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AJUDH RAJ AND ORS.

v.

MOTI, S/O MUSSADI

MAY 3, 1991

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[LALIT MOHAN SHARMA AND J.S. VERMA, JJ.]

*Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953: Section 27(4)—Acquisition of proprietary rights—Adverse order made under section 27(4)—Suit to set aside order—Period of Limitation—What is.*

C

*Limitation Act, 1963: Articles 65, 100 and 113—Adverse order made under a Special Act—Order passed without jurisdiction—Suit challenging the order—Period of Limitation—Article 65—Applicability of.*

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The respondent-defendant claimed the benefits under Section 27(4) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 alleging that he was a sub-tenant cultivating the disputed land. The Compensation Officer accepted his claim and passed an order in his favour under Section 27(4). The appellants' father, Plaintiff, challenged the order of Compensation Officer contending that the defendant was not entitled to the acquisition of the proprietary right under section 27(4) because he was merely a labourer employed by him and he had never cultivated the disputed land. Both the Trial and the Appellate Court accepted the plaintiff's case and concurrently held that the defendant was not a sub-tenant and consequently the order passed in his favour under Section 27(4) was without jurisdiction. The plea of

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Limitation was rejected and the plaintiff's suit was decreed by holding that he being the tenant in possession was entitled to the right under section 27(4) of the Act.

On further appeal the High Court dismissed the plaintiff's suit on the ground that the suit having been filed after a period of more than three years from the date of the order under section 27(4) it was barred by limitation. Hence this appeal against the decision of the High Court.

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Allowing the appeal and setting aside the judgment of the High Court, this Court,

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**HELD: 1.** The principle for deciding the question of limitation in

a suit filed after an adverse order under a Special Act is well-settled. If the order impugned in the suit is such that it has to be set aside before any relief can be granted to the plaintiff the provisions of Article 100 will be attracted and if no particular Article of the Limitation Act is applicable the suit must be governed by the residuary Article 113, prescribing a period of three years. Therefore, in a suit for title to an immoveable property which has been the subject matter of a proceeding under a Special Act if an adverse order comes in the way of the success of the plaintiff, he must get it cleared before proceeding further. On the other hand if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside; and such a suit will be covered by Article 65. [693C-D]

1.1 In the instant case the concurrent findings were that the plaintiff was the owner in cultivating possession of the land and the defendant was merely a labourer without any right of the tenant or a sub-tenant. If the land was in cultivating possession of the plaintiff, the compensation Officer did not have the jurisdiction to pass any order in defiance of section 27(2) and the land did not vest in the State at all. Further, for the additional reason that defendant was not a tenant of the land the order passed in his favour under Section 27(4) was again without jurisdiction. Therefore, in absence of the conditions necessary for the exercise of power under Section 27(4) the Officer lacked jurisdiction to act and it was not necessary for the Civil Court to formally set aside his order before passing a decree. What necessitated the plaintiff to come to the civil court was the challenge to his title, and the suit must be held to be covered by Article 65, and, therefore, not barred by shorter period of limitation either under Article 100 or Article 113. [693E, 694B-C-D]

*Sheo Lal and Ors. v. Sultan & Ors.*, [1970] 2 S.C.R. 405 and *Mohd. Murtiza Khan v. State of M.P. and Ors.*, [1966] M.P.L.J., referred to.

*State v. Sadh Ram*, I.L.R. (HP) 1973 (2) 235 and *Gangu and Ors. v. Mahanraj Chand and Ors.*, A.I.R. 1934 Lahore 384, held inapplicable.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2225 of 1991.

From the Judgment and Order dated 12.10.1990 of the Himachal Pradesh High Court in R.S.A. No. 134 of 1979.

A C.K. Mahajan and Ashok Grover for the Appellants.

The Judgment of the Court was delivered by

B **SHARMA. J.** Special leave is granted. The appeal is directed against the judgment of the High Court setting aside the decree passed by the trial court and the first appellate court in favour of the plaintiffs-appellants, and dismissing their suit, on the ground of being barred by limitation.

C 2. The subject matter of the present case is agricultural land in Himachal Pradesh belonging to one Sham Sunder, the original plaintiff since dead, who was the father of the appellant No. 1 and the grand-father of the appellants No. 2 and 3. The defendant-respondent, Moti, alleging to be a sub-tenant cultivating the land, claimed the benefits under Section 27 (4) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, hereinafter referred to as the Act. Notice was issued to Sham Sunder which according to his case was not served on him. The claim of Moti was accepted, amount of compensation payable under Section 27 (4) of the Act was determined by the Compensation Officer and consequential orders were passed in his favour. The present suit was filed by Sham Sunder challenging the aforesaid orders on the allegation that Moti was merely a labourer employed by him and he never cultivated the disputed land and he, therefore, was not entitled to the acquisition of the proprietary right under Section 27 (4) of the Act. The Suit was resisted by the defendant. Both the trial court and the appellate court, accepted the plaintiff's case and concurrently held that Moti was not a sub-tenant and hence, the order passed by the Revenue Officer in his favour under Section 27 (4) of the Act was without jurisdiction. The plea of limitation was rejected and the suit was decreed holding that Sham Sunder being the tenant in possession was entitled to the right under Section 27 (4) of the Act.

G 3. In a further appeal under Section 100 of the Code of Civil Procedure, the defendant contended before the High Court that the suit having been filed after a period of more than three years from the day of the order under Section 27 (4) of the Act, was barred by limitation. The Court agreed with him and dismissed the suit by the impugned judgment. The High Court did not deal with any other aspect in the case, stating that the defendant had not urged any other point in support of the second appeal.

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4. In the impugned judgment the High Court has held that “as a consequence of the Order of the Compensation Officer under Section 27 (4), the title in the land stood vested in the appellant”, and merely because a longer period of limitation is provided for recovery of possession under Article 65 of the Limitation Act, the suit can not be said to be within the period of limitation. Accordingly either one year period under Article 100 or in the alternative the three years’ rule under Article 113 has been held applicable. We do not think that the High Court is right.

5. The principle for deciding the question of limitation in a suit filed after an adverse order under a Special Act is well-settled. If the order impugned in the suit is such that it has to be set aside before any relief can be granted to the plaintiff the provisions of Article 100 will be attracted and if no particular Article of the Limitation Act is applicable the suit must be governed by the residuary Article 113, prescribing a period of three years. Therefore, in a suit for title to an immovable property which has been the subject matter of a proceeding under a Special Act if an adverse order comes in the way of the success of the plaintiff, he must get it cleared before proceeding further. On the other hand if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside; and such a suit will be covered by Article 65. In the present case the controversial facts have been decided in favour of the plaintiff-appellant and the findings were not challenged before the High Court. The position, thus, is that the plaintiff was the owner in cultivating possession of the land and the defendant Moti was merely a labourer without any right of a tenant or a sub-tenant. The question is as to whether in this background it is necessary to set aside the order passed in favour of the respondent under Section 27 (4) of the Act before the suit can be decreed or whether the plaintiff can get a decree ignoring the said order as void, in which case the suit undoubtedly will be governed by Article 65.

6. The provisions of Section 27 (4) of the Act as also the other provisions are limited in their scope. The preamble indicates that the object of the Act is to provide for the abolition of the big landed estates and to reform the law relating to tenancies in the Himachal Pradesh. The expressions ‘tenant’, ‘sub-tenant’ as also other similar expressions have to be understood in the sense they have been used in the other statutes dealing with the relationship of landlord and tenant in agricultural lands. Section 27 of the Act provides for a transfer by the law of the right title and interest of the land owner to the State

- A Government under sub-section (1). Sub-Section (2) is by way of an exception with respect to land under the personal cultivation of the land owner. Sub-Section (4) directs that the right, title and interest of the land owner thus acquired, shall be transferred by the State, on payment of compensation, to the tenant who cultivates such land.
- B Under this provision, the order in the present case was passed in favour of Moti. If Moti was not a tenant or sub-tenant he was not entitled to the benefits under the sub-section. If the land was in cultivating possession of the plaintiffs, as held in the present suit, the Compensation Officer did not have the jurisdiction to pass any order in defiance of sub-Section (2) and the land did not vest in the State at all. Further, for the additional reason that Moti was not a tenant of the land the order passed in his favour under Section 27(4) was again
- C without jurisdiction. In absence of the conditions necessary for the exercise of power under Section 27(4) the Officer lacked jurisdiction to act and it was not necessary for the civil court to formally set aside his order before passing a decree. What necessitated the plaintiff to come to the civil court was the challenge to his title, and the suit must
- D be held to be covered by Article 65, and, therefore, not barred by shorter periods of limitation either under Article 100 or Article 113.

7. The cases relied upon by the High Court do not support the impugned judgment. In *State v. Sadh Ram*, I.L.R. (Himachal Pradesh) 1973 (2) 235, the Compensation Officer had passed an order under
- E Section 27(4) of the Act, transferring the proprietary right to the cultivating tenants of the land, excluding the trees standing thereon. The transferee tenants filed a suit in respect of the trees, and the High Court held that the suit was barred by limitation either under Article 100 or Article 113. The grievance of the tenant was not against the exercise of the power of the Compensation Officer under Section 27
- F (4) of the Act, rather he relied upon the same. The observations, mentioned below, from the judgment of Pathak, C.J. (as he then was) are enlightening and supporting the view expressed by us:

- G “This is not a case where the order made by the Compensation Officer is a nullity. If the Compensation Officer had *ab initio* no jurisdiction to take the proceeding and make an order therein, he would have no jurisdiction to make any order at all. In that event, the entire order made by him, including that part of it which is in favour of the plaintiffs, would be a nullity.”

- H In the full Bench judgment of the Lahore High Court in *Gangu and*

*Others v. Mahanraj Chand and Others*, A.I.R. 1934 Lahore 384 the decision on the question of limitation went against the plaintiff on account of the special facts and circumstances of the case, as is clear from the enunciation of the proposition (at page 389, column 2) to the effect that if it is necessary for a plaintiff to get rid of an order made by an Officer of the Government, which stands in his way before he can obtain a certain relief and in order to obtain that relief he does not specifically ask for the setting aside of the order but merely for a declaratory decree still the suit should be deemed to be one to set aside an order falling within the ambit of Article 14. It is material to note that in that case, it was essential for the plaintiff to have got the order of the Collector set aside, before asking for a decree.

8. Two cases of this Court, although not identical in facts nor governed by the present Act, support the view which we are taking. In *Sheo Lal and Ors. v. Sultan & Ors.*, [1970] 2 S.C.R. 405 the plaintiff filed a suit for a decree for redemption after unsuccessfully moving the Assistant Collector for similar relief under the Redemption of Mortgages (Punjab Act 2 of 1913) 1913, and a plea of limitation by virtue of Article 14 of the Limitation Act, 1908, was raised. Agreeing with the High Court this Court rejected the defence argument based on Article 14 on the ground that in the facts of the case it was not necessary to set aside the order of the Assistant Collector before granting a redemption decree. The other decision in *Mohd. Murtiza Khan v. State of M.P. and Others*, [1966] M.P.L.J. 933 arose out of a suit in which the interpretation of the provisions of the Bhopal Land Revenue Act was involved. In similar situation as in the present appeal before us, this Court held that Article 14 of the Limitation Act, 1908, had no application to the suit as the order under the Bhopal Land Revenue Act had been passed without jurisdiction and could be ignored without getting it set aside. Article 142 of the Limitation Act was applied.

9. For the reasons mentioned above we set aside the impugned judgment of the High Court and restore the decree passed by the first appellate court. The appeal is accordingly allowed with costs through out.

T.N.A.

Appeal allowed.