

Mohammad Hussaln and Etc. Etc. Vs. Rahim and anr., Etc. Etc.

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Court : Jammu and Kashmir

Decided On : Oct-31-1985

Reported in : AIR1987J& K48

Judge : M.L. Bhat,; K.K. Gupta and; S.M. Rizvi, JJ.

Acts : Jammu and Kashmir Agrarian Reforms Act, 1976 - Sections 19(3) and 25; ;Jammu and Kashmir Agrarian Reforms (Amendment) Act, 1981; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 9

Appeal No. : Civil First Appeal No. 13 of 1980, Civil Revn. Nos. 170 and 176 of 1980 and 37 of 1974 and Civil Sec

Appellant : Mohammad Hussaln and Etc. Etc.

Respondent : Rahim and anr., Etc. Etc.

Advocate for Def. : B.M. Sadiq,; G.N. Hagroo,; R.N. Kaul and;

Advocate for Pet/Ap. : S.L. Kaul,; K.N. Bhat,; Z.A. Shah and;

Judgement :

Bhat, J.

1. By virtue of Act No. VIII of 1981, Sections 19(e) and 25(b) of the Jammu and Kashmir Agrarian Reforms Act came to be amended and in view of the said

amendment, a reference came to be made by a learned single Judge of this Court (Kolwal J) in Civil Second Appeal No. 27/1981 on 15th Sept. 1982. The matter was referred to the Full Bench for determination of the following two questions :

i) Does the view taken in the Full Bench judgment of this Court namely Jagtu v. Badri reported in supplement to JKLR Vol. X hold good even after Clause (e) of Section 19 of the Act has been amended by virtue of Act No. VIII of 1981?

ii) Whose opinion will prevail where the Civil Court says that certain disputes raised in the suit before it are triable by the Collector under Section 19 of the Act, but the Collector on reference says that the same are triable by the Civil Court itself?

2. In order to understand the controversy properly, it is necessary to refer to the law which was framed in the years 1972 and 1976 and in the light of the statutory provisions as amended in 1981, whether the Full Bench authority of this Court namely Jagtu v. Badri would still hold the field.

3. Jammu & Kashmir Agrarian Reforms Act was first applied to the State of Jammu & Kashmir by virtue of Act No. XXV of 1972. In Rahim v. Amma Bar, reported in AIR 1975 J & K 33, the Full Bench of this Court considered as to whether the provisions of the said Act were retrospective and would apply to pending cases also. This question was answered in affirmative by the Full Bench. Section 36 of the said Act reads as under : --

'Notwithstanding anything contained in any law for the time being in force;

1) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the rules made thereunder required to be settled, decided or dealt with or to be determined by an officer or the authority appointed under this Act or the rules made thereunder;

2) No order of an officer or authority mentioned in Sub-section (1) shall be called in question in any Civil Court.

4. While giving interpretation to this section the Full Bench held that the section was widely worded and it forbade the Civil Courts from dealing with or adjudicating upon any question or matter which was required to be decided or dealt with or adjudicated upon by an officer or authority appointed under the new Act or the rules made thereunder. The orders of an officer or authority could not be called in question in a Civil Court. However, this Full Bench authority based on 1972 Act lost its force because that Act is repealed and a new Act of 1976 was applied to the State in 1978. By virtue of Act of 1976, law in comprehensive form came to be codified and attempt was made to do away with the shortcomings which were detected in the Act of 1972. Section 19(3) of the Act of 1976 laid down that following applications, suits and proceedings shall be disposed of by a Collector :

- a) Proceedings under Section 56 of the Jammu and Kashmir Tenancy Act, Samvat, 1980;
- b) Proceedings under Sub-section (2) of Section 68-A of the Jammu and Kashmir Tenancy Act, Samvat, (2007?) 1980;
- c) Proceedings under Section 24 of the Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007;
- d) Application by an owner or an intermediary that the person, who claims to be cultivating the land as a tenant, is not a tenant but a trespasser;
- e) All other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/ intermediary.

5. On its terms Section 19(3) barred the Civil Court to try certain disputes specified therein and reproduced hereinabove. Sub-s. (e) of Section 19(3) was amended by Act No. VIII of 1981. The amended Section 19(3) (e) is recast as under : --

'Any other dispute relating to or arising out of the provisions of this Act.'

6. So far as other clauses of Section 19(3) are concerned, there can be no dispute with regard to the question of jurisdiction conferred on the authorities, but clause (e) as it stood in the Act of 1976 and now as amended presents some difficulty in

respect of jurisdiction of the Civil Courts.

7. Clause (e) of Section 19(3) as it stood in 1976 Act came to be considered by a Full Bench of this Court in Jagtu v. Badri reported in AIR 1980 J & K 1. Bar of the jurisdiction of the civil Court and its extent was discussed in the said authority. Section 19(3) (e) was held to be of a wider amplitude and was held to cover all cases in which right to possess the land was claimed or disputed. 'All other' occurring in the said clause were held to have relation with the background and scheme of the Act. All other cases of dispute were given liberal construction and jurisdiction of the Civil Court to take cognizance of any dispute relating to the possession or claim to land was held to be barred. However, disputes involving determination of title or right on the basis of succession or inheritance without claiming possession could be decided by the civil Court. By virtue of Section 41 of the Act of 1976, personal law or statutory law of succession in respect of ownership rights available to a person were saved. Section 25(a) of the said Act also came to be interpreted and was held to lend support to the import enshrined in Clause (e) of Section 19(3) of the Act in so far as bar of Civil Court's jurisdiction was concerned. Kotwal, J. while concurring with the other two judges constituting the Full Bench gave his own reasoning by saying that jurisdiction of the Collector which otherwise also was there, was widened by Section 19(3) (a to d). While considering the import of all cases of dispute occurring in Clause (e) of Section 19(3), it was held, that this means and includes only those disputes which the Collector is empowered to try under the Act or the rules made thereunder. It is impossible to prepare an exhaustive list of all such cases.

8. Correctness of this authority cannot be doubted because Clause (e) of Section 19(3) was couched in such a language which would make all disputes concerning land as regards its possession or claimed by adverse possession cognizable by the officer and the authority under the Act. The question which faces us in these cases is : What is the effect of Section 19(3)(e) as amended in 1981 on the jurisdiction of Civil Courts and does it require a fresh look in the facts and circumstances of the changed situation?

Section 19(3)(e) as already said here.in makes any other dispute relating to or arising out of the provisions of this Act cognizable by the authorities under the Act. This amendment is to be read with Section 25 as amended and Section 41 of the Act. Section 25(b) was also substituted by Act No. VIII of 1981 and the amended section reads as under : --

'No order of any officer or authority passed under this Act or the rules made thereunder shall be called in question in any Civil Court.'

Rest of the Sub-clause was deleted :

The deleted portion would read as under : -- 'On any ground whatsoever including that relating to non-compliance with the provisions of this Act or the fundamental principles of judicial procedure.'

9. The amended Sub-section 25(b) seems to make it possible for Civil Court to call in question an order of an officer or authority, if the same does not relate to or arise out of the Act. However, let us first advert to the effect of Section 19(3)(e) of the amended Act of 1981 and its effect on the Civil Courts jurisdiction.

10. A Division Bench of this Court in Ghulam Mohd v. Habiba reported in 1985 Kash LJ 334 : (AIR 1986 J & K 28) also dealt briefly with the import of the amendment that was brought in 1981 in Section 19(3)(e). A decree for joint ownership coupled with decree for joint possession granted by the Civil Court was held to be valid and Civil Court jurisdiction in passing such a decree was upheld. In this judgment we shall have to specify as to what is implied by 'any other dispute relating to or arising out of the provisions of the Act'. Such disputes will not be cognizable by Civil Courts but any other dispute which does not fall in the category of 'any other dispute relating to or arising out of the provisions of this Act', is certainly cognizable by a Civil Court. For this purpose scheme of the Act of 1976 shall have to be briefly summarised.

11. Section 2 of the Act of 1976 defines various expressions in the Act. Ceiling Area is defined as land measuring twelve and a half standard acres and a proviso added to the definition. It defines among other expression 'defence force',

demarcated forest', 'evacuee's land', 'family', 'head of the family', Sub-section (8) of Section 2 defines 'intermediary' and Sub-section (9) defines 'land' Sub-section 9(e) was later amended and orchards were deleted from the definition of land. Definition of owner' and personal cultivation' is also given. Then there is the definition of the 'prospective owner' and the 'tiller' also. Sec. 3 of the Act exempts certain lands from the operation of the provisions of the Agrarian Reforms Act. Section 4 provides that all rights, title and interest in land of any person not cultivating it personally in Kharif 1971, shall be deemed to have extinguished and vested in the State free from all encumbrances, with effect from 1st. Day of May, 1973, and some lands are exempted from the operation of Section 4. Section 5 provides that land in excess of the ceiling area in personal cultivation of a tenant or owner shall vest in State. Section 7 provides resumption of land for bona fide personal cultivation by ex-landlords. Some categories are given in the said section who could resume the land up to a certain limit for bona fide personal cultivation. Section 8 provides for vesting of ownership rights in land in prospective owners subject to certain conditions which are specified in the Act and the rules made thereunder. Section 9 deals with the payment of rent by the tiller till he acquires ownership rights therein under Section 8 or until land is resumed under Section 7. Section 10 deals with the mortgage of lands. It empowers an authority to allow restitution of mortgaged properties with possession subject to certain conditions mentioned in the Act. Section 12 deals with payment of compensation in lieu of extinguishment of right in land. Section 12 makes private agreements between ex-owners and the intermediaries valid on certain specified conditions. Section 13 restricts utilization of land through a tenant and provides land to be utilized under personal cultivation. By virtue of Section 14 the tenant also cannot have land in excess of ceiling area. Power to dispose of surplus land is given to the State by Section 14. Liabilities are fixed during the interim period and there is prohibition on transfer of land by virtue of Sections 16 and 17 respectively. Chapter III begins from Section 18 and deals with class of officers and authorities and their powers. Section 26 deals with the supplementary matters and unauthorised raising of orchards or plantation of trees on State land by a person and the Collector's authority in respect of the same. Section 27 authorises Revenue Officer to use such force as may be necessary in his opinion for affecting transfer or acquisition

from or delivery of possession of lands under the Act. Section 28 specifies the rights and liabilities of the prospective owner. Section 29 gives immunity to the officers under the Act in respect of anything done by them in good faith under the Act. Section 30 deals with wrong or excess payment recoverable as arrears of land revenue. Section 31 imposes restrictions on alienation and felling or removal of trees subject to certain conditions mentioned in this section. By virtue of Section 32 the Act has overriding effect over other laws. Section 33 empowers the Revenue Minister to issue instructions. By virtue of Section 34 costs incurred in attachment and auction proceedings under Section 26 are to be recovered as land revenue. Section 35 imposes a bar on any transfer which has the effect of defeating the provisions of the Act. Section 36 brings the restrictions on alienation etc. within the ambit of reasonableness. Chapter V deals with penalties and Chapter VI with the framing of rules and with the provisions as regards succession. It provides that save as otherwise expressly provided nothing in this Act shall be construed to affect the personal or statutory law of succession in respect of ownership rights applicable to persons. Section 42 makes certain Acts inapplicable in so far as they are inconsistent with the provisions of this Act.

12. The aforesaid scheme of the Act and the matters with which the Act deals is briefly given hereinabove to understand the import of Clause (e) of Section 19(3) of the Act of 1976.

13. Even the Full Bench authority of AIR 1980J & K 1 (supra) has held that the Clause (e) of Section 19(3) will not apply to suits or proceedings which merely involved the determination of question of title or right on the basis of succession and inheritance on partition without claiming possession. Certain matters which could be determined by Civil Court only are as regards custom of making Khananishin daughter or adopted son. In short, it was held even under the unamended provisions that declaration of title and as regards succession and inheritance could be given by Civil Court, but question of possession of the property if raised, is to be decided by the Collector.

14. From a plain reading of amended Section 19(3)(e) it becomes clear that only those matters which arise out of the Act or relate to the provisions of the Act are to

be decided by the officers and authorities under the Act and other matters which do not fall in this category are to be dealt with or decided by the Civil Court, Section 19(3)(e) as amended has narrowed down and limited the jurisdiction of a Collector in respect of other matters which are outside the ambit of Clause (e) of Section 19(3). Those matters which could be said to be outside the ambit of Section 19(3)(e), as amended, may be illustrated as under :---

i) Suit for declaration of title in respect of land in which dispute is raised as regards possession of the land.

15. The said dispute may be cognizable by a Civil Court, but as regards the delivery of possession, the matter shall have to be referred to the authorities under the Agrarian Reforms Act because delivery of possession may involve determination of the question of ceiling area.

(ii) Suit for right of prior purchase in which possession also is claimed.

16. Such a suit will be cognizable by a Civil Court in so far as the determination of right of prior purchase is concerned. If the suit is decreed and the right of a pre-emptor is determined by a Civil Court, the question of delivery of possession of land shall have to be considered by the authorities under the Agrarian Reforms Act in the light of the provisions of that Act so as not to enlarge the ceiling area of the pre-emptor.

(iii) A suit regarding ownership of land based on custom of adoption of Khananishin daughter in which possession is also claimed.

17. Validity and existence and factum of custom is to be determined by a Civil Court and any question relating to the delivery of possession is to be referred to the Collector who will settle the same in the light of the provisions of the Act,

(iv) In a suit in which a document such as sale, gift or any other document concerning the land is challenged on the ground of its being void, ineffective, inoperative is to be tried by a Civil Court if the additional relief in such a suit is relief for possession, the matter relating to the question of delivery of possession shall have to be referred to the Collector for settling it in the light of the provisions

of the Act.

(v) In a suit in which a compromise decree, or a contested decree is challenged on the ground of its having been passed on the ground of fraud, misrepresentation, undue influence etc. etc., relating to land shall be cognizable by a Civil Court and not by the collector.

18. In such a suit if the plaintiff succeeds in establishing his title and in avoiding the decree or the compromise deed, the question of delivery of possession is squarely to be determined by the Collector.

(vi) A person in possession of land claiming ownership by prescription can bring a civil suit because Collector will not be competent to pronounce on the question of adverse possession, which would involve the determination of extinguishment of title of a true owner in favour of a person in possession on the sole ground of prescription. This type of suit will be only declaratory because the plaintiff in such a suit will be in possession of the land and no question of delivery of possession would arise.

(vii) Then there are suits which are saved from the operation of the Act by virtue of Section 41. These suits relate to succession and partition on the ground of personal law and statutory law.

19. Above is only an illustrative list of cases and not an exhaustive one, because it is well nigh impossible to give an illustrative list of cases cognizance whereof will be taken by the Civil Courts. Suffice it to say that all suits which do not arise out of the Act and which do not relate to any matter specified in the Act will be taken cognizance by a Civil Court. By way of illustration we have shown that in respect of the aforesaid matters there is no scheme in the Act which could empower any authority or any officer under the Act to hold an enquiry or trial of such case. The authority of the officers or the authorities under the Act is restricted to only certain matters for which the Act is framed and which are specified in the Act. For instance following will be the suits whose cognizance by (he Civil Court will be barred- This is also illustrative and not exhaustive.

(a) As to who was in actual cultivating possession in Kharif, 1971 is a matter which is to be gone into by the authorities under the Act and Civil Court will not deal with such a matter.

(b) As to whether the land is held in excess of the ceiling area by an ex-owner or intermediary is a matter to be dealt with by the authority or the officer under the Act.

(c) As to whether the land was an orchard or land as defined in the Act is to be determined by the authority or the officer under the Act.

(d) The distribution of surplus land is a matter which is to be dealt with by the authorities under the Act.

(e) If a question arises as to who is an intermediary for the purposes of the Act, that will be cognizable by the authority or the officer under the Act.

(f) As to who is entitled to resumption of land for personal cultivation under the Act is a matter for determination of the authority or the officer under the Act. Even the bona fides of such resumption is to be determined by the authorities or the officers under the Act.

(g) Vesting of land in prospective owner is also a question which arises under the Act and is to be determined by the authorities and officers under the Act.

(h) Payment of rent till vesting or resumption takes place is also to be dealt with by the authorities under the Act because there is no scheme for enforcing right to recover compensation from the tenant.

(i) All questions relating to land revenue, its assessment payment and recoveries are to be dealt with under the Act.

(j) Matters relating to private agreements between intermediaries and ex-owners as regards cultivation of land are also to be dealt with by the authorities and officers under the Act.

(k) Restriction on alienation of land or felling or removal of trees subject to certain conditions is to be determined by the officers or authorities under the Act.

20. The above are cases, which are only illustrative and by no means exhaustive, which are cognizable by the authorities or the officers under the Act.

21. Section 19(3)(e) has changed the law drastically in so far as the jurisdiction of the Civil Court over certain matters is concerned. By amending law it is now possible that matters and disputes which do not relate to the provisions of the Act and do not arise out of the Act are to be dealt with by a Civil Court. Only such matters which arise out of the Act and relate to the Act are to be dealt with by the authorities or officers under the Act. So any matter which the amending Act of 1981 excludes from the jurisdiction of authorities or the officers under the Act is to be dealt with by a Civil Court. This is by operation of law which is in the form of amended Section 19(3)(e) of Act No. VIII of 1981. In this view of the matter, the Full Bench authority of *Jagtu v. Badri* will not hold the field now because that authority is superseded by the change which was effected in law in 1981. It will be Clause 19(3)(e) as interpreted by us which will determine the jurisdiction of Civil Courts as also the authorities and officers under the Act.

22. The proposition laid down in the Division Bench authority of this Court in *Gh. Mohd. v. Habiba*, 1985 Kash LJ 334 : (AIR 1986 J & K 28) (supra) cannot therefore be doubted and is to be accepted though the learned Judges constituting the Division Bench have not elaborated the reasons in support of their views expressed in the said judgment.

23. We do not doubt the correctness or the reasoning of the Full Bench authority in *Jagtu v. Badri*, (AIR 1980 J & K 1). We only hold that the said authority is no longer applicable because Section 19(3)(a) has undergone a drastic change and the jurisdiction of the authorities and the officers under the Act is narrowed down and restricted. We also feel that the Legislature in its wisdom has recognized the importance of jurisdiction of Civil Courts in respect of disputes which do not relate to or arise out of the Agrarian Reforms Act. The law as it stood in 1980 was properly interpreted by the earlier Full Bench, but since the law has undergone change, therefore the Full Bench authority has lost its importance.

24. Regarding the question No. 1 formulated by the learned single Judge as regards view expressed by the Full Bench in Jagtu v. Badri, we hold that after Clause (e) of Section 19(3) has been amended by virtue of Act No. VIII of 1981, the said view could not hold good and may not be valid.

25. That brings us to the second question as regards whose view will prevail about the jurisdiction of Civil Court and of the authorities under the Agrarian Reforms Act. This question will not pose any difficulty because the authority of Civil Court to decide its own jurisdiction cannot be questioned by the Collector. Any Civil Court is vested with the power to decide its own jurisdiction and that seems to have been recognized by amending Clause (b) of Section 25 of the Act. Therefore, it will be Civil Court which will be competent to say, if a matter is brought before it, as to whether it is to be decided by the Civil Court or by the Collector or any authority under the Act. Once a matter is referred by the Civil Court to the Collector, it hardly would lie in the hands of the Collector to refuse to pronounce on the matter by saying that Civil Court has the jurisdiction to decide the matter. He is bound by the orders of the Civil Court and has to take the proceedings to its logical conclusion. Power of Civil Court to refer the matters to the Collector are inherent in a Civil Court which powers do not seem to be available to the Collector or any other authority under the Act. However, it would not mean that the Collector would taken cognizance of all the disputes which are outside the ambit of Section 19(3)(e). If any dispute is brought before the Collector or any other authority under the Act, if the dispute relates to the Act or arises out of the provisions of the Act, he will readily assume the jurisdiction. If it is outside the purview of the Act and does not relate to the Act, he will be at liberty to direct the parties to agitate the matter before the Civil Court, he has no right to transfer such a dispute to the Civil Court. But he should return the application to the party who has brought the dispute before him with a direction that he should agitate the matter in a Civil Court. Civil Court's jurisdiction on the other hand to transfer the matter to the Collector remains unaffected, if the matter brought before it is considered by the Civil Court, relating, to the provisions of the Act or arising out of the Act, Collector cannot sit in judgment over the order of the Civil Court, but the Civil Court will at the same time specify the dispute which is sought to be transferred by it to the Collector and give reasons as to why such a dispute is transferred. The mechanical orders of transfer

saying that dispute is cognizable by the Collector are to be avoided to be passed. Such orders may confuse the Collector and the authorities under the Act also. Therefore, it requires that the Civil Court will after assigning reasons transfer such dispute to the Collector or any authority under the Act which relates or arises out of the Act. Sweeping powers given to the authorities or the Collector under the Act by virtue of Section 25 of the Act have also undergone a drastic change because now the Section 25(b) reads only as under : --

'No order of an officer or authority passed under this Act or the rules made thereunder shall be called in question in any Civil Court.'

26. This would not include order of a Civil Court transferring a dispute or matter which arises out of the Act or relates to the Act, to the Collector or an officer or authority under the Act. This finding is given only as regards powers of Civil Court and Collector in respect of matters which are to be heard by them. Party aggrieved against the order of the Civil Court, taking cognizance or refusing to take cognizance in the matter relating to land, has other remedies available under the C.P.C. But certainly the Collector or any officer under the Act will not sit in revision, appeal over the head of Civil Court and it has to accept the reference made to it by the Civil Court and take cognizance of the dispute referred to it.

27. Therefore, our answer to question No. 2 will be that if the Civil Court says that certain disputes raised in the suit before it are triable by the Collector or any officer under the Act and refers the same to the Collector, the Collector is not competent to make a further reference saying that the dispute referred to it by the Civil Court is not cognizable by it. However, if the order of the Civil Court is mechanical without reasoning, the Collector may seek guidance from the Civil Court in such matters. If the Collector or any officer under the Act independently takes cognizance of a dispute which in his opinion is not cognizable by him, by virtue of change in law and does not relate to the provisions of the Act or arises out of the Act, he may direct the party bringing such dispute before him to agitate the matter in Civil Court and he cannot make a reference to the Civil Court. No such power is given to an authority, officer or Collector under the Act.

28. The single Bench authority of this Court in 1979 J & K LR 466, (Hari Singh v. Gurdharan Singh) is based on unamended Section 19(3)(e) of the Act. Therefore is not a good law now in view of the change in law and in view of what has been stated hereinabove.

29. 1978 J & K LR 680, (Dharmarth Trust v. Gh. Mohd. Drabu) deals with a different point. In this case the defendant had not challenged the nature of the suit land. Plaintiff had averred that the suit land was being used for residential and commercial purposes which was admitted by the defendant. Therefore, in view of that admission it was held that the Civil Court could determine on the basis of the pleadings as to whether the suit land was covered by Section 2(9) of the Act or not. The law laid down in this authority seems to be correct and does not warrant any comment.

30. 1980 Srinagar LJ 254, (Mohinder Pal v. Mst. Kailash Devi) does not seem to be good law now. The said authority is based on unamended Section 19(3)(e) and lays down some propositions which are in direct conflict with the proposition laid down in the Full Bench Jagtu v. Badri. However the authority has lost its force now because the law on the subject has changed.

31. 1980 Srinagar LJ 336, (Gh. Mohd. Hafiz v. Rajab Bodh) deals with Section 25 only. However, this authority also does not seem to be laying down a correct proposition of law because the Civil Court's competence to decide its own jurisdiction is inherent in every Civil Court which cannot be taken away even by Section 25. If the Civil Court holds that it has no jurisdiction to decide a dispute because of the operation of the Agrarian Reforms Act, it can refer the matter to the Collector. Therefore conversely speaking, Civil Court has competence to decide whether dispute is cognizable by it or not. Only such disputes will be barred by Civil Court, which relate to the provisions of the Act or which arise out of the Act.

32. 1980 Srinagar LJ 522, (Ama v. Mst. Azizi) does not seem to lay down the correct law. The suit was for partition and for possession. The question of inheritance and succession was involved in the suit and property of one Shaban Wani was claimed. The determination as regards title and ownership could be given by the Civil Court even on the basis of the law as it then stood. The question

of delivery of possession alone was to be referred to the officers and authorities under the Act. The whole suit seems to have been transferred to the Collector probably on the basis of Section 19(3)(e).

Now that section has been amended and Clause (e) has been recast. Therefore this authority also would not hold the field.

33. During the course of hearing, it was observed by us that some single Bench authorities given on the subject on the basis of unamended Section 19(3)(e) were in direct conflict with the authoritative pronouncement given in the Full Bench judgment Jagtu v. Badri, (AIR 1980 J&K; 1). This naturally must have created a lot of confusion to the subordinate Courts and to the litigant public. We have tried to clear the confusion and interpreted the amended section in the simplest possible terms so as to make it intelligible even to layman. The subordinate Courts therefore need not rely on any authority which is based on unamended Section 19(3)(e) of the Act because the amendment has the effect of change of law on the subject and on the basis of changed law we have answered the questions under reference and set at rest the controversy in so far as the interpretation of Section 19(3)(e) of the Act and in so far as the powers of Civil Court as regards making of reference is concerned.

Gupta, J.

34. I agree.

Rizvi, J.

35. I agree.