

# **Sau Rajani vs Sau Smita on 8 August, 2022**

**Author: D.Y. Chandrachud**

**Bench: A S Bopanna, Dhananjaya Y Chandrachud**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No 5216 of 2022  
(Arising out of SLP(C) No 1580 of 2021)

Sau Rajani

Versus

Sau Smita & Anr

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 By a judgment dated 11 December 2019, a Single Judge of the Nagpur Bench of the High Court of Judicature at Bombay, held in the course of deciding a second appeal under Section 100 of the Code of Civil Procedure 19081 that the suit instituted by the appellant is barred by Sections 71 and 177 of the Maharashtra Housing and Area Development Act 1976 2.The High Court reversed concurrent findings of the trial court in the suit and of the first appellate court.

10:59:30 IST Reason:

1 “CPC” 2 “the Act” 3 In order to appreciate the nature of the controversy, it would, at the outset, be necessary to advert to the plaint in the suit - Regular Civil Suit No 775 of 1993-

instituted by the appellant before the Court of the Civil Judge (Junior Division), Amravati. The appellant has pleaded that the second respondent (Amravati Housing and Area Development Board) allotted Block No 4/6 situated on the first floor at Tope Nagar, Amravati to her on 16 July 1986. The appellant claims to be in possession of the residential tenement. The first respondent is stated to be

in occupation of a ground floor tenement in the same building bearing Block No 4/2. According to the appellant, the first respondent made an illegal and unauthorized construction in an open vacant site situated in the northern and eastern side of the block. This has been depicted in a plan, which is annexed to the plaint. The first respondent is alleged to have constructed four rooms, as a consequence of which the appellant claims that her easements have been affected. The appellant has alleged the following disturbances to her easements:

- i. The privacy, light, and air of the appellant's block have been affected;
- ii. The first respondent is alleged to have constructed a stair case to gain access to the terrace, as a consequence of which the appellant's privacy is stated to be disturbed;
- iii. The first respondent has removed a water pipeline, as a result of which the water supply to the property of the appellant is affected; and iv. The first respondent has locked the service line for the cleaning of the septic tank.

4 It is contended by the appellant that she had raised complaints against the illegal construction by the first respondent to the second respondent and that she also issued notices to the first and second respondents for removing the construction. The first and the second respondents did not respond to the complaints and notices. The appellant instituted a suit seeking the following reliefs:

“PRAYER It is, therefore, most humbly prayed that this Hon'ble Court may kindly be pleased to pass a decree in mandatory forms giving directions to both the defendants to remove the illegal and unauthorized construction made by the defendant no. 1 on the open site, which is situated towards the east and north to the plaintiffs and defendants No. 1's tenant as shown by letters A B C D in the map and further be pleased to grant permanent prohibitory injunction restraining the defendants from making any constructions over this open site and be directed to keep open the said open site as it was.

2. The defendants be directed to restore the water connections as it was prior to its removal for the plaintiffs tenement and further be directed to grant to temporary injunction to remove by obstruction which have been created in the service line and the defendant be restrained by grant of permanent injunction in the service line.

3. The defendant no. 1 further be restrained by grant of permanent injunction from making encroachment or making any construction in this open site and causing any nuisance to the plaintiff in respect of to occupy her tenement on first floor.

4. Costs of this suit be added on the defendants.” 5 The first respondent filed a written statement contending that the civil court does not have the jurisdiction to entertain the suit under the provisions Section 71 read with Section 177 of the Act. The Civil Judge (Junior Division), Amravati held that

(i) the first respondent made an unauthorized construction; (ii) the first respondent shifted the water pipeline in the course of the illegal construction, resulting in shortage of water to the appellant; (iii) the suit is maintainable since the dispute does not relate to the business of the co-operative society but the legal rights of the appellant. The following order was passed, while decreeing the suit:

“Plaintiff's suit is hereby decreed.

Defendants are hereby directed to remove the illegal and unauthorized construction made by the defendant No. 1 on the open space towards the eastern and northern side of Block No.4/2 which is shown in the map which is produced along with inspection report Ex. 73 by letters A B C D A and D H I J K L D. Both the defendants are hereby directed to restore the water connection to the plaintiff's house by removing the obstructions which are made in the service line.

Defendant No. 1 or anybody on her behalf is hereby permanently restrained from making encroachment as well as making any construction on the open site causing any nuisance to the plaintiff's tenement.

Plaintiff and defendant are residing in the same building. Taking into consideration the relationship in between them, parties to bear their own costs, if any.

The map which is produced along with inspection Note Ex. 73 will form the part of the decree.

Decree be drawn accordingly.” 6 The judgment of the trial court was assailed by the first respondent under Section 96 of the CPC in Regular Civil Appeal No 37 of 1999, which was dismissed on 21 November 2003. The District Court affirmed the finding of the trial Judge that it had the jurisdiction to entertain the suit. The District Judge held that the appellant – who is the plaintiff in the suit – is affected by the encroachment which has been made by the first respondent on premises belonging to the Authority. In the view of the District Judge, since the individual rights of the appellant were affected by the unauthorized construction, the suit was maintainable and was not barred by the provisions of Section 71. It was observed:

“ 20. [...] Due to the construction made by the defendant no. 1, the plaintiff had lost her right to privacy so also the drainage line and water pipe line to her premises have been damaged and destroyed, which has put her to material loss, We have come to the conclusion that plaintiff has sufficient[ly] proved that her valuable rights have been infringed due to the construction made by defendant no.1. So when the rights of plaintiff are infringed, she is certainly entitled to seek relief from the Civil Court to get reinstated her rights. [...] So this is a case in which plaintiff is interested in safe guarding her right and to get them restored. The removal of encroachment is a consequence thereof. So we cannot construe the present suit as a suit for removal of

encroachment on the authority premises, as envisaged under MHADA Act so as to hold that the suit is barred under Section 71 or 177 of the MHADA Act.”<sup>7</sup> The Single Judge of the Bombay High Court allowed the appeal against the judgment of the District Judge holding that the suit was barred in terms of the provisions of Sections 71 and 177 of the Act. Referring to Section 66(1)(a)(iv), the High Court observed that the Competent Authority has the power to evict persons from Authority premises if it is satisfied that material alterations have been made without its previous permission. The High Court held that since the remedy of eviction is provided for in the Act, the Civil Court does not have jurisdiction to entertain a suit on a cause of action on which the Competent Authority is empowered to take action.

8 We have heard Mr Somiran Sharma, counsel appearing on behalf of the appellant, Mr Satya Kam Sharma, counsel appearing on behalf of the first respondent and Mr Sanjay Kharde, counsel appearing on behalf of the second respondent.

9 Sections 71 and 177 are extracted below:

“71. Bar of jurisdiction of civil courts.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Authority premises under this Chapter, or the recovery of the arrears of rent, compensation, amount or damages for use and occupation of such premises, or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority or the appellate officer in the exercise of any power conferred by or under this Chapter, or to grant any injunction in respect of such order or action.

177. Bar of jurisdiction.—Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act.” (emphasis supplied)<sup>10</sup> Section 66 forms a part of Chapter VI which is titled “Power to evict persons from authority premises and to recover dues”. Sub-section (1) of Section 66 empowers the competent authority to order a person who is in occupation of the whole or any part of the premises to be evicted for unauthorized occupation. Section 66(1) is in the following terms:

“66. Power to evict certain persons from Authority premises.

- (1) If the Competent Authority is satisfied—
  - (a) that the person authorised, to occupy any Authority premises has—
    - (i) not paid rent or compensation or amount lawfully due from him in respect of such premises for a period of more than two months, or

- (ii) sub-let, without the previous permission of the Authority, the whole or any part of such premises, or
- (iii) committed, or is committing any act which is destructive or permanently injurious to such premises, or
- (iv) made, or is making, material addition to, or alteration in, such premises without the previous permission of the Authority, or
- (v) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or
- (vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and to accept the alternative accommodation offered by the Authority.

(b) that any person is in unauthorised occupation of any Authority premises, the Competent Authority may, for reasons to be recorded in writing, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorised occupation, within 24 hours of the date of service of notice, and in any other case within a period of seven days of the date of such service.” (emphasis supplied) 11 Section 71 provides for the bar of jurisdiction of civil courts. In terms of the provision, no civil court shall have jurisdiction to entertain any suit or proceedings (i) “in respect of the eviction of any person from any Authority premises under this Chapter”; or (ii) for the recovery of the arrears of rent, compensation or damages for the use and occupation of such premises; or (iii) in respect of any order made or to be made or any action taken or to be taken by the competent authority in exercise of the power conferred by or under the Chapter; or (iv) to grant an injunction in respect of such order or action. Section 177 bars the jurisdiction of a civil court in respect of any matter which the Authority or Tribunal is empowered by or under the Act, to determine. Similarly, no injunction or stay can be granted by a Court or other authority in respect of any action taken or to be taken in pursuance of the power conferred or duty imposed by or under the Act.

12 Section 66(1)(b) of MHAD Act entrusts the competent authority with a power to order eviction on the grounds which are set out in the provision. Among them in sub-

clauses (iii), (iv) and (v) of clause (a) of sub-section (1) of Section 66 are:

- (a) The commission of an act which is destructive of or permanently injurious to the premises;

- (b) Making a material addition or alteration to the premises without prior permission; and
- (c) Acting in contravention of the terms on which a person is authorized to occupy the premises.

Under clause (b), where a person is in unauthorized occupation of any ‘Authority premises’, the competent authority may proceed to order the person to be evicted from the premises.

13 The appellant did not seek the eviction of the first respondent in the suit. On the contrary, the plaint proceeds on the basis that both the appellant and the first respondent are allottees under the second respondent. The plea against the first respondent is that she has made an unauthorized construction of rooms on a vacant site, as a result of which the access to light and air, and the right to privacy of the appellant have been affected. Besides this, it has been submitted that the first respondent has shifted a water line and caused an obstruction to be made to the drainage line in the premises.

14 Under Section 9 of CPC, the civil court has the jurisdiction to try all suits of a civil nature, except those in respect of which the jurisdiction is barred either expressly or impliedly by a specific provision of law. In *Dhulabhai v. State of Madhya Pradesh* 3, a Constitution Bench laid down the law on ouster of jurisdiction of civil courts. Chief Justice M Hidayatullah writing for the Bench laid down the principles on bar of jurisdiction of the civil courts as follows:

- (1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.
- (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intent becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

[...] (7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

(emphasis supplied) AIR 1969 SC 78 15 In Ramesh Gobindram v. Sugra Humayun Mirza 4, a two-Judge Bench of this Court observed that the jurisdiction of the civil courts to try suits of a civil nature is expansive and the onus to prove the ouster of the jurisdiction is on the party that asserts it. The court observed that even in cases where the jurisdiction of the civil court is barred by a statute, the test is to determine if the authority or tribunal constituted under the statute has the power to grant reliefs that the civil courts would normally grant in suits filed before them. The relevant observations are extracted below:

“12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted.”

13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal Mukund Bairwa (2) [(2009) 4 SCC 299 : (2009) 1 SCC (L&S) 812] a three-Judge Bench of this Court observed: (SCC pp. 302h-303a) “There is a presumption that a civil court has jurisdiction.

Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in (2010) 8 SCC 726; Also see Competent Authority, Calcutta under the Urban Land (Ceiling and Regulation) Act 1976 v. David Manthosh, (2020) 12 SCC 542 respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.” 16 The preamble to the Act states that it is an Act to “unify, consolidate and amend the laws relating to housing, repairing and reconstructing dangerous buildings and carrying out improvement works in slum areas”. The scheme of the statute provides that the Board constituted under the statute would have the power to repair and reconstruct dilapidated buildings, conduct structural repairs and evict persons from authority premises, among others. The objective of the bodies and authorities constituted under the Act is to ensure repairing and reconstructing buildings to provide housing. Undoubtedly, the competent authority has the jurisdiction to order eviction in terms of the provisions of Section 66. But that is not the frame of the suit or the relief which has been claimed by the appellant in the suit. The reliefs sought by the appellant in the plaint are: (i) the removal of the unauthorized construction; (ii) a permanent prohibitory injunction restraining the defendants from constructing over the open site and causing ‘nuisance’; and (iii) restoration of the water connection as it was prior to the construction. The appellant instituted the suit for injunction because her easements were infringed by the illegal construction which the first

respondent had erected on the open space. The reliefs claimed by the appellant are beyond the scope of the Act. A suit of this nature will be maintainable before the civil court and would not be barred by Section 71 or Section 177 of the Act. 17 For the above reasons, we are of the view that the Single Judge of the High Court was in error in upholding the plea that there was a bar of jurisdiction and reversing the findings of the trial Judge and the first appellate court. Since, however, the Single Judge of the High Court has only ruled on the absence of jurisdiction, a view which has been disapproved above, the second appeal is restored to the file of the High Court for consideration on merits. We allow the appeal and set aside the impugned judgment and order of the Single Judge of the Nagpur Bench of the High Court of Judicature at Bombay dated 11 December 2019 in Second Appeal No 111 of 2004. Second Appeal No 111 of 2004 is restored to the file of the High Court for disposal on merits.

18 Since the appeal pertains to the year 2004, we request the High Court to take it up for admission expeditiously and to endeavor a disposal within a period of three months from the date on which a certified copy of this order is produced before it on the record.

19 Pending application, if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]  
.....J. [A S Bopanna] New Delhi;

August 08, 2022

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