
(1984) 08 OHC CK 0032

In the Orissa High Court

Case No : Civil Revision No's. 191 of 1979 and 88 of 1980

Duruju Mallik and etc.

APPELLANT

Vs

Krupasindhu Swain and Others etc.

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 4(4)

Citation : AIR 1985 Ori 202 : (1984) 58 CLT 359

Hon'ble Judges : D. Pathak, C.J; J.K. Mohanty, J; B.K. Behera, J

Bench : Full Bench

Advocate : B.H. Mohanty, S. Misra No. 1 and S.K. Nayak, for the Appellant; M. Patra and Deepak Misra, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty, J.—The question that arises for consideration in these revisions is whether a suit for permanent injunction restraining the defendants from interfering with the plaintiffs' possession over the disputed lands will abate under the provisions of Section 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (Orissa Act 21 of 1972) (hereinafter referred to as the "Act"). One of these cases (C.R. No. 88/80) was placed before a learned single Judge of this Court Mr. Justice P. K. Mohanti (as he then was) and his Lordship was pleased to refer the case to a Division Bench as the reasoning given by a Division Bench of this Court in a case reported in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, was not accepted. Thereafter the case came up before a Division Bench consisting of Mr. Justice P. K. Mohanti (as he then was) and Hon'ble Mr. Justice D. P. Mohapatra and their Lordships thought it proper to refer the same to a Full Bench for consideration of the above point of law. Accordingly the matter was placed before the Hon'ble the Chief Justice for constitution of a Full Bench and as common question of law arose in both the revisions, these were heard analogously.

2. Petitioner (in C.R. No. 88/80) brought Title Suit No. 134 of 1978 in the court of the Munsif, Kendrapara for a declaration of title to the suit lands and for a permanent injunction restraining the defendant from interfering with his peaceful possession. The suit lands having come under the consolidation operation the defendant filed a petition on 22-12-1976 for an order of abatement of the suit u/s 4(4) of the Act. While the petition for abatement of the suit was pending, the plaintiff amended the plaint by deleting the prayer for declaration of title and contended that the suit being one for permanent injunction only it should not abate. The learned Munsif by his order D/-20-12-79 having passed an order that the suit would abate u/s 4(4) of the Act, the plaintiff has come up in revision to this Court. The facts of the case in C.R. No. 191/79 are almost identical.

3. The question of law that arises for consideration as mentioned above was before a Division Bench of this Court earlier consisting of Hon"ble Mr. Justice R.N. Misra, C.J. and Hon"ble Mr. Justice R.C. Patnaik in a case reported in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, . In that case the plaintiffs suit was for permanent injunction restraining the defendants from interfering with her possession and enjoyment of the property. The trial Court has declared that the suit would partly abate under the Act. Therefore the plaintiff filed the Civil Revision challenging the order of the trial Court. The revision application came up before a single Judge and it was directed to be placed before a Division Bench as some single Judge decisions (to which reference has been made in the decision) took contradictory views on the point in issue. The Division Bench observed :

"The relief of injunction, as already pointed out, was an existing remedy at common law. No provision has been made in the Act empowering the authorities to grant injunction. Can the existing remedy at common law for which there is a pending action, in the circumstances, be held to have abated?

Undoubtedly, even to grant injunction it would be necessary for the Court to adjudicate upon the question of title or possession. There would be many suits where who the rightful owner is has to be ascertained even when the relief is one of permanent injunction simpliciter. Invariably, the question of possession in present will have to be taken into account. There is force in the submission of counsel for opposite parties that possession is an "interest" in land. A suit for declaration of right or interest including possession would, therefore, abate, as required by Section 4(4) of the Act. The main plank in the stand taken by counsel for the defendants opposite parties is that if a suit for declaration of right or interest abates, since even in a suit for injunction simpliciter, right and/or interest has to be ascertained before relief can be granted, it must follow that the mischief of abatement must extend even to a suit for permanent injunction only.

The legislative policy behind the Orissa Act 21 of 1972 is clear. In providing for abatement and temporarily taking away the jurisdiction of the court during the currency of the notification under the Act, the legislature has intended that when the consolidation operation is on, all relevant disputes should come before the consolidation authorities and two forums should not be dealing with the same

matter, as in that event there was likelihood of inconsistent situation arising.

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We may advert to Section 15 of the Orissa Land Reforms Act. Sub-section (7)"thereof clothed the Revenue Officer with jurisdiction to pass interim orders relating to appointment of receiver. Jurisdiction to pass order of injunction had not been vested. When dispute arose as to whether the Revenue Officer could restrain one party from interfering with the possession of the other, and whether a relief for such purpose would be barred by Section 67 of the Land Reforms Act, the legislature advisedly amended Sub-section (7) in incorporating therein words "restraining" the landlord from interfering with the tenant's cultivation of the land or for such other purposes". Mrs. Padhi for the opposite parties does not contend that even in the absence of the power to grant injunction, the Consolidation Officer would have a right to pass an order of that type. It becomes difficult for us, therefore, to accept the submission that a suit for permanent injunction pending at common law would stand abated as a result of the notification under the Orissa Act 21 of 1972 even though the relief of injunction is not available under the Act."

As a matter of fact their Lordships indicated that the legislature should step in and confer the jurisdiction on consolidation authorities to grant injunction, both temporary and permanent, in regard to lands which are the subject matter of consolidation proceedings and orders of permanent injunction should be deemed to be "decrees" for purposes of execution so that the inconvenience which arises may not continue and the legislative intention may be effectively worked out. Their Lordships further observed : --

"Until all that has been done, merely by construction of the scheme under the Orissa Act 21 of 1972, it becomes difficult to hold that the remedy at common law of permanent injunction is no more available either in the Civil Court or before the authorities under the Act, once there is a notification under" Section 3 of the Act."

The learned Judges ultimately held : --

"We are inclined, therefore, to hold that the suit for permanent injunction in the instant case did not abate. The view taken by P.K. Mohanti, J., in the case of Puni Bewa v. Ananta Sahoo 47 (1979) CLT 494, where the learned Judge held that so far as the reliefs which relate to matters which are beyond the purview of the Act, the suit would not abate, and the single Judge decision in Chintamani Bhanja (deceased by L.R.) Vs. Gokula Chandra Bhanja and Others, appear to be correct. The subsequent decision of our learned brother P. K. Mohanty, J. in Bhagaban Prasad Das Vs. Narayan Prasad Das, , where he took a contrary view to his own in the earlier decision, in our opinion, does not state the correct position of the law."

The above principles has been accepted by this Court in the cases reported in 57

(1984) CLT 239 : AIR 1984 NOC 202 (Narendra Naik v. Kela Lenka) 57 (1984) CLT 417 Sridhar Mohanty v. Kamal Kumar Agarwal, and (1984) OLR 333 (Rusava Hota v. State of Orissa). The matter, therefore, requires careful consideration.

4. The Government may issue a notification u/s 3 of the Act to the effect that any area specified in the notification may be brought under consolidation operations. Section 4 of the Act enumerates the consequences that shall ensue upon publication of such notification. Abatement of the suit is one of the consequences of the notification issued u/s 3(1) of the Act as provided under Sub-section (4) of Section 4 of the Act. Section 4(4) of the Act provides : --

"4(4). Every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal, reference or revision shall, on an order being passed in that behalf by the Court before which such suit or proceeding is pending, stand abated :

Provided that no such order shall be passed without giving the parties concerned an opportunity of being heard;

Provided further that on the issue of a notification under Sub-section (1) of Section 5 in respect of the said area or part thereof, --

(a) every order passed by the Court under Clause (4) in relation to the lands situate in such area or part thereof, as the case may be, shall stand vacated; and

(b) All such suits and proceedings as are referred to in Clause (3) or Clause (4) which relate to lands situate in such area or part thereof, as the case may be, shall be proceeded with and disposed of in accordance with the law as if they had never abated :

Provided also that such abatement shall be without prejudice to the right of the person affected to agitate the right or interest which formed the subject matter of the said suit or " proceeding, before the proper consolidation authority in accordance with the provisions of this Act or the Rules made thereunder."

The aforesaid provisions go to show that if the matter can be gone into by the consolidation authorities, then the suit in respect of the same would abate u/s 4(4) of the Act. The intention of the legislature is quite clear and is in conformity with the well recognised principle that two forums should not be dealing with the same matter, as in that case there is likelihood of inconsistent situation arising.

5. As held by the Division Bench in the case-reported in Rahas Bewa Vs. Kanduri Charan Sutar and Others, the relief of injunction is an existing remedy at common law. No provision has been made in the Act empowering the authorities to grant injunction.

It is well established in law that an exclusion of jurisdiction of the Civil Court is not to be readily inferred unless such exclusion is either expressly spelt out in

the special statute or clearly implied. Obviously there is no express provision in the Act giving jurisdiction to the consolidation authorities to grant relief of injunction and, therefore, the jurisdiction of the Civil Court cannot be taken to have been ousted. When the special statute does not provide adequate remedy, which the Civil Court can grant, the jurisdiction of the Civil Court cannot be taken to have been ousted by necessary implication. In this case it is useful to refer to the oft-quoted dictum of Willes J., in *Weverhampton New Waterworks Co. v. Hawkesford* (1859) 6 CB 336, which is to the following effect: --

""There are three classes of cases in which a liability might be established, founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication excludes the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form or remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."

In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, the following principles regarding exclusion of jurisdiction of Civil Court have been laid down : --

"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

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(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

The Supreme Court in the facts and circumstances of the case held that the suit in question for declaration that the provisions of the law relating to assessment under the M.B. Sales Tax Act (30 of 1950) were ultra vires and for refund of the amount of the tax illegally collected was not barred by Section 17 of the Act.

It is well known that a party cannot be nonsuited when under the law he does not have any alternative forum for the redressal of his grievances. When his rights are of civil nature, the reliefs which flow from such rights and which he is entitled to get should be available from the Civil Court where the officer or authority has not been empowered to grant the same.

6. In view of what has been discussed above, we agree with the view expressed by the Division Bench of this Court in the case reported in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, that it becomes difficult to accept the submission that a suit for permanent injunction pending at common law shall stand abated as a result of the notification under the Orissa Act 21 of 1972 even though the relief of injunction is not available under the Act.

7. The next question arises for consideration is whether it is permissible under law to obtain the prohibited reliefs from the Civil Court in the garb of a suit for permanent injunction? This matter was considered by Hon"ble Mr. Justice P.C. Misra, in the decision reported in 57 (1984) CLT417 (supra). The learned Judge observed : --

"In suits relating to land a suit for permanent injunction restraining interference with possession cannot be maintained if the plaintiff had no legal possession of the property. Thus where the grant of injunction depends upon the determination of the title a suit for mere injunction may not be maintainable. It is not possible to lay down any formula or an exhaustive list of the nature of cases where a suit for injunction simpliciter is maintainable. Each case is to be decided in the facts of its own keeping in view the judicial precedence and guidelines given in cases dealing with the subject. It is equally true that merely because the question of title or possession may be required to be gone into incidentally would not make the suit for injunction simpliciter incompetent. Therefore, in order to determine whether the suit for injunction simpliciter is maintainable or not the substance of the pleadings has to be looked into and not merely the form of pleadings of the plaintiff alone or the prayer made by him. Their Lordships in a decision reported in *Jagardao Shukla v. Chandradeo Singh* 1981 ALJ 936 in dealing with such a question have held that notwithstanding the form in which the relief is couched in the plaint the suit would abate as the grant for relief for injunction claimed by the plaintiff was dependant squarely upon the conclusion that the plaintiff was Bhumidhar of the plot. The Hon"ble Supreme Court in the decision reported in *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, while approved the view of the Allahabad High Court in *Jagarnath Shukla's* case 1969 All LJ 768, that it is

the substance of the claim and not its form, which is decisive."

Thus where the grant of injunction depends upon the determination of the right or interest in any land situated within the consolidation area, the suit for permanent injunction may not be maintainable. In order to determine whether the suit for injunction simpliciter is maintainable or not, the substance of the pleadings has to be looked into and not merely the form of pleadings of the plaintiff alone or the prayer made by him. Each case is to be decided in the facts of its own.

8. Before parting with this case we reiterate the observation made in, the Division Bench decision of this Court reported in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, that it is high time, the legislature should step in and confer the jurisdiction on the consolidation authorities to grant injunction, both temporary and permanent, in regard to lands which are the subject matter of consolidation proceedings and orders of permanent injunction should be deemed to be "decrees" for purposes of execution so that the inconvenience which arises may not continue and the legislative intention may be effectively worked out.

The matters are now placed before a learned single Judge for disposal.

Pathak, C.J.

9. I have read the judgments prepared by my learned brothers J.K. Mohanty and B.K. Behera, JJ. I agree that a suit for permanent injunction does not abate under the provisions of the Act, as correctly decided by the Division Bench in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, . This is the only question raised by these revisions. The revisions are allowed and the orders passed by the learned Munsif holding that the suits abate are vacated. The parties in these revisions shall bear their own costs.

Behera, J.

10. For the reasons to follow, I agree that a suit for permanent injunction pending in the Civil Court does not abate u/s 4(4) after the issue of a notification u/s 3(1) of the Act, as recorded in paragraph 6 of this judgment.

11. A Division Bench of this Court has observed in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, that the Legislature may step in and confer jurisdiction on the Consolidation Authorities to grant injunction, both permanent and temporary. With respect, I have not been able to persuade myself to agree that the Consolidation Authorities created under a temporary Act should be clothed with the power to grant permanent injunction and that they should be given larger jurisdiction by limiting further the jurisdiction of the Civil Court. The Legislature has conferred such jurisdiction with regard to matters enumerated in the Act as has been considered to be legal, reasonable and proper. Authorities under the Act are statutory authorities exercising jurisdiction in respect of some specified purposes enumerated in the Act which is of a temporary nature and will spend its force on the completion of the consolidation operations in the State. In

my view, the jurisdiction of the Consolidation Authorities may not be enlarged, as suggested and their jurisdiction may be : thus far and no further.

12. The impugned orders in both the revisions before us have been passed by Mr. S. P. Acharya, Munsif, Kendrapara, in 1979 in two suits much prior to the decision of the Division Bench *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, . In both the suits, the question that has arisen is as to whether the two suits for permanent injunction abate under, Section 4(4) of the Act and the learned Munsif has held that the suits abate as the Civil Court has no jurisdiction in view of the provisions made in the Act.

13. In Civil Revision No. 88 of 1980, P.K. Mohanti, J. (as he then was) has referred to some decisions of the Supreme Court and this Court and it has been stated that Mr. M. Patra, the learned counsel for the opposite party, does not accept the reasoning adopted by the Division Bench of this Court in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, . Civil Revision No. 191 of 1979 has been referred by a Division Bench of this Court consisting of P. K. Mohanti and D. P. Mohapatra, JJ. because one of the learned Judges (P.K. Mohanti, J.) has referred the same question in the other revision. At the hearing of the two revisions by this Bench, Mr. Misra for the petitioner in Civil Revision No. 191 of 1979, Mr. B. H. Mohanty for the petitioner in Civil Revision No. 88 of 1980, Mr. Deepak Misra for the opposite parties in Civil Revision No. 191 of 1979 and Mr. M Patra for the opposite party in Civil Revision No. 88 of 1980, have submitted that the Division Bench has correctly decided in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, that a suit for permanent injunction pending in the Civil Court does not abate u/s 4(4) of the Act. This Bench is thankful to Mr. R.K. Mohapatra, an Advocate of the High Court Bar Association, who volunteered to address us at the hearing and was permitted to do so regard being had to the importance of the question involved. Mr. Mohapatra mainly dealt with the relative scope of Section 4(4) and that of Section 51 of the Act and in particular, submitted that the expression "Entertain any suit or proceeding" occurring in Section 51 of the Act would refer both to pending and future suits.

14. Section 4(4) of the Act provides that every suit and proceeding for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under the Act, which is pending before any Civil Court, whether of the first instance or appeal, reference or revision, shall, on an order being passed in that behalf by the Court before which such suit or proceeding is pending, stand abated and as provided therein, this order shall be passed after giving the parties an opportunity of being heard.

15. Section 51 of the Act providing for bar of jurisdiction of Civil Courts reads : --

"Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Clause (3) of Section 4 and Sub-section (1) of Section 7--

(1) all questions relating to right, title, interest and liability in land lying in the consolidation area, except, those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations; and

(2) no Civil Court shall entertain any suit or proceeding in respect of any matter which an Officer or authority empowered under this Act is competent to decide."

16. While Section 4(4) of the Act relates to a " pending suit, Section 51 debars the Civil Court from entertaining any suit or proceeding in respect of which a consolidation authority has been empowered under the Act to decide. Whether the expression "entertain any suit or proceeding" would cover suits or proceedings both pending on the date of the notification u/s 3(1) of the Act and also instituted, thereafter may appropriately be decided when such a question arises. Plainly, however, as Section 4(4) provides, only suits and proceedings for declaration of any right or interest in any land shall abate.

17. In the case of Puni Bewa v. Ananta Sahoo 47 (1979) CLT494, P. K. Mohanti, J. observed and held:

"..... The Consolidation Authorities have not been vested with power to give a declaration of status or to set aside a decree or order of a competent Court. They have also no power to grant the relief of permanent injunction. The Civil Court's jurisdiction to grant such reliefs is not expressly or impliedly barred under the provisions of the Act."

18. The same learned Judge, however, took a contrary view in the case of Bhagaban Prasad Das Vs. Narayan Prasad Das, although he had himself decided otherwise in the earlier case. It was for this reason that the then learned Chief Justice observed in Chintamani Bhanja (deceased by L.R.) Vs. Gokula Chandra Bhanja and Others, that P. K. Mohanti, J. had changed his view in the latter case Bhagaban Prasad Das Vs. Narayan Prasad Das, unfortunately without referring to any of the reported decisions including his own and further observed (at p. 114) :

"..... A learned single Judge is not entitled to take a different view from reported decisions of the Court even though they may be single Judges, and in case he is inclined to have a view of the legal position it is open to him to refer the matter to a larger Bench....." .

19. I may quote an extract from Eknath Shankarrao Mukkawar Vs. State of Maharashtra, . Their Lordships observed (para 25) :

"Our attention is drawn to a disquieting feature in the procedure adopted by the learned single Judge (G.N. Vaidya, J.) in disposing of the appeal. The learned Judge ignored the decision of another single Judge of the same Court (J.M. Gandhi, J.) who had earlier held in a similar case that the appeal by the State was not competent u/s 377(1) Cr. P.C. It is true that the decision is pending before this Court in appeal by special leave. That, however, cannot be sufficient

reason for the learned Judge to ignore it and observe that it is "unnecessary to keep back this matter till the Supreme Court decides the matter". When there was a decision of a co-ordinate court, it was open to the learned Judge to differ from it but in that case the only judicial alternative was to refer it to a larger Bench and not to dispose of the appeal by taking a contrary view. Judicial discipline as well as decorum should suggest that as the only course."

20. The decision taken by P. K. Mohanti, J. in Bhagaban Prasad Das Vs. Narayan Prasad Das, was overruled in Rahas Bewa Vs. Kanduri Charan Sutar and Others, .

21. As provided in Section 9 of the Civil P.C the civil court has plenary jurisdiction and it lays down that such court "shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". In other words, a civil court has jurisdiction in respect of all civil matters except those for which tribunals are constituted under special statutes and such tribunals have limited jurisdiction as provided in the statutes under which they exercise their jurisdiction. If a statute purports to exclude the ordinary jurisdiction of a civil court, it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. The Judicial Committee has observed in AIR 1940 105 (Privy Council) :

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

22. One of the points which is often treated "as relevant in dealing with the question about the exclusion of the jurisdiction of the civil court is as to whether the special statute which, it is urged, excludes such jurisdiction has used clear and unambiguous words indicating that intention. Another test is as to whether the statute provides for adequate and satisfactory alternative remedy to an aggrieved party. (See Lala Ram Swarup and Others Vs. Shikar Chand and Another,).

23. In Abdul Waheed Khan Vs. Bhawani and Others, , it has been laid down :

"Under Section 9 of the Civil PC., a Civil Court can entertain a suit of a civil nature except a suit of which its cognizance is expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a civil Court must be strictly construed."

In this connection, reference may also be made to the principles laid down in Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, .

24. A Full Bench of this Court has examined the question relating to the jurisdiction of a civil court in the case of Magulu Jal and Others Vs. Bhagaban Rai

and Others, . After referring to a number of authorities, G.K. Misra, C.J., speaking for the Court, with P.K. Mohanti and N. K. Das, JJ. agreeing with the learned Chief Justice, observed and held (at pp. 228-229)

"The following principles may be laid down as well settled by the aforesaid authorities :

(i) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.

(ii) Even if jurisdiction is so excluded. Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court would interfere if it finds the order of the special tribunal is unfair, capricious or arbitrary.

(iii) Where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it, a remedy provided by the statute must be followed and the Court's jurisdiction is ousted. The scheme of the particular Act is to be examined to see if remedies normally associated with actions in civil suits are prescribed by the statute.

(iv) The Legislature may entrust the special tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. The legislature shall have to consider whether there shall be an appeal from the decision of the tribunal as otherwise there will be none. In cases of this nature, the tribunal has jurisdiction to determine all facts including the existence of preliminary facts on which exercise of further jurisdiction depends. In the exercise of the jurisdiction the tribunal may decide facts wrongly or if no appeal is provided therefrom there is no appeal from the exercise of such jurisdiction.

(v) Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority as in point No. (ii) it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law."

25, Statute affecting jurisdiction of Courts are to be construed, as far as possible, to avoid the effect of transferring the determination of rights and liabilities from the ordinary Courts to other authorities.

26. In Smt. Ganga Bai Vs. Vijay Kumar and Others, , the Supreme Court has observed (Para 15):

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of

law and it is enough that no statute bars the suit....."

This principle has been followed by a Division Bench of the Allahabad High Court in Smt. Ram Pyari Vs. Dharam Das and Others, .

27. On a careful consideration of the provisions contained in the Act, the Division Bench of this Court in Rahas Bewa Vs. Kanduri Charan Sutar and Others, has, in clear terms, accepted the contention that a suit for permanent injunction does not abate u/s 4(4) of the Act as the Consolidation Authorities under the Act have no jurisdiction to grant injunction. Reference has been made to some decisions of the Supreme Court including the one reported in Gorakh Nath Dube Vs. Hari Narain Singh and Others, and some decisions of this Court. As noticed by me earlier, the same view has been taken by the then learned Chief Justice in Chintamani Bhanja (deceased by L.R.) Vs. Gokula Chandra Bhanja and Others, . It was observed and held (at p. 114):

".....The position, therefore, would be a suit for permanent injunction would not abate in view of the fact that such a relief is not possible to be granted by the Consolidation Authorities. It may be, as has been pointed out occasionally, that while dealing with a claim for interim injunction, the question of title as also possession would be ancillary gone into. That, however, does not give rise to a situation where the logic, that declaration of title is within the ambit of the Consolidation Authorities" authority, would operate so as to make a suit for permanent injunction not maintainable in the Civil Court."

28. I have said earlier and I repeat, Section 4(4) of the Act would operate in respect of suits and proceedings for "declaration of any right or interest" u/s 4(4) of the Act. Section 51 of the Act provides that "no civil Court shall entertain any suit or proceedings in respect of any matter which an officer or authority empowered under this Act is competent to decide". In order, therefore, to oust the jurisdiction of the civil Court, an officer or authority empowered under the Act must be competent to decide the question of permanent injunction and there can be no doubt, as has been submitted at the Bar with reference to the provisions of the Act and the reported cases, that a Consolidation Authority has no power to grant injunction. In the absence of any materials placed before us, it cannot be said that the two suits out of which the revisions arise had been instituted only in the garb of suits for permanent injunction. The opposite parties had not raised any objection to that effect in the Court below. No such contention has been raised on behalf of the opposite parties at the hearing of these revisions.

29. I would now proceed to record some decisions of this Court which have either been placed at the Bar or have come to my notice in which the scope of Sections 4(4) and 51 of the Act has been dealt with and in particular, cases in which it has been held in respect of the subject-matter of controversy that the Consolidation Authorities have no jurisdiction to decide the dispute for which the pending suits do not abate u/s 4(4) of the Act

30. A Full Bench of this Court has decided in the negative the question as to whether a final decree proceeding abates u/s 4(4) of the Act in the case of Srinibas Jena and Others Vs. Janardan Jena and Others, Dealing with Section 4(4) and Section 51 of the Act, it was observed and held (para 17):

" In deciding the true scope and effect of the relevant words in any statutory provision, the context in which the provision has been made, and the policy underlying the statute assume relevance and become material. The whole object of the provision of Section 4(4) of the Act is to oust the jurisdiction of the ordinary Civil Courts for the duration of the consolidation operations. Adjudication of right or interest by the Consolidation authorities was considered more suitable and efficacious for speedy decision which had to be taken in order to enable the consolidation operations to be finalised within a reasonable time. In order to achieve this object, the Legislature in its wisdom and experience provided for abatement of suits u/s 4(4) of the Act. The view of the Legislature appears to be that the scheme of consolidation would be inordinately delayed if ordinary Civil Courts were to decide the questions of right or interest relating to land. It is well known that civil litigation usually takes a long time to come to an end and the litigants feel completely desperate. If this were to be permitted, consolidation proceedings ran the risk of being held up for an indefinite period. It is with this end in view that the word "abate" has been used. The third proviso to Section 4 of the Act lays down that abatement of a suit shall be without prejudice to the right of the person affected to agitate the right or interest which forms subject-matter of the suit or proceedings, before the proper consolidation authority in accordance with the provisions of the Act or the Rules made thereunder. That is why in respect of most of the matters that abate, provision has been made conferring jurisdiction on the consolidation authorities to deal with. Finality is attached to the decisions of the appellate authority and the revisional authority under the Act as provided in Sections 12 and 36(2). Section 36(2) specifically provides that all orders passed under this section shall be final and shall not be called in question in any Court of law. Section 51 bars the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter which the consolidation authorities are competent to decide. Sections 4 and 51 are integral parts of the same scheme, namely, that declaration or rights and interests has to be done under the Consolidation Act and nowhere else. Section 4 covers pending suits and proceedings while Section 51 forbids entertainment of suits and proceedings to that end. Thus, it is abundantly clear that the consolidation authorities have been vested with exclusive jurisdiction to decide right and interest in land during the consolidation operations and the Civil Court's jurisdiction has been taken away.

31. In the case of Abas AH Khan v. Sahabuddin Khan 49 (1980) CLT 297, P. K. Mohanti, J. (as he then was) had dealt with the scope and applicability of Section 4(4) of the Act in a suit for recovery of possession and redemption of mortgage and held : --

"It will, thus, be seen that the scope of Section 4(4) of the Act is confined only to suits for declaration of any right or interest in land. In the present case, the plaintiff has sued for recovery of possession on redemption of mortgage. The transfer of interest represented by the mortgage was for the purpose of securing payment of money advanced by way of loan. Security cannot exist after the amount of loan had been paid up or validly tendered. The mortgage-money was validly tendered to the mortgagee and he refused to accept the same. Therefore, the right of the mortgagee to remain in possession came to an end. The mortgagee is bound to deliver possession of the mortgaged property to the mortgagor and to deliver to him the mortgage deed and other documents relating to the mortgaged property. No question of declaration of any right or interest in land is involved in the suit I am, therefore, of the view that Section 4(4) of the Act 21 of 1972 is not applicable to the present suit"

32. My learned brother R.C. Patnaik, J. has observed in 58 (1984) CLT 86, *Banambar Tripathy v. Collector of Ganjam* :

"The Civil Court has jurisdiction to entertain and try a lis unless its jurisdiction is ousted expressly or by necessary implication. Can one say on reading the provisions contained in Section 4(4) and Section 51 of the Act that jurisdiction of the Civil Court to entertain and try a suit wherein the reliefs for damages and for declaration that certain encroachment proceeding is illegal has been ousted or a proceeding under the Act seeking identical relief could be or ought to be started? A proceeding under the Act could be or ought to be started if the authority under the Act is competent and has jurisdiction to grant the reliefs. The provisions contained in Sections 4(4) and 51 have, therefore, to be given a purposive interpretation in harmony with the general principle that under our jurisprudence a party is not left without a remedy.

Sub-section (2) of Section 51 says that no Civil Court shall entertain any suit or proceeding in respect of any matter which an officer or authority empowered under the Act is competent to decide. In my humble opinion, when an officer or authority is not competent to grant a relief not having been empowered under the Act to do so a suit in the Civil Court is entertainable and where the reliefs claimed can only be granted by the Civil Court but not by an officer or authority under the Act the suit does not abate. This follows from a plain reading of the provisions."

Following the principle laid down in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, , the same learned Judge has held in Civil Revision No. 639 of 1980 (*Jadunath Rout v. Bhagabat Panda*), decided on November 16, 1983 57 (1984) CLT 13, that a suit for permanent injunction does not abate u/s 4(4) of the Act.

33. My learned brother P.C. Misra, J. in 57 (1984) CLT 405: (1984) 1 OLR 512 : *Basudev Pani v. Jagannath*, while dealing with the question as to whether a suit involving the question of adoption would abate u/s 4(4) of the Act and giving the answer in the negative has held:

"Civil Court would not entertain a suit or proceeding which can be entertained and decided by the consolidation authorities and if such a suit is pending, the same should abate u/s 4(4) of the Act Thus, the Civil Court's jurisdiction has been taken away in those matters for the adjudication of which the consolidation authorities have been vested with exclusive jurisdiction."

"In 57 (1984) CLT 417 (supra), the same learned Judge has examined the question as to whether a suit for permanent injunction abates u/s 4(4) of the Act and referring to some decisions of this Court including the Division Bench case *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, , has observed and held:

".....It is well established in law that an exclusion of jurisdiction of the Civil Court is not readily to be inferred unless such exclusion is either expressly spelt out in the special statute or clearly implied There is no express provision in the Consolidation Act giving jurisdiction to the Consolidation Authorities to grant of injunction and, therefore, the jurisdiction of the Civil Court cannot be taken to have been ousted. If the special statute does not provide adequate remedy, which the Civil Court could grant, the jurisdiction of the Civil Court cannot be taken to have been ousted by necessary implication."

In that case, however, it was held that as the question of title and possession were not to be gone into incidentally in view of the pleadings of the parties, the suit would abate u/s 4(4) of the Act. This view had been taken on the facts and in the circumstances of that case.

34. In *Radhasyam Jena and Others Vs. Jagannath Jena and Another*, , my learned brother G.B. Patnaik, J. has held that a suit for preferential claim u/s 22(2) of the Hindu Succession Act does not abate under the provisions of the Act as the Consolidation Authorities have no jurisdiction to decide this question.

35. My learned brother D.P. Mohapatra, J. referring to and relying on the principle laid down by the Division Bench in *Chintamani Bhanja (deceased by L.R.) Vs. Gokula Chandra Bhanja and Others*, , has held in (1984) 1 OLR 333 (supra) that a suit for injunction does not abate u/s 4(4) of the Act.

The same learned Judge has held in 57 (1984) CLT 239 : (1984) 1 OLR 27 : AIR 1984 NOC 202 (supra) that a suit for permanent injunction pending at common law does not abate u/s 4(4) of the Act. Reliance had been placed on the same Division Bench decision of this Court.

36. In Civil Revision No. 53 of 1982 (*Jadunath Mallik v. Sisirkanta Mohapatra*), decided on August 17, 1982 55 (1983) CLT 164 and Civil Revision No. 98 of 1981 (*Bhagaban Behera v. Sk. Ismile*), decided on November 55 1982 CLT 67, I had occasions to examine the same question, In the first-mentioned case, it has been held : ;

"For the purpose of determination as to whether the suit would be competent, the reliefs claimed and prayed for would be the criterion and not what might be the ultimate result at the conclusion of the trial. Among the reliefs claimed, one

is for permanent injunction. The view of Mr. Justice P.K. Mohanti of this Court Bhagaban Prasad Das Vs. Narayan Prasad Das, that a suit for permanent injunction involving question of title would abate is no longer good law as it has been overruled by a Division Bench of this Court consisting of the learned Chief Justice and Mr. Justice R. C. Patnaik in Rahas Bewa Vs. Kanduri Charan Sutar and Others, . The learned Chief Justice has dissented from the view taken by the learned single Judge in Bhagaban Prasad Das Vs. Narayan Prasad Das, in the case of Chintamani Bhanja (deceased by L.R.) Vs. Gokula Chandra Bhanja and Others, . Merely because the question of title may have to be gone into while deciding the question of granting permanent injunction prayed for by a party the suit would not abate as the Consolidation Authorities have no power to grant this relief under the Act"

I have taken the same view in the other Civil Revision.

37. It would thus be noticed that my learned brothers R.C. Patnaik, P.C. Misra and D.P. Mohapatra, JJ. have accepted the view taken by the Division Bench in Rahas Bewa Vs. Kanduri Charan Sutar and Others, that a suit for permanent injunction does not abate u/s 4(4) of the Act and I have also followed the principle laid down therein.

38. For all these reasons, it is found that the Division Bench of this Court had correctly decided the question of abatement of a suit for permanent injunction u/s 4(4) of the Act in the negative in Rahas Bewa Vs. Kanduri Charan Sutar and Others, . A suit for permanent injunction pending in the civil Court does not abate u/s 4(4) of the Act on the issue of a notification u/s 3(1) of the Act.

39. Both the revisions have been referred to a Full Bench for final decisions. The learned counsel for both the sides have submitted that a suit for permanent injunction does not abate u/s 4(4) of the Act and no other question has been raised by them at the hearing. The two revisions are, therefore, to be finally decided by this Bench.

40. The revisions succeed and the orders of the Court below holding that the suits abate u/s 4(4) of the Act stand vacated leaving the parties to bear their costs in these revisions. The learned Munsif shall now proceed with the suits in accordance with law.

41. A common judgment in this case and C.R. No. 88/80 is delivered in Court vide judgment in separate sheets.

42. In view of the majority of opinion, both the Civil Revisions are allowed. Parties are directed to bear their own costs.