

FAQIR (DEAD) THROUGH SHYAM DEO

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v.

KISHORI @ LALLOO AND ANR.

APRIL 25, 1995

[KULDIP SINGH, N. VENKATACHALA AND  
S. SAGHIR AHMAD, JJ.]

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*U.P. Consolidation of Holdings Act, 1953:*

*Ss.4, 9-A(2)—Consolidation Proceedings—Objections—Revenue entries sought to be corrected on basis of decree passed by civil court in a suit for injunction or in the alternative for possession filed in 1954—Held, in view of provisions of S.331 and Schedule II to U.P. Zamindari Abolition & Land Reforms Act, as they stood at the time of filing of suit, the suit could be filed only in civil court and not in revenue court—Consolidation Courts not justified in ignoring the decree.*

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*U.P. Zamindari Abolition and Land Reforms Act, 1950:*

*Ss.208, 209, 331 and Schedule II (as it stood prior to U.P. Land Reforms (Amendment) Act 18 of 1956)—Cognizance of suits etc.—Held, prior to amendment by Amendment Act 18 of 1956, suits covered under ss.208 and 209 could be filed only in civil court and not in revenue court—Amendment did not affect pending suits, or rights of appeal, review or revision available under original provision.*

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On commencement of proceedings under the Uttar Pradesh Consolidation of Holdings Act 1953, the plots in dispute were found recorded in the name of the appellant. The respondent filed objections under s.9A(2) of the Act contending that the land was his *sir* and *khudkast* even before the enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and on the date of vesting, he became its *bhumidhar*; since the appellant was trying to interfere with the possession of the respondent, he filed a civil suit on 5.1.1954 for permanent injunction and in the alternative for possession over the land in dispute; the suit was dismissed by the trial court but the appellate court decreed the suit and the respondent obtained "*Dakhal Dehani*"; the second appeal and the special appeal filed by the appellant were dismissed by the High Court, and the said decree operated

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A as res- judicata. It was further stated that inspite of the decree and "*dakhal dehani*", revenue entries continued in the name of the appellant and, therefore, the respondent had to file a suit under s.229-B of the ZA & LR Act for declaration of his *bhumidhari* rights and for expunction of entries in favour of the appellant, but the suit abated as meanwhile the land in dispute was brought under consolidation operations. The Consolidation Officer dismissed the objections of the respondent. Being unsuccessful before the appellate authority and in the revision, the respondent filed a writ petition before the High Court, which allowed his claim and quashed the judgment and order passed by the Consolidation Officer with the direction that the entries existing in favour of the appellant in respect of the land in dispute be expunged. Aggrieved, the appellant filed the appeal by special leave.

D It was contended for the appellant that the High Court erred in not following the decision of this Court in *Chandrika Misr's\** case which laid down that the civil court had no jurisdiction to entertain the suit of the nature involved in that case in respect of agricultural lands and that such a suit could be filed only before the Revenue Court. The respondent supported the judgment of the High Court stating that, apart from the decision in *Chandrika Misr's* case being based on concession, the relevant provisions of the Zamindari Abolition and Land Reforms Act relating to the jurisdiction of the civil or revenue courts were not brought to the notice of the Court and as such it was a judgment rendered per incuriam and had no binding effect.

F Dismissing the appeal, this Court

G HELD : 1.1. In view of the provisions contained in s.331 as also in Schedule II to the U.P. Zamindari Abolition and Land Reforms Act, 1950, as they stood then (i.e. on 5.1.1954, the date on which the respondent filed the suit), the suit could be filed only in the civil court and not in the revenue court. Consequently, the decree passed in that suit by the trial court which was upheld by the lower appellate court as also by the High Court was binding on the appellant against whom the suit was filed and the consolidation courts were not justified in ignoring the decree on the ground that this Court in *Chandrika Misr's* case had laid down that a suit under s.209 could be filed only in the revenue court and a decree passed by the civil court was a nullity. The High Court, therefore, was right in allowing the writ petition

and quashing the orders passed by the consolidation authorities.

[p.753-E-G]

1.2. Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950, deals with cognizance by Revenue Courts of suits etc. enumerated in Schedule II to the Act. Schedule II as it originally stood did not contain any entry pertaining to suits under s.208 ("Suit for injunction or for repair of waste or damage") or to suits under s.209 ("Suit for ejection of person occupying land without title). These entries were introduced by the U.P. Land Reforms (Amendment) Act 18 of 1956 with effect from 28.5.1956. In view of the "Saving" provision of s.23 of the Amendment Act, the conferment of exclusive jurisdiction on the revenue courts by the Amendment Act did not affect the pending suits or rights of appeal, review or revision available under the original provisions. [pp. 752-D-H; 753-A]

1.3. The basis of the decision of this Court in *Chandrika Misr's case\** is the statutory provision contained in s.331 as also Schedule II of the U.P. Zamindari Abolition and Land Reforms Act. The Court held that the suit under s.209 for ejection of persons occupying land without title could be filed only in the court of Assistant Collector, which was described as the court of original jurisdiction at serial no. 24 of Schedule II to the Act. This error was caused on account of non-consideration of the statutory provisions as they stood on the relevant date i.e. 5.9.1955, when the suit was filed. The statutory provisions including the entries in Schedule II as originally contained in the Act, were not brought to the notice of this Court, nor was it brought to its notice that exclusive jurisdiction on the revenue courts was conferred by the amendment introduced in the Act by U.P. Act 18 of 1956. Since the suits under s.209 of the Act were made cognizable by the revenue courts only with effect from 28.5.1956, the suit filed on 5.9.1955 was cognizable by the civil court and not by the revenue court. [pp. 751-D, 752-B-C; 753-B-D]

\**Chandrika Misr v. Bhaiya Lal and Others*, AIR (1973) SC 2391 = SCR [1974] 1 P.290, held per incuriam.

2. As regards the observation of the High Court that the decision in *Chandrika Misr's case* was based on concession, the concession made by the counsel was not the basis of the judgment in that case. What was conceded by the counsel was that the question of lack of jurisdiction in the trial court could be raised even at the execution stage. The question that the civil court had no jurisdiction to entertain the suit and that the suit could be enter-

**A** tained only by the revenue court was not conceded and that question was decided by the Court on merits. [pp. 750-E-F; 751-A-B]

*\*Chandrika Misr v. Bhaiya Lal and Others*, AIR (1973) SC 2391 = SCR [1974] 1 P.290, explained.

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1691 of 1987.

From the Judgment and Order dated 11.12.86 of the Allahabad High Court in C.M.W.P. No. 4714 of 1975.

**C** Shiva Pujan Singh and Manoj Prasad (N.P.) for the Appellant.

J.P. Goyal, M.R. Bidsar and K.K. Gupta (N.P.) for the Respondents.

The Judgment of the Court was delivered by

**D** **S. SAGHIR AHMAD, J.** The correctness of the decision of this Court in *Chandrika Misr v. Bhaiya Lal and Others*, AIR (1973) SC 2391 is questioned in this appeal on the ground that an important statutory provision relating to the jurisdiction of Civil or Revenue Court, as contained in the U.P. Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred to as ZA & LR Act) was not brought to the notice of the Court and, therefore, the decision was rendered *per incuriam*. It is also questioned on the ground that decision was based on a wrong concession made on a question of law by the counsel appearing on behalf of one of the parties to the appeal.

**F** This question has arisen in the circumstances set out hereinbelow.

On the initiation of proceedings under the U.P. Consolidation of Holdings Act, plots of Khatas No. 156 and 266 situated in Village Chibila Pargana Mahaich, District Varanasi, were found recorded in the name of Faqir, who died during the pendency of proceedings in the High Court, and has since been substituted by his legal representatives. There were other Khatas also in dispute but for the purpose of the present appeal we need not look to the respective claims concerning those Khatas.

**H** Kishori @ Lalloo, who is respondent No. 1 in this appeal, filed objections under Section 9A(2) of the U.P. Consolidation of Holdings Act

(hereinafter referred to as the 'Consolidation Act') setting out therein that the land of the said two khatas was his *Sir* and *khudkhast* land even before the enforcement of the ZA&LR Act and, therefore, on the date of vesting, he became its Bhumidhar. It was also set out therein that since Faqir, who was respondent No. 4 before the High Court, was trying to interfere with his possession, he filed Regular Suit No. 5 of 1954 in the Court of Munsif on 5.1.54 for a decree for permanent injunction to restrain Faqir from interfering with his possession and in the alternative for possession over the plots in question but the suit was dismissed by the trial Court viz. the Munsif, on 10th October, 1956. He, viz., Kishori, then filed an appeal which was allowed by the Civil Judge on 29th October, 1958 and a decree was passed against Faqir and "Dakhal Dehani" was obtained by him on 19th November, 1957. Faqir then filed Second Appeal No. 2328 of 1957 in the High Court at Allahabad but it was dismissed on 12th July, 1961. The Special Appeal No. 323 of 1961 filed thereafter by Faqir before a Division Bench of the High Court was also dismissed on 9th July, 1965. These decrees, it was claimed, operated as *res judicata*. It was indicated in the objections that in spite of the aforesaid decree and "Dakhal Dehani", the revenue entries continued in the name of Faqir and, therefore, he had to file a suit for declaration of his bhumidari rights and for expunction of the entries existing in favour of Faqir. This suit was filed under Section 229-B of the ZA & LR Act, but the suit abated as the village in the meantime, was notified for consolidation operations under Section 4 of the Consolidation Act on 15th May, 1971. It was prayed by him before the Consolidation Officer that the entries existing in the revenue record, in favour of Faqir may be expunged.

Faqir in his reply denied the claims of Kishori and contended that the decree passed by the Civil Court was a nullity as the Civil Court had no jurisdiction to entertain the suit for permanent injunction or for the alternative relief of possession and that such a suit could be filed only before the Revenue Courts.

The Consolidation Officer by judgment and order dated 13th December, 1972 dismissed the objections filed by Kishori and maintained the entries in favour of Faqir. This decision was challenged by Kishori in an appeal which was dismissed on 21st December, 1973 by the Assistant Settlement Officer, Consolidation. The Revision, which was thereafter filed by Kishori, was dismissed by the Deputy Director of Consolidation.

A Kishori, then filed Civil Miscellaneous Writ Petition No. 4714 of 1975 in the High Court which was allowed by judgment and order dated 11th December, 1986 and the judgment and order passed by the Consolidation Authorities were quashed with the direction that the entries existing in favour of Faqir in respect of Khatas No. 156 and 266 be expunged. It is against this judgment that this appeal has been filed.

B Learned counsel appearing on behalf of the appellant has contended that the High Court was in error in not following the decision of this Court in *Chandrika Misr v. Bhaiya Lal and Others*, AIR (1973) SC 2391 in which it is clearly laid down that the Civil Court had no jurisdiction to entertain the suit of the nature involved in that case in respect of agricultural plots and that such a suit could be filed only before the Revenue Courts.

C Learned counsel for the respondent, on the contrary, has contended that the High Court was justified in not following the decision of this Court in *Chandrika Misr's* case as that decision was based on a concession, on a vital question of law, made by the counsel appearing in this case as also on the ground that the relevant provisions of the ZA&LR Act, relating to the jurisdiction of the Civil or revenue Courts were not brought to the notice of the Court. It was contended that the judgment passed by this Court was, therefore, a judgment rendered *per incuriam* and had no binding effect.

E A perusal of the judgment passed by the High Court shows that the High Court did not follow the decision in *Chandrika Misr's* case for two reasons: the first being that it was based on a concession made by the counsel in that case on a question of law which was not correct and the second being that the judgment was rendered *per incuriam*.

F So far as the concession made by the counsel on the question of law is concerned, we may observe that the concession was not the basis of the judgment. The observation of the Court in that regard may be quoted below:

G "But the unfortunate part of the whole case is that the Civil Court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the defendant in the Trial Court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogeshwar Prasad, even in execution proceed-

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ings on the ground that the decree was a nullity. A

The portion extracted above would indicate that what was conceded by the counsel in that case was that the question of lack of jurisdiction in the trial Court could be raised even at the execution stage. The question that the Civil Court had no jurisdiction to entertain the suit and that the suit could be entertained only by the Revenue Court was not conceded and that question was decided by the Court itself on merits. B

Let us now proceed to examine the decision of this Court in *Chandrika Misr's* case (supra) to find out whether the decision was rendered on due consideration of relevant statutory provisions relating to the question of jurisdiction of Civil or Revenue Court in entertaining a suit of the nature, filed by Kishori (respondent no. 1), against Faqir in whose favour the revenue entries existed in the records, even on the date of initiation of consolidation proceedings. C

The basis of the decision of this Court in *Chandrika Misr's* case (supra) is the statutory provision contained in Section 331 as also Schedule II of the U.P. Zamindari Abolition and Land Reforms Act. This Court quoted the provisions of Section 331 and discussed its relevancy in the light of Schedule II as under:- D

"Section 331 so far as it is relevant is as follows : E

"331. Cognizance of suits, etc., under this Act.

(1) Except as provided by or under this Act no Court other than a Court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof." F

Schedule II at serial no. 24 shows that a suit for ejection of persons occupying land without title under s.209 should be filed in the court of the Assistant Collector, First Class, which is described as the Court of Original Jurisdiction. In view of Section 331 (1) quoted above it is evident that the suit made cognizable by a special court i.e. the Court of the Assistant Collector, First Class, could not be filed in a Civil Court and the Civil Court was, therefore, inherently lacking in jurisdiction to entertain such a suit. It is H

A           unfortunate that this position in law was not noticed in the several  
 Courts through which this litigation has passed, not even by the  
 High Court which had specifically come to the conclusion that the  
 period of limitation was the one laid down by the rules under U.P.  
 Act No. 1 of 1951. Since the Civil Court which entertained the suit  
 B           suffered from an inherent lack of jurisdiction, the present appeal  
 filed by the plaintiffs will have to be dismissed."

It is set out in para I of the report that the Suit was filed on 5th  
 September, 1955. It will be seen from the portion of the decision extracted  
 above that this Court proceeded to hold that the Suit under Section 209  
 C           for ejectment of persons occupying land without title could be filed only in  
 the Court of the Assistant Collector, First Class, which was described as  
 the Court of original jurisdiction as serial no. 24 of Schedule II of the Act.

U.P. Zamindari Abolition and Land Reforms Act came into force in  
 1952 and Schedule II, as it originally existed in the Act, did not contain any  
 D           entry pertaining to the suits under section 209 of the Act. This entry was  
 introduced for the first time by the U.P. Land Reforms (Amendment) Act  
 No. 18 of 56 with effect from 28th May, 1956 which repealed U.P. Land  
 Reforms (Amendment) (Second) Ordinance, 1956. Another entry viz. entry  
 E           relating to "Suit for injunction or for the repair or waste or damage"  
 contemplated by Section 208 of the Act was also included in Schedule II  
 by the aforesaid Amendment Act, with effect from the same date, namely,  
 from 28th May, 1956. Section 23 of the Amendment Act provides as under:

"Saving : (1) Any amendment made by this Act shall not effect the  
 F           validity, invalidity, effect or consequence of anything al-  
 ready done or suffered, or any right, title, obligation or  
 liability already acquired, accrued or incurred or any  
 jurisdiction already exercised and any proceeding in-  
 stituted or commenced before any court or authority prior  
 to the commencement of this Act shall, notwithstanding  
 G           any amendment herein by such court or authority.

(ii) An appeal, review or revision from any suit or  
 proceeding instituted or commenced before any court or  
 authority prior to the commencement of this Act shall,  
 notwithstanding any amendment herein made, lie to the  
 H           Court or authority to which it would have laid if instituted



or commenced before the said commencement." A

In view of the above saving provision, the conferment of exclusive jurisdiction on the Revenue Courts by the Amending Act did not affect the pending Suits or right of appeal, review or revision available under the original provisions. B

The statutory provisions including the entries in Schedule II as originally contained in the Act, were not brought to the notice of this Court in *Chandrika Misr's* case nor was it brought to its notice that exclusive jurisdiction on the revenue Courts was conferred by the amendment introduced in the Act by U.P. Act No. 18 of 1956. Consequently it proceeded to lay down that a suit which was filed on 5th September, 1953 could be filed only in the Court of the Assistant Collector, First Class and not in the Civil Court. C

This error was caused on account of non-consideration of the statutory provision as they existed on the relevant date. Since the Suits under 209 of the Act were made cognizable by the Revenue Court only with effect from 28th May, 1956, the suit in *Chandrika Misr's* case which was filed on 5th September, 1955 was, therefore, cognizable by the Civil Court and not by the Revenue Court. D

In the instant case, as pointed out earlier, the suit was filed by Kishori on 5th January, 1954. On that date, in view of the provisions contained in Section 331 as also in Sch.II as they stood then, the suit could be filed only in the Civil Court and not in the Revenue Court. Consequently, the decree passed in that suit by the trial Court, which was upheld by the lower Appellate Court as also in the High Court by the Single Judge and thereafter by the Division Bench, were binding on Faqir against whom the suit was filed and the consolidation Courts were not justified in ignoring those decrees on the ground that this Court in *Chandrika Misr's* case (supra) had laid down that a suit under Section 209 could be filed only in the Revenue Court and a decree passed by the Civil Court was a nullity. The High Court, in our opinion, was, therefore, right in allowing the Writ Petition and quashing the orders passed by the consolidation authorities. E F G

The appeal having no force is, therefore, dismissed. There will be no order as to costs.

R.P.

Appeal dismissed.