

Balak Ram Vs. Kanehya

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Court : Delhi

Decided On : May-06-1968

Reported in : 4(1968)DLT384

Judge : I.D. Dua, C.J. and; Jagjit Singh, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 9

Appeal No. : Civil Revision Application Appeal No. 41 of 1967

Appellant : Balak Ram

Respondent : Kanehya

Advocate for Pet/Ap. : R.K. Gupta,; Prithvi Raj and; Amar Nath, Advs

Judgement :

I.D. Dua, C.J.

(1) These three revisions (Civil Revisions Nos. 41, 42, and 47 of 1967) raising, as they do, a common question, are being disposed of by one judgment. The facts of C.k. No. 41 of 1947 alone may be adverted to.

(2) Balak Ram and Shiv Ram, sons of Bali Ram, instituted a suit for permanent injunction against Kanehya, son of Bhajju, restraining him from interfering with their possession of the suit land measuring 15 bighas 13 bids was situated in

village Rajana, Fargana Jajhto, Kasumpti. It was alleged by the plaintiffs that they were the owners in possession of the land in dispute and that Kanehya defendant had been wrongly recorded in the revenue papers to be in possession of the suit land as a tenant. The defendant had made an application before the Compensation Officer, Mahasu for acquiring proprietary rights of the land in dispute under section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (hereafter called the Abolition Act) on the basis of the aforasaid entries in revenue papers. The Compensation Officer had rejected that application by holding that the defendant was neither a tenant nor in possession of the land in dispute. On appeal, however, the learned District Judge, Mahasu, referred that finding and held that Kanehya defendant was a tenant of the land in dispute and was also in possession thereof and was thus entitled to acquire its ownership under the Abolition Act. The plaintiffs pleaded that the judgment of the learned District Judge was illegal, against facts and inoperative. As Kanehya defendant was threatening to take possession of the land in dispute on the strength of the judgment of the learned District Judge, it was prayed that he be restrained by a perpetual injunction from interfering with the plaintiffs' possession.

(3) The suit was contested by the defendant and it was inter alia pleaded that the order of the learned District Judge under the Abolition Act was final and binding on the parties to the suit and operated as res judicata. The defendant claimed to have become the owner of the land in dispute by virtue of the said order and being in possession, there was no point in granting any injunction against him. The jurisdiction of the civil Court was also challenged on the basis of section 12(2) and (4) of the Abolition Act.

(4) The trial Court framed on 7th July, 1965 the following five issues on the merits :-

'1. Whether the suit is not barred by the provisions of section 12, sub-section (2)(c) and subclause (2) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act and is maintainable in face of the judgment of the learned District Judge, Mahasu dated 5th September 1964? OP.P. 2. Whether the suit is barred by res-judicata in view of the judgment of the learned District Judge,

Mahasu dated 5th September 1964? O.P.D. 3. Whether the plaintiffs are in possession of the land in suit as owners and as such the suit for mere injunction is maintainable? O.P.P. 4. Whether the defendant interferes with the possession of the plaintiffs? O.P.P. 5 Whether the plaintiffs are entitled to permanent injunction? O.P.P.'

Issues Nos 1 and 2 were treated as preliminary issues. No evidence was led by the plaintiffs thereon, but the defendant produced a copy of the judgment of the learned District Judge dated 5th September, 1964 which was exhibited as Exhibit D. A. The Court found both these issues in favor of the defendant and dismissed the plaintiffs' suit with costs.

(5) The plaintiffs took the matter on appeal to the Court of the learned District Judge, but the conclusions of the trial Court were affirmed by him on 21st December, 1966. After agreeing with the trial Court on the decision of the two issues, the learned District Judge dealt with another point raised on behalf of the appellants. It was argued that these two issues could not be treated as preliminary issues and that the trial Court should also have decided issues Nos. 3, 4 and 5 and afforded an opportunity to the plaintiffs to prove their case. and observed that trial of all the issues would have unnecessarily delayed the final disposal of the case, thereby causing to the parties inconvenience and unnecessary expenditure. In the final result, however, as the conclusions of the trial Court were affirmed, the appeal was dismissed with costs.

(6) These revisions came up for hearing before Andley, J. before whom, the following two questions were raised by the counsel for the petitioners :-

'1. Whether a suit in a civil Court challenging the finding of the Compensation Officer that an applicant under section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1963, is or is not a tenant is competent? and 2. Whether decision of the Compensation Officer holding a person to be a tenant will be res judicata in a civil suit where the aforesaid finding is challenged?'

The correctness of the decision of the learned Judicial Commissioner, Himachal Pradesh, in *Daulat Ram v. Huma Namd.* according to which the jurisdiction of the

civil Court is barred, was questioned on behalf of the plaintiff-petitioners As Andlev, J entertained some doubt about the correctness of the decision of the learned Judicial Commissioner, the case was directed to be placed before a Division Bench and it is in these circumstances that these three revisions have been posted turn disposal before us. To answer the two questions contained in the referring order, we have to turn to the scheme of the Abolition Act. The Abolition Act was brought on the statute book to provide for the abolition of big landed estates and to reform the law relating to tenancies in the Himachal Pradesh. It consists of 148 sections, divided into 10 Chapters and two Schedules. We are, however, concerned only with Chapter III which deals with acquisition of proprietary rights by tenants, This Chapter consists of sections 9 to 27. Section 9 provides for the appointment of Compensation Officers to carry out the purposes of the Abolition Act, including partitions, operations in holdings, assessment of compensation and settlement of disputes between the land owners and their tenants Such officer is to be guided by such instructions, not inconsistent with the Act, as the State Government may from time to time issue.

(7) Section 10 empowers the State Government to give effect to the provisions of the Abolition Act and in particular to exercise control and superintendence over Compensation Officers and also to issue instructions for their guidance and to cancel or revise any of the orders, acts or proceedings of such Compensation Officers, other than those orders in respect of which an appeal lies under the Abolition Act. Section 11 deals with the rights of tenants to acquire interests of landowners by means of an application to the Compensation Officer. Section 12 on which emphasis has been laid in the bar, provides for the determination of compensation and is in the following terms

'12.Determination of compensation.(1) The amount of compensation payable by a tenant for acquisition of the right, title and interest of the landowner in the land of the tenancy shall be determined by the Compensation Officer in accordance with the provisions of the Schedule. (2) (a) Any person aggrieved by any order of the compensation officer under subsection (1) may, within forty-five days from the date of the order, appeal to the District Judge. (b) Where any such appeal is preferred to the District Judge, he shall cause to be published in the prescribed manner a

notice requiring the landowner or the tenant, as the case may be, to appear before him and after giving the parties a reasonable opportunity of being heard shall give his decision. (c) As against the decision of the District Judge an appeal shall lie within such period as may be prescribed to the Judicial Commissioner whose decision shall be final and shall not be liable to be called in question in any court or before any authority. (3) No decision of the District Judge or the Judicial Commissioner under sub-section (2) shall be invalid by reason of any defect in the form of notice or manner of its publication. (4) Every decision of the Compensation Officer under this section shall, subject to the provision of sub-section (2), be binding on all persons claiming an interest in the holding concerned, notwithstanding any such person not having appeared or participated in the proceedings before the Compensation Officer, the District Judge or the Judicial Commissioner, as the case may be' Section 20, providing for reference to civil Court, lays down that where a dispute arises between persons claiming compensation, the Compensation Officer shall require them to refer their claims to a competent civil Court of Jurisdiction. By virtue of section 25 the Compensation Officer has the powers of a civil Court under the Code of Civil Procedure for the purpose of administering oaths, taking evidence and of enforcing attendance of witnesses and compelling production of documents and material objects. In Chapter Iii, no other section has been referred to at the bar. The only other sections of the Abolition Act to which reference has seriously been made, may now briefly be noticed. They are sections 79, 92, 95, 97, 104, 105 and 106 occurring in Chapter VIII dealing with the assumption of management and acquisition by the State. Section 79 confers on the State Government the power to make rules relating to efficient cultivation and management, but this provision obviously does not help us in solving the problem before us. Section 92 preserves the right of persons to establish their claim in respect of any land or part thereof by due process of law in the Courts having jurisdiction. According to section 95, the order of the Compensation Officer deciding objections regarding entries in the Compensation Assessment Roll, is to be deemed to be a decree of the civil Court and it is to contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decisions. Section 97 lays down that except a Court or authority before whom an appeal under Chapter VIII is

pending against an order or decree of the Compensation Officer, no Court or authority shall, notwithstanding anything contained in any law, issue any jurisdiction against any person in respect of any proceedings pending before the Compensation Officer under Chapter VIII, which has the effect of staying the proceedings. Section 101 provides for appeals to the District Judge from any order of the Compensation Officer and a second appeal to the Judicial Commissioner from the decision of the District Judge. Section 105 provides for interference on revision by the Judicial Commissioner. Section 106 fixes the period of 45 days for appeals to the District Judge and of 93 days for appeals to the Judicial Commissioner under section 104.

(8) Reference at the bar has also been made to the Rules framed under the Abolition Act. Rule 3 of the Rules prescribes the form in which an application under section 11 of the Abolition Act for the grant of proprietary rights is to be made. Immediately on receipt of such application, the Compensation Officer has to cause it to be entered in his register in the prescribed form. After making necessary enquiries, the Compensation Officer is enjoined to proceed to determine the amount of compensation payable by the tenant to the landowner in accordance with the provisions of sections 12 and 13 of the Abolition Act. Rule 4 makes a provision for objections, but these objections are invited after the Compensation Officer has determined the amount of compensation. If within the time allowed no objections are received, or if they are received, and disposed of, the Compensation Officer is to finally determine the amount of compensation payable by the tenant to the landowner and direct the deposit of the amount in the treasury or the sub-treasury within the prescribed period.

(9) The learned counsel for the plaintiff petitioners has very strongly argued that the Compensation Officer constituted under the Abolition Act is invested with the power only of determining the amount of compensation and nothing else. If, therefore, the landlord claims that the applicant under section 11 of the Abolition Act is not a tenant then the civil Court's jurisdiction is not barred by any provision contained in the Abolition Act either expressly or by necessary implication.

(10) Turning now to the decision of the learned Judicial Commissioner in Daulat Ram's case, we find that the finality of the orders of the Compensation Officer and the bar of jurisdiction of civil Court: were founded on section 12(2) (e) and (4) of the Abolition Act. By virtue of section 9 of the Abolition Act, section 11 was held to extend to the controversies whether or not the petitioner under section 11 is a tenant. Section 92 being a general provision, was held not to override the special provisions contained in section 12(2) (e) and (4). In this decision, reliance was placed on a decision of the Supreme Court in Addanki Tiruvenkata Thata v. State of Andhra Pradesh. in which while dealing with the Madras Estates (Abolition and Conversion into Ryotwari) Act of 1948, it was held that the question as to whether an inam village (shroteriam) is an 'inam estate' is exclusively within the jurisdiction of the Settlement Officer and of the Tribunal on appeal and the civil Courts have no jurisdiction to determine it or retry it. The bar was held to arise by necessary implication. That implied exclusion of the jurisdiction of the ordinary Courts in the reported case was founded on section 9 of the Madras Abolition Act. The section may now be read : -

'9.(1) As soon as may be after the passing of the Act, the Settlement Officer may sue out and shall, on application, enquire and determine whether any inam village in his jurisdiction is an inam estate or not

(2) Before holding the inquiry, the Settlement Officer shall cause to be published in the village in the prescribed manner, a notice requiring all persons claiming an interest in any land in the village to file before him statements bearing on the question whether the village is an inam estate or not.

(3) The Settlement Officer shall then hear the parties and afford to them a reasonable opportunity of adducing all such evidence either oral or documentary as they may desire to, examine all such documents as he has reason to believe are in the possession of the Government and have a bearing on the question before him and give his decision in writing.

(4) (a) Any person deeming himself aggrieved by a decision of the Settlement Officer under sub-section

(3) may, within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal. (b) Where any such appeal is preferred, the Tribunal shall cause to be published in the village in the prescribed manner, a notice requiring all persons who have applied to the Settlement Officer under sub sec. (i) or filed before him statements under sub-sec.

(2) to appear before it, and after giving them a reasonable opportunity of being heard give, its decision. (e) The decision of the Tribunal under this sub section shall be final and not be liable to be questioned in any Court of law.

(6) No decision of the Settlement Officer under sub-sec.

(3) or of the Tribunal under sub-sec.

(1) shall be invalid by reason of any defect in the form of the notice referred to in sub-sec.

(2) or sub-sec. (4). as the case may be, or the manner of its publication.

(6) Every decision of the Tribunal and subject to such decision every decision of the Settlement Officer under this section shall be binding on all persons claiming an interest in any land in the village notwithstanding that any such person has not preferred any application or filed any statement or adduced any evidence or appeared or participated in the proceedings before the Settlement Officer or the Tribunal as the case may be.

(7) In the absence of evidence to the contrary, the Settlement Officer and the Tribunal may presume that an inam village is an inam estate.'

According to the learned counsel for the plaintiff petitioners, the Supreme Court decision is distinguishable and the provisions of the Abolition Act which concern us, do not contain any provision similar to section 9 of the Madras Abolition Act which was, by necessary implication held to exclude the jurisdiction of the civil Courts in regard to the question of the status as a tenant of the person applying under section 11 of the Act

(11) The general principles governing the exclusion of civil Court's jurisdiction, when a special Tribunal is created for the purpose of deciding a specified dispute under a statute, are quite well settled. The well known observations of Lord Esher, M R in *The Queen v. The Commissioners For Special Purposes of the Income Tax*. contain a clear enunciation of the basic principle It was observed there thus :--

'WHEN an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none., In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.'

In *Secretary of State v Mask & Co.*, it was stated to be settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It was also considered to be well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act

have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. While considering the question whether section 188 of the Sea Customs Act excluded the jurisdiction of the Civil Courts, it was clarified that the determination of this question must rest on the terms of the particular statute which is under consideration, and decisions on other statutory provisions are not of material assistance, except in so far as general principles of construction are laid down. The main principles were stated to be found in the well-known judgment of Willes J. in (*Wolverhampton New Waterworks Co T. Hawkesfer*) which was held to be approved of in the House of Lords in *Neville v. London Express Newspaper Limited*. The following quotation from the judgment of Willes J was reproduced : -

'WHERE the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it ... -with respect to that class it has always been held, that the party must adopt the form of remedy given by the statute.'

In *Firm I.S Chetty & Sons v. State of Andhra Pradesh*. Gajendragadhkar, J. (as he then was) speaking on behalf of a Bench of five Judges, while commenting on the decision of the Privy Council in the case of *Mask & Co*, made the following observations :-

'LORD Thankerton who delivered the opinion of the Board, however, proceeded to add that 'it is also well-settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure- It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non compliance with such fundamental provision of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction-

Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may effect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps, be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute.'

That the observations in *Mask & Co's* case were in some respects too widely stated was repeated by the Supreme Court in *Custodian Evacuee Property Punjab v. Jafran Begum*, and reference was made to the earlier Supreme Court decision in the case of *Firm I.S. Chetty*. In *Magiti Sasamal v. Punjab Bissol*. while dealing with the scope and effect of section 7(1) of the *Orrissa Tenants Protection Act 3 of 1948*, the Court observed that this provision of law postulated the relationship of tenant and landlord between the parties and proceeded to provide for the exclusive Jurisdiction of the Collector to try the five categories of disputes arising between the landlord and the tenant. It was unreasonable said the Court, to hold that a dispute about the status of the tenant also fell within the purview of that provision. In *Abdul Waheed Khan v. Bhawani*, it was accepted as settled principles that it is for the party who seeks to oust the jurisdiction of a civil Court to establish his contention and that a statute ousting the jurisdiction of a civil Court deserves to be strictly construed. While dealing with the *Bhopal State Land Revenue Act 4 of 1932*, the suit raising a question of title was held to be open to decision by a civil Court. Earlier, similar views had been expressed by the Supreme Court in *Shri Raja Durga Singh v. Tholu*, while dealing with the *Punjab Tenancy Act (16 of 1887 as applied to Himachal Pradesh)*.

(12) It is unnecessary to refer to large number of other decisions cited at the bar. We may merely note them. The petitioner's learned counsel has in addition referred to *Beant Singh v. State of Punjab*, *Faqir Singh v. Mst. Gurbachan Kaur*, *Kundun v. Sardara Ramji Lal*, *Des Raj v. Ram Singh*, *Sir Sobha Singh & Sons v. Delhi Administration*, (a case of writ in the High Court), *Girish Chandra v. Manila Benudhar Dalai v The State of Orissa*, *Kishan Sah v. Harinandan Prasad Sah*, and

Patna Municipal Corboration v Ram Bachan Lal,.

(13) The respondent's learned counsel has in addition to the judgment of the Judicial Commissioner of Himachal Pradesh referred as to Husein Miya Documiya v. Chandubhai Jethabhai. and an unreported Bench decision of this Court in Messrs Edward Keventars v. New Delhi Municipal Committed, L.P. A 113-D of 1963 decided on 31st January, 1967, noted in the Short Notes of Cases of 1967 D.L.T. 16 SN

(14) Now, applying the principles of law discussed earlier to the provisions of the Abolition Act, it is obvious that the Compensation Officer is appointed only for carrying out the purposes of the Act including partition, operations in holdings, assessment of Compensation and settlement of disputes between the landowners and their tenants. There is no express power conferred on this officer to adjudicate upon the status or title of the parties for the purposes of determining the applicability of the Act. The sole argument is based on the contention that by necessary implication, such power must be deemed to be possessed by the Compensation Officer and must also by necessary implication be intended to be excluded from the jurisdiction of the civil Court. We have to see if this argument is valid. For the purpose of determining the amount of compensation under section 12 of the Abolition Act, the Compensation Officer may, by necessary implication, be held to possess the power to determine whether or not the applicant under section 11 of the Abolition Act is a tenant, but we are disinclined, as at present advised, to hold that such a finding would be binding on the parties even when the civil Court is approached to adjudicate upon the existence of tenancy rights so as to exclude such Court's jurisdiction to finally determine the controversy. The binding effect as contemplated by section 12(2)(c) and 12(4) of the Abolition Act would seem to us to be confined to the determination of the amount of compensation and not to the question of the status of the alleged tenant, That the law-maker did not intend the question of title to be finally determined by the Compensation Officer, may also be spelt out from section 20 of the Abolition Act which postulates reference to civil Court by the Compensation Officer of any dispute between the rival claimants to compensation. If an ancillary dispute in regard to title of the rival claimants to the apportionment of compensation has

been intended to be finally settled by the civil Court, it is not easy to comprehend an intention on the part of the law-maker to deprive a party of his right to have the question of title to the land itself finally determined by the civil Court. Neither any principle nor any other binding precedent in support of such deprivation has been brought to our notice and the submission has been confined mainly to the ratio of the decision in Daulat Ram's case. This decision, speaking with great respect, does not seem to us to construe section 12 of the Abolition Act correctly. As observed earlier, the decision in this case followed the decision of the Supreme Court in Addanki's case which dealt with section 29 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, which has already been reproduced. It is quite clear that section 9(4) (e) of the Madras Abolition Act in terms expressly barred the jurisdiction of all Courts of law from questioning the correctness of the appellate decision. This clause read with section 9(6) can, in our view, rightly be held, to the extent of the question stated in section 9(i), to confer exclusive jurisdiction on the Settlement Officer and to preclude the civil Courts from trying or re-trying the same question. Now, the question posed in section 9(1) of that Act relates to the determination whether any inam village in the jurisdiction of the Settlement Officer is or is not an inam estate. The Supreme Court after referring to various decisions, which we have already noticed, and quoting certain passages there from, expressed its opinion on the scope and effect of section 9 of the Madras Abolition Act in the following words:-

'WHEREFORE persons appearing in opposition to the proceedings initiated before the Settlement Officer under S. 9 question the character of the property as not falling within the description of an 'inam village', he has of necessity to decide the issue, for until he holds that this condition is satisfied, he cannot enter on the further enquiry which is the one which by S. 9(1) of the Act he is directed to conduct. On the terms of S. 9(1) the property in question being an 'inam village' is assumed as a fact on the existence of which the competency of the Settlement Officer to determine the matter within his jurisdiction rests and as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question, therefore, is (subject to the result of an appeal to the Tribunal) binding on the parties only for the purposes of

the proceedings, under the Act, but no further. The correctness of that finding may be questioned in any subsequent legal proceeding in the ordinary Courts of the land where the question might arise for decision. The determination by him of the second question whether the 'inam village' is an inam estate is, however, within his exclusive jurisdiction and in regard to it the jurisdiction of the Civil Courts is clearly barred. In this connection, we might refer to the decision of the Madras High Court in Venkatanarasayya v. State of Madras, where Rajamannar, C. J. said: - 'if the grant is less than a village then obviously Madras Act XXVI of 1918 can have no application whatever. Section 9 of that Act provides for the determination after inquiry of the question whether any inam village is an inam estate or not. Presumably, when the contention is that the grant does not comprise a village, the proceedings under section 9 would not be strictly open to the aggrieved party.....The aggrieved party will have a right of suit as he would have a good cause of action when proceedings are taken under colour of an Act which does not apply to the facts of the case. This correctly expresses the distinction between the two related questions and the effect of the decision on the preliminary condition.'

(15) On this ratio, the decision of the Compensation Officer on the question of the applicant under section 11 being a tenant, cannot be conclusive so as to exclude the jurisdiction of civil Courts to examine or re-examine whether or not he is a tenant. In the Madras Abolition Act, the question whether an inam village is an inam estate alone was to be held to be excluded from the jurisdiction of civil Courts, but the finding whether the property in question is an inam village was not held to be solely within the exclusive jurisdiction of the Settlement Officer so as to deprive the ordinary civil Courts of their jurisdiction to decide this question. If properly raised before them The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Rules, also do not seem to us to contemplate any exclusive jurisdiction in the Compensation Officer to determine the question of the status as a tenant of the applicant under section 11 of the Abolition Act. Looking at section 92 of the Abolition Act, in the background of the foregoing discussion, in our view, the right of the land holder to establish in a competent civil Court that the person claiming to be his tenant is not a tenant, cannot be deemed to have been taken away or lost to him by virtue of sections 9, 11 and 12 or any other section in Part III of the Abolition Act.

(16) Once this question is decided in favor of the plaintiff-petitioners, the second question would seem to present no difficulty. In so far as section 11. Civil P. C. is concerned, it can be attracted only when the prior Court was competent to try the subsequent suit. the general rule of resjudicata is also difficult to apply, for, in suits, section 11 alone can be urged and nto the general rule, and indeed no attempt has been made on behalf of the respondent to convass for a favorable decision on question No. 2 by applying either section 11 or the general doctrine of rest judicata if the exclusion of jurisdiction of the ordinary civil Courts is nto upheld under the first question.

(17) As a result of the foregoing discussion, we have no hesitation in holding that the plaintiff's suit in the case in hand was nto barred, and the decision in Daulat Ram's case, if we may say so with all respect does nto lay down the law correctly. This revision accordingly succeeds and allowing the same, we set aside the order of the trial Court and remit the case back to it for further proceedings in accordance with law and in the light of the observations made above. In the peculiar circumstances of this case, there will be no order as to costs.

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