A

ABDUL WAHEED KHAN

v.

BHAWANI AND ORS.

February 21, 1966

B [K. SUBBA RAO AND V. RAMASWAMI, JJ.]

Bhopal State Land Revenue Act (4 *of* 1932), *ss.* 71, 89, 93, 95 *and* 200(1)—*Suit based on title—If barred by decision of revenue officer.*

The suit of the appellant as *khatedar* of the land in dispute, for ejectment of the respondents on the ground that they were *shikmi* tenants, was decreed by the Tahsildar under s. 71 of the Bhopal State Land Revenue C Act, 1932. Within 12 years of the date of their dispossession the respondents filed the suit against the appellant in the civil court, claiming to be the *khatedars* and for possession. The lower courts and the High Court held that the decision of the revenue court did not bar the jurisdiction of the civil court on the question of title to the suit land and decreed the suit.

In appeal to this Court,

D HELD : Section 200(1) of the Act, read with ss. 71, 89, 93 and 95, does not exclude the jurisdiction of the civil court to entertain a suit based on title. [621 E-F]

Section 200(1) bars the civil court from entertaining a suit with respect to any matter which a revenue officer is empowered by the Act to determine. But the question of title is a matter foreign to the scope of s. 71. The Tahsildar is no doubt empowered under s. 93 to decide on E any dispute about any entry to be made in the Record of rights showing the persons who are holders of land, but, under s. 95, the effect of such an entry is only to make it a presumptive piece of evidence in a collateral proceeding such as a suit based on title. Therefore, it is assumed that such a suit could be filed in spite of a decision under s. 93. The suit was within time under Art. 142, Limitation Act, 1908, and since the High Court and the lower courts held that the presumption raised by the entry was rebutted by the oral and documentary evidence adduced by the res- F pondents, the correctness of the concurrent findings of fact could not be canvassed in the appeal under Art. 136. [621 B, C; 622 B, C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1039 of 1963.

Appeal by special leave from the judgment and order dated G June 24, 1959 of the Madhya Pradesh High Court in Civil Second Appeal No. 8 of 1957.

N. N. Keswani and *Urmilla Kapur*, for the appellant.

B. Sen, C. L. Sanghi and *A. G. Ratnaparkhi*, for the respondents.

H The Judgment of the Court as delivered by:

Subba Rao, J. This appeal by special leave raises mainly the question whether a civil court had jurisdiction to entertain the

suit filed by the respondents for the recovery of possession of the plaint-schedule land and mesne profits. A

The relevant facts may be briefly stated: The respondents, claiming to be the *khatedars* of an extent of 57.07 acres of land in Mauza Bhanpur, Tahsil Huzur, Western District Bhopal, filed a suit against the appellant on the ground that the latter was in illegal possession thereof. The appellant contested the suit mainly B on the ground that he was the *khatedar* of the said land and that he was in possession thereof in that capacity. He also pleaded that his title to the property was declared by the Tahsildar in an application for ejectment filed by him against the respondents under the Bhopal State Land Revenue Act, 1932 (Act No. IV of 1932), hereinafter called the Act, and that the said decision would be a bar to C the maintainability of the suit in a civil court.

The learned Subordinate Judge, Bhopal, held that the respondents were the *khatedars* of the suit land and that they had been in possession thereof in that capacity. He held that the suit was maintainable in a civil court.

D

On appeal, the Additional District Judge agreed with the findings arrived at by the trial court.

On second appeal to the Madhya Pradesh High Court, Shiv Dayal, J., of that Court, after admitting certain notifications as evidence, came to the same conclusion both on the question of title and on the question of jurisdiction. In the result he E dismissed the second appeal.

Hence the present appeal by special leave.

Mr. Keswani, learned counsel for the appellant, raised before us a number of points; but his arguments may conveniently be crystallized into the following points: (1) whether the decision of the F revenue court on the question of title to the suit land bars the jurisdiction of the civil court; (2) whether the concurrent finding given by the lower courts on the question of title was vitiated by an error of law by the courts wrongly throwing the burden of establishing title on the appellant notwithstanding the fact that in the Record of Rights the said land was entered in the name of the appellant; and (3) whether the suit was barred by limitation. The G other questions mooted by him were pure questions of fact and, therefore, they need not be noticed.

To appreciate the first question it is necessary to notice a few facts. The appellant as *khatedar* of the land in dispute had filed a suit under s. 71 of the Act in the court of the Tahsildar, Tahsil H Huzur, Bhopal for the ejectment of the respondents on the ground that they were his *shikmi* tenants. The said court held that the appellant was the *khatedar* of the land in dispute and the respon-

A dents were his *shikmi* tenants. The present contention is that the said decree was given by a court of exclusive jurisdiction and, therefore, the respondents could not reagitate the same subject-matter in a civil court.

Under s. 9 of the Code of Civil Procedure, a civil court can entertain a suit of a civil nature except a suit of which its cognizance B is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed. The question is whether a suit based on title of a *khatedar* and for possession is either expressly or by necessary implication barred by the provisions of the Act. The relevant provisions C of the Act may now be read:

> *Section* 200 (i) Except as otherwise provided in this Act, or in any other enactment for the time being in force no civil court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the Government or any revenue officer is, by this Act, D empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no civil court shall exercise jurisdiction over any of the following matters :
>
> Cls. (a) to (u) . . . . . .

E No reliance is placed on the matters described in cls. (a) to (u) of this section. But it is said that under the other provisions of the Act a revenue officer is empowered to determine, decide or dispose of a question of title of a person to a land as *khatedar* and, therefore, a suit in a civil court is barred in terms of s. 200(1). The first section relied upon in that context is s. 71, which reads:

F > "A shikmi may be ejected by order of the Tahsildar if he fails to vacate land on the termination of his lawful possession or does anything in contravention of his agreement, if any, provided that no ejectment shall take effect before the commencement of the next agricultural year."

"Shikmi" is defined under the Act to mean a person who holds G land from an occupant and is or but for a contract, would be liable to pay rent for such land to that occupant, but does not include a mortgagee or a person holding land directly from Government. "Occupant" is defined to mean "a person who holds land direct from Government or would do so but the right of collecting land revenue having been assigned or relinquished." Section 71, therefore, presupposes the existence of a legal relationship H of landlord and tenant and enables the occupant to evict his shikmi if he does not comply with one or other of the conditions mentioned therein; it does not comprehend a decision on a question of

title. The question of title is a matter foreign to the scope of s. 71. If so, a suit in a civil court for a declaration of title and possession by a *khatadar* against a trespasser falls outside the scope of s. 200(1) of the Act.

The second limb of the contention turns upon a fasciculus of provisions relating to the preparation of the Record of Rights. The relevant provisions are as follows:

Section 89. The Record of rights in each village shall comprise

(1) . . . . . .

(2) a register, to be called the "register of rights", showing all persons who are holders of land and the nature and extent of their interests and the conditions and liabilities, if any, attaching thereto.

Section 92. No entry in the register of rights shall be contrary to the decree or order of a civil court.

Section 93. (1) If any dispute arises about any entry to be made in any document of the record of rights, the Tahsildar or other officer preparing the record shall inquire into it summarily and shall pass such order as he thinks fit.

. . . . . .

(2) Such order, if passed with reference to any entry in the register of rights, shall not be subject to appeal, but no such order shall debar any person from establishing any right to land in a civil court, and the civil court may direct that the entry relating to the land shall be altered in accordance with its decision.

(3) Any such order, if passed with reference to a record other than the register of rights shall be subject to appeal but shall not be called in question in a civil court, except in so far as any private right, is infringed and then only by a suit instituted within one year from the date on which the contents of the record were announced under section 88.

Section 95. Any entry in the register of rights shall be presumed to be correct until the contrary is proved, and all other entries in the record of rights, subject to any change which may be ordered in appeal, revision or review only or by a civil court under sub-section (3) of section 93, shall be conclusive evidence of the facts to which they relate.

On the basis of the said provisions it is argued that under the said provisions the right of a person to hold land shall be entered in the register of rights under s. 89(2) of the Act and a dispute in respect thereof shall be decided by the Tahsildar under s. 93(1) thereof and

A that thereafter such an entry shall be rectified only by filing a suit in a civil court in the manner prescribed in s. 93(2) of the Act and that, therefore, the Tahsildar, subject to the statutory suit, has the exclusive jurisdiction to determine or decide the question in regard to the said matter within the meaning of s. 200 of the Act. This argument appears to be plausible, but a deeper scrutiny re-
B veals a fallacy. The scope of an entry in regard to the right to hold a land under s. 89(2) of the Act and the decision under s. 93 thereof is disclosed by s. 95. When such an entry is made in the register of rights and is not corrected in the manner prescribed in s. 93, under s. 95 it shall be presumed to be correct until the contrary is proved. The effect of such an entry, therefore, is only to make it a presumptive piece of evidence in a collateral proce-
C ding: that is to say, in a suit based on title when such an entry is relied upon by one or other of the parties, the court shall presume it to be correct unless the other party rebuts the presumption. Not only s. 95 does not by necessary implication bar a suit but also assumes that in such a suit the correctness of such an entry could be questioned subject to the said presumption.

D

Learned counsel for the appellant, in support of his contention, relied upon *Gokhul Sahu* v. *Jodu Nundun Roy*(1), and *Jatindra Nath Chowdhury* v. *Azizur Rahaman Shana*( ). Those decisions turned upon provisions which are not in *pari materia* with those with which we are now concerned. They do not, therefore, throw
E any light on the construction of the relevant provisions of the Act.

It is, therefore, clear that s. 200(1) of the Act, read with the said group of sections, does not exclude the jurisdiction of a civil court to entertain a suit based on title.

Learned counsel for the appellant then contended that though
F the patta was granted in favour of the ancestors of the respondents in the year 1929 it was revoked later on, that under the new settlement of 1935 the appellant's name was recorded in the register of rights, that in subsequent khasras up to 1953 his name continued to be shown as the owner of the suit land and that, therefore, the courts below should have held that the presumption raised by the
G register of rights in his favour was not rebutted and the plaintiff had failed to prove his title. But a perusal of the judgments of the courts below shows that all the courts, after taking into consideration the entire oral and documentary evidence, came to the conclusion that the respondents had established their title. Indeed, though the High Court rightly pointed out that the finding of fact given by the lower appellate court was conclusive, in view
H of the insistence of the Advocate in the High Court, it considered the entire documentary and oral evidence over again and came

(1) [1890] I.L.R. 17 Cal. 721. (2) A.I.R. 1923 Cal. 433.

to the same conclusion. It also admitted the notifications in respect of the settlement as fresh evidence and, after considering them, held that they did not disclose that the patta issued in favour of the respondents' ancestors was cancelled. In our view, the High Court should have accepted the finding of the first appellate court and should not have reviewed the evidence over again. The courts in effect held that the said presumption was rebutted by the oral and documentary evidence adduced by the respondents. We are not, therefore, justified in an appeal under Art. 136 of the Constitution to permit the appellant to canvass the correctness of the said concurrent findings of fact.

The last argument raises a question of limitation. If, as we have held, the suit is outside the scope of the Act, the question of limitation turns upon the provisions of the Indian Limitation Act. The suit was originally filed by the respondents for a declaration of their title to the suit property, but as they were dispossessed of the land on March 5, 1953, subsequent to the filing of the suit, the plaint was amended on July 24, 1954, praying for delivery of possession. To such a suit Art. 142 of the Limitation Act applies. The suit is, therefore, clearly not barred by limitation.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.