IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 13th OF FEBRUARY, 2024

CIVIL REVISION No.796 of 2023

BETWEEN:-

OLPHERTS PRIVATE LTD. THROUGH ITS DIRECTOR B.D. GAUTAM S/O SHRI SADANAND GAUTAM R/O A.C.C COLONY, KATNI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI KISHORE SHRIVASTAVA, SENIOR ADVOCATE WITH SHRI RAMAN CHOUBEY, ADVOCATE)

AND

1. **SARLA DEVI MAHILA MANDAL THROUGH ITS PRESIDENT SMT. PRYANKA YADAV (MADHYA PRADESH)**
2. **SHIMLA YADAV W/O BRIJ KISHORE, AGED ABOUT 59 YEARS, OCCUPATION: SECRETARY SARLA DEVI MAHILA MANDAL R/OB JHARAA TIKURIYA KATNI (MADHYA PRADESH)**
3. **STATE OF M.P. THROUGH COLLECTOR, KATNI (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI YASHPAL PATEL, ADVOCATE FOR RESPONDENT 1)
(BY SHRI SURENDRA TIWARI, PANEL LAWYER FOR RESPONDENT 3-STATE)

....

This revision coming on for admission, this day, the court passed the following:

ORDER

This civil revision has been preferred by the petitioner/defendant 1 challenging the order dtd. 19.07.2023 passed by 3rd Civil Judge Junior Division, Katni in RCSA No.218/2021 whereby defendant 1's application under Order 7 Rule 11 CPC has been dismissed.

2. Learned counsel for the petitioner submits that the plaintiffs/ respondents 1-2 being encroachers on the land, an order of dispossession was passed on 23.02.2021 by Tahsildar Katni under Section 248 of the MP Land Revenue Code, 1959 (in short 'the Code'), against which an appeal was preferred by the plaintiffs before SDO, which was also dismissed on 23.09.2021, but during pendency of this appeal itself, the plaintiffs instituted instant suit on 27.07.2021 even without waiting for decision of revenue first appeal. He submits that the order passed by SDO was also challenged by plaintiffs before Additional Commissioner by filing revenue second appeal, which was dismissed on 28.10.2021 as not maintainable and W.P. No. 24685/2021 filed against which, was not entertained due to filing of civil suit and was disposed off on 15.11.2021 by the High Court and taking benefit of this order passed by High Court observing therein to pursue remedy of civil suit, the plaintiffs want to continue with the suit, whereas on the date of filing of civil suit, it was not maintainable without exhausting all the statutory remedies available under the Code. By placing reliance on decision of Supreme Court in the case of **DHULABHAI ETC.** *VERSUS* **STATE OF M.P. AND ANOTHER AIR 1969 SC 78** (para 32) he submits that where a special statute provides alternative remedy, then jurisdiction of civil Court is excluded. Although he also placed reliance on a decision of a co-ordinate Bench of this Court

in the case of Mansik Chikitsalaya, Gwalior (Director) **2007(1) MPLJ 206 = 2007 RN 95**, but learned senior counsel himself concedes and submits that of course the plaintiffs can file civil suit seeking declaration of title before civil Court but they can do so only after exhausting all the statutory remedies available under the Code. He submits that if plaintiffs do not challenge the order of section 248 of the Code dtd. 23.02.2021 by availing all the statutory remedies, the order becomes final and in any case in midway they cannot file the civil suit. He further submits that plaintiffs have no cause of action because they have filed the suit for declaration of title on the basis of adverse possession and have not been able to place sufficient material before the civil Court, for acquisition of title on the basis of adverse possession and just with a view to protect their possession, they have filed the suit for declaration of title and permanent injunction, in which their application under Order 39 Rule 1 & 2 CPC, has already been dismissed. With the aforesaid submissions learned senior counsel prays for allowing the civil revision.

Relevant part of order dtd. 15.11.2021 passed in WP No. 24685 of 2021 is quoted as under :

> "Considering the aforesaid and the fact that a civil suit challenging the order of revenue authority is pending before the Civil Court, in such a circumstance, two parallel proceedings in respect of the same order are not maintainable. However, the petitioner is directed to pursue the civil suit."

3. Learned counsel appearing for the respondents 1-2/plaintiffs supports the impugned order and prays for dismissal of the civil revision.

4. Heard learned counsel for the parties and perused the record.

5. In the present case, the plaintiffs have instituted a suit for declaration of title and permanent injunction on the basis of adverse

possession claiming themselves to be in possession of the land w.e.f. the year 1956-57 and such suit for declaration of title and permanent injunction on the basis of adverse possession is maintainable in the light of decision of Supreme Court in the case of **RAVINDER KAUR GREWAL AND OTHERS** *VERSUS* **MANJIT KAUR AND OTHERS (2019) 8 SCC 729**. Relevant paragraph of which is quoted as under:

> **"64**. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.**"**

6. With a view to consider nature and scope of proceedings of Section 248 of the Code, extract of Section 248 of the Code is given below :-

[248. Penalty for unauthorisedly taking possession of land. –
(1) Any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or any other which has been set apart for any special purpose under Section 237 [or upon any land which is the property of Government, or any authority, body corporate, or institution constituted or established under any State enactment,] may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary, to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar [to a fine with may extend to one lakh rupees] and to a further fine which may extend to twenty rupees for every day on which such unauthorised occupation or possession continues after the date of first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion have suffered loss or injury from the encroachment :]

Provided that the Tahsildar shall not exercise the powers conferred by this sub-section in regard to encroachment made by buildings or works constructed-

(i) in the Mahakoshal region-

(a) in areas other than the merged States before the first day of September, 1917;

(b) in the merged States, before the third day of April, 1950;

(ii) in the Madhya Bharat region, before the fifteenth day of August, 1950;

(iii) in the Vindhya Pradesh region, before the first day of April, 1955;

(iv) in the Bhopal region, before the eighth day of November, 1933; and

(v) in the Sironj region, before the first day of July, 1958.

Explanation.-For the purposes of this sub-section "Merged States" shall have the meaning assigned to it in the Madhya Pradesh Merged States Laws (State) Act, 1950 (XII of 1950).
[(1-A) On a resolution duly passed by the Gram Panchayat in respect of any unauthorised possession, the Tahsildar shall start and complete the proceedings under this section within thirty days from the date of receipt of the information of such resolution and shall communicate the action taken by him to the Gram Panchayat.]
(2) It shall not be competent to the Tahsildar to impose a fine of amount exceeding [one thousand five hundred] rupees but if in any case he considers that circumstances of the case warrant imposition of a higher fine, he may refer the case to the Sub-Divisional Officer who shall, then, after giving the party concerned an opportunity of being heard, pass such orders in respect of line as he may deem fit.
[(2-A) If any person continues in unauthorised occupation or possession of land for more than seven days after the date of order of ejectment under sub-section (1), then without prejudice to the fine that may be imposed thereunder the Sub-Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first ejectment and three months in case of second or subsequent ejectment :

Provided that no action under this sub-section shall be taken-

(i) unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison;

(ii) in respect of encroachments on Government and Nazul lands for the settlement of which the Government have issued orders from time-to-time :

Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the unauthorised possession has been vacated :

Provided also that no woman shall be arrested or detained under this sub-section.

(2-B) The State Government may make rules for the purpose of carrying into effect the provisions of sub-section (2-A).]

(3) [***]

(4) [***]…………."

7. Sub-section (3) of Section 248 of the Code, omitted w.e.f. 15.03.2000 vide Amendment Act No. 7/2000, is also quoted as under:-

> "(3) No order under sub-section (1) shall prevent any person from establishing his rights in a civil Court."

8. Effect of omission of sub-section (3) of Section 248 of the Code came into consideration of a coordinate Bench of this Court in the case of Mansik Chikitsalaya, Gwalior (Director) 2007 RN 95 **(supra)**, in which it has been held that because sub-section (3) of Section 248 of the Code has

been deleted, and every order passed by the Revenue Authorities is appealable or revisable under section 44 and section 50 of the Code and that section 248 of the Code is already amended, therefore, the order passed under section 248 of the Code cannot be challenged before civil Court. It is pertinent to mention here that by amending section 46 of the Code vide Act No. 23 of 2018, remedy of second appeal previously available against the order passed under section 248 of the Code, has already been curtailed.

9. As has been recorded above, despite placing reliance on the aforesaid decision in the case of Mansik Chikitsalaya, Gwalior (Director) (**supra**), learned senior counsel for the petitioner/defendant 1, has conceded that even after challenging the order passed under section 248 of the Code before the revenue authorities, the plaintiffs can file civil suit for declaration of title and permanent injunction but only after exhausting all the statutory remedies available under the Code.

10. Although prior to omission of said sub-section (3) of the Code, but almost identical controversy arose in the case of State of M.P. and another vs. Sind Mahajan Exchange Ltd. **1999 RN 328 (SC)**, in which Hon'ble Supreme Court had held as under :

> "3. Since the order passed by the Tehsildar (Nazul) under section 248(1) could not have the effect of deciding the title, if any, of the respondent in the land in question, it was open to the respondent to approach the civil Court and institute a regular suit for declaration of title which he can still do in accordance with law."

11. While considering the question of availability of alternative remedy, Hon'ble Supreme Court in the case of State Of H.P. And Ors. V. Gujarat Ambuja Cements And Anr. **(2005) 6 SCC 499**, has held as under:

> **"17.** We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.
> **18. to 20**. *****
> **21.** In G. Veerappa Pillai v. Raman & Raman Ltd., CCE v. Dunlop India Ltd., Ramendra Kishore Biswas v. State of Tripura, Shivgonda Anna Patil v. State of Maharashtra, C.A. Abraham v. ITO, Titaghur Paper Mills Co. Ltd. v. State of Orissa, H.B. Gandhi v. Gopi Nath and Sons, Whirlpool Corporation v. Registrar of Trade Marks, Tin Plate Co. of India Ltd. v. State of Bihar, Sheela Devi v. Jaspal Singh and Punjab National Bank v. O.C. Krishnan, this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction**."**

12. Further applying the said ratio, Hon'ble Supreme Court in the case of U.P. State Spinning Co. Ltd. V. R.S. Pandey And Anr. (**2005) 8 SCC 264**, observed as under:

> **"21.** In U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, Rajasthan SRTC v. Krishna Kant, Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad and in Scooters India v. Vijai E.V. Eldred**."**

13. While considering the scope of jurisdiction of civil Courts available under section 9 of C.P.C., Hon'ble Supreme Court in the case of Dhruv Green Field Ltd. vs. Hukum Singh and others **(2002) 6 SCC 416**, has held as under :

> **"8.** The jurisdiction of the courts to try all suits of civil nature is very expansive as is evident from the plain language of Section 9 of the Code of Civil Procedure. This is because of the principle 'ubi jus ibi remedium. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the civil court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of civil courts should be construed strictly.

9. The question, when and in what circumstances, can a suit of civil nature be said to be barred by a special statute, is no longer res integra. In M/s. Kamala Mills Ltd. vs. State of Bombay [AIR 1965 SC 1942], a seven- Judge Bench of this Court laid down the principle thus:

> "The question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose. Whenever a plea is raised before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot, however, be decisive. But when exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and, in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not"

That judgment was followed in Lala Ram Swarup & Ors. Vs. Shikar Chand & Anr. [1966(2) SCR 553). There Gajendragadkar, CJ. speaking for a Constitution Bench of this Court formulated the following tests:

> "The two tests, which are often considered relevant in dealing with the question about the exclusion of civil courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention; and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded.
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> XXX XXX XXX
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> The bar excluding the jurisdiction of civil courts cannot operate in cases where 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 "

10. In the light of the above discussion, the following principles may be re-stated-

> (1) If there is express provision in any Special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.
>
> (2) If there is no express provision in the Act but an examination of the provisions contained therein lead to a conclusion in regard to exclusion of jurisdic-

tion of a civil court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity**."**

14. In the context of provisions of section 57 of the Code, Hon'ble Supreme Court in the case of **HUKAM SINGH (DEAD) BY LRS. AND OTHERS** *VERSUS* **STATE OF M.P. (2005) 10 SCC 124,** had considered all the previous judgments and held as under :

"6. A reading of the judgment of the trial court shows as if the suit was for declaration of title. We have seen the original plaint, which is in Hindi. The learned counsel for the State, on seeing the averments made in the plaint and. the relief sought for, could not dispute that in the said suit, declaration was sought by the appellant in relation to his rights as a bhumiswami.

7. Paras 14 and 17 of the decision rendered by the Full Bench of the Madhya Pradesh High Court read: (AIR p. 164)

"It must be remembered that a bhumiswami has a title though he is not the 'swami' of the 'bhumi' which he holds, in the sense of absolute ownership, because as declared in Section 257 of the Revenue Code, ownership of land vests in the State Government, yet, he is a bhumiswami. He is not a mere lessee. His rights are higher and superior. They are akin to those of a proprietor in the sense that they are transferable and heritable, and, he cannot be deprived of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation.

* * *

We, therefore, hold that a bhumiswami is not bound to avail himself of the speedy remedy provided in Section 250 of the Code. It is open to him to take recourse to the summary remedy under Section 250, or even without it straightway bring a suit in the civil court for declaration of his title and possession. Even if there has been a decision under Section 250 by a Revenue Court, the party aggrieved may institute a civil suit to establish his title to the disputed land. We further hold that Nathu v. Dilbande Hussain*(AIR 1967 MP 14)* was correctly decided. The civil court can take cognizance of a suit. This is our answer to the questions referred to us."

8. The view taken by the Full Bench of the Madhya Pradesh High Court is affirmed by this Court in Rohini Prasad v. Kasturchand*((2000) 3 SCC 668 : (2000) 2 SCR 88)*. This being the position, the first substantial question of law is wrongly decided by the High Court. Under the circumstances, the impugned order cannot be sustained. Con-

> sequently, the civil appeal is allowed and the judgment and decree passed by the High Court is set aside. The second appeal is remitted to the High Court for disposal afresh on merits accepting that the suit is maintainable, having regard to the law laid down by the Full Bench of the Madhya Pradesh High Court in Ramgopal *(1976 Jab LJ 278 : AIR 1976 MP 160 (FB)* as affirmed by this Court in Rohini Prasad*((2000) 3 SCC 668 : (2000) 2 SCR 88*.**"**

15. It is relevant to mention here that although sub-section (3) of Section 248 of the Code was omitted in the year 2000 but no amendment was made in section 257 of the Code barring jurisdiction of civil Courts regarding establishment/decision of/about title over the disputed property, therefore, it cannot be said that omitting of sub-section (3) of Section 248 of the Code, has effect of excluding jurisdiction of civil Court.

16. Although against the order of section 248 of the Code there is remedy of first appeal under section 44 of Code before SDO but as has been held by this Court in the case of Santprasad v. Jawaharsingh **1963 MPLJ N-45**, the omission cannot be interpreted to mean that a litigant who has not pursued his remedy before the revenue Court at all, is precluded from bringing a suit in the civil Court to establish his title. It is pertinent to mention here that under the Code finality has not been given to the orders passed in the proceedings under section 248 of the Code especially in respect of establishment of title before civil Court.

17. In the case of Gappulal Meena and others vs. Gajanand and others **2001(1) MPHT 150,** a coordinate Bench of this Court also considered almost identical controversy and has held as under :

> **"6.** In a Division Bench's decision of this Court, in the case of Bhupendra Singh Vs. Gopalkunwar, reported in 1970 JLJ 256, it has been held that the assumption the jurisdiction of Civil Court, where the order of authorities is a nuliity, is not barred. In another decision of this Court in the case of Radhe Mohan Vs. Omnarayan Dubey, reported in 1991 Revenue Nirnay 87, it was pointed out that ex parte order of partition by Tehsildar can be challenged in civil suit for declaration of title.
> 7. *******
> 8. *******
> 9. From the evidence discussed hereinabove, it is apparent that the service of proceedings of partition, by Revenue Court, vide Ex. D-8, upon the plaintiff/appellant was not proper and in the circumstances, the order of partition by Revenue Court is not

> binding upon the plaintiff. Both the Courts below therefore, erred in law in dismissing the suit of the plaintiff on the ground that she was properly served in partition proceedings**.”**

18. From bare reading of section 248 of the Code itself it is clear that the proceedings under section 248 of the Code, are summary proceedings, and so far as question of title is concerned, such proceedings do not have effect of res-judicata. In the case of Maa Kaila Devi Enterprises Through Its Partners vs. State of M.P. and others **2012(2) MPLJ 562** (DB) (para 16), a division bench of this Court had considered the nature and scope of enquiry under section 248 of the Code and held that the procedure prescribed under section 248 of the Code in regard to ejectment is summary in nature.

19. In view of the aforesaid legal position it can very well be said that principle/procedure of first exhausting of available alternative/statutory remedy is applicable only in the case of approaching to the High Court under Article 226/227 of the Constitution of India and not in respect of invoking of jurisdiction of Civil Court under section 9 of Civil Procedure Code, unless jurisdiction of civil Court is clearly excluded creating bar under the Code/special Act itself or any finality has been given to the order under the Code.

20. It is well settled that for the purpose of rejection of plaint under order 7 rule 11 CPC the suit has to be barred by a provision of law. In respect of section 248 of the Code bar for filing the civil suit has been provided under Section 257 (w-i) of the Code to which the proceedings regarding establishment of title are not made applicable. While omitting sub section (3), amendment was made in section 257 (w-i) of the Code to the effect “any decision regarding penalty under section 248, for unauthorisedly taking possession of land.” Therefore, it can very well be said that there is no bar of civil suit under the Code to challenge the order

passed under Section 248 of the Code for the purpose of establishing title. Apparently, all this had escaped from consideration in the case of Mansik Chikitsalaya, Gwalior (Director) (**supra**). However, the decision in the case of Mansik Chikitsalaya, Gwalior (Director) (**supra**) does not mention the facts of the case and from the decision, it does not transpire as to whether question of title was involved in that case or not. As such, the said decision is distinguishable on facts.

21. In view of the aforesaid legal position, in my considered opinion, if a person aggrieved by order under section 248 of the Code , wishes to file a suit for declaration of his rights/title, he is not required to avail the alternative/statutory remedy of appeal available under the Code and he can file civil suit directly in civil Court for establishing his title. As such, filing of civil suit during pendency of revenue first appeal, has no adverse effect.

22. In view of the aforesaid discussion, trial Court does not appear to have committed any illegality in rejecting the application under Order 7 Rule 11 CPC.

23. Resultantly, this revision fails and is hereby dismissed. However, no order as to costs.

24. Pending application(s), if any, shall stand dismissed.

(DWARKA DHISH BANSAL)
JUDGE

KPS