

Pyarelal vs Shubhendra Pilania (Minor) Through ... on 29 January, 2019

Equivalent citations: AIRONLINE 2019 SC 2377, AIRONLINE 2019 SC 1921

Bench: Dhananjaya Y Chandrachud, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.1269-1270 OF 2019
SPECIAL LEAVE PETITION (CIVIL) Nos. 21402-21403 OF 2015

PYARELAL

.... APPELLANT

Versus

SHUBHENDRA PILANIA (MINOR)
THROUGH NATURAL GUARDIAN (FATHER)
SHRI PRADEEP KUMAR PILANIA & ORS.

.... RESPONDENTS

JUDGMENT

DR DHANANJAYA Y CHANDRACHUD, J.

1 Leave granted.

2 The appeals in the present case arise from two orders dated 13 November 2014 and 2 March 2015 of the Rajasthan High Court in exercise of its revisional jurisdiction. By an order dated 13 November 2014, the learned Single Judge of the High Court allowed the revision petition filed by the respondents. The challenge was to an order dated 26 August 2013 of the Additional Civil Judge (Junior Division), Sikar rejecting the objection to the jurisdiction of the civil court to try the suit filed by the appellant. The appellant filed a petition for review before the High Court. The learned single Judge dismissed the petition on 2 March 2015.

3 The family tree of the appellant is depicted below:

Bholu (deceased) Mangalram (deceased) Rukma Devi (wife, deceased) Bhagwan Singh (R3) Kushali Devi Pradeep Kumar (R2) Shubhendra (R1) Pyarelal (Appellant) Amrita (R7) Shanti (R8) Kamla (R9) Santosh (R10) The Sub-Registrar and Tehsildar are respondent Nos. 4 and 5 respectively.

4 The appellant alleged that on the death of Mangalram and Rukma Devi, the agricultural land in question devolved upon respondent No. 3 and his sister Kushali Devi (mother of the Plaintiff) in equal shares. Kushali Devi died intestate and her share devolved upon her children – the appellant and respondent Nos. 7 to 10 in equal measure. The appellant and respondent Nos. 7 to 10 claim to be in possession of their share in the suit property. The appellant alleged that respondent Nos. 2 and 3 colluded with the Sarpanch of the village and got the name of respondent No. 3 recorded as the owner of the land belonging to the appellant and respondent Nos. 7 to 10. Thereafter, respondent Nos. 2 and 3 registered a gift deed dated 10 February 2011 in favour of respondent No. 1.

5 On 13 March 2012, the appellant filed a civil suit 1 against the respondents praying that the gift deed dated 10 February 2011 be declared void to the extent of the share claimed by the appellant and that respondent Nos. 1 to 5 be restrained from alienating the suit property. Respondent Nos. 1 to 3 filed an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure 19082 contending that the appellant, who is not a recorded khatedar of the suit land, had filed a suit before the revenue court for the declaration of his khatedari right and the suit preferred by the appellant before the Trial court was liable to be dismissed. In reply, the appellant admitted that a suit had been filed before the revenue court for the declaration of his khatedari right but contended that the civil court had jurisdiction to grant the relief sought.

6 On 26 August, 2013, the Trial court dismissed the application, taking the view that any conclusion on the question of jurisdiction can only be drawn after framing preliminary issues and recording evidence of the parties. The objections were dismissed by Trial court with the following observations:

“6. So far as present application is concerned, in the said application, the first ground taken by the defendants is that the plaintiff and the defendant Nos. 7 to 10 are not recorded kashtkar of the disputed land and they have already filed suit in the revenue court for getting their khatedari right declared. Therefore, civil courts have no jurisdiction to try the present suit.

7. In this context, the defendants cited Rukmani v Bhola and others (SB Civil Misc. Appeal No. 553/1993) dated 20.12.2011, while plaintiff cited DNJ 2013(1) Rajasthan 358. In the citation of the defendants, though the Hon’ble High Court has set this principle that if the relief of declaring any document ineffective and void is sought for and in pith and substance, the suit is related with khatedari rights, then revenue court would have jurisdiction to try the suit because until and unless revenue court has not declared khatedari rights, the civil court cannot declare the document void. Though in the citation cited by the defendants as stated above, the suit must be related for the declaration of basic khatedari rights, then only the jurisdiction is vested unto the revenue court, but if we carefully peruse the said citation then in that case the trial court has framed issues on the basis

of pleadings of the plaintiff and written statement of the parties and thereafter recording evidence of the parties on the 2 “The Code” preliminary issue, the suit has been returned back for filing in the concerned court in view of Order VII Rule 11 CPC. In the present case, issues are yet to be framed. The plaintiff has pleaded in the plaint that his mother has one half share in the suit land hence on this point any conclusion can be drawn only after framing a preliminary issue and recording evidence of the parties.” 7 Respondent Nos. 1 to 3 challenged the order of the Trial court in revision under Section 115 of the Code. The Rajasthan High Court allowed the revision by its judgement dated 13 November 2014. Relying on the averments in the plaint, the High Court held that the suit was barred by the provisions of the Rajasthan Tenancy Act, 1955. 3 The High Court observed thus:

“Apparently and looking to the prayer of the plaintiff in the Trial court, it can easily be said that the suit was triable only by the revenue court under the provisions of Section 88 and Section 207 of the Act of 1955 and hence it can further be said that the suit from the averment in the plaint appears to be barred under the provisions of the Act of 1955 and the suit should have been rejected on that count alone under the provisions of Order VII Rule 11(d) of Code of Civil Procedure and hence the order dated 26.8.2013 passed by Additional Civil Judge (Jr. Div.) No.2, Sikar in Civil Suit No.62/2012 B.T. No.20/12 deserves to be quashed and set aside which is hereby quashed and set aside.” The review petition preferred by appellant was dismissed.

8 Assailing the decision of the High Court, learned counsel for the appellant urged the following submissions:

- (i) The relief claimed in the suit is not covered under Section 207 and the Third Schedule of the Tenancy Act and a civil court has jurisdiction to decide the existing dispute; and
- (ii) A suit before a civil court is maintainable even though a suit for declaring khatedari rights has been filed before the revenue court.

3 Tenancy Act 9 On the other hand, learned counsel for the respondents has urged the following submissions:

- i) The jurisdiction of a civil court is barred in respect of suits and applications of the nature specified in the Third Schedule of the Tenancy Act;
- ii) A civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Tenancy Act or the Rules made under it, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act; and
- iii) The issue of jurisdiction travels to the root of or to the inherent lack of jurisdiction.

10 These submissions fall for our consideration. 11 Section 9 of the Code of Civil Procedure provides thus:

“9. Courts to try all civil suits unless barred - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.” Section 9 empowers civil courts to try all suits of a civil nature unless expressly or impliedly barred by any statute.

12 Section 256 of the Tenancy Act provides thus:

“256. Bar to jurisdiction of civil courts – (i) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any civil court with respect to any matter arising under this Act or the rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein.

(2) Save as aforesaid no order passed by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the rules made thereunder, shall be liable to be questioned in any civil court.” Section 256 bars the jurisdiction of civil courts, save as otherwise provided under the Tenancy Act. Civil courts are expressly barred from trying a suit or proceeding with respect to matters arising under the Tenancy Act or rules made under it for which a remedy by way of a suit, application, appeal or otherwise is provided in the Tenancy Act.

13 Section 207 of the Tenancy Act provides thus:

“207. Suits and applications cognizable by revenue court only— (1) All suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court.

(2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation.— If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted.” Section 207 of the Tenancy

Act states that no court other than a revenue court shall take cognizance of suits and applications of the nature specified in the Third Schedule. Such suits can be heard and determined by a revenue court which has exclusive jurisdiction. The explanation clarifies that if the cause of action is one in respect of which relief may be granted by the revenue court, then it is immaterial that a relief sought from the civil court is greater than, in addition to or not identical to the relief sought from the revenue court. Where a suit is of a nature specified in any of the provisions of the Third Schedule, the bar under Section 256 is attracted and the revenue courts have exclusive jurisdiction to try the suit.

14 In *Bank of Baroda v Moti Bhai*⁴, a two judge Bench of this Court dealt with the question of jurisdiction under Sections 207 and 256 of the Tenancy Act. A bank had sanctioned a demand loan facility to the respondent for which the respondent executed a promissory note and a simple mortgage in favour of the bank. On his failure to repay the loan, the Bank instituted a suit in the civil court for recovery. The respondent raised a preliminary objection that the suit was essentially one for enforcing the mortgage and that the revenue court had the exclusive jurisdiction to entertain the suit by reason of the provisions contained in the Tenancy Act. The Trial court dismissed the objection. Allowing the revision filed by the respondent, the High Court held that that the mortgage deed in respect of agricultural lands formed an essential part of the cause of action. Upon an analysis of Sections 207 and 256 of the Tenancy Act (1985) 1 SCC 475, a two judge Bench of this Court set aside the judgment of the High Court with the following reasons:

“5. A combined reading of these two sections would show that the jurisdiction of civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act.

A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and can, by no stretch of imagination, be said to be in respect of any matter arising under the Act... The business of the Bank, in so far as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys.

8. On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. If the matter is approached from that point of view, it would be clear that, primarily and basically, the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promissory note executed by respondent 1 and the guarantee given by respondents 2 and 3.” (Emphasis supplied) Section 207 read with Section 256 of the Tenancy Act bars the jurisdiction of the civil courts in respect of suits and applications of the nature specified in the Third Schedule to the Act. The question

before us is whether the relief claimed by the appellant can be granted exclusively by a revenue court under the provisions of the Tenancy Act.

15 Section 88 of the Tenancy Act provides thus:

“88. Suits for declaration of right:- (1) Any person claiming to be a tenant or a co-tenant may sue for a declaration that he is a tenant or for a declaration of his share in such joint tenancy.

(2) A tenant of Khudkasht may sue for a declaration that he is such a tenant.

(3) A sub-tenant may sue the person from whom he holds for declaration that he is a sub-tenant. (4) A landholder other than a State Government may sue a person claiming to be a tenant or co-tenant of a holding or a tenant of Khudkasht or a sub-tenant for a declaration of the right of such person.” Sl. No. 5 of the Third Schedule provides thus:

“THE THIRD SCHEDULE Suits, Applications and Appeals under the Act (See Sections 207, 214, 215 & 217) S. Section Description of suit, application or Period of Time Proper Court/ No. of Act appeal limitation from Court Fees Officer which competent period to dispose begins to of run

5. 88 Suit for declaration of the plaintiffs right :-

(i)	as a tenant, or	
(ii)	as a tenant of khudkasht, or	None
(iii)	as a sub-tenant, or	
(iv)	for a share in a joint tenancy	

”

Sl. No. 5 in the Third Schedule read with Section 207 of the Tenancy Act stipulates that a suit for the declaration of a right provided in Section 88 would lie before a revenue court. In a suit where the relief sought for is the declaration of the right stipulated in Section 88, Sections 207 and 256 read with the Third Schedule bar the jurisdiction of civil courts and vest jurisdiction exclusively with a revenue court.

16 It is admitted that the suit property is agricultural property and the appellant has filed a suit before the revenue court for the declaration of his khatedari rights.

17 Order VII Rule 11(d) of the Code provides thus:

“11. Rejection of plaint. – The plaint shall be rejected in the following cases:-

(a) ...

(b) ...

(c) ...

(d) Where the suit appears from the statement in the plaint to be barred by any law;” A plaint shall be rejected where the suit appears from the averments made in the plaint to be barred by any law. To determine whether the relief sought by the appellant before the Trial court is a relief that may be granted by a revenue court and is consequently barred under the provisions of the Tenancy Act, the prayer in the plaint before the Trial court may be examined. The prayer reads thus:

“a) That the suit may be decreed in favour of the plaintiff and against defendants No. 1 to 3 and the gift deed executed and registered on 10.2.2011 at Book No. 1 Volume No. 737, Page No. 53, Sr. No. 2011001797 in the Office of Sub Registrar Sikar may kindly be declared as exhibitory, illegal, ab-initio, void and ineffective and may be cancelled to the extent of ½ share of the defendant and plaintiff Nos. 7 to 10 in the agricultural land comprised Khasra No. 395 Rakba 0.24 Hectare, Khasra No 395 Rakba 0.24 Hectare, Khasra No. 410 Rakba 0.87 Hectare situated in Village Ajeetpura, Tehsil and District Sikar and for putting a note to this effect on the gift deed; a copy of the judgment and decree may kindly be forwarded to the Sub Registrar, Sikar;

(b) That defendant Nos. 1 to 5 may kindly be restrained not to transfer, mortgage, damage, sale or transfer the ½ share of the agricultural land which is in possession and cultivation of the plaintiff and defendant Nos. 7 to 10 out of the land of Khasra No. 395 Rakba 0.24 Hectare and Khasra No. 410 Rakba 0.87 Hectare situated in village Ajeetpura, Tehsil and District Sikar described in the said gift deed and not to disturb their cultivatory possession and not to raise any construction thereon and not to mortgage, gift, transfer or create any charge and not to transfer the same and not to register any mortgage deed and not to change the revenue records on the basis of the gift deed in question and further not to do such acts through his agents, servants and representatives etc. in any manner;

(c) That cost of the suit may be granted in favour of the plaintiff and against the defendant Nos. 2 and 3;

(d) Any other relief which this Hon’ble Court may deem fit and proper be also passed in favour of the plaintiff.”

18 The appellant has prayed that the gift deed dated 10 February, 2011 be declared void to the extent of the share claimed by the appellant and that respondent Nos. 1 to 5 be restrained from alienating the share of the appellant. The civil court may decree the relief prayed only if it is first determined that the appellant is entitled to khatedari rights in the suit property. Under the provisions of the Tenancy Act, the jurisdiction to declare khatedari rights vests exclusively with the revenue courts. Only after such determination may the civil court proceed to decree the relief as prayed. The explanation to Section 207 clarifies that if the cause of action in respect of which relief is sought can be granted only by the revenue court, then it is immaterial that the relief asked from the civil court is greater than, or in addition to or identical with the relief which the revenue court would have granted. In view of this matter, the civil court may not grant relief until the khatedari rights of the appellant have been decreed by a revenue court.

19 A claimant whose khatedari rights have been decreed by a revenue court is however on a different footing from a claimant whose khatedari rights are pending adjudication by a revenue court. Where the khatedari rights are yet to be decreed, a claimant must first approach the revenue courts. The relief to declare the gift deed void and to restrain respondents Nos. 1 to 5 from interfering with or alienating the property vesting in a civil court may be sought for in a suit by a claimant in whom khatedari rights have been decreed by a revenue court.

20 In *Shri Ram v A D J5*, a suit was filed before the civil court for the cancellation of a sale deed of an agricultural land on the grounds of fraud and impersonation. The defendant contended that the suit is barred by Section 331 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 which reads thus:

“331. Cognizance of suits etc. under this Act. – (1) Except as provided by or under this Act, no Court other than a Court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application;

... Explanation.- If the cause of action is one in respect of which relief may be granted by the revenue Court, it is immaterial that the relief asked for from the civil Court may not be incidental to that which the revenue Court would have granted.” The question before this court was whether a recorded tenure-holder having prima facie title in his favour and in possession was required to file a suit in the revenue court, or where the civil court had jurisdiction to entertain and decide the suit seeking relief of cancellation of a void document. Upholding the jurisdiction of civil court to try the suit, a two judge Bench of this Court differentiated between a recorded tenure holder, and an unrecorded tenure holder with the following observations:

5 (2001) 3 SCC 24 “7. ...we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue court - reason being that in such a

case, *prima facie*, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for giving him relief for declaration and possession.”²¹ Though the above principles emerge in the context of the bar under Section 331 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the logic of the judgment extends to the bar under Section 207 read with Section 256 of the Tenancy Act. A recorded khatedar stands on a different footing compared to a claimant seeking a decree of their khatedari rights. A claimant seeking a decree of khatedari rights is barred from filing a suit in the civil court prior to their khatedari right being decreed by a revenue court when the relief sought for by the civil court includes a determination of khatedari rights.

22 In the present case, the High Court has proceeded on the basis that the suit seeking a declaration of the gift deed relating to disputed agricultural land situated in Sikar as void and restraining Respondent Nos. 1 to 5 from transfer or sale of the agricultural land before the civil court is squarely covered by the bar to the jurisdiction of the civil court under the provisions of the Tenancy Act.

The claim of the appellant to khatedari rights is pending adjudication by a revenue court which has the exclusive jurisdiction to adjudicate upon such a claim. The appellant has no right to seek relief before the civil court without first getting his khatedari rights decreed by the revenue court.²³ For the above reasons, we find that there is no merit in the challenge preferred by the appellant to the impugned judgment and order of the High Court. The appeals shall, accordingly stand dismissed. There shall be no order as to costs.

.....J. [UDAY UME SH LALIT]
.....J. [Dr DHANANJAYA Y CHANDRACHUD] NEW DELHI;

JANUARY 29, 2019.