

A DEOKINANDAN AND ORS.

v.

SURAJPAL AND ORS.

OCTOBER 30, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*U.P. Zamindari Abolition and Land Reforms Act, 1951.*

C S.331—Cognizance of suits—Held, Civil Court lacked jurisdiction to go into the question of title in respect of land governed by the Act.

*Practice and Procedure :*

D Counter affidavit—Not filed even after Court's order that right to file counter affidavit would be forfeited if the same was not filed within time granted—Right to file counter affidavit forfeited.

E In a civil suit in respect of the land, governed by the U.P. Zamindari Abolition and Land Reforms Act, 1951, the defendant raised an objection before the Civil Court that the suit was barred by provisions of S.331 of the Act. The Trial Court as well as the appellate Court negated the objection. The High Court dismissed the second appeal *in limine*. Aggrieved, the defendant filed the appeal by special leave.

Allowing the appeal, this Court

F HELD : Since the lands are admittedly covered by the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951, the Civil Court inherently lacked jurisdiction to go into the question of title. [560-C]

*Chandrika Misir & Anr. v. Bhaiya Lal*, [1974] 1 SCR 290, relied on.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9869 of 1995.

From the Judgment and Order dated 5.11.88 of the Allahabad High Court in S.A. No. 2207 of 1988.

H S. Kulshreshtha for the Appellants.

K.K. Gupta (N.P) for the Respondents.

A

The following Order of the Court was delivered :

This Court had given time on September 1, 1995 to Mr. K.K. Gupta, Advocate, to file counter-affidavit within four weeks from that date and on failure to do the same, it was stated that he would forfeit the right to file the counter-affidavit and the matter would be disposed of on merits without reference to any counter- affidavit. The petitioner had already served the notices on all the other respondents and dasti service also was effected. Notices accordingly have been served. But counter-affidavit has not been filed till today. The right to file counter-affidavit is forfeited.

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Leave granted.

The controversy is no longer *res integra*. Admittedly, the suit lands are governed by the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951 [for short, 'the Act']. The appellant had raised the objection to the jurisdiction of the Civil Court in his defence in the Trial Court. He pleaded thus :

D

"The suit is barred under the provisions of section 331 of U.P. Zamindari & Land Reforms Act. The sale is not barred under the provisions of section 168-A of Z.A. Act. The plaintiff's suit is liable to be dismissed with costs."

E

In the appellant Court also the same point has been reiterated but negatived. The second appeal was dismissed by the High Court *in limine*. Thus this appeal by special leave.

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This Court in *Chandrika Misir & Anr. v. Bhaiya Lal*, [1974] 1 SCR 290 had to deal with the same question. It was held that :

"Sections 209 and 331 of U.P. Zaminadari Abolition and Land Reforms Act, 1951, when read together, showed that a suit, like the present one, had to be filed in a Special Court created under the Act within a period of limitation specially prescribed under the Rules made under the Act, and the jurisdiction of the ordinary Civil Courts to entertain the suit was absolutely barred.

G

Since the Civil Court which entertained the suit suffered from an

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- A inherent lack of jurisdiction because of special provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1951, the present appeal filed by the appellants had to be dismissed."

- B The above ratio applies to the facts in this case. As pointed out earlier, the lands are covered by the provisions of the Act and express objection as to the jurisdiction of the Civil Court was raised. The appellant had purchased 0.7 acres of land out of 2.17 acres. The abadi site comprises one Kachha Kotha and Ghar having boundary walls. Since the lands are admittedly covered by the provisions of the Act, the Civil Court inherently lacked jurisdiction to go into the question of title.

- C The appeal is accordingly allowed and the suit stands dismissed in so far as it relates to 0.7 acres of land purchased by the appellant. No costs.

R.P.

Appeal allowed.