

Rahmatullah and ors. Vs. Civil Judge (Senior Division) and ors.

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Court : Allahabad

Decided On : Jul-30-2004

Reported in : 2004(4)AWC3768

Judge : B.S. Chauhan and ;D.P. Gupta, JJ.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 - Order 7, Rule 10 - Order 14, Rules 1 and 2

Appeal No. : C.M.W.P. No. 29341 of 2004

Appellant : Rahmatullah and ors.

Respondent : Civil Judge (Senior Division) and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.K. Mishra, Adv.

Disposition : Petition dismissed

Judgement :

B.S. Chauhan, J.

1. Dr. B. S. Chauhan, J.-This writ petition has been filed for prohibiting the respondent No. 1, the learned Civil Judge (Senior Division), Mathura to proceed with the Suit 1165 of 2003, Vijay Kumar Seth v. Rahmatullah and Ors., and for

quashing the proceedings of the said suit.

2. Facts and circumstances giving rise to this case as stated by the petitioners are that the plaintiff- respondent Nos. 2 and 3 instituted a civil suit on 24.12.2003 for restraining the defendant petitioners from doing any kind of destructive activity and taking forcible possession of the land in dispute or interfering, in any manner, in peaceful possession of their enjoyment. The suit is pending. Petitioners had earlier filed Writ Petition No. 38215 of 2003 which was disposed of by this Court vide order dated 4th September, 2003 prior to institution of the said suit, wherein it had been submitted before us that the land in dispute belonged to them but the District Authorities had taken its possession temporarily for the purpose of holding the function of the Chief Minister of Uttar Pradesh as the space adjacent to the said land where the function had been organised was found to be not sufficient for that purpose. Subsequently, they refused to hand over possession of the same to the petitioners after the function was over. This Court disposed of the said petition directing the petitioners to approach the District Collector, Mathura and the latter was directed to find out as to whether there was any dispute regarding title of the land and whether the averments made in the petition were true and to pass an order of restoration of the possession of the said land after being fully satisfied on the said issues. Grievance of the petitioners is that in spite of the order passed by this Court, the District Authorities have not handed over the possession to them rather in order to overreach the said order, plaintiff-respondents have dragged the defendant-petitioners in a civil suit. The suit is not maintainable before the civil court as land has been recorded as agricultural land in the revenue records and it is only the revenue court which can decide the case. The defendant-petitioners have filed written statement before the civil court along with an application under Order VII Rule 10 of the Code of Civil Procedure (hereinafter called the C.P.C.) to return the plaint to present the same before the revenue court. However, the said application is not being decided. Hence this petition.

3. The only question involved herein is as to whether this is the appropriate case wherein this Court should exercise its discretionary Jurisdiction and issue a writ of prohibition to the civil court restraining it to proceed with the trial of the suit and to quash the proceedings of the said suit on the ground that the issue can be

adjudicated only before the revenue court and not before the civil court.

4. Right of filing a suit is an inherent right unlike an appeal, review or revision, right of filing of which is dependent upon the statutory provisions. Appeal etc. cannot be filed unless the right to file the same is conferred by the statute. A suit is maintainable before a civil court unless provided otherwise, for example, Section 9, C.P.C. provides for bar of jurisdiction of civil court if some other statute provides for an alternative forum.

5. In Firm Seth Radha Kishan v. Administrator, Municipal Committee, Ludhiana : [1964]2SCR273 , the Hon'ble Apex Court held that in a case where Jurisdiction of civil court has expressly been barred, a suit should not be entertained even If it is impliedly barred under Section 9 of the Code, but a suit in the civil court will always lie to question the order of a Tribunal created by a Statute, even if its order is, expressly or by necessary implication, made final if the said Tribunal abused its power or does not act under the Act but in violation of Its provisions.

6. A Constitution Bench of the Hon'ble Supreme Court in Firm of Illury Subbayya Chetty and Sons v. State of Andhra Pradesh : [1963]50ITR93(SC) , placing reliance upon the judgments of the Privy Council in Secretary of State v. Mask and Co. and Raleigh Investment Co. Ltd. v. Governor General in Council AIR 1947 PC 78, held as under :

'.....there is a general presumption that there must be a remedy in the ordinary civil court to a citizen claiming that an amount had been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indication to the contrary. The exclusion of the jurisdiction of a civil court to entertain civil cause will not be assumed unless the relevant Statute contains an express provision to that effect or leads to a necessary and inevitable implication of that nature.....'

7. The Court further held that if the jurisdiction has been conferred upon a particular authority/Tribunal, entertaining a civil suit would make the proceedings before the appropriate authority illegal and without jurisdiction. The Court further held that as the provisions of Section 18A of the Sales Tax Act expressly excludes

the Jurisdiction of the civil court, hence the Court had no Jurisdiction to entertain such a suit.

8. Another Constitution Bench of the Hon'ble Supreme Court in Ram Swarup and Ors. v. Shikar Chand and Anr. : [1966]2SCR553 , held that the jurisdiction of civil courts to deal with civil causes can be excluded by the Legislature by Special Act which may deal with special subject- matters, but the statutory provision must expressly provide for such exclusion or must necessarily and impliedly lead to that inference. However, the said bar would not be relevant if the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity. While deciding the said case, the Court placed reliance upon large number of judgments including the judgment in Secretary of State for India in Council v. Roy Jatindra Nath Chowdhury and Anr., AIR 1924 PC 175.

9. Yet another Constitution Bench of the Hon'ble Supreme Court in Dhulabhai and Anr. v. State of Madhya Pradesh and Anr. : [1968]3SCR662 , held that exclusion of jurisdiction of the civil court by express provision may not be a complete bar to entertain a suit if party satisfies the civil court that the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. More so, the Statutory Tribunal must be competent to provide all the remedies normally associated with the actions' in civil courts, which are prescribed by the said Statute or not. More so, the exclusion of jurisdiction of the civil court is not readily to be inferred unless the aforesaid conditions are fulfilled.

10. In Sardara Singh v. Sardara Singh. : (1990)4SCC90 , the Hon'ble Supreme Court held that civil court's jurisdiction is available wherever action is taken without jurisdiction under any Statute.

11. In D.R. Chawla and Ors. v. Municipal Corporation of Delhi, (1993) 3 SCC 162, the Supreme Court held that where statutory enactments only create rights or liabilities without providing forums for remedies, any person having a grievance that he had been wronged or his right is being affected, can approach the ordinary civil court, but in case a Special Forum is provided for enforcement of such right or for protection or enforcement of a liability without any authority in law, the ouster of

the civil court's Jurisdiction can be upheld on the finding that the rights and liabilities in question have been created by the Act without touching the existing Common Law rights and the remedy provided therein is adequate and complete. But where adequate redressal machinery is not provided under the Statutory Forum, the civil court can still examine the correctness of the order passed under the Statute.

12. In Pavitter Singh and Ors. v. Niranjana Lal Malhotra, JT 2001 (8) SC 641, the Apex Court held that Section 46 of the Administration of Evacuee Property Act, 1950 bars the jurisdiction of civil court in certain cases. The Court held that in such an eventuality, civil court cannot entertain and try a suit as its Jurisdiction has expressly been barred and the only remedy in such cases, if any person is aggrieved by the order passed under the Act in respect of those evicted, is to resort to writ jurisdiction of the Writ Court.

13. Similar view has been reiterated by the Hon'ble Supreme Court while dealing with the provisions of the Motor Vehicles Act, 1939 in Shri Chand v. Government of U. P. and Ors. : AIR 1986 SC242 and Anwar v. First Addl. District Judge, Bulandshahr and Ors. : [1986]3SCR540 , observing that in most of the matters pertaining to the Motor Vehicles Act, the jurisdiction of the civil court is impliedly barred as the matter can be adjudicated upon by the State Transport Appellate Tribunal only.

14. In Sankarnarayanan Potti v. K. Sreedevi and Ors., : [1998]2SCR444 , the Hon'ble Supreme Court observed as under :

'It is obvious that in all types of civil disputes, civil courts have inherent jurisdiction as per Section 9 of the Code of Civil Procedure unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other Tribunal or authority.'

15. Similar view has been reiterated in Shri Panch Nagar Parakh, Mandsaur v. Purushottam Das : AIR 1999 SC3071 ,

16. In *P.A. Ahammed Ibrahim v. Food Corporation of India* : AIR 1999 SC3033 , the Hon'ble Supreme Court held that the applications under the provisions of various Statutes cannot be treated as suits or claims unless such possibility is specifically provided for under those particular statutes.

17. In *Bhanu Construction Co. (P.) Ltd. v. Andhra Bank, Hyderabad* AIR 2001 SC 477, the Hon'ble Supreme Court considered the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and held that after the commencement of provisions of the said Act came into force, the suit could not be instituted as conferring the jurisdiction upon the Tribunal under the Act would take away the jurisdiction of the civil court.

18. In *Vannattankandy Ibrayi v. Kunhabduula Hajee*, (2001) 1 SCC 564, the Hon'ble Supreme Court considered the provisions of the Kerala Building and Lease Control Act, 1965, which barred the jurisdiction of civil court for recovery of premises on various grounds by the landlord before the Authority prescribed under the Act and the Suit was not maintainable. The Court held that where the building stood washed off because of natural calamity, possession of the remaining land may be recovered before the civil court. The Court held that under such circumstances, civil court may have jurisdiction, but had the building been there, its jurisdiction was barred by Section 9 of the Code because it ceased to be a building and remained land and in such a situation, only civil court was competent to entertain and try the suit.

19. In *Shri Ram and Anr. v. First Addl. District Judge and Ors.* : [2001]1SCR984 , the Apex Court held that in tenancy matters, generally revenue court has the jurisdiction, but in case a suit is filed for cancellation of a void document, Section 9 of the Code does not impliedly bar such a suit because the document has been obtained by fraud or impersonation as in such a case the mere declaration of title is required and the document, being void, is merely to be ignored for giving relief for declaration and possession.

20. In *Ghulam Qadir v. Special Tribunal and Ors.* : (2002)1SCC33 , the Hon'ble Supreme Court held that in case the title is to be established, the remedy of civil court is available and in such case, Section 9 of the Code would not bar the civil

suit and would ask the authority only to avail the remedy under the provisions of J and K State Evacuees (Administration of Property) Act, 1949.

21. In *M/s. Pearlite Liners Pvt. Ltd. v. Manorma Sirsi*, 2004 (1) AWC 764 (SC) the Apex Court held that as contract of service (Private) cannot be enforced in court, the suit for declaration/permanent injunction that termination was bad, would not be entertained.

22. A party is bound either by provisions of the Constitution, statutory provisions or any rule or under the terms of the contract which is not against the public policy. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of several forums available to them then the party can only file the suit in that Court alone to which they had agreed vide *Shriram City Union Finance Corporation Ltd. v. Rama Mishra*, AIR 2002 SC 2402.

23. A Full Bench of this Court in *Ram Awalamb v. Jata Shanker* : AIR1969 All526 , held that while deciding the issue ; whether the suit is solely cognizable by the revenue Court or is impliedly cognizable by a civil court, the cause of action of the suit has to be strictly scrutinized and where on a definite cause of action two or more reliefs can be claimed, which of the relief is the main relief and which relief or other reliefs is/are ancillary reliefs. Once the suit is maintainable for the main relief in the civil court then there is no bar for the civil court to grant all possible reliefs flowing from the same cause of action, and which is the main relief sought by the plaintiff, would depend upon the facts and circumstances of each case.

24. In *Dwarka Singh v. District Judge and Ors.* : AIR1996 All325 , it was held that where the suit for declaration that the sale deed of agricultural land was non-est and no other relief was sought for, the civil court, and not the revenue court, would have jurisdiction to try the suit. While deciding the said case issue, reliance was placed on the Judgment of the Apex Court in : *Ningawwa v. Byrappa Shiddappa Hireknrabar and Ors.* : [1968]2SCR797 , wherein it was held that a contract induced by fraud is not void but only voidable at the option of the party defrauded and unless it is avoided, the transaction remains valid.

25. In *Smt. Dularia Devi v. Janardan Singh* : [1990]1SCR799 , the thumb impression of the executant -an illiterate woman-had been obtained on the sale deed by making her the belief that she had been executing the gift deed in favour of her daughter. The Apex Court held that 'her mind never accompanied her thumb impression'. It was a case of misrepresentation to the character of the document and not to its contents and thus the deed was found to be void and not voidable and, thus, the civil suit was not maintainable and the suit could be tried by the statutory authority. Moreover, it is, also, settled law that it is for the party, who seeks to oust the jurisdiction of the civil court, to establish his contention. In : *Abdul Waheed Khan v. Bhawani and Ors.* : [1966]3SCR617 , the Apex Court held that a statute ousting the jurisdiction of a civil court must be strictly construed. In fact, it is the pith and substance of the plaint which is to be seen to determine : whether the suit is maintainable in a civil court or before other competent authority, as the language might be used in such a way that It may oust the jurisdiction of a particular court. The form of action in relation to void document or instrument regarding agricultural land depends on the real cause of action with reference to the facts averred.

26. In *Smt. Bismillah v. Janeshwar Prasad and Ors.*, AIR 1990 SC 540, the Hon'ble Supreme Court has observed as under:

'It is true that the question of jurisdiction depends upon the allegations in the plaint and not the merits or the result of the suit. However, In order to determine the premise, the nature of action, the pleadings should be taken as a whole.....The real point is not the stray or loose explanation which abound in inartistically drafted plaint but the real substance of the case is gathered by construing the pleadings as a whole.'

27. More so, the jurisdiction of the civil court is not concurrent with that of the revenue court in a matter of this nature and the facts and circumstances of each case have to be considered of its own.

28. In *Modi v. Nand Ram*, AIR 1957 Raj 230, after placing reliance on the Privy Council judgment in *Laxman Prasad v. Sarnam Singh*, AIR 1917 PC 41, the Rajasthan High Court made the following observations :

'It is only voidable at the instance of other coparceners. If such a suit is brought, the Court will certainly declare the alienation void in its entirety if legal necessity or payment of antecedent debt is not proved. But it is one thing to say that the mortgage could be declared void in its entirety by the Court and it is quite another thing to say that it is void ab initio.'

29. The Court held that it was a case of voidable transaction and, thus, the civil court was having the jurisdiction to try it.

30. In *Azhar Hasan and Ors. v. District Judge. Saharanpur and Ors.* : AIR 1998 SC2960 , the Apex Court held that the rights of tenancy are determinable by the Revenue Authorities, in a case where the sale deed is being questioned on the basis of fraud, the executor of the sale deed must be necessarily impleaded and whether the matter can be decided by the revenue court or civil court, would depend upon the pleadings taken in the plaint and the relief sought in the suit. Similar view has been taken by this Court in *Sukhpal Singh v. State of Rajasthan and Ors.* .

31. In *Ramaswamy v. M. Lobo* : (2001)10SCC176 , the Hon'ble Apex Court rejected the contention that a suit in respect of the agricultural land, could be entertained only by the revenue court and not by the writ court on the ground that the use of the land stood changed as it was having the residential buildings.

32. In *Shri Ram and Anr. v. Ist Additional District Judge and Ors.* : [2001]1SCR984 , while deciding a similar issue the Hon'ble Supreme Court held that suit by a recorded tenure holder in possession for cancellation of a sale deed being void would lie before the civil court.

33. A seven Judges Bench of the Hon'ble Supreme Court in *Kamla Mills Limited v. State of Bombay* : [1965]57ITR643(SC) , considered the issue as under what circumstances a suit of civil nature can be held to be barred by special statute. The Court held that for deciding the issue, the Court is to be very conscious about the words used in the statutory provisions on which the plea is rested, the scheme of the relevant provision, their object and purpose. The issue becomes more important when the bar is pleaded by necessary implication and it becomes

pertinent to inquire as to whether remedy is normally associated with actions in civil courts are prescribed by the said institute or not.

34. In *Dhruv Greenfield Limited v. Hukam Singh and Ors.* : [2002]SUPP1SCR449 , the Supreme Court held that for ousting the jurisdiction of the civil court the other statute should provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provision.

35. In *Sahebgouda (Dead) by L.Rs. and Ors. v. Ogeppa and Ors.*, AIR 2003 SC 2743, the Apex Court held that to prove that the civil court does not have jurisdiction, a very heavy onus lies on the party seeking ouster of civil court Jurisdiction as exclusion of jurisdiction is not to be easily inferred.

36. In *Dwarka Prasad Agrawal v. Ramesh Chandra Agrawal and Ors.* : AIR 2003 SC2696 , the Hon'ble Supreme Court considered a case as to whether the jurisdiction of the civil court stood barred by the Companies Act. In that case, the owner of the Printing Press leased out the premises to a company of which he himself had been one of the members. Another member of the Company wanted to dispossess the lessor of the Printing Press. In such circumstances eviction suit filed by the lessor against the said other member of the Company was held to be maintainable in view of the provisions of Section 6 of the Specific Relief Act, 1963 in spite of the fact that the provisions of Sections 9 and 10 of the Companies Act, 1956 barred the jurisdiction of the civil court. The Court held that in such an eventuality the statutory provisions ousting the Jurisdiction of a civil court requires very strict interpretation.

37. In view of the above, the law can be summarised that generally civil court has a jurisdiction to entertain a suit unless it is expressly or impliedly barred by any other Statute or by the provisions of Section 9 of the C.P.C. The onus to prove that civil court does not have jurisdiction in a particular case lies upon a party asserting such a plea. Provisions of statute ousting the jurisdiction of civil court requires very strict construction. Thus, it is not to be readily inferred that the jurisdiction of the civil court is ousted because the remedy has been provided under some other statutory provisions. The issue is to be determined considering the facts by individual case and no straitjacket formula can be formulated for this purpose.

38. Shri P. K. Mishra, learned counsel for the petitioner has placed reliance upon a large number of judgments in support of his case, which are necessary to be considered.

39. In *Smt. Barsatiya v. District Judge, Ghazipur and Ors.*, 1984 RD 156, this Court issued the writ of prohibition restraining the civil courts from hearing the matter as the same can be dealt with only under the provisions of the U.P. Consolidation of Holdings Act, 1953 (hereinafter called the Consolidation Act).

40. Similar facts were involved in *Jagardeo Shukla and Ors. v. Chandradeo Singh*, 1981 ALR 543.

41. Those were the cases where the entertainment of the suit in respect of the land covered by the proceedings under the Consolidation Act by civil court, had been barred after Notification of Section 4 of the Act. Similar view has been reiterated in *Khageshwar v. Hoshram and Ors.* : AIR1966 All191 .

42. As all the aforesaid three cases have been under the Consolidation Act, the same are quite distinguishable and the law laid down therein has no application in the instant case.

43. Further reliance has been placed on *Chhedi Lal Gupta and Ors. v. Mohammad Sattar*, AIR 1963 SC 448. That was a case where a suit under Section 73 of the Trade Marks Act had been filed in the civil court and the objection had been filed regarding jurisdiction, which was dismissed by the civil court. However, in writ petition the High Court issued the writ of prohibition to the learned civil court not to proceed with the trial of the suit and issued further direction to return the plaint under Order VII Rule 10, C.P.C. to enable the plaintiff to file the same in a Court/Authority of having the jurisdiction in the matter.

44. In *Auto Engineering Works v. Bansal Trading Company and Ors.* : (2001)10SCC630 , the Hon'ble Supreme Court held that once the civil court comes to the conclusion after having heard on the issue of jurisdiction, that it does not have the jurisdiction to entertain the suit, the Court must return the plaint to present the same before the Court of competent jurisdiction.

45. In *S. Govinda Menon v. Union of India and Ors* : (1967)11LLJ219SC the Hon'ble Supreme Court held that there is no prohibition for the writ court to issue the writ of prohibition to the inferior court, if it assumes a jurisdiction which it does not possess or this is to prevent it from exceeding the limits of its Jurisdiction, the purpose of issuing such a writ is to keep the inferior Court/Tribunal within their bounds of limited jurisdiction. Writ may also be issued in case of departure from the principles of natural justice.

46. In the instant case, as the matter is as to whether civil court has jurisdiction or not is yet to be decided by the civil court and this Court cannot take the task of the civil court upon itself and decide the said issue.

47. Similarly, no assistance can be taken from the judgment, relied upon by the learned counsel for the petitioner. In *M/s. East India Commercial Co. Ltd., Calcutta and Anr. v. Collector of Customs, Calcutta* : 1983(13)ELT1342(SC) , the notice issued by the statutory authority had been challenged being without jurisdiction. In the instant case, it does not involve the similar feature, hence none of the judgments relied upon by the learned counsel for the petitioner has any application in the instant case.

48. The Hon'ble Supreme Court in *Thirunala Tirupati Devasthanams and Anr. v. Thallappaka Ananthacharyulu and Ors.* : AIR 2003 SC3209 , considered the issue at length and also had taken into consideration the earlier judgments, particularly, in *G. Veerappa Pillai v. Raman and Raman Ltd.* : [1952]1SCR583 ; *T.C. Basappa v. T. Nagappa* : [1955]1SCR250 ; *Hari Vishnu Kamath v. Syed Ahmad Ishaque* : [1955]1SCR1104 ; *Nanduri Yogananda Lakshminarasimhachari v. Sri Agastheswaraswamvaru* : [1960]2SCR768 ; *Ujjam Bai v. State of U. P.*, AIR 1962 SC 1621 ; *Gulabchand Chhotalal Parikh v. State of Gujarat* : [1965]2SCR547 and *Naresh Shridhar Mirajkar v. State of Maharashtra* 0044/1966 : [1966]3SCR744 , and summarised the law as under :

'On the basis of the authorities it is clear that the Supreme Court and the High Courts have power to issue writs, including a writ of prohibition. A writ of prohibition is normally issued only when the inferior court or Tribunal (a) proceeds to act without or in excess of jurisdiction ; (b) proceeds to act in violation of the

rules of natural justice ; (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act. in contravention of fundamental rights. The principles, which govern the exercise of such power, must be strictly observed. A writ of prohibition must be issued only in rarest of rare cases. Judicial discipline of the highest order has to be exercised whilst issuing such writs. It must be remembered that the writ jurisdiction is original Jurisdiction distinct from appellate Jurisdiction. An appeal cannot be allowed to be disguised in the form of a writ. In other words, this power cannot be allowed to be used 'as a cloak of an appeal in disguise'. Lax use of such a power would impair the dignity and integrity of the subordinate court and could also lead to chaotic consequences. It would undermine the confidence of the subordinate court. It was not even argued that there was total lack of jurisdiction in the civil court. It could not be denied that the civil court, before which the suit was pending, had powers to decide on the maintainability of the suit and to decide on questions of its jurisdiction. The civil court had jurisdiction to decide whether the suit was barred by Section 14 of the said Act or on the principles of res Judicata/estoppel. Thus unless there was some very cogent or strong reason the High Court should not have prevented the Court of competent Jurisdiction from deciding these questions. In other words, the High Court should not usurp the jurisdiction of the civil court to decide these questions.'

49. Quashing of proceedings in a suit and issuing the writ of prohibition to the civil court not to proceed with a case, is to be rarely attempted to by any court of law. Such a course can be adhered to in rarest of rare cases. It is only where the pleadings are per se improbable and wholly obtuse and malacious from their very nature, they are guided by an inbuilt desire to cause serious harm and harassment to the defendant, leave apart unscrupulous wastage of time of the Court. Abuse of process of the Court is, therefore, inherent in such complaints of the suits.

50. In view of the above, we are of the opinion that it will depend upon the facts of a particular case to determine as to whether the matter is to be adjudicated before the civil court or revenue court. There is no strait- jacket formula to determine the said controversy. Even the application filed by the defendant-petitioners under Order VII Rule 10 of the Code of Civil Procedure cannot be decided straightaway without deciding the issue as to whether the civil court has a competence to

adjudicate upon the controversies involved therein and whether the suit is maintainable in civil court. For that purpose, issues have to be framed and the issue of jurisdiction may be decided as a preliminary issue as provided under the provisions of Order XIV Rules 1 and 2, C.P.C.

51. The suit has been filed with the averments that the plaintiff- respondents are in possession of the land in dispute since 1962 and it is a part of the Jain Inter College (respondent No. 3). Though there had been no mutation in the revenue records, it is in possession of the said College and petitioner-defendants have nothing to do with the land in dispute, rather they want to grab the same. Petitioner-defendants had earlier filed the Suit No. 679 of 1995, Rahamtullah Khan v. Kishan Lal, which had been dismissed, and as no appeal against the said Judgment and decree had been preferred, it attained the finality. Therefore, petitioner- defendants should be restrained from interfering with the peaceful possession of the land in dispute. In the written statement again and again it has been submitted that as in the revenue records it has been shown as agricultural land, the civil court does not have jurisdiction to hear the matter.

52. In view of the aforesaid pleadings the matter requires to be thoroughly examined by the civil court after framing the issues.

53. As issues have not yet been framed, it is pre-emptive on the part of the defendant-petitioners to rush to this Court for issuing the aforesaid directions. In view of the above, we see no cogent reason to entertain the petition on merit.

54. Petition is devoid of any merit, and accordingly, dismissed. Any observation made herein above shall not prejudice the cause of either party.