

**(1990) 09 GUJ CK 0008**  
**In the Gujarat High Court**

**Case No :** Civil Revision Application No. 1123 of 1985

State of Gujarat

APPELLANT

Vs

Mer Parbat Ramaji

RESPONDENT

**Date of Decision :** 01-09-1990

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9  
Essential Commodities Act, 1955 — Section 6A, 6C, 6E

**Citation :** AIR 1991 Guj 185 : (1991) 2 GLR 705

**Hon'ble Judges :** J.N. Bhatt, J

**Bench :** Single Bench

**Advocate :** D.N. Trivedi, A.G.P, for the Appellant; M.N. Popat, for M.C. Thakkar, for the Respondent

## **Judgement**

1. By this revision, petitioner State has challenged the judgment and order dated 22-4-1985 passed by the learned Assistant Judge, at Jamnagar, in Civil Misc. Appeal No, 113 of 1984. Thus, the State has invoked the provisions of S, 115 of the CPC ("Code" for short hereinafter).

2. Learned Assistant Government Pleader Shri D. N. Trivedi appeared for the petitioner-State. Learned Advocate Shri M. N. Popat for learned Advocate Mrs. M. C. Thakkar, appeared for the respondent.

3. The impugned order is challenged on diverse grounds. However, one of the contentions, pertaining to the competence and jurisdiction of the Court, being important and going to the root of the matter, is examined and considered first. Mr. Trivedi, learned A.G.P. for the State, seriously contended that Civil Court has no jurisdiction and, therefore, the passing of interim order by the trial Court and then confirming by the appellate Court would be totally invalid and illegal. Thus, it brings into the focus as to whether the Civil Court has jurisdiction in such matters or not.

4. In order to appreciate the main above important contention, a resume of

material facts giving birth to the present revision, may be, narrated at this juncture.

5. The respondent before this Court in this revision is the original plaintiff whereas the petitioner in this revision is the original defendant. The plaintiff filed a Regular Civil Suit No. 914 of 1983 in the Court of the Civil Judge (S.D.), at Jamnagar, for declaration that the defendant has no right to seize 100 gunny bags of wheat and for its return. The plaintiff also claimed the relief of injunction. The contention of the plaintiff in the suit is that the Collector, Jamnagar, had illegally ordered confiscation of 100 gunny bags of wheat. One truck loaded with 100 gunny bags of wheat of the plaintiff was seized on 15-3-1983 and thereafter the said material was confiscated to the State by the Collector of Jamnagar by exercising his powers under S. 6(A) of the Essential Commodities Act ("Act" for short hereinafter). Being aggrieved by the confiscation of the essential commodity like 100 gunny bags of wheat, the plaintiff filed the above suit.

6. The plaintiff also filed an application for interlocutory injunction under O. 39, R. 12 of the Code and S. 151 of the Code along with the suit on 30-9-1983. After hearing both the parties, the learned Civil Judge (S.D.) at Jamnagar, found that the wheat, being perishable item, and in order to protect the interest of both the parties, he was pleased to direct the defendant-State to return the confiscated wheat on payment of Rs. 10,000/by the plaintiff in this Court. Being aggrieved by the said interim order, the original defendant State preferred Civil Misc. Appeal No. 113 of 1984 under O. 43, R. 1(r) of the Code in the District Court at Jamnagar. After hearing both the parties, the learned Assistant Judge, Jamnagar, was pleased to dismiss the appeal on 22-4-1985. Being dissatisfied by the said judgment and order of the District Court, the original defendant-appellant in that appeal, has come up before this Court in this revision, assailing the said judgment and order. That is how this revision under S. 115 of the Code has come up for determination.

7. The contention raised by the learned A . G . P. Mr. Trivedi, with regard to the maintainability of the suit, goes to the root of the matter and, therefore, it is taken up first. It may be noted at this stage that the Courts shall have jurisdiction to try all suits of civil nature under S. 9 of the Code except suits of which that cognizance is either expressly or impliedly barred under the provisions of law. Thus, all disputes of civil nature are triable by the Civil Courts, except which are barred. General rule of law is that when a legal right and an infringement thereof, if complained of or alleged, cause of action is disclosed and unless there is an express or implied bar to the entertainment of the suit, ordinarily Civil Courts are bound to entertain such civil claims. When remedy is provided in a special statute or when a relief is available under an enactment, by a special provision, there may be, in such a case, implied bar of jurisdiction of the Civil Courts. Thus, if a right or liability is created by statute, two situations may arise.

(i) The statute may create a specific forum for its enforcement. In such a case,

the question whether the Civil Court's jurisdiction is impliedly excluded within the meaning of S. 9 of the Code, is one of the statutory constructions. If the right is new one, ouster may be inferred.

(ii) If, while creating a liability, no machinery is provided for enforcement, Civil Court's can entertain tire suits, besides the suit of which the cognizance is expressly barred. There are suits, which are barred by general principles of law.

In so far as the present case is concerned. There is an express bar on the jurisdiction of the Civil Court in the Essential Commodities Act itself. It would be pertinent at this stage to refer to the provisions of S. 6(E) of the Act. There is a specific provision in the said section which excludes the jurisdiction of the Civil Court's. It is provided there in that whenever any essential commodity is seized. in pursuance of an order under S. 3 of the Act, in relation thereto, the Collector or, as the case may be, the State Government concerned, under S. 6(E) of the Act, shall have and not with standing anything contrary contained "in any other law for the time being in force, any other Court, Tribunal or Authority shall not have jurisdiction to make orders with regard to the possession, delivery disposal or distribution of such property, Thus, the jurisdiction of the Civil Courts, in case of" seizure or any order under the Act in relation to essential commodities, is expressly barred. It may also be mentioned that the impugned order of the Collector, Jamnagar, came to be passed under S. 6(A) of the Act. S. 6(C) of the Act provides a forum for filing an appeal by an aggrieved person by all order of confiscation under S. 6(A) of the Act. it is, an admitted fact that the plaintiff respondent in this appeal, could have filed an appeal under S. 6(C) of the Act and he did not file an appeal and straightway filed the above suit and obtained the interim relief. Apparently, a specific forum is created under the Act for filing an appeal against the order of the Collector under S. 6(A) of the Act. Therefore, as observed hereinbefore, the jurisdiction of the Civil Courts will get also excluded. Impliedly within the meaning of S. 9 of Act in Vic" W of the specific statutory provisions in the enactment itself. Whereas in the present case there is a specific exclusion of the civil Court jurisdiction in such case, S 6(E) of the Act, undoubtedly, bars jurisdiction of the Civil Courts. This point was raised on behalf of the State before the trial Court and also before the appellate Court. However, unfortunately, both the Courts below did not seriously appreciate this point pertaining to the jurisdiction of the Civil Courts. Mr. Trivedi, learned A.G.P. for the State, is fully justified in his submission that the trial Court ought not to have passed an order granting interim relief and ought not to have entertained the suit. The contention raised by Mr. Trivedi, A.G.P. for the State, is full of substance. Therefore, it is required to be subscribed to and the revision application is required to be allowed.

8. In the result, this revision application is allowed. "The impugned order is quashed. Rule is made absolute to the aforesaid extent with no order as to costs.

9. Application allowed.