

MANU/BH/0018/1987

Equivalent Citation: AIR1987Pat167, 1988(36)BLJR34, 1987PLJR354, 1987RRR265

**IN THE HIGH COURT OF PATNA AT RANCHI
FULL BENCH**

S.A. Nos. 36 and 149(R) of 1977

Decided On: 11.12.1986

Appellants: **Paritosh Maity and Ors.**
Vs.

Respondent: **Ghasiram Maity and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., S. Roy and R.C.P. Sinha , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: P.C. Roy, Jaya Roy, P.K. Sinha and D.K. Sarkar, Advs.

For Respondents/Defendant: S.B. Sinha, V. Shivnath, P. Modi, A.K. Mehta, P.R. Bhagat, P.S. Rai, A. Sahay, S.K. Chatopadhyaya and Indrani Choudhary, Advs.

JUDGMENT

S.S. Sandhawalia, C.J.

1 . Whether a civil suit for declaration of title and confirmation of possession, challenging, inter alia, the entries in the revenue records would still be maintainable after the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act, 1908, by the Chotanagpur Tenancy (Amendment) Act, 1920 (Bihar and Orissa Act VI of 1920), is the significant common question in these two connected Second Appeals, referred to the Full Bench for an authoritative decision.

2. The representative matrix of facts for the decision of the pristinely legal question above may be noticed briefly from Second Appeal No. 36 of 1977(R) (Paritosh Maity v. Ghasiram Maity). The plaintiff-respondent had instituted a suit for declaration of title and confirmation of possession and for a permanent injunction with respect to a portion of land in Revenue Khata No. 105, Plots Nos. 347 and 361, which had been recorded in the recent survey Plot No. 1153, the area being 0. 25 acre and 0. 17 acre, respectively, in Mouza Chalunia, Police Station Chakulia, District Singhbhum. It was the claim that the entries in the revenue records with regard to the aforesaid plots had been wrongly recorded in the Anand Khata of Bihar Sarkar, though the State of Bihar had no manner of title and interest therein, and, as a matter of fact, these plots belonged to the plaintiff, as he was in peaceful possession thereof. The suit was contested on behalf of the defendants, and, on the pleadings of the parties, as many as 8 issues were framed, including Issue No. 1 with regard to the very maintainability of the suit as framed. It would appear that, during the course of trial, Issue No. 1 was not seriously pressed and no patent defect with regard to the frame of the suit was pointed out by the defendants and the same was decided in favour of the plaintiff. On the other issues as well the findings went in favour of the plaintiff and the suit was decreed with regard to declaration of title in favour of the plaintiff and confirmation of his possession, restraining the defendants, from interfering therewith.

On appeal by the defendants, the learned First Additional Subordinate Judge, Jamshedpur, in a detailed judgment, confirmed the findings of the trial court, and discovering no merit in the appeal, dismissed the same with costs.

3. In the present second appeal, the defendant-appellant primarily pressed the point that the very suit was not maintainable in view of the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act (hereinafter referred to as the Act), and, further the courts below had failed to draw the presumption of correctness attaching to the entries in the record of rights. Reliance was placed on the unreported judgment in *Moswar Khan v. Sk. Alim* (First Appeal No. 215 of 1977(R), decided on the 2nd March, 1984). The learned single Judge, considering the significance of the question, referred the appeal to the Division Bench.

4. Before the Division Bench, hearing both the connected second appeals (Second Appeals 36 and 149 of 1977(R)) a conflict of precedent within the Court was noticed with an earlier Division Bench decision reported in MANU/BH/0068/1935 : AIR 1936 Pat 611 (*Gobardhan Sahu v. Lal Mohan Kharwar*). The matter was, therefore, referred to be heard by a larger Bench. That is how it is before us.

5. Learned Counsel for the defendant-appellant in Second Appeal No. 36 of 1977(R) vehemently contended that the very suit preferred by the plaintiff-respondent was not at all maintainable, after the insertion of Clause (ee) in Section 87(1) of the Act. It was argued that any question relating to title to the land or its possession between the parties to the suit could now be agitated only by way of a suit under Section 87 of the Act before a revenue officer. It was claimed that this provision now conferred exclusive jurisdiction on the revenue officer by virtue of Section 87(1)(ee) and a civil suit with regard thereto was barred by virtue of Section 258 of the Act. Firm reliance was placed on the decision in *Moswar Khan v. Shaikh Alim* (supra) wherein it has been observed as under : --

"Since a forum has been created under the Act for deciding such disputes, the plaintiff, if aggrieved by the entry in the record of rights, as appears from Ext. E, ought to have filed a suit under Section 87(1)(ee) of the Act. In our opinion, the suit, therefore, was not maintainable."

6. On behalf of the plaintiff-respondent challenge is laid to both the correctness of the stand and the decision relied upon. Particular reliance on his behalf was placed on the earlier Division Bench decision in *Gobardhan Sahu v. Lal Mohan Kharwar*, (MANU/BH/0068/1935 : AIR 1936 Pat 611) (supra).

7. Inevitably, the meaningful issue herein turns on the relevant statutory provisions and more pointedly on the changes brought about in the Act by the Chotanagpur Tenancy (Amendment) Act, 1920 (Bihar and Orissa Act 6 of 1920). It is, therefore, not only necessary to refer to the Act, but indeed it is apt to notice the relevant part of the provisions in extenso at the very outset, for facility of reference.

"84. Presumptions as to final publication and correctness of record-of-rights
:

(1) XXX XX

(2) The State Government may by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such

notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect."

"87. Institution of suits before Revenue Officer :

(1) In proceedings under this Chapter, a suit may be instituted before a Revenue Officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 83, for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which he has made from, the record, except an entry of a fair rent settled under the provisions of Section 85 before the final publication of the record-of-rights, whether such dispute be-

XXX XX

(ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit; or,

(f) as to any other matter; and the Revenue-Officer shall hear and decide the dispute :

Provided that the Revenue Officer may, subject to such rules as may be made in this behalf under Section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

XXX XXX XXX

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions passed under Sub-section (1) and a second appeal to the High Court shall "lie from any decision on appeal of such officer as if such decision were an appellate decree passed by the Judicial Commissioner under Chapter XVI."

92. Bar to jurisdiction of Courts in matters relating to record-of-rights : No suit shall be brought in any Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it."

"139A: Exclusive jurisdiction of Deputy Commissioner in certain cases :

Subject to the provisions of Chapter XII, no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under Section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

"258. Bar to suits in certain cases.-- Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside either directly or indirectly, any decision, order or decree of any Deputy Commissioner or Revenue Officer in any suit, application, or proceeding

under Section 29, Section 32, Section 42. Section 46 Sub-section (4), Section 49, Section 50, Section 54, Section 61, Section 63, Section 65, Section 73, Section 74-A, Section 75, Section 85, Section 86, Section 8J, Section 89 or Section 91 (proviso), or under Chap. XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction, and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and subject to the provisions of this Act relating to appeal shall be final."

8. It appears to me that the true, construction of the aforesaid provisions is rooted in the legislative history and can be well construed in that perspective background. The larger purpose and import of the Act has been very elaborately discussed in the recent Full Bench decision in *Bina Rani Ghosh v. Commr., South Chotanagpur Division*, (MANU/BH/0100/1985 : 1985 Pat LJR 732 : AIR 1985 Pat 352). It is unnecessary to traverse the same ground again and it would, perhaps, suffice to recall that the true perspective of the Act is against the backdrop of the primordial backwardness of the scheduled tribes interspersed in the deeply wooded and semi-tropical forests of the Chotanagpur Division and the adjoining district of Santhal Parganas. What calls for notice with particularity is the larger purpose of the insertion of Clause (ee) in Section 87(1) of the Act, not merely in isolation but equally in the perspective of other complementary changes brought about by the amending Act in a number of other provisions as well. Chapter XII of the Act as its very heading indicates, contains Sections 80 to 100 pertaining to entries in the record-of-rights and settlement of rent. It is, perhaps, unnecessary to advert to individual sections thereof or elaborate the scheme of this Chapter at any great length. Indeed, it is manifest that the same is intended to provide in some detail the procedure for the purpose of making entries in the revenue records and the adjudication of any dispute regarding such entries before a Revenue Officer. It is somewhat common ground that prior to 1920, despite the existence of these provisions, litigations in the Civil Courts continued with regard to questions relating to title in land or to any interest in land as betwixt the parties to the suit. Indeed, it would appear that on the earlier provisions precedent consistently held that a suit for declaration of title or recovery of possession and injunction would not lie before Revenue Officer and inevitably had to be brought in a Civil Court on the existing provisions of Section 87. Apparently to change the situation and to bring even questions of title relating to land or other interest therein within the ambit of Section 87, Clause (ee) was inserted in Sub-section (1) thereof by the Bihar and Orissa Amending Act VI of 1920. As is being indicated hereinafter, substantive changes were brought in the other provisions of the Act as well by the aforesaid Amending Act of 1920.

9. The corresponding change brought about in Sub-section (2) of Section 87 may be first noticed. Apparently because questions of title in land or any interest in land had been brought within the sweep of a suit under Section 87 (and otherwise also with regard to Clauses to (f)) a second appeal to the High court from any decision in the first appeal by a Revenue Officer was provided as if such decision was an appellate decree passed by the Judicial Commissioner under Chap. XVI. This was indeed a significant provision which brought the Revenue Officers and the Courts directly under the aegis and adjudication of the High Court itself in second appeal. Reference is again called for to Section 258 and what meets the eye is the fact that it does not place a blanket bar on the jurisdiction of the Civil Court but, as its title indicates, merely puts a bar to suits in certain cases. The Amending Act broadened the base of Section 258 by extending it to any decision of any Deputy Commissioner or Revenue Officer in any suit, and extended it to applications as well and further provided that

all such decisions, orders or decrees shall have the force and effect of a decree of a Civil Court in a suit between the parties and subject to the provisions of this Act relating to appeals.

10. Against the aforesaid legislative background, one may now revert to the wholly well known provisions of Section 9, Civil P.C., the relevant part thereof may be quoted for facility of reference:

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

There cannot be any dispute that questions relating to title in land or any interest in land are matters of a civil nature. Both generally and specifically the suits involved in this set of appeals are suits of a civil nature and jurisdiction of the Civil Court can only be barred if firstly, it is expressly excluded or secondly, if it is so done by necessary implication. Indeed, in this context some basic propositions are so well established by judicial pronouncements that they need to be only recapitulated, viz. :

(i) A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in Civil Court unless its cognizance is either expressly or impliedly barred and there is a strong presumption in favour of the jurisdiction of a Civil Court (see (1) MANU/SC/0132/1963 : AIR 1964 SC 1126 (V. R. Sadacope Naidu v. Bakthavatsalam), (2) MANU/SC/0299/1960 : AIR 1961 SC 149 (Brij Raj Singh v. Lj Singh v. Laxman Singh), and MANU/BH/0038/1961 (Patna Municipal Corporation v. Ram Bachan Lal)).:

(ii) The exclusion of jurisdiction of Civil Court is not to be readily inferred. A statute ousting jurisdiction of the Civil Court must do so either in express terms or by use of such language as would necessarily lead to such an inference (see MANU/SC/0393/1968 : AIR 1969 SC 439 (Musamia Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai and MANU/SC/0400/1968 : AIR 1969 SC 560 (Dewaji v. Ganpatlal)).

(iii) The onus is on the party who seeks to oust the jurisdiction of the Civil Court to establish its stand. Further, a statute ousting the jurisdiction of the Civil Court must be strictly construed (see MANU/SC/0266/1966 : AIR 1966 SC 1718 (Abdul Waheed Khan v. Bhawani)).

(iv) Even if the jurisdiction of the Civil Court is excluded by statute, in case where the provisions of such statute have not been complied with, or a statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Courts would still have jurisdiction to examine such cases (see MANU/SC/0266/1966 : AIR 1966 SC 1718 : Abdul Waheed Khan v. Bhawani).

11. It is in the light of the aforesaid well established principles of law that the question regarding the exclusion of the jurisdiction of the Civil Court in the present case has to be examined with reference to the provisions of the Act.

12. Inevitably one must first turn to Section 87 which is the most relevant provision of law for the decision of the question involved. Sub-section (1) thereof undoubtedly permits a suit to be instituted before a Revenue Officer within the narrow period of limitation of three months from the date of the certificate of final publication of the

record of rights, for deciding any dispute regarding any entry which a Revenue Officer has made or omitted from such records. The provision further clarifies that such a suit would lie whether such dispute be with regard to the wide ranging matters specified in Clauses (a) to (f) and including the newly inserted Clause (ee). What, however, is very significant and first meets the eye is the fact that though S, 87 provides for a suit of the aforesaid nature, it does not even remotely say that a suit for declaration of title and confirmation of possession or recovery of possession cannot be entertained by any Civil Court. It is manifest that there is no express bar whatsoever and indeed not even a hint of an implied bar against the jurisdiction of the Civil Courts in Section 87. As mentioned above, it is a settled principle of law that even where there is a provision in the statute regarding exclusion of jurisdiction of civil courts, it has to be strictly construed. Herein, apart from strict construction, there is manifestly nothing in Section 87 which could even remotely hint at any express bar or one by necessary implication. By now, because of settled judicial precedent, the legislatures are well aware of the language and terminology to be employed where the jurisdiction of the civil or other courts is to be completely ousted. A salient and typical example may be noticed from Section 57 Bihar and Orissa Co-operative Societies Act, where it is provided as under : --

"57. Bar of jurisdiction of Courts.-- (1) Save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by Section 48 to be referred to the Registrar or of any proceedings under Chap. VI1-A.

(2) X X XX

(3) XX XX X"

13. What, therefore, deserves highlighting herein is the fact that neither Section 87 nor Section 258 (to which detailed reference would follow) uses the aforesaid terminology and not even any which could remotely indicate an unequivocal exclusion of the jurisdiction of the Civil Courts. Apart from analogy, a reference may be made to Sections 92 and 139-A of this very Act, the latter one having been inserted by the amending Act of 1920, which are in the terms following : --

"92. Bar to jurisdiction of Courts in matters relating to record-of-rights. -- No suit shall be brought in any court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it."

"139-A. Exclusive jurisdiction of Deputy Commissioner in certain cases.-- Subject to the provisions of Chap. XII, no Court shall entertain any suit concerning any matter in respect of which an application cognizable by the Deputy Commissioner under Section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

It will be somewhat plain from the aforequoted provision that the Legislature in this very statute was well aware of the language to be employed where its intent was to exclude the jurisdiction of other Courts. No such language has been even remotely used in Section 87. Without labouring the point any further it can, perhaps, be unhesitatingly said that Section 87 which is the material provision for consideration

does not spell out any express or implied bar of the jurisdiction of the Civil Court.

14. The matter may also be viewed from another refreshing angle. It is common ground that prior to the Amending Act of 1920, Section 87(1) existed with Clauses (a) to (f) thereof. The provision thus permitted a suit before the Revenue Officers disputing the entry or the omission thereof even though such a dispute fell within the wide ranging ambit of the aforesaid clauses. However, no authority was cited before us that under the unamended provision a suit in the Civil Court would have been barred in this wide ranging field even though no suit before the Revenue Officer was preferred within the limitation of three months from the date of the certificate of the final publication of the record of rights. Thus, the jurisdiction of the Civil Courts has not been held to be barred with regard to Clauses (a) to (f). The insertion of Clause (ee) in 1920, therefore, does no more than putting the questions relating to title in land or any interest in land as betwixt the parties to the suit on the same pedestal as the matters contained in the earlier Clauses (a) to (f). Therefore, a civil suit was not barred with regard to Clauses (a) to (f) a fortiori such a civil suit is equally not barred with regard to Clause (ee) pertaining to questions of title in land or any interest therein.

14A. Yet again the very short period of limitation prescribed by Section 87 for bringing a suit before a Revenue Officer is not without significance either. As noticed earlier, this has been fixed within three months from the date of the certificate of the final publication of the record of rights. Both the terminus a quo and the limited time are in a way a pointer to and indicative of the fact that the larger and the basic remedy by way of a civil suit was not to be abrogated. The lis for a suit for the declaration of title and recovery of possession may well arise long after the final publication of the record of rights. That terminus, therefore, would have little relevance to such a suit and it would be anomalous to hold that the same cannot be brought beyond three months from the date even where the lis may have actually arisen thereafter, even otherwise it looks somewhat inconceivable that valuable rights pertaining to title in law and recovery of possession thereof would become barred within three months from the date of the certificate of the final publication of the record of rights, merely because they have some connection with the entries in the record of rights and thus will be rendered unenforceable.

15. The stage is now set for a consideration of Section 258 which bars suits in certain cases. What, however, deserves notice at the very outset is that even this section is not creating an absolute bar of jurisdiction against the Civil Courts, but only a conditional bar applicable in certain cases specified therein. If one may say so, it is a limited bar which would be elaborated hereinafter. What deserves pinpointing herein is that this section does not employ the unequivocal phraseology noticed earlier in Section 57 of the Bihar and Orissa Co-operative Societies Act, or of Section 139-A of this very Act itself. It is true that it bars the jurisdiction of any other Court including a Civil Court, to entertain a suit but such a prohibition is limited only to a suit either to vary, modify or set aside directly or indirectly any decision, order or decree of any Deputy Commissioner or Revenue Officer in a suit or application or proceeding under the sections mentioned therein including Section 87. Thus, the precondition for the applicability of Section 258 is the existence of an earlier order or decree of a Revenue Officer or Deputy Commissioner in a prior proceeding. From a perusal of this section it is manifest that if earlier any decision has been made by a Revenue Court in any suit under Section 87, then only the other Courts or the Civil Court have no jurisdiction to entertain any suit either to vary, modify or set aside the decision, It also makes it clear that the aforesaid decision or order will have the force

or effect of a decree of a Civil Court in a suit between the parties, However, if there is no order or decision under the sections specified in Section 258 including therein Section 87, the jurisdiction of the Civil Court will not be barred and specially so in a suit for declaration of title and confirmation or possession or recovery of possession. What further calls for notice is the fact that even where Section 258 would be attracted, the bar is not absolute, and if the orders, decision or decree are challenged on the ground of fraud or want of jurisdiction, such a suit can still be entertained by the Civil Court. It would thus be manifest that the sine qua non for the applicability of Section 258 in the present context would be the existence of an order or decree in a previous suit under Section 87. If there has been no previous suit for the same lis, no question of any varying, modifying or setting aside the same either directly or indirectly can arise. Thus, in the absence of an earlier suit under Section 87 in this context, the provisions of Section 258 would not be applicable or attracted at all.

16. The true legal effect of a harmonious reading of Sections 87 and 258 may, therefore, be noticed. Chapter XII provides for the record of rights and Section 83 therein deals with the preliminary publication, the amendment and the final publication of the record of rights, whilst Section 84 creates certain rebuttable presumptions in favour of the correctness of the entries in the record of rights. However, Section 87 provides a remedy by way of a suit before the Revenue Officer for resolving any dispute with regard to such an entry in the record of rights or an omission therefrom. In essence, such a suit is thus directed as a challenge to the entry or omission in such a record, but Section 87 further provides that this can be raised even where such a dispute be with regard to matters specified in Clauses (a) to (f) of Section 87. In a way, therefore, Section 87 provides a special and additional remedy pertaining to entries in the revenue records as soon as they are finally published and certified. That is why the Legislature has chosen to provide a narrow limitation of three months from the date of the certificate of the final publication of the record of rights for bringing such a suit. To my mind, this remedy is not in any way in derogation of the civil rights of the parties, but indeed is a special and additional remedy which may be availed of within a limited period of three months, if a party feels aggrieved by any of the entries in the record of rights. However, if such a remedy is availed of by the parties then the statute now provides an appeal and even a second appeal to the High Court itself in the very forum of Sub-section (2), Section 87 which inevitably would achieve finality. Thus, if actual resort has been made to a suit under Section 87 then for an identical lis Section 258 would bar a further resort to the Civil Courts except on the grounds of fraud or want of jurisdiction. Obviously enough, to bring in even this limited bar, the lis would have to be identical. However, as already noticed and it bears repetition that if no resort has been earlier made to a suit under Section 87 by the parties, the very precondition for the application of Section 258 would be absent and it cannot come into play in such a situation.

17. Inevitably, one must now turn to precedent as well Learned counsel for the parties advocating against the existence of any bar to the civil jurisdiction have rightly placed reliance on MANU/SC/0736/1971 : AIR 1971 SC 681, (Dayaram v. Dawalat Shah); MANU/SC/0329/1962, (Jyotish Thakur v. Tarakant Jha); MANU/SC/0370/1962 : AIR 1963 SC 361, (Raja Durga Singh v. Tholu); MANU/SC/0402/1975, (Guru Charan Singh v. Kamla Singh); MANU/SC/0266/1966 : AIR 1966 SC 1718, (Abdul Waheed Khan v. Bhawani) and MANU/SC/0382/1981 : AIR 1981 SC 2016, (Sayed Mohomed Baquir El-Edroos v. State of Gujarat).

18. On the other hand, primal reliance by the learned counsel advocating the bar to

the civil jurisdiction was placed on MANU/SC/0410/1970, (Haiti v. Sundar Singh). Therein on a construction of the provisions of the Delhi Land Reforms Act, it was held that the jurisdiction of the Civil Courts was ousted. However, what fell for consideration by their Lordships in the said case was Section 185(1), Delhi Land Reforms Act, which is in the following terms: --

"Except as provided by or under this Act, no Court other than a Court mentioned in Col. 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application or proceedings mentioned in Col. 3 thereof."

Now, plainly enough, the aforesaid section in unequivocal terms bars the jurisdiction of any other Court including a Civil Court in spite; of Section 9, Civil P.C. There is no provision even remotely similar to the aforesaid one in the present Act. Consequently, it is inapt to invoke the ratio of the said case in the context of the provisions of the Chotanagpur Tenancy Act, which have been discussed in detail earlier.

19. Within this jurisdiction, reliance was sought to be placed on the observations of the learned single Judge in Sahodri Kuer v. Lal Barjeshwar Nath Sahdeo, (First Appeal No. 43 of 1968(R) decided on the 11th July, 1979). However, a close perusal of the said judgment would indicate that the observations therein in no way spell out a bar or advance the proposition that a civil suit would not be maintainable. Therein the import of Sections 84 and 87 was discussed and it was observed that the provisions in Chapter XII envisage a machinery for the adjudication of disputes with regard to the correctness of the entries in the record of rights or with regard to the title in land or any interest in the same. However, those observations, to my mind, are no warrant for elongating them to the holding of an inflexible bar to the jurisdiction of the Civil Court. The case is thus distinguishable. This, however, cannot be said of Mosowar Khan v. Sk. Alim, (F.A. 215 of 1977(R)) decided on the 2nd of March, 1984. Therein the Division Bench observed as follows: -

".....Section 87 of the Act provides for institution of a suit before the Revenue Officer at any time within three months from the date of the certificate of the final publication of record of rights for the decision of any dispute regarding any entry when such dispute, inter alia, be as to the question relating to the title in land or to any interest in land as between the parties to the suit. The dispute between the parties, therefore, was a question relating to the title in land. Since a forum has been created under the Act for deciding such disputes, the plaintiffs, if aggrieved by the entry in the record of rights as appears from Ext. E, ought to have filed a suit under Section 87(1)(ee) of the Act. In our opinion, the suit, therefore, was not maintainable."

20. A close perusal of the judgment would indicate that the counsel were somewhat remiss in not bringing to the notice of the Bench all the relevant provisions of the Act. Equally the earlier Division Bench judgment in Gobardhan Sahu v. Lal Mohan Kharwar, (MANU/BH/0068/1935 : AIR 1936 Pat 611) (supra) was not cited. Even otherwise the issue does not seem to have been well debated and the various considerations discussed in the earlier part of the judgment were apparently not canvassed. With the deepest deference to the learned Judges, it seems to me, the conclusion with regard to the non-maintainability of the suit was not correctly arrived at and the judgment has consequently to be overruled. The earlier view in Gobardhan Sahu v. Lal Mohan Kharwar, MANU/BH/0068/1935 : AIR 1936 Pat 611 is hereby

affirmed.

21. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative both on principle and precedent. It is held that a civil suit for declaration of title and confirmation of possession and, inter alia, challenging the entries in the revenue record would still be maintainable even after the insertion of Clause (ee) in Section 87(1), Chotanagpur Tenancy Act, 1908.

22. In the light of the above, it has necessarily to be held in Paritosh Maity v. Ghasiram, Second Appeal No. 36 of 1977(R) that the civil suit preferred by the plaintiff respondent was perfectly maintainable in law. The appeal is otherwise without merit and is consequently dismissed though the parties are left to bear their own costs.

23. In Second Appeal No. 149 of 1977(R), (Shri Radhagobinda Jew v. Panu Mahto) the suit preferred before the Civil Court is held to be maintainable. However, the appeal stands concluded by concurrent findings of fact which do not call for any interference by this Court and the same is consequently dismissed. There will be no order as to cost.

S. Roy, J.

24. I agree.

R.C.P. Sinha, J.

25. I agree.

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