decide or deal with any question which is "by or under this Act required to be settled, decided or dealt with by the Tahsildar, 2 1967 (1) Andh WR 12 3 (1985) 2 SCC 54 4 (1993) 3 SCC 161 Tribunal or Collector or by the Board of Revenue or Government". If none of the provisions of the Tenancy and Agricultural Lands Act require that a proceeding for redemption of usufructuary mortgage is to be entertained by Tahsildar only, it is obvious that the bar of Section 99 cannot operate and the jurisdiction of the civil court shall not be deemed to have been ousted in respect of such suit. Section 9 of the Code of Civil Procedure vests power in the civil court to try all suits of a civil nature "except suits of which their cognizance is either expressly or impliedly barred". If Section 99 does not operate as a bar on the power of the civil court to entertain a suit relating to the redemption of a usufructuary mortgage, then it has rightly been held by the courts, including the High Court, that the suit filed on behalf of the plaintiffs-respondents was maintainable. Once it is held that Section 99 does not oust the jurisdiction of a civil court in respect of a suit for redemption, then a bar on such power cannot be pleaded on basis of sub-section (2) of Section 103 of the Tenancy and Agricultural Lands Act, which, in spite of the repeal of the Prevention of Agricultural Land Alienation Act, protects the right or privilege accrued under the Act so repealed.

9. Accordingly, the appeal fails and is dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.