

(1978) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Appeal No. 663 of 1974 with cross-objection C.M.A. No. 360 of 1976 and S.A. No's. 777 and 778 of 1975

Ashifaquddin and Others

APPELLANT

Vs

Mohd. Azizuddin and Others

RESPONDENT

Date of Decision : 08-02-1978

Acts Referred:

Code Of Civil Procedure, 1908 — Section 1(3), 1(4), 1(3)(b), 4, 9, 24, 36, 37, 38, 39, 40, 41, 42, 43
Government Of India Act, 1935 — Section 91, 92
Scheduled Districts Act, 1874 — Section 3, 4, 5, 6
Limitation Act, 1963 — Section 5
Orissa Money Lenders Act, 1939 — Section 17
Andhra Pradesh Agency Rules, 1924 — Rule 1(1), 1(2), 2, 3, 5, 5(1), 6, 7, 36

Citation : AIR 1978 AP 354 : (1978) 1 APLJ 432

Hon'ble Judges : Ramachandra Rao, J;Amareswari, J

Bench : Division Bench

Advocate : C. Ananda Rao, for the Appellant; S.V. Kondapi, for the Respondent

Judgement

Ramachandra Rao, J.—The question, whether the ordinary Civil Court has jurisdiction to entertain a suit between persons not belonging to Scheduled Tribes, in respect of lands situated in a Scheduled Area of Telangana Area in the State of Andhra Pradesh arises for consideration in this batch of appeals.

2. The question arises this way. The appeal A. S. No. 663/1974 has been preferred against the judgment and decree of the learned District Judge, Adilabad, in O. S. No. 1 of 1966. The suit lands are situated in Utnoor village which is a scheduled area. The suit O. S. 1/1966 was filed by the plaintiffs the respondents herein for a declaration of their title to the said lands and to the office of Mutsaddi or in the alternative for a declaration of their right to a 4/5th share in the said lands and for joint possession of the same along with the first defendant. A claim was also made for recovery of past and future profits. The suit was decreed declaring the title of the plaintiffs and defendants to certain shares and that they were entitled to be in joint possession of the suit properties

along with the first defendant. The past and future profits were directed to be ascertained in a separate enquiry. The defendants preferred the appeal A. S. 663 of 1974.

3. In this appeal it is contended for the appellants that the District Court, Adilabad, had no jurisdiction to entertain the suit as the suit lands are situated in Utnoor, which is a Scheduled area, that it is only the competent Agency Courts constituted under the Agency Rules that have jurisdiction to entertain the suit and therefore the judgment and decree of the lower Court are null and void.

4. The plaintiffs-respondents filed an application E. P. 1/1975 on the file of the Court of the District Judge, Adilabad for execution of the decree in O. S. No. 1/1966. The defendants - the appellants herein-raised an objection in the lower Court that the decree passed by the District Court was null and void on the ground that the said Court had no jurisdiction to entertain the suit in respect of lands situated in Utnoor, a notified scheduled area, and therefore the decree was not executable. This objection was upheld by the learned District Judge, and the execution petition dismissed. The plaintiffs have now preferred the appeal C.M.A. 360/1976.

5. Second Appeals 777 and 778 of 1975 arise out of two suits O. S. Nos. 448 and 449 of 1971 on the file of the Court of the District Munsif, Adilabad, for specific performance of two agreements of sale or in the alternative for recovery of the amounts of sale consideration. Both the suits were decreed by the trial Court for recovery of consideration but were dismissed with regard to the relief of specific performance. In the second appeals also the question arises whether the Civil Courts have jurisdiction to entertain the suits in respect of lands situated in a scheduled area. When the second appeals came up for hearing before our learned brother K. A. Muktadar, J., reliance was placed by the appellants therein on the decision of our learned brother M. Ramachandra Raju, J., in *A. Gopala Rao v. B. Kabbaiah* (1975 1 AWR 60), where the learned Judge took the view that there is nothing in the Agency Rules from which it could be said that the jurisdiction of the Civil Courts was ousted and that therefore the Civil Courts are not barred from trying suits relating to lands situated in a scheduled area. Our learned brother K. A. Muktadar, J., was not inclined to agree with the view taken by our learned brother M. Ramachandra Raju, J., and hence referred the appeals for consideration by a Bench.

6. As the main objection to the jurisdiction of the Civil Court is based upon the Andhra Pradesh Agency Rules as extended to the Telangana Area, it is necessary to trace the history of the said Rules and their application to the Telangana Area.

7. From the earliest times, Statutes were enacted barring completely or partially the application of Ordinary Laws in the backward parts of India. The enactments in force in these areas took different forms from time to time and in course of time it became a matter of considerable difficulty to ascertain what laws were and what were not in force in the said backward tracts. In order to ascertain the

enactments in force in various parts of British India and for other purposes, the Scheduled Districts Act (Act No. XIV of 1874) was enacted. The preamble to the said Act refers to the fact that

"Various parts of British India have never been brought within or have from time to time been removed from the operation of the general Acts and Regulations and the jurisdiction of the Ordinary Courts of Judicature, "that, doubts had arisen in " some cases as to which Acts or regulations were in force in such parts and in other cases as to what were the boundaries of such parts and that it was expedient to provide readier means of ascertaining the enactments in force in such territories and the boundaries thereof and for administering the law therein."

8. The Act specified a number of tracts as Scheduled Tracts, and power was given to the Local Government to declare by notification what enactments were not in force in any Scheduled District and to provide for extending by notification to any Scheduled District with or without modification or restriction any enactments in force in any part of British India at the date of the notification.

9. A Scheduled District was defined in Para. 3 of S. 1, as meaning the territories mentioned in the First Schedule to the Act. The first schedule contained several tracts in various States of British India but so far as the erstwhile composite State of Madras was concerned, Scheduled Districts comprised certain agency tracts in Vishakapatnam and Godavari Districts. Section 6 of the Act empowered the local Government to appoint officers to administer Civil and Criminal Justice and to superintend the settlement and collection of public revenue and all matters relating to rent and otherwise to conduct the administration within the Scheduled Districts and to regulate the procedure of the said officer and also give directions for the exercise of jurisdiction or duties by the authorities. It is pursuant to this power the Agency Rules were framed by the Governor in G. O. No. 1116 Revenue dated 23-7-1924 which came into force from 1st September, 1924.

10. Some modifications were made by the Government of India Acts of 1915 and 1919 with regard to the procedure for declaration of any territory in India, as a Backward Tract and for applying the laws with such exceptions and modifications as might be prescribed in the notification to be issued by the Governor General in Council. But the Government of India Act, 1935 modified the aforesaid provisions. Sections 91 and 92 of the Act dealt with the delimitation and administration of the areas which under the earlier Legislation were termed "Scheduled Districts" or "Backward Tracts". The expressions, "Scheduled Districts" and "Backward Tracts" were replaced by the expression "Excluded Area" or "Partially Excluded Area." These areas were specified in the Excluded Areas Order in Council, 1936. By this order, the areas excluded from the Provincial Legislature were enlarged. The agencies of Ganjam, Visakhapatnam and Godavari were specified as Partially Excluded Areas. By S. 92 of the Government of India Act, 1935, it was provided that the executive authority of the Province extended to the Excluded and Partially Excluded Areas but no Act of

the Federal Legislature or of the Provincial Legislature would apply to an Excluded Area or a Partially Excluded Area unless the Governor by public notification so directed and the Governor might direct that the Act would apply subject to such exceptions or modifications as he thought fit. Thus Ss. 91 and 92 of the Government of India Act, 1935 read with the Excluded Areas Order in Council, 1936, in effect repealed the Scheduled Districts Act (Act No. XIV of 1874). The Agency Rules framed under the said Act were however continued to be enforced in the agency tracts of Ganjam, Visakhapatnam and Godavari.

11. But the erstwhile State of Hyderabad not being a part of British India, neither the Scheduled Districts Act nor the Agency Rules framed thereunder, were applicable to the said State. Consequently the Agency Rules were not in force in the Telangana Area which was then part of the erstwhile State of Hyderabad. However the administration of the tribal areas in the Telangana area was governed by the provisions of the Andhra Pradesh (Telangana Tribal Areas) Regulation (Regulation No. III of 1359 Fasli) and the Notified Tribal Areas rules 1359 Fasli framed under the said Regulation. Under the aforesaid Regulation, power was conferred on the Government to direct that any Act or Regulation or Rule for the time being in force in the State of Hyderabad, would not apply to any notified tribal area specified in the notification or would apply thereto with such omissions and modifications as might be so specified. Power was also conferred on the Government to make rules as might be necessary or expedient for the better administration of any notified tribal area in respect of tribals and of their relations with non-tribals and also for barring jurisdiction of Courts of law or revenue authorities in any dispute relating to lands, house or house-sites claimed, rented or possessed by any tribal or from which any tribal might be evicted.

12. Rule 3 of the Notified Tribal Areas Rules of 1359 fasli provided that the Agent appointed by the Government was competent to define the jurisdiction of any Assistant Agent and to transfer any case, Civil or Criminal from an Assistant Agent to himself. Rule 5 of the said rules, barred the jurisdiction of Civil Courts in respect of disputes relating to land, house or house site where a tribal was involved and Rule 6 provided for transfer of such suits or proceedings from Courts of law to Courts constituted under the Agency Rules.

13. Thus till the coming into force of the Constitution of India, the Agency Rules were in force in the agency areas of Andhra, and the Notified Tribal Areas Rules, 1359 fasli were in force in the Telangana area. The Constitution of India, however, brought about certain changes with regard to the administration and control of the agency areas. Under Article 244 of the Constitution of India, it has been provided that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam and Meghalaya. Under the provisions of para. 5 (2) of the Fifth Schedule to the Constitution, power is conferred on the Governor to make regulations for the peace and good government of any area in

a State which is for the time being a Scheduled Area.

14. Sub-para. (1) of Para. 5 of the Fifth Schedule provides :-

"Notwithstanding anything in this Constitution, the Governor as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub paragraph may be given so as to have retrospective effect."

15. Under para. 6, Scheduled Areas are defined as meaning, such areas as the President may by order declare to be Scheduled Areas and power is also conferred on the President of India for modification or alteration of the Scheduled Area in the manner mentioned in sub-para. (2) of para. 6 of the Fifth Schedule.

16. In exercise of the power conferred by the provisions of para. 6 (1) of the Fifth Schedule to the Constitution, the President issued two orders viz., the Scheduled Areas (Part A States) Order, 1950 and the Scheduled areas (Part B States) Order, 1950 declaring the areas mentioned therein to be Scheduled Areas. Under the first Order, East Godavari, West Godavari and Visakhapatnam Agencies were declared to be Scheduled Areas. Under the latter order, certain areas in the State of Hyderabad were declared to be Scheduled Areas. It is common ground that the villagers in which the lands in dispute are situate, are notified as Scheduled Areas under the Scheduled Areas (Part B) Sates Order, 1950. These Scheduled Areas in the Telangana Area of the Hyderabad State which was Part B State continued to be governed by the provisions of the Andhra Pradesh (Telangana Tribal Areas) Regulation, 1359 fasil and the Notified tribal Areas Rules of 1359 fasil framed thereunder even after the formation of the State of Andhra Pradesh in 1956.

17. While so, the Governor of Andhra Pradesh in exercise of the powers conferred by Paragraph 5 (2) of the Fifth Schedule to the Constitution made the Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963 (Regulation No. Ii of 1963). This regulation extends to the whole of the Scheduled Areas in the State of Andhra Pradesh. Under Cl.2. the following laws have been extended to the Scheduled Areas in the whole of the State of Andhra Pradesh :

(1) The Andhra Agency rules.

(2) The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Andhra Pradesh Regulation I of 1959).

(3) The Andhra Pradesh (Andhra Region Scheduled Areas) Money Lenders Regulation, 1960 (Andhra Pradesh Regulation I of 1960), and,

(4) The Andhra Pradesh (Andhra Areas Scheduled Tribes) Debt Relief Regulation,

1960 (Andhra Pradesh Regulation II of 1960).

18. Clause 8 of the said Regulation, repealed the Tribal Areas Regulation, (Regulation III of 1359 Fasli) which was in force in the Telangana Area till then. It is by virtue of the Andhra Pradesh Scheduled Areas Laws (Extension and Amendment) Regulation, 1963, that the Andhra Pradesh Agency Rules have been extended to the Scheduled Areas in the Telangana Area which is now part of the State of Andhra Pradesh. It is therefore necessary to refer to the relevant Agency Rules to determine whether the jurisdiction of Civil Courts is barred in respect of disputes arising in Scheduled Areas.

19. Under sub-rule (1) of Rule 1 of the Andhra Pradesh Agency Rules, the Collectors and District Magistrates of west Godavari, East Godavari, Visakhapatnam, Srikakulam of Andhra Area Adilabad, Warangal, Khammam and Mohboobnagar, of Telangana area have been designated as Agents to the State Government and they shall be the Collectors, District Magistrates and District Judges within the Agency tracts included in their respective districts.

20. Under sub-rule (2) of R. 1, for the trial and determination of suits coming before them, the Agent to the State Government is vested with the same powers as are vested in the district and revenue courts and the Agency Divisional Officers with the same powers as are vested in the subordinate and revenue courts in the ordinary tracts of the State of Andhra Pradesh subject to the modifications contained in the Agency Rules.

21. Rules 2 to 60 provide for administration of Civil Justice and contain elaborate provisions with regard to constitution of Agency Courts, defining their pecuniary and territorial jurisdiction and the procedure to be followed by the said Courts. Rule 2 provides for valuation of suits, Rules 3 to 10 for Constitution of Agency Courts and their respective jurisdictions. Rules 11 to 13, for transfer of suits, Rr. 14 to 20 for institution, trial and determination of suits; and R. 21 provides for appearance of Pleaders in Agency Courts. Rules 22 to 28 provide for service of process; Rules 29 to 38, for execution of decrees and orders; Rules 39 to 41 for investigation of claims and objections to the execution; Rules 42 to 46, for passing orders for interim protection of property; Rules 47 to 57, for appeals, and Rr.57 to 60 contain general provisions with regard to bringing on record the legal representatives of a deceased person, the applicability of the provisions of S. 5 of the Limitation Act and other matters. For the purpose of the present case, the relevant rules are Rules 3, 4, 5, 6, 7 and 10 which read as follows :-

R. 3:- "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.

R. 4 :- "Claims to succession to or of any interest in the estates of any chief, or to any pension or grant of money or land revenue conferred or made by the British or any former Government shall not be entertained in any court. Such claims shall be inquired into by the Agent to the State Government, and he shall

submit the result of the inquiries for the orders of the Government who may pass such orders as they think fit.

R. 5 (1):- Agency Munsif shall have cognizance of suits for movable or immovable property not exceeding in value Rs. 500 but shall not have cognizance of any suit in which any Zamindar, Bissoyee or any mansubdar, Muttadar or other feudal hill chief may be concerned :

Provided that the Agent to the State Government or Agency Divisional Officer having jurisdiction may transfer any suit in which a hill chief is concerned, if both parties desire such transfer or consent thereto and if the value of the suit does not exceed rupees 500 to the Agency Munsif within whose local jurisdiction the cause of action has arisen for disposal by him:

Provided also that the Agent to the State Government with the sanction of the State Government, may authorise any Agency Munsif by name to take cognizance of suits up to any amount not exceeding Rs. 3,000 in value.

(2) Suits cognizable by an Agency Munsif shall be instituted only in the Court of the Agency Munsif having jurisdiction.

R. 6:- With the exception firstly of suits which are cognizable by Agency Munsifs and secondly of the suits described in Rule 7 all suits shall be instituted in the Court of the Agency Divisional Officer having jurisdiction.

R. 7:- Suits of a value exceeding Rs. 5,000 or for revenue paying lands of which the value of the annual produce exceeds Rs. 500 shall be instituted in the Court of the Agent to the State Government or the Government Agent as the case may be.

R. 10 (1):- The Civil Courts of each grade shall receive, try and determine suits hereby declared to be cognizable by those courts, if in the case of suits for land or other immovable property, such land or property or any portion of such land or property is situated within the limits to which their respective jurisdictions extend, and all other cases if the cause of action wholly or in part shall have arisen or the defendant or any one of the defendants at the time of commencement of the suit dwells or personally works for gain within such limits. In no case shall the Courts have jurisdiction to adjudicate upon property not within the jurisdiction of the Agent to the State Government :

Provided that if in a suit, not being one for land or other immovable property, the defendant or all the defendants do not reside within limits of the jurisdiction of the Agent to the State Government, the suit shall not be instituted except with the previous consent of the Agent to the State Government or the Agency Divisional Officer to whom the Court in which the suit is intended to be instituted is subordinate.

(2) Where a suit which may be instituted in any one or two or more courts subordinate to the Agent to the State Government, or the Agency Divisional

Officer is instituted in one of such courts, the Agent to the State Government, or the Agency Divisional Officer, as the case may be, shall on application by the defendant, and after hearing the objections, if any of the other parties determine in which of the several courts having jurisdiction the suit shall proceed, and he may where necessary, transfer the suit to such court."

22. Before referring to the contentions of the learned counsel, it is necessary to state that in all the suits out of which these appeals arise all the parties are non-tribals though the lands in dispute are situate in Scheduled Areas. The question, whether the ordinary civil Courts have jurisdiction in disputes of a civil nature where tribals are involved, does not arise for consideration in these appeals. We therefore confine ourselves to the question as to whether the ordinary civil Courts have jurisdiction to try suits of civil nature where all the parties are non-tribals.

23. The contention of the learned counsel for the defendants is that by virtue of the provisions of R. 3 of the Andhra Pradesh Agency Rules, the Agency Courts have been conferred exclusive jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred and therefore the ordinary Civil Courts are barred from trying such suits even though the dispute is between non-tribals.

24. But it is contended by the learned counsel for the plaintiffs that the jurisdiction of Civil Courts extends also to the areas covered by the Scheduled Areas, that the Agency Courts are constituted primarily for the benefit of tribals and therefore suits between non-tribals can be entertained by ordinary civil Courts having jurisdiction over Scheduled Areas.

25. It is well settled that the provisions barring the jurisdiction of Civil Courts should be strictly construed and unless there is a specific provision barring the jurisdiction of Civil Courts, the Courts cannot infer bar of jurisdiction by a process of implied reasoning. There is no provision in the Agency Rules expressly barring the jurisdiction of Civil Courts in respect of suits relating to disputes arising between non-tribals, nor can it be necessarily implied that the jurisdiction of Civil Courts is barred to try such suits. There are also other reasons why the contention that the ordinary Civil Courts have no jurisdiction to entertain suits relating to disputes arising in Scheduled Areas between non-tribals, cannot be accepted.

26. Firstly, the ordinary civil Courts constituted under the Andhra Pradesh Civil Courts Act (No. 19 of 1972) have jurisdiction over the entire area included in the Scheduled Areas falling within the limits of their territorial jurisdiction and also in respect of disputes where the cause of action arises within their respective jurisdictions. The Civil P. C. 1908 extends to the whole of India including the Scheduled Areas except as mentioned in sub-secs. (3) and (4) of S. 1, C.P.C.

27. It is provided under sub-sec. (4) of S. 1 C.P.C. (as amended) that

"In relation to the Amindivi islands, and the east Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union Territory of Lakshadweep, the application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, ? Agencies or such Union territory, as the case may be, relating to the application of this Code."

28. So far as Scheduled Areas in Telangana area are concerned, there is no such limitation as mentioned insub-sec. (4) of S. 1 C.P.C. (as amended). Therefore by virtue of the provisions of S. 9 C.P.C. the ordinary Civil Courts have jurisdiction to entertain all disputes of a civil nature arising in the Scheduled Areas unless their jurisdiction is expressly or impliedly barred. We have already mentioned that the Agency Rules were primarily intended for the benefit of the Scheduled Tribes and we do not see any reason or justification why the jurisdiction of ordinary Civil Courts should be barred from trying suits relating to disputes between non-tribals.

29. Further para. 5 of the Fifth Schedule to the Constitution, empowers the Governor by public notification to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

30. In the instant case, no notification was made by the Governor excluding the application of the Andhra Pradesh Civil Courts Act or the CPC to any Scheduled Area or part thereof and therefore the Civil Courts have jurisdiction to entertain suits between non-tribals.

31. Whenever the Legislature intended to exclude the jurisdiction of Civil Courts in disputes relating to tribals, an express provision was made in that behalf; for instance, S. 5 of the Agency Tracts Interest and Land Transfer Act, 1917, provided that every suit against a member of a hill tribe instituted after the commencement of the said Act, should be instituted only in the Courts of the Agency tracts. The said Act of 1917 was however repealed by the Andhra Pradesh Scheduled Areas Land Transfer Regulation (I of 1959). The latter Regulation also provides by Sec. 4 that

"Every suit against a member of a Scheduled Tribe instituted after the commencement of the Regulation shall be instituted only in the Court having jurisdiction over the Agency tracts."

32. Rules 5 and 6 of the Notified Tribal Areas Rules made under the Andhra Pradesh (Telangana Tribal Areas) Regulation 1359 Fasli also excluded the jurisdiction of Civil Courts in respect of disputes relating to land or house or house-site claimed by a tribal. The Andhra Pradesh (Telangana Tribal Areas) Regulation, (Regulation No. III of 1359 Fasli) was repealed by the Andhra Pradesh Scheduled Areas Law (Extension and Amendment) Regulation, 1963. Thus in respect of specific disputes or claims arising in Scheduled Areas in which

tribals are involved, jurisdiction was expressly conferred on the Agency Courts. As already observed by us, the question whether such disputes also can be tried by ordinary civil Courts does not arise for consideration in these appeals and we do not therefore propose to express any opinion on the said question. In the instant case, the disputes are between non-tribals in respect of lands situate in a Scheduled Area and we do not find any express or implied provision in the Agency Rules which excludes the jurisdiction of Civil Courts from taking cognizance of suits relating to disputes arising in a Scheduled Area between non-tribals.

33. It is contended by Sri. D.V. Sastri, learned Government Pleader that in respect of suits of a civil nature arising in Scheduled areas, two forms are available. One the Agency Courts constituted under the Agency Rules and the other the ordinary Civil Courts constituted under the Andhra Pradesh Civil Courts Act, that both have concurrent jurisdiction to take cognizance of such suits, whether parties are tribals or non-tribals and that the agency Rules only provide a cheaper remedy, and opinion is given to the parties to choose either of the Forums. In support of this contention, he relied upon three rulings in *P. Sowrayya and Brothers Ltd. Vs. Sundaragiri Abdul Khader Saheb*, *Kartar Singh v. Pritam Singh* (AIR 1956 Pepsu 78) and *Mana and Another Vs. Ujal Bisi and Others*, . In the Andhra case, the Gurasala Panchayat Board provided a stand for the stopping of buses and lorries and auctioned the right to collect fees from the owners of the vehicles using the said stand. The plaintiff therein was the highest bidder and became entitled to collect the fees from the vehicles stopping in the cart-stand. The defendant was using the cart-stand for parking his lorry and buses. The suit was filed for lorry and buses. The suit was filed for recovery of the amount due by the defendant towards fees for using the cart-stand for parking his vehicles. The defendant contended that the suit was not maintainable as the Madras Local Board's Act (Act XIV of 1920) provided the machinery for the collection of such fees. But that contention was negatived. On second appeal His Lordship Subba Rao, Chief Justice held that (at p. 29):

" It is well established principle of law that a Civil Court's jurisdiction is not ousted unless a particular statute expressly or by necessary implication excluded it and that there was no express provision in the act excluding the jurisdiction of a Civil Court.....".

34. His Lordship then referred to the ruling in *Wolverhampton New Waterworks Co. V. Hawkesford* (1859)6 CB 336, where Willies J., laid down the principle as follows:-

" There are three classes of cases in which a liability existing at common law. And which is only re-enacted by the statute with a special form of remedy; there unless the statute contains words necessarily excluding the common law remedy the plaintiff has his election proceeding either under the statute or at common law. Then there is a second class, which consists of those cases in which a statute has created a liability but has given no special remedy for it; there the party may

adopt an action of debt or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law and gives also a particular remedy for enforcing it. With respect to that class, it has always been held that the party must adopt the forum of remedy given by the statute".

His Lordship Subba Rao, C.J., held that the case before him was governed by the first class of cases enumerated by Willies, J. His Lordship observed that

" this liability of a person who uses another man's property for parking his carts to pay the latter for his use and occupation is not a liability created for the first time by the provisions of the Madras Local Boards Act,"

that the said liability was only re-enacted by the Statute and therefore it could not be held that by necessary implication the Panchayat Board's remedy to recover the amount in a Civil Court was ousted.

35. In the Pepsu case (Kartar Singh v. Pritam Singh AIR 1956 Pepsu 78) under the Pepsu Panchayat Raj Act (8 of 2008 BK) it was the Adalat Class I that could entertain civil suits where the valuation did not exceed Rs. 500 but the suit was filed by the plaintiffs therein in the Court of the Subordinate Judge 2nd Class, For recovery of a sum of Rs. 450, and obtained a decree. The question arose in second appeal , whether the jurisdiction of the Subordinate Judge's Court was barred by the provisions of the Pepsu Panchayat Raj Act and whether the decree passed by the Subordinate Judge's Court was a nullity. The learned Judge held that although the Panchayat Court were given jurisdiction in certain suits by the Pepsu Panchayat Raj act, the jurisdiction of ordinary Civil Courts in such suits was not excluded or taken away, that both courts had concurrent jurisdiction in such suits and that the decree passed by the Subordinate Judge's Court was not a nullity.

36. In the Orissa case (Mana and Another Vs. Ujal Bisi and Others,), the suit was filed in the Subordinate Judge's Court for a declaration of title to certain land. The defendants raised a plea inter alia that the jurisdiction of the Civil Court was barred by reason of the provisions of S. 17(2) of the Orissa Money Lenders Act, which is to the following effect (at p.22):-

"When the mortgagor is a member of a backward tribe as described in Part VI of the Thirteenth Schedule to the Government of India (Provincial Legislative Assembly) Order 1936, the Special Assistant Agent , the Sub-Divisional Magistrate or any other officer specially empowered in this behalf by the District Magistrate, the Deputy Commissioner or the Agent to the State Government, as the case may be may either on application by anyone interested or on his own motion, if he is satisfied on a summary enquiry that the mortgage shall be deemed to stand discharged under sub-sec.(1), decree ejectment against any person in possession of the property claiming under the mortgage and may restore it to the mortgagor or his heirs.....".

37. Both the trial Judge and the appellate Judge rejected the said plea. On

second appeal, the learned Judge R.N. Misra J., after referring to the principle laid down by Willies J., in *Wolverhampton New Waterworks Co.v. Hawkesford* referred to (1859) 6 CB (NS) 336 (supra) , held that " the right to redeem a mortgage has been provided for under the T.P. Act and is not one created under S. 17 of the Orissa Money Lenders Act", that it was really an instance where certain remedies were provided but not that any new right or liability was created, that there was no express or implied ouster of the jurisdiction of the Civil Court, that the remedy under the Act was only an additional one and option was left to the party asking for assistance of the court to choose the ordinary forum of the Civil Court or the special forum created under the statue.

38. These three rulings may not apply to the facts of the present case as the plaintiffs in all these appeals are not seeking to enforce any right or liability created by any special statue, but they are seeking to enforce common law rights in respect of lands situate in scheduled areas where two forums have concurrent jurisdiction to entertain suits of a civil nature, (1) the Agency Courts constituted under the Agency Rules and the other the ordinary Civil Courts constituted under the Civil Courts Act and governed by the Civil P. C. The only question for consideration is whether the Agency Rules which constituted the Agency Courts and conferred jurisdiction on the said Courts to entertain suits of a civil nature, would exclude the jurisdiction of the ordinary Civil Courts having also jurisdiction over the said area, to entertain suits of a civil nature relating to disputes between non-tribals. It may be that the Agency Courts also may have jurisdiction to entertain such suits between non-tribals but on that ground alone it could not be held that the jurisdiction of the Civil Courts is barred to entertain such suits unless the bar of jurisdiction is explicitly expressed or clearly implied by the provisions of the Agency Rules. We do not find any provision in the Agency Rules which bars jurisdiction of Civil Courts either expressly or by necessary implication.

39. Sri Ugle and Sri Azizullah Khan, relied upon the ruling of our learned brother Ramachandra Raju J., in *A. Gopala Rao v. B. Kabbaiah* (1975 1 An WR 60), in support of the contention that the jurisdiction of Civil Courts is not barred to entertain suits between non-tribals. In that case, a decree for money was passed by the District Court, Khammam against two defendants therein, and in execution of the decree, the decree-holder filed an application for the arrest of both the judgment-debtors. A contention was raised by the defendants that both of them were residing in Madanapalli village of Kothagudem taluk of Khammam District which is in the Agency Area, that the Agency Courts only have jurisdiction to entertain suits under the Agency Rules and that the District Court had no jurisdiction to entertain the suit. That contention was negatived by the executing Court. The judgment-debtors came up in revision to this Court. Our learned brother M. Ramachandra Raju, J., found that though the judgment-debtors were residents of the Agency Area, the promissory note was executed within the territorial jurisdiction of the District Court, that there was nothing in the Agency Rules from which it could be said that with regard to suits which could be tried by Courts in the Agency Area, the jurisdiction of Courts outside the

Agency Area was ousted.

40. Sri Hassan, and Sri Kondapi, learned counsel for the defendants contended that the view taken by our learned brother in the aforesaid ruling, requires reconsideration. Our learned brother Muktadar, J., in his order of reference to the Bench in S. A. Nos. 777 and 778/1975 dated 21-6-1977, doubted the correctness of the view taken by our learned brother M. Ramachandra Raju, J. In the aforesaid ruling. The learned Judge Muktadar J., further observed that a perusal of the Andhra Pradesh Rules would make it clear that by implication the Civil Courts are barred from hearing any suit pertaining to lands situate in a scheduled area, and the Agency Courts are the proper Courts which could hear such suits. In support of this view, the learned Judge relied upon the provisions of Rr. 3, 5 and 7 of the Agency Rules.

41. But with respect, we are unable to agree with the view taken by our learned brother Muktadar J. Rule 3 of the Agency Rules merely provides that the Agency Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. This rule is similar to Sec. 9, C.P.C. which confers jurisdiction on ordinary Civil Courts to try suits of a civil nature excepting suits of which their cognizance is wither expressly or impliedly barred. There is nothing in Rule 3 of the Agency rules from which it could be inferred that the jurisdiction of the ordinary Civil Courts to entertain suits of civil nature between non-tribals is barred expressly or by necessary implication.

42. Rule 5 of the Agency Rules merely prescribes the limits of the pecuniary jurisdiction of the Agency Courts. Under sub-rule (1) of Rule 5, the Agency Munsif has jurisdiction to entertain suits for movable or immovable property not exceeding in value Rs. 500. But he may take cognizance of suits up to any amount not exceeding Rs. 3,000 in value, provided he is so authorised by the Agent to the State Government with the sanction of the State Government.

43. Rule 7 provides that suits of a value exceeding Rs. 5,000 shall be instituted in the Court of the Agent to the State Government, Rule 6, provides that the Agency Divisional Officer can take cognizance of suits except those which are cognizable by the Agency Munsif under Rule 5 or by the Agent to the State Government under Rule 7.

44. Sub-rule (2) of Rule 5 of the Andhra Pradesh Agency Rules, which is referred to by our learned brother Muktadar J., and which is also relied upon by the learned counsel for the defendants, is to the following effect :-

"R. 5 (2). Suits cognizable by an Agency Munsif shall be instituted only in the Court of the Agency Munsif having jurisdiction."

45. This Rule merely enjoins that suits falling within the jurisdiction of an Agency Munsif according to Rule 5, should be instituted only before the said Agency Munsif and not before the other Agency Courts i.e., the Court of the Agency

Divisional Officer or the Agent to the State Government and that the word "Only" occurring in Rule 5 (2), cannot give rise to an inference that the jurisdiction of Civil Courts is barred to try suits of a civil nature between non-tribals.

46. In the instant case, as all the parties are non-tribals and the cause of action has arisen within the jurisdiction of Civil Courts, the Civil Courts have jurisdiction to entertain suits though the lands are situated in scheduled areas.

47. As already observed by us, the question, whether the Civil Courts have jurisdiction to entertain suits where tribals are involved does not arise for consideration in these appeals and we therefore do not express any opinion as to the correctness or otherwise of the decision of our learned brother Ramachandra Raju, J. in *A. Gopala Rao v. B. Kabbaiah* (1975) 1 AnWR 60.

48. It is contended by Sri Hassan, that the Civil P. C. is not applicable to the areas declared to be "Scheduled Areas". Support for this contention is sought to be derived from the rulings in *Sree Raja Manyam Mahalakshamma Garu Vs. Muchika Appalaraju, Rambhadra Raju Bahadur v. Maharaja of Jeypore* ILR Mad 813 : (AIR 1919 PC 150), *Govindasami Padayachi by next friend and Another Vs. R. Sami Padayachi, and Lakshmi Devi v. Venkata Krishnamma* (1958 1 An WR 213).

49. But those rulings are no longer applicable after the amendment of S. 1(3), C.P.C. The Civil P. C. (Act No. V of 1908) has been extended to Part B States by the Civil P. C. Amendment Act II of 1951 and came into force on 1-4-1951. Section 1 (3) was first amended by the Civil P. C. Act II of 1951 and later further amended by the Adoption of Laws Order, 1954. After the States Reorganisation, it was further amended by the Andhra Pradesh Adaptation of Laws Order, 1957.

50. Clause (b) of S. 1(3) (which is relevant for this case) reads that the Code extends to the whole of India except "Save as hereinafter provided, the Scheduled Areas in the State of Andhra as it existed immediately before 1st Nov., 1956 and in the State of Madras."

51. Under the Proviso to Sec. 1, C. P. C. , only the provisions of Ss. 36 to 43 and O. XXXIV, C. P. C. were extended to East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh.

52. The Code has been further amended by the Civil P. C. (Amendment) Act, 1976 (Act No. 104 of 1976). Section 1(3), C.P.C. as amended now extends the CPC to the whole of India except the State of Jammu and Kashmir, and the State of Nagaland and certain Tribal Areas in Assam.

53. Thus after the Civil P.C. V of 1908 has been extended to the State of Hyderabad in 1951, the Code applies to the whole of the Telangana Area, which is now part of the State of Andhra Pradesh. The Scheduled Areas of Telangana have not been excluded from the application of the Code either by S. 1(3), C.P.C. or by any order of Governor under Para. 5 of the Fifth Schedule to the Constitution.

54. Secondly under Ss. 3, 4, and 5 of the Scheduled Districts Act, 1874 and S. 92 of the Government of India Act, 1935, no enactment in force in British India would apply to the Scheduled Districts or the excluded or partially excluded areas, unless it was extended to them by a notification by the local Government or the Governor. The CPC does not appear to have been extended to the said Districts or areas. But the Fifth Sch. to the Constitution of India has brought about a material change in the application of the laws to the Scheduled Areas. Paragraph 5 of the Fifth Sch. requires that the Governor may by Public Notification direct that any particular Act of Parliament or Legislature shall not apply to a Scheduled Area or any part thereof or shall apply to it subject to such exceptions or modifications as he may specify in the notification. In view of this constitutional Provision, the CPC is also applicable to the Scheduled Areas in the State of Andhra Pradesh as admittedly no notification has been made by the Governor under Para. 5 of the Fifth Sch. to the Constitution directing that the CPC shall not apply to the Scheduled Areas in the State of Andhra Pradesh.

55. Sri S. V. Kondapi, relied upon Rr. 36 and 42 of the Andhra Pradesh Agency Rules in support of his contention that ordinary Civil Courts are barred from trying suits between nontribals. Rule 36 of the said Rules provides for execution of a decree passed by the Agency Court outside the Agency tracts and R. 42 confers power on Agency Courts to pass interim orders for protection of property and have no relevance to the question of jurisdiction of Civil Courts.

56. It is then contended that under S. 4, C.P.C. nothing in the Code shall be deemed to limit or otherwise affect any special or local law in force or any special jurisdiction or power conferred or procedure prescribed by or under any other law in force, and the Agency Rules being a law in force in Scheduled Areas, the jurisdiction and powers conferred on Agency Courts by the said Rules cannot be curtailed or affected by the provisions of the Civil P. C. Sec. 4 C.P.C. merely saves the Agency Rules in their application to Scheduled Areas. But the CPC does not in any manner curtail or affect the power or jurisdiction of the Agency Courts to try suits falling within their jurisdiction in accordance with the procedure prescribed by the Agency Rules, when the cause of action arises within the territorial jurisdiction of the Civil Courts even though the dispute is between non-tribals residing in the Scheduled Area or the dispute between the non-tribals residing in the Scheduled Area or the dispute between the non-tribals relates to land situate in a Scheduled Area. Thus both the Agency Courts and the Civil Courts have concurrent jurisdiction to try suits of a civil nature except in cases where the jurisdiction of the civil Courts is expressly or impliedly barred by a special or local law.

57. Our attention has been drawn to two recent decisions of this Court; one an unreported decision of a Division Bench consisting of Divan, C. J., and Chennakesav Reddy, J. in *Narra Veeraiah v. Rokkula Pakeeru* L. P. A. No. 200 of 1976 and connected appeals rendered on 17-12-1976 (AP); and another of *Madhave Reddy and Madhusudan Rao JJ. in Jalagam Sitarama Rao and Another*

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58. In those cases, the main question that fell for consideration was, whether the High Court has power under r. 12 of the Agency Rules or S. 24, C. P. C. to transfer a suit pending in an Agency Court to an ordinary Civil Court. In the first of the cases, it was held that the application for transfer having been made by a party, R. 12 could not be invoked; and that under S. 24, C. P. C. the High Court could not transfer a suit exclusively triable by an Agency Munsiff's Court to an ordinary Civil Court. In the second case, it was however held that the Agency Court is a Court subordinate to the High Court, and therefore the High Court is competent to transfer a suit pending in the Agency Court to another competent Court subordinate to it, but that on such transfer, the suit would have to be tried in accordance with the law and procedure applicable to the Agency Court where it was validly instituted. In both the cases, the question whether Civil Court's jurisdiction to try suits between non-tribals where the cause of action wholly or partly arises in scheduled areas, did not directly arise for consideration. The aforesaid decisions do not therefore render any assistance in deciding the question that arises for consideration in the instant cases. For all the aforesaid reasons, we hold that the jurisdiction of ordinary civil Courts to take cognizance of suits of civil nature in respect of disputes relating to or arising out of lands situated in a scheduled area where all the parties are non-tribals and where the cause of action arises within the jurisdiction of the Civil Court is not barred by the provisions of the Andhra Pradesh Agency Rules either expressly or by necessary implication.

59. It therefore follows that the suits out of which these appeals arise, were cognizable by the Civil Courts in which they were instituted and that the judgments rendered and decrees passed by the said Courts cannot be said to be null and void for want of jurisdiction.

60. In this view, the appeal C.M.A. 360/1976 is allowed and the order of the lower Court dismissing the Execution Petition E. P. 1/1975 is set aside and the lower Court is directed to dispose of the said Execution Petition in accordance with law. The appellant will have his costs from respondents other than the Government, here and in the Court below.

61. The appeal A. S. No. 663/1974 and the cross-objections filed therein and the Second Appeals S. A. Nos. 777 and 778 of 1975 will be posted for hearing on merits.

62. Order accordingly.