Supreme Court of India
Zafar Khan And Ors vs Board Of Revenue, U.P. & Ors on 31 July, 1984
Equivalent citations: 1985 AIR 39, 1985 SCR (1) 287
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
ZAFAR KHAN AND ORS.

Vs.

RESPONDENT:
BOARD OF REVENUE, U.P. & ORS.

DATE OF JUDGMENT31/07/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
ERADI, V. BALAKRISHNA (J)

CITATION:
1985 AIR 39 1985 SCR (1) 287
1984 SCALE (2)135

ACT:
Limitation Act, 1963-Section 14 (1)-Interpretation of-For claiming benefit under s. 14 (1) three conditions must be satisfied. Expression 'other cause of a like nature' must be read ejusdem generis with expression 'defect of jurisdiction'.
Code of Civil Procedure s. 144-Requirements of.
U.P. Consolidation of Holding Act. 1953-s.49-Interpretation of.
U.P. Zamindari Abolition and Land Reforms Act, 1950-Section 20(b) read with Explanation I-Interpretation of.

HEADNOTE:
The appellants, in execution of a decree passed in a suit filed by them under s. 180 of the U.P. Tenancy Act, 1939, on December 2, 1948 took back possession of the land in dispute from the respondent Nos. 4 and 5 (respondents for short). On the advent of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ('1950 Act' for short) the respondents moved an application under s. 232 of the 1950 Act to regain possession of the land on the ground that they hand acquired the status of adhivasis udder that Act. The Assistant Collector dismissed the application. The respondents appealed to the Additional Commissioner. The

appellants contended that since the village in which the land in dispute was situated was put into consolidation under the U.P. Consolidation of Holdings Act, 1953 ('1953 Act' for short), the Additional Commissioner had no jurisdiction to hear the appeal. The appellants also submitted that a statement under s. 8 and 8A of the 1953 Act was published in which they were shown as bhumidars of the land in question and the respondents had not objected to the entries. The Additional Commissioner, by his order dated June 15, 1956, allowed the appeal. Pursuant to that order the entries in the said statement were corrected and the respondents acquired possession of the land. The Board of Revenue, before whom the Additional Commissioner's order was challenged, held that the Additional Commissioner had no jurisdiction to hear the appeal on merits.

On September 11, 1958 the appellants moved an application under s. 144 of the Code of Civil Procedure before the Sub Divisional officer praying for restitution of possession. This application and the subsequent appeals were rejected by the authorities. Dismissing a writ petition filed by the appellants the High Court held that the proceedings under s. 144 of the Code of Civil Procedure could not succeed, but since the decision recorded by the authorities under the 1953 Act had become final, it was always open

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to the petitioners to move the first appellate court to decide the appeal in terms of the decision of the consolidation authorities.

Thereupon, in August 1966, the appellants filed a suit under ss. 209 and 229 (b) of the 1950 Act against the respondents for a decree for possession on the ground that they were bhumidhars of the land in question under the 1950 Act. The Assistant Collector decreed the suit. The Additional Commissioner allowed the appeal filed by the respondents. The Board of Revenue dismissed the appellants' second appeal. The appellants filed a writ petition in the High Court. A single Judge of the High Court dismissed the writ petition. A Division Bench of the High Court dismissed the special appeal filed by the appellants. Hence this appeal.

The respondents contended: (i) that the suit was barred by limitation and the appellants were not entitled to the benefit of s. 14(1) of the Limitation Act, 1963; and (ii) that the suit was barred by s. 49 of the 1953 Act.

Dismissing the appeal,

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HELD. 1. The party seeking benefit of s. 14 (1) of the Limitation Act, 1963 must satisfy the three conditions laid down in the section, namely, (i) that the Party as the plaintiff was prosecuting another civil proceeding with due diligence (ii) that the former proceeding and the later proceeding relate to the same matter in issue; and (iii)

that the former proceeding was being prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.[297G-H]

2. The expression 'other cause of a like nature' will have to be read ejusdem generis with the expression 'defect of jurisdiction'. So construed the expression other cause of a like nature must be so interpreted as to convey something analogous to the preceding words from defect of jurisdiction'. The defect of jurisdiction goes to the root of the matter as the court is incompetent to entertain the proceeding. The proceeding may as well fail for some other defect. Not all such defects can be said to be analogous to defect of jurisdiction. Therefore, the expression other cause of a like nature on which some light is shed by the Explanation (C) to s. 14 which provides "misjoinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction", must take its colour and content from the just preceding expression, defect of jurisdiction'. Prima facie it appears that there must be something taking to a preliminary objection which if it succeeds, the court would be incompetent to entertain the proceeding on merits. Such defect could be said to be of the like nature' as defect of jurisdiction. Coversely if the party seeking benefit of the provision of s. 14 failed to get the relief in earlier proceeding not with regard to anything connected with the jurisdiction of the court or some other defect of a like nature, it would not be entitled to the benefit of s 14. [300C-G]

India Electric Works Ltd. v. James Mantosh & Anr., [1971] 2 SCR 397, referred to.

3. In a proceeding under s. 144 of the Code of Civil Procedure, the party applying for restitution has to satisfy the court of first instance that a decree under which it was made to part with the property is varied or reversed or modified in appeal or revision or other proceeding or is set aside or modified in any suit instituted for the purpose and therefore, restitution

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must be ordered. In such a proceeding, the party seeking restitution is not required to satisfy the court about its title or right to the property save and except showing its deprivation under a decree and the reversal or variation of the decree. [298C-D; E]

4. In the instant case, the High Court rightly declined to grant benefit of the provision of sec 14 of the Limitation Act to the appellants because the second and third condition laid down in s. 14 (1) were not satisfied. It may be assumed that the earlier proceeding under s. 144 of Civil Procedure Code was a civil proceeding for the purpose of s. 14 (1) and that the appellants were prosecuting the same with due diligence. But it is difficult to accept that the subsequent proceeding relates to same matter in issue as was involved in the earlier proceeding.

The appellants merely claimed in their application under s. 144 that in view of the reversal of the order by the Board of Revenue the respondents are not entitled to retain possession and that restitution should be evicted because the appellants lost possession under the order of the Additional Commissioner which was reversed by the Board of Revenue. The cause of action was the reversal of the order of the Additional Commissioner. When they failed to obtain restitution, the appellants filed a substantive suit under ss. 209 and 229 (b) of the 1950 Act. It was a suit on title as bhumidars for possession against respondents alleging unauthorised retention of possession. It had nothing to do with the order of the Additional Commissioner. Moreover, the appellants failed in the earlier proceeding not on the ground that the authority had no jurisdiction to entertain the application nor on the ground that there was any other defect of a like nature, but on merits inasmuch as the authorities and the High Court held that in view of the decision of the authorities under 1953 Act, the appellants are not entitled to restitution. [301B; 299A; 298G-H; 299A]

5. Once an allotment under s. 49 of the U.P. Consolidation of Holdings Act, 1953 became final, a suit would not lie before a civil or revenue court with respect to rights in lands or with respect to any other matter for which a proceeding could or ought to have been taken under that Act. [301G]

6. In the instant case, once the village was denotified, as found by the authorities and the High Court the allotment made under the 1953 ACI became final and it could not be questioned in a suit before civil or revenue Court in view of the bar enacted in s. 49. [302A-B]

7. The appellants' submission that after reversal of the Additional Commissioner's order dated June 15, 1956 the respondents had neither a legal nor equatable right to be in possession, has no force. Assuming that the appellants had acquired the status of bhumidars the same was subject to the provision contained in s. 20 (b) read with Explanation I of the U.P. Zamindari Abolition and Land Reforms Act, 1950 according to which, as correctly found by single Judge of the High Court, the respondents would become adhivasis of the land. Such adhivasis if they had lost possession were entitled to regain the same by making an appropriate application under s. 232 of that Act. The respondents did move such an application which ultimately was accepted by the Additional Commissioner. Therefore, primarily, legally and additionally in equity, respondents have an iron clad case to be in possession against appellants. [294H; 296D-G] 290

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1514 of 1970.

From the Judgment and order dated the 14th February, 1959 of the Allahabad High Court in Special Appeal No. 92/1950.

C.M. Lodha, Mrs. Uma Jain & R.K.Mehta for the Appellants.

Vishnu Mathur and S.K. Chaturvedi for the Respondents. The Judgment of the Court was delivered by DESAI J. Appellants claiming to be the Khudkasht holders of the Zamindars of the plots of land involved in dispute filed a suit for possession under Sec. 180 of the U.P. Tenancy Act, 1939 (Tenancy Act 'for short) against respondents Nos. 4 and 5 ('respondents' for short) who were and are in actual and physical possession and cultivating the land. This suit ended in a decree in favour of the appellants on September 30, 1948 and in execution of the decree, the appellants assert that they obtained actual and physical possession from the respondents on December 2, 1948. On the advent of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ('1950 Act' for short) the appellants claimed to have acquired the status of Bhumidars in respect of the plots of land in dispute.

The respondents moved an application under Section 232 of the 1950 Act against the appellants alleging that as they were in actual and physical possession during the year 1356 Fasli and were subsequently dispossessed in view of the provision contained in Sec. 20 of the 1950 Act, they have acquired the status of adhivasis and therefore, they are entitled to regain possession. This application was made to the Assistant Collector within the prescribed period of limitation. The Assistant Collector rejected the application holding that as the respondents were not in possession through the entire year of 1356 Fasli but only for a part of the year, they have not acquired the status of adhivasis and were not entitled to regain possession. The respondents carried the matter in appeal to the Additional Commissioner who held that the respondents had acquired the status of adhivasis and were entitled to regain possession and accordingly allowed the appeal by his order dated June 1956 and in compliance with this order the respondents regained actual and physical possession of the land and since than till today are in possession of the same.

According to the appellants the village/villages in which the plots of land involved in the dispute are situated were put into consolidation under the U.P. Consolidation of Holdings Act, 1953 ('1953 Act' for short) and therefore, the Additional Commissioner had no jurisdiction to decide the appeal of the respondents on merits but should have stayed the same. In the meantime according to the appellants a statement under Sec. 8 and 8-A of the 1953 Act was published in which according to them they were shown as Bhumidars of the plots in question and the respondents had failed to object to the entries. However, it appears that since the appeal preferred by the respondents was allowed by the Additional Commissioner, pursuant to his judgment the entries in the statement were corrected in favour of the respondents and they regained actual and physical possession of the land. The appellants carried the matter in appeal to the Board of Revenue, which was allowed holding that once the village/villages in which the plots involved in the dispute are situated have been put into consolidation and a notification under Sec. 4 of the 1953 Act is issued, the Additional Commissioner should have stayed the appeal as the law then stood, and not heard it on merits and allowed the same. The appeal was accordingly remitted to the Additional Commissioner to retain it

on his file and stayed further hearing of the appeal.

The appellants on the reversal of the decision of the Additional Commissioner moved an application under Sec. 144 of Code of Civil of Procedure, before the Sub Divisional officer on September 11, 1958 praying for restitution of possession. Thus started the second round of litigation. The Sub Divisional officer by his order dated April 14, 1959 rejected the application of the appellants holding that as the rival claims have been decided under the 1953 Act, he has no jurisdiction to re-open the proceeding concluded before the authorities under the 1953 Act and the decision therein recorded has become final. He was further of the opinion that if any redressal consequent upon the reversal of the decision of the Additional Commissioner was to be obtained, the appellants should have moved the authorities under the 1953 Act which they having failed to do, no relief by way of restitution can be granted by the Sub Divisional officer. The appellants carried the matter in appeal to the Additional Commissioner who by his order dated July 7, 1959 upheld the decision of the Sub Divisional officer and dismissed the appeal. The appellants after an unsuccessful appeal to the Board of Revenue approached the Allahbad High Court in writ Petition No. 622 of 1960. This writ petition was dismissed by a learned Singal Judge of the High Court holding that as the authorities under the Consolidation Act-1953 Act have allotted the plots in question to the respondents on the strength of the Additional Commissioner, on the reversal of that order, the appellants should have approached the authorities under the 1953 Act for recording them as holders of the plots and for correction of the statement by filing appropriate proceeding. It was held that as the appellants failed to seek relief before the authorities having jurisdiction in the matter, they cannot succeed in a proceeding under Sec. 144 of the Code of Civil Procedure because if such a relief is granted, it would tentamount to interfering with the decisions recorded by the authorities under the 1953 Act which have become final. It was observed that after the final decision of the consolidation authorities it is always open to the petitioners to move the first appellate court to decide the appeal in terms of the consolidation authorities or it was open to them, to have moved the appropriate consolidation authorities at appropriate time. That having not been done, they were not entitled to relief at the hands of the court. The writ petition was accordingly rejected on January 27, 1966.

Thereupon the appellants started the third round of litigation. After having concurrently failed before all authorities for obtaining relief under sec. 144 of the Code of Civil Procedure, the appellants filed Suit No. 73 of 1967 under Sec. 209 and 229(b) of the 1950 Act against the respondents in August, 1966. In this suit they claimed a decree for possession on the ground that as they are Bhumidars of the plots in question under the 1950 Act, and as against them the respondents are not entitled to retain possession they are entitled to be reinducted in possession. It was alleged that the respondents cannot continue to remain in possession which they obtained under the order of the Additional Commissioner because that order no more exists and has been reversed by the Board of Revenue at the instance of the appellants. The suit was resisted by the respondents and the State of U.P. which had been impleaded as one of the defendants inter alia contending that the suit is barred under Sec. 49 of the 1953 Act as also it was barred by limitation It was also contended that the plots were finally allotted in consolidation proceedings to the respondents and that order having not been challenged, the same has become final and the Revenue Court has no jurisdiction to nullify that order even if it is satisfied that that order was not consistent with law or facts. The learned Assistant Collector held that on the date of vesting of the estate, the

appellants become the Bhumidars and the suit is not barred under Sec. 49 of the 1943 Act. It was also held that even though the suit was barred by limitation, appellants were entitled to the benefit of the provision contained in Sec. 14 of the Limitation Act. It was further held that as against the appellants, the respondents were not entitled to retain possession as the order under which they obtained possession no more exists. Consistent with these findings, the appellants suit for possession was decreed.

The respondents preferred an appeal to the Additional Commissioner who by his judgment and order dated August 23, 1967 allowed the same and set aside the judgment of the Assistant Collector and dismissed the appellants suit for possession inter alia holding that a decision on an application under Sec. 239 of the 1950 Act would operate as res judicata in respect of the suit of the appellants from which the appeal arose and the suit was also barred by Sec. 49 of the 1953 Act nor were the present appellants- plaintiffs in the suit entitled to the benefit of the provision contained in Sec. 14 of the Limitation Act. The suit accordingly was liable to be dismissed as barred by limitation. Consistent with these findings the appeal of the respondents was allowed and the plaintiffs' suit was dismissed. The appellants' second appeal to the Board of Revenue was summarily dismissed whereupon they moved the High Court in Writ Petition 19/1968. A learned Single Judge of the High Court rejected the writ petition holding that the finding of the statutory authorities that the suit was barred by limitation was unexceptional and that they were rightly denied the benefit of the provision contained in Sec. 14 of the Limitation Act. The learned Judge also held that the suit of the appellants' was also barred by Sec. 10 (sic) of the Code of Civil Procedure. An application was moved before the learned Judge seeking an amendment in the writ petition so as to be able to question the correctness of the order of allotment made by the authorities under 1953 Act in favour of the respondents and praying for quashing the same. The learned Judge was not persuaded to grant the amendment application and the same was rejected. The learned Judge also held that the respondents had become adhivasis and were entitled to regain possession both in view of Sec. 20 of the 1950 Act and cl. (c) of sub-sec. (1) of Sec. 27 of the United Provinces Tenancy (Amendment) Act, 1947. While holding that the respondents had become adhivasis under Sec. 20, learned Judge observed that a person evicted after 30th June 1948 but within the year 1356 Fasli would be deemed to be in possession in that year till the date of his ejectment and he may thus be in possession for apartment of the year, but if he is recorded in the year 1356 Fasli, he would be a person recorded as an occupant in 1356 Fasli within the meaning of the first part of cl. (b) (i), even though he may not have been actually in possession throughout the year and thus the necessary requirements to clothe him with the status of adhivasi would be wholly fulfilled. Consistent with this finding, the writ petition was dismissed with costs. Undaunted by the continuous repeated rejection of their claim, the appellants carried the matter in Special Appeal No. 92 of 1969 which was heard by a Division Bench of the Allahabad High Court presided over by the then learned Chief Justice. Before the Division Bench only two points were canvassed: (1) whether the appellants were entitled to the benefit of the provision contained in Sec. 14 of the Limitation Act and (2) whether the suit was barred under Sec. 49 of the 1953 Act. On both these points, the Division Bench agreed with learned Single Judge and rejected the appeal of the appellants. Hence this appeal by certificate under Art. 133 (1)(a) of the Constitution.

At the commencement of the hearing, Mr. Lodha urged that the appeal is filed by certificate under Art. 133 (1)(a) and (c) of the Constitution which would mean that apart from the valuation, the Division Bench granting the certificate was satisfied that there was substantial question of law of general public importance which ought to be decided by this Court. However, when we examined the certificate and the order granting the same, it transpired that the certificate was granted under Art. 132 (1)(a) of the Constitution and not under Art. 133 (1)(c) though there are some observations which may generate a belief that the High Court was satisfied that the case involved a substantial question of law of general public importance which ought to be decided by this Court.

Mr. C.M. Lodha, learned counsel urged that once the order of Additional Commissioner dated June 15, 1956 allowing the appeal of the respondents against the dismissal of their application under Sec. 232 of the 1950 Act by the Sub Divisional Officer was reversed, they have neither a legal nor equitable right to be in possession and that the appellants pilloried and pushed from pillar to post denying substantial justice on technical grounds. His grievance was that on a very narrow view of law a genuine claim is refused. Apart from the two legal contentions, even this submission does not commend to us. Prior to the introduction of the 1950 Act, there used to be a vertical hierarchy of absentee landlords who thrived at the cost of the actual cultivators had no security of tenure. It was a feudal order, to remove all intermediaries between the actual cultivator and the State, 1950 Act was introduced with the avowed object especially of abolition of Zamindari System and to assure to the actual cultivator security of tenure and fixity of rent. The promise of independence of ensuring the tillers of the soil to be the owners thereof, was being gradually implemented. The Zamindari Abolition Act was a step in that direction. Leaving aside all the nuances of agrarian reforms, absentee landlords and intermediaries who thrived on the labour of actual cultivators were to be removed and the burden on the land was thus to be reduced and the cultivators were to be protected against exploitation. It is notorious that before such radical step of abolition of vested interest in the land is taken, there is a fanfare of publicity with the result that those whose interests were to be affected would try to screen them away from the purview of the proposed statute by taking such steps at a time when the protection was not available to the tenants and offer a fait accompli when the agrarian reform legislation is put on the statute book. The facts in this case would illustrate the point and would negative any claim made on behalf of the appellants.

The entire claim of the appellants throughout this litigation spreading roughly over three and a half decades is founded upon a decree obtained under Sec. 180 of the U.P. Tenancy Act, 1939 against respondents Nos 4 and 5. We repeatedly asked Mr. Lodha to tell us under what title the appellants sought possession and succeeded in evicting the respondents who were admittedly the actual cultivators and against whom the suit for eviction was filed. We practically for the answer in vain, save and except being told that as that aspect was never in dispute, relevant facts were not available, nor the decree is on record. However, what emerges from facts as conceded on behalf of the appellants is that they were the Khudkasht holders of the erstwhile Zamindars and in that capacity they filed suit for possession against the respondents under Sec. 180 of the 1939 Act. One has not to labour much to appreciate who are Khudkasht holders of the Zamindars. They can be styled as alter ego or proxies of the Zamindars. In other words, this proxy of Zamindars filed a suit for eviction of the respondents and as law then stood succeeded as per decree dated Sept. 30, 1948 and in execution whereof on December 2, 1918 dispossessed the actual cultivators the respondents and got

into possession. This was done when agrarian reform law was on the anvil. The entire edifice of the present litigation by the appellants is founded on this decree, a decree which because of the subsequent developments of law has become legally unsound and equitably unjust.

On the advent of the 1950 Act, the appellants assert that they became the Bhumidars of the plots. Assuming that the appellants have acquired the status of Bhumidars, the same was subject to the provision contained in Sec. 20(b) read with Explanation 1 of 1950 Act according to which the respondents would become adhivasis of the plots. It is not necessary to examine this aspect in detail because the learned Single Judge of the High Court found as a fact that for a portion of the year 1356 Fasli, the respondents were in possession as occupants and were cultivating the land and their names were so recorded in the khasra of 1356 Fasli and that they were dispossessed but were entitled to regain possession under Sec. 27 of the United Provinces Tenancy (Amendment) Act, 1947 and therefore they have become Adhivasis of the plots. No amount of argument of Mr. Lodha could persuade us to disturb this finding. It is correct in law, consistent with the record and eminently just. Such adhivasis if they had lost possession were entitled to regain the same be making an appropriate application under Sec. 232 of the 1950 Act. The respondents did move such an application which ultimately was accepted by the Additional Commissioner. This is not in dispute. Therefore, primarily, legally and additionally in equity, the respondents have an iron clad case to be in possession against appellants. Therefore we find no substance in the contention of Mr. Lodha that an eminently just claim is refused on narrow technical view of matter. The case is the other-way round.

Reverting to the two points on which the suit of the appellants was dismissed, Mr. Lodha pointed out that the High Court and all the statutory authorities were in error in denying to the benefit of the provision contained in Sec. 14 of the Limitation Act and dismissed the suit as barred by limitation. After the appellants lost upto the High Court in the proceeding arising upon their application under Sec. 144 of the Code of Civil Procedure, the appellants filed a suit under Secs. 209 and 229(b) of the 1950 Act. Under the order of the Additional Commissioner, the respondents obtained possession of the plots on June 21, 1956. The present suit was filed in August, 1966. Suit under Sec. 209 of the 1950 Act has to be filed within the prescribed period of limitation and it is not in dispute that the suit filed by the appellants in August, 1966 was filed beyond the period of limitation. The appellants submitted that they are entitled to the benefit of the provision contained in Sec. 14 of the Limitation Act. The learned Judge and the Division Bench of the High Court have concurrently held that the appellants were not entitled to the benefit claimed by them Sec.14(1) of the Limitation Act reads as under: "14(1): In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it."

In order to attract the application of Sec. 14(1), the parties seeking its benefit must satisfy the court that: (1) that the party as the plaintiff was prosecuting another civil proceeding with due; diligence; (ii) that the earlier proceeding and the later proceeding relate to the same matter in issue and (iii) the former proceeding was being prosecuted in good faith in a court which, from defect of

jurisdiction or other cause of a like nature, is unable to entertain it. It may be assumed that the earlier proceeding under Sec. 144 of the Code of Civil procedure was a civil proceeding for the purpose of Sec. 14. It may as well be assumed in favour of the appellants that they were prosecuting the same with due diligence and in good faith, as they relentlessly carried the proceeding upto the High Court invoking its extraordinary jurisdiction. The first of the aforementioned three cumulative conditions can be said to have been satisfied.

The appellants must further satisfy the court that the earlier proceeding i.e. the one under Sec. 144 of the Code of Civil Procedure related to the same matter in issue, as in the present suit. There the appellants are not on sure ground. In a proceeding under Sec. 144 of the Code of Civil Procedure, the party applying for restitution has to satisfy the court of first instance that a decree under which it was made to part with the property is varied or reversed or modified in appeal or revision or other proceeding or is set aside or modified in any suit instituted for the purpose and therefore, restitution must be ordered. Sec. 144 is founded on the equitable principle that one who has taken advantage of a decree of a court should not be permitted to retain it, if the decree is reversed or modified. That is why the marginal note to Sec. 144(1) reads 'application for restitution' and the word 'restitution' in its ethological sense means restoring to a party on the modification, variation or reversal of a decree what has been lost to him in execution of the decree or in direct consequence of the decree. In such a proceeding, the party seeking restitution is not required to satisfy the court about its title or right to the property save and showing its deprivation under a decree and the reversal or variation of the decree. On the reversal by the Board of Revenue in the appeal filed by the appellant of the order of the Additional Commissioner under which the respondents obtained possession, the appellants merely claimed in their application under Sec. 144 that in view of the reversal of the order by the Board of Revenue the respondents are not entitled to retain possession and that restitution should be ordered because the appellants lost possession under the order of the Additional Commissioner which was reversed by the Board of Revenue. The cause of action was the reversal of the order Additional Commissioner. When they failed to obtain restitution, the appellants filed a substantive suit under Sec. 209 and 229(b) of the 1950 Act in which they claimed that they have become the Bhumidars of the plots in dispute and that the respondents are not entitled to retain possession as their possession is not in accordance with the provisions of 1950 Act. It was a suit on title as Bhumidars for possession against respondents alleging unauthorised retention of possession. It had nothing to do with the order of the Additional Commissioner. In this suit the appellants were bound to prove that the respondents were not entitled to retain possession under any of the provisions of the 1950 Act. Incidentally, the order of the Additional Commissioner and its reversal would figure as evidence but it is difficult to accept that the subsequent proceeding relates to the same matter in issue as was involved in the earlier proceeding. In the application under Sec. 144 Code of Civil Procedure only allegation to be proved for relief of restitution is that the decree or order under which respondents obtained possession from appellants has been reversed, modified or varied. They need not prove title or right to be in possession. In the suit, not only title to the land as Bhumidar must be also the respondents had not a tital of title to retain possession. And respondents can allege and prove that under the very 1950 Act under which appellants became Bhumidars, the respondents have become adhivasis entitled to retain possession against the appellants. This defence was not open to them in the proceeding under Sec. 144. It was, however, submitted that the appellants were seeking, in both the proceeding, possession of the plots involved in the dispute on the ground that

they are ultimately entitled to the possession thereof and the possession of the respondents vis-a-vis the appellants was unauthorised and they were not entitled to retain possession against the appellants. This is far from convincing. One can at best say there is a grey area and that as the provision of Sec. 14 is required to be construed liberally, therefore we may not have denied the benefit it this was the only aspect against the appellants.

The question however is whether the third condition for attracting Sec. 14(1) is satisfied. The appellants must further satisfy the court that the earlier proceeding failed on account of defect of jurisdiction or other cause of a like nature. Now at no stage it was contended that the authority to whom the application was made for restitution had no jurisdiction to entertain the application, nor through the course of the proceedings upto the High Court anyone, anywhere, questioned the jurisdiction of the authority to grant restitution. Therefore, it can be safely said that the previous proceeding did not fail on account of defect of jurisdiction.

The next limb of the submission was that as in the former proceeding restitution was refused on the ground that in the proceeding under the 1953 Act the land in dispute was allotted to the respondents and the allotment had become final, it can safely be said that the proceeding failed on account of a cause of like nature such as defect of jurisdiction and the appellants would be entitled to exclude the time spent in that proceeding while computing the period of limitation in the suit. It is true that where the expression as a whole reads 'from defect of jurisdiction or other cause of a like nature is unable to entertain it' the expression 'cause of a like nature' will have to be read ejusdem generis with the expression 'defect of jurisdiction'. So construed the expression 'other cause of a like nature' must be so interpreted as to convey something analogous to the preceding words 'from defect of jurisdiction'. The defect of jurisdiction goes to the root of the matter as the court is incompetent to entertain the proceeding. The proceeding may as well fail for some other defect. Not all such defects can be said to be analogous to defect of jurisdiction. Therefore the expression 'other cause of a like nature' on which some light is shed by the Explanation (C) to Sec. 14 which provides "misjoinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction", must take its colour and content from the just preceding expression, 'defect of jurisdiction'. Prime facie it appears that must be some preliminary objection which if it succeeds, the court would be incompetent to entertain the proceeding on merits, such defect could be said to be 'of the like nature' as defect of jurisdiction. Conversely if the party seeking benefit of the provision of Sec. 14 failed to get the relief in earlier proceeding not with regard to anything connected with the jurisdiction of the court of some other defect of a like nature, it would not be entitled to the benefit of Sec.

14. Where, therefore, the party failed in the earlier proceeding on merits and not on defect of jurisdiction or other cause of a like nature, it would not be entitled to the benefit of Sec. 14 of the Limitation Act. (Sec India Electric Works Ltd. v. James Mantosh & Anr (1) The appellants failed in the earlier proceeding not on the ground that the authority had no jurisdiction to entertain the application nor on the ground that there was any other defect of a like nature, but on merits in as much as the authorities and the High Court held that in view of the decision of the authorities under 1953 Act, the appellants are not entitled to restitution. That was the decision on merits of the dispute and the appellants' application was rejected. Therefore, the High Court rightly declined to

grant benefit of the provision of Sec. 14 of the Limitation Act to the appellants.

The second contention of the respondents which found favour with the High Court was that the suit of the plaintiff was barred by Sec 49 of the 1953 Act. Sec. 49 reads as under:

> "Bar to civil jurisdiction: Not with standing anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, shall be done in accordance with the provisions of the Act and no civil or revenue court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under the Act."

The admitted facts are that the authority under the 1953 Act allotted the plots in question to the respondents. It may be that the decision may appear to be erroneous in as much as it was founded on the decision of the Additional Commissioner in favour of the respondents which was reversed by the Board of Revenue. The question is once the allotment under 1953 Act became final, would a suit lie before the civil or revenue court with respect to rights in land or with respect to any other matter for which a proceeding could or ought to have been taken under the 1953 Act ? When the village in which the plots in dispute are situated was put into consolidation was not made clear to us. But the statutory authorities and the High Court while dismissing the appeal of the appellants had noticed that the village was put into consolidation several years before the suit from which the present appeal arises was filed and village was denotified in the year 1958.

Once the village was denotified, the allotment made under the 1953 Act became final. The final allotment cannot be questioned by the suit before civil or revenue court in view of the bar enacted in Sec. 49.

Mr. Lodha, however, urged that when the matter was before the learned Single Judge in the High Court an application for amendment of the writ petition was moved on behalf of the appellants seeking to challenge that decision of the authorities under the 1953 Act by which the names of the respondents were introduced in the plots and the allotments were made in favour of them. This application for amendment was rejected by the learned Single Judge. The point was not canvassed before the Division Bench and we are of the opinion that it is of no use trying to infuse life into this carcass after a lapse of nearly two decades. Further Sec. 232-A which was introduced by Sec. 48 of Act XX of 1954 in the 1950 Act conferred right on adhivasi object anyone who has dispossessed him and to such a proceeding the provision of Section 209 will mutatis mutandis apply as if he was an asami. This provision would have certainly enabled the respondents to claim possession from the appellants even if they were Bhumidars on the gound that the respondents were adhivasis as held by the High Court. No useful purpose would therefore, be served by re-opening the orders and decision of the authorities under the 1950 Act which have become final These were all the contentions urged in the appeal and as we find no merit in any of them the appeal fails and is dismissed with no order

as to costs.

H.S.K. Appeal dismissed