BABU KHAN AND ORS. A

v.

NAZIM KHAN (DEAD) BY LRS. AND ORS.

APRIL 16, 2001

[V.N. KHARE AND SHIVARAJ V. PATIL, JJ.] B

Land Laws :

Madhya Bharat Land Revenue and Tenancy Act, 1950 :

Section 91—Proceedings under—Nature of—Tenant—Reinstatement of— C
Civil suit—Maintainability of—Pucca tenant filed application before Revenue authorities for his reinstatement as he was allegedly dispossessed—Application dismissed—Thereafter, such pucca tenant filed suit before civil court for declaration and possession—Held : Proceedings under S. 91 are not summary in nature and akin to S. 6 of the Specific Relief Act—A pucca tenant who has been D
dispossessed is first required to take recourse under S. 91—Hence, suit filed in civil court without resorting to remedy under S. 91 not maintainable—Specific Relief Act, 1963, S. 6.

Limitation Act, 1963 : Section 14, Article 65.

Tenant—Reinstatement of—Limitation—Pucca tenant filed civil suit for E
declaration and possession after resorting to remedy available under relevant Land & Tenancy Act—Adverse possession—Arresting of—Held : once a suit for recovery of possession is filed adverse possession is arrested—Hence, such a suit is not barred by limitation.

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Interpretation of Statutes :

Pari Materia provisions—Interpretation of—Principles—Held : If two provisions of different statutes are pari materia, courts generally follow the decision on similar provision of the other statute to avoid contradiction—But if the two statutes are not in pari materia the same principle does not hold good. G

The predecessor-in-interest of the appellants-plaintiffs filed an application under Section 91 of the Madhya Bharat Land Revenue and Tenancy Act, 1950 for this reinstatement as pucca tenant as he was allegedly dispossessed by the predecessor-in-interest of the respondent-defendants. The Tehsildar allowed the application. But the Sub-divisional Officer reversed H

A this decision. The Commissioner dismissed the second appeal filed by the appellants. The revision petition filed before the Board of Revenue was also dismissed. It was held by the Board of Revenue that the respondents were already in possession of the land and they had planted trees and also constructed two houses over the said land.

B Thereafter, the appellants brought a suit for declaration of title and delivery of possession against the respondents. The respondents contended that the suit brought by the appellants was barred by limitation. The trial court held that the time spent in prosecuting the case in the revenue court should be excluded under Section 14 of the Limitation Act, 1963 while C computing the period of limitation for the suit and came to the conclusion that the suit was filed within the period of limitation. Consequently, the suit was decreed. The first appellate court affirmed the decree of the trial curt. However, the High Court allowed the second appeal filed by the respondents. Hence this appeal.

D On behalf of the appellants it was contended that the remedy of filing the suit for recovery of possession of the land under Section 93 of the Act was available to a pucca tenant only after exhausting the remedy provided under Sections 91 and 92 of the Act and, therefore, the suit brought by the appellants was not barred by limitation; and that once an application E under Section 91 of the Act was filed by the appellant before the Tehsildar, the adverse possession ceased to continue thereafter.

On behalf of the respondents it was contended that the remedy under Section 91 of the Act was summary in nature, akin to Section 6 of F the Specific Relief Act, 1963; that it was always open to the appellant either to take recourse to the summary proceedings under Sections 91 and 92 of the Act or to file a regular title suit in the civil court and also claim possession in the same suit and, therefore, the suit brought by the appellant was barred by limitation; and that Section 91 was in *pari materia* to Section 250 of the M.P. Land Revenue Code and a Full Bench of the High Court G while interpreting Section 250 of the Code had held that proceedings under Section 250 of the Code was summary in nature and, therefore, in view of the said decision the proceedings under Section 91 of the Act has to be held as summary in nature.

H Allowing the appeal, the Court

HELD : 1.1. The applicant under Section 91 of the Madhya Bharat Land Revenue and Tenancy Act, 1950 has to prove and establish that he is a pucca tenant and that he has been dispossessed otherwise than in due course of law. Thus, Section 91 of the Act requires the Court to go into the title of the applicant who has applied for restoration of possession. In view of the nature of enquiry, which is required to be made by the Court, the proceedings under Section 91 of the Act cannot be termed as summary in nature and akin to Section 6 of the Specific Relief Act, 1963. [1206-G-H]

1.2. An analysis of Section 91 read with Section 93 shows that the recourse to a civil court is not available to a pucca tenant who has been dispossessed unless he exhausts the remedy under Section 91 of the Act. In this connection the use of the expression in Section 93 of the Act "that no order passed under Sections 91 and 92 shall preclude any person from establishing such rights" shows that a pucca tenant who has been dispossessed and claims recovery of possession is first required to take recourse to the remedy available under Section 91 of the Act. [1207-H; 1208-A-B]

1.3. The scheme envisaged under the Act which comprises of Sections 91, 92 and 93 of the Act shows that where a pucca tenant who has been dispossessed without due course of law and such a pucca tenant wants restoration of possession, there is an implied exclusion of jurisdiction of the civil court to grant relief to a pucca tenant. In such a situation, a pucca tenant who has been dispossessed is at first instance required to file an application for restoration of his possession before the Tehsildar under Section 91 of the Act. In view of the matter, it cannot be said that the remedy available under Section 91 of the Act is discretionary and it is open to a pucca tenant either to take recourse to Section 91 of the Act or file a suit under Section 93 of the Act. If such a suit is filed in a civil court at the first instance without resorting to the remedy under Section 91 of the Act, the same would not be maintainable. [1208-E-G]

2. Once a suit for recovery of possession against the defendant who is in adverse possession is filed the period of limitation for perfecting title by adverse possession comes to a grinding halt. In the present case, as soon as the predecessor-in-interest of the applicant filed an application under Section 91 of the Act for restoration of possession of the land against the defendant in adverse possession, the defendant's adverse possession ceased to continue thereafter in view of the legal position that such adverse

A **possession does not continue to run after filing of the suit. Thereafter, the suit brought by the appellant-plaintiff for recovery of possession of the land was not barred by limitation. [1210-A-C]**

Sultan Khan v. *State of M.P.,* **(1991) MP LJ 81,** *Sultan Jehan Begum* **v.** *Gul Mohd.,* **AIR (1973) MP 72 and** *Ragho Prasad* **v.** *P.N. Agarwal,* **(1969) All**
B **LJ 975, approved.**

3. It is true that the courts while construing a provision of an enactment often follow the decisions by the courts construing similar provision of an enactment in *pari materia.* **The object behind the application of the said rule of construction is to avoid contradiction between the two statutes**
C **dealing with the same subject. But Sections 91, 92 and 93 of the Act are not** *pari materia* **with the provision of Section 250 of the M.P. Land Revenue Code. It is not a sound principle of construction to interpret a provision of an enactment following the decision rendered on similar provision of an enactment when two statutes are not in** *pari materia.* **[1207-D-F]**

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Nathu **v.** *Dilbande Hussain,* **AIR (1967) MP 14 and** *Ramgopal* **v.** *Chettu Batte,* **AIR (1976) MP 160, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 774 of 1997.

From the Judgment and Order dated 19.7.96 of the Madhya Pradesh
E High Court in S.A. No. 49 of 1981.

U.N. Bachawat, S.B. Tripathi for Ashok K. Srivastava for the Appellants.

S.K. Gambhir, Awanish Sinha for R.K. Maheshwari for the Respond-
F ents.

The Judgment of the Court was delivered by

V.N. KHARE, J. This appeal is directed against the judgment of Madhya Pradesh High Court whereby the High Court has allowed the second
G appeal preferred by the defendants/respondents and dismissed the suit brought by the appellants herein.

The facts of the case in brief are these:

On 14.5.1954, one Nathe Khan, predecessor-in-interest of the
H appellants herein, and one Shankar Rao, filed an application before the

Tehsilda. under Section 91 of the Madhya Bharat Land Revenue and Tenancy Act, 1950 (hereinafter referred to as the Act) for reinstatement of pucca tenant Nathe Khan who was alleged to be dispossessed by Najim Khan, predecessor-in-interest of respondents 1(a) to 1(k) in respect of agricultural land measuring .135 hectare, situated at village Maksi, Distt. Shajapur. The case of Najim Khan was that the land in dispute was given to him on *patta* for consideration of a premium of Rs. 100 and he, thereafter, planted trees and constructed two houses over the said land. On 31.8.1960, the Tehsildar allowed the application with a direction to late Najim Khan to restore back possession of the land to Shankar Rao instead of Nathe Khan. Feeling aggrieved, late Najim Khan filed an appeal before the Sub-divisional Officer, Shajapur. Nathe Khan also filed a cross-objection against the order of the Tehsildar directing delivery of possession to Shankar Rao. The Sub-divisional Officer, on 20.3.1963, allowed the appeal of Najim Khan and dismissed the cross objection filed by Nathe Khan. Nathe Khan and Shankar Rao thereafter filed second appeal before the Commissioner, Bhopal, being Revenue Case No. 357/63. The Commissioner by order dated 30.4.1963, dismissed the appeal and affirmed the order passed by the Sub-divisional Officer. The revision petition filed before the Board of Revenue, M.P. Gwalior by Shankar Rao and Nathe Khan was also dismissed. It was held by the Board of Revenue that Najim Khan and Pan Mal were already in possession of the land since 1950 and they planted trees and also constructed two houses over the said plot of land. On 9.2.1972, the appellant herein, brought a suit for declaration of title and delivery of possession against Najim Khan and Shankar Rao. Defendant Najim Khan filed a written statement wherein it was pleaded that the suit brought by plaintiff was barred by limitation. The trial court framed various issues and one of the issues framed was whether the suit laid by the plaintiff was barred by limitation. The trial court was of the view that the time spent in prosecuting the case in the revenue court should be excluded under Section 14 of the Limitation Act while computing the period of limitation for the present suit. In view of the matter, the trial court held that the suit was filed within the period of limitation. Consequently, the suit was decreed. The decree of the trial court was affirmed by the first appellate court. However, the defendants/respondents' second appeal was allowed by the High Court. The High Court was of the view that the benefit of Section 14(1) of the Limitation Act can be availed by the plaintiff only if the court had not entertained the plaintiff's earlier suit on the ground of defect of jurisdiction or other cause of like nature. Since the earlier application of the plaintiff was entertained and decided on merit, the benefit under Section 14(1) of the

A Limitation Act was not available to the plaintiff. In view of the matter, the suit stood dismissed. It is against the said judgment the plaintiffs/appellants are in appeal before us.

On 30.9.1996, this Court while entertaining the Special Leave Petition passed the following order:

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> "The submission of the learned counsel for the petitioner is that the petitioner could not have filed civil suit without resorting to remedies available before the revenue courts and the suit could not be filed only when he fails before the revenue court under Sections 91 and 92 of the Act and that being so the question of limitation cannot be
> C raised against the petitioner as according to him limitation will commence only after the decision by the revenue court. The second submission is that after resorting to the remedy under Sections 91 and 92 of the Act the limitation for adverse possession remains asserted.
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> Issue notice. Mr. Gambhir accepts notice on behalf of legal heirs of respondent No. 1. Issue notice to respondent No. 2. Issue notice on application for stay also."

Shri U.N. Bachawat, learned senior counsel raised two submissions. E The first submission is that the remedy of filing the suit for recovery of possession of the land under Section 93 of the Act is available to a pakka tenant only after exhausting remedy provided under Sections 91 and 92 of the Act and, therefore, the suit brought by the plaintiff was not barred by limitation. The second submission is that once an application F under Section 91 of the Act was filed by the plaintiff before the Tehsildar, the adverse possession of the defendant ceased to continue thereafter and in view of this legal position, the suit brought by the plaintiff was not barred by limitation. Whereas, the contention of Shri S.K. Gambhir, learned senior counsel, is that the remedy under Section 91 of the Act is summary in nature, akin to Section 6 of Specific G Reliefs Act and further, it is always open to the plaintiff either to take recourse to the summary proceedings under Sections 91 and 92 of the Act or to file a regular title suit in the civil court and also claim possession in the same suit. In nut-shell, the argument is that the filing of the suit is not envisaged only after the recourse had been taken under Sections 91 and 92 of the Act H and in view of the matter, the suit brought by the plaintiff was barred by

limitation. A

On the arguments of learned counsel for the parties the questions that arise for consideration are whether the proceedings under Section 91 of the Act is summary in nature and, secondly, whether it was permissible under law to file a suit for recovery of possession without resorting to remedy available under Section 91 of the Act. In order to appreciate the arguments of learned B counsel appearing for the parties it is necessary to reproduce Sections 91, 92 and 93 of the Act which run as under :

> "91. Re-instatement of pakka tenant improperly dispossessed — (1) If a pakka tenant has been dispossessed of the whole or any part of C his holding otherwise than in due course of law, he or his successor in interest may apply to the Tehsildar within three years from the date of dispossession for the restoration of the possession.
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> (2) The Tehsildar shall, after making an enquiry into the respective claims of the parties, pass necessary orders in the matter and shall D hand-over possession of the land to the party entitled to it.
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> (3) Before proceeding to make the full enquiry prescribed by the foregoing sub-section, the Tehsildar may pass after such enquiry as he may deem proper, an interim order for handing-over the possession of the land to the applicant if he finds that he was dispossessed by E the opposite party within six months prior to the submission of the application under this section. In such a case the opposite party shall be ejected, if necessary, under orders of the Tehsildar.
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> (4) When an interim order has been passed regarding possession of F the land under the foregoing sub-section, the opposite party may be required by the Tehsildar to execute a bond for such sum as the Tehsildar may deem fit for abstaining from taking possession of the land until the final order is passed by the Tehsildar.
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> (5) If the person executing a bond is found to have entered into or G taken possession of the land in contravention of the bond, the Tehsildar may forfeit the bond in whole or in part and may recover such amount as arrears of land revenue.
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> (6) If the order passed under sub-section (2) is in favour of the H

A applicant, the Tehsildar shall also award a reasonable compensation to be paid to the applicant by the opposite party.

(7) The compensation awarded under this section shall be recoverable as arrears of land revenue.

B (8) When final order has been passed under sub- section (2), the Tehsildar may require the opposite party to execute a bond for such sum as the Tehsildar may deem fit for abstaining from taking possession of the land in contravention of the order.

92. Reinstatement of ordinary tenant or sub tenant improperly dispos-
C sessed — If an ordinary tenant or a sub-tenant has been dispossessed of the whole or any part of his holding otherwise than in due course of law, he or his successor in interest may apply to the Tehsildar within two years from the date of dispossession for the restoration of the possession. The Tehsildar shall after making necessary enquiry in
D accordance with the provisions of section 91, pass such orders as he thinks fit.

93. Civil Court's jurisdiction in regard to sections 91 and 92 - No order passed under sections 91 and 92 shall preclude any person from establishing such rights as he may claim in the whole or any part of
E the holding and from obtaining possession of such holding or part thereof by means of a regular suit in a competent civil court."

A perusal of Section 91 of the Act shows that if a pakka tenant has been dispossessed from the land, otherwise than in accordance with law and if he wants restoration of possession he is required to file an application before the
F Tehsildar within 3 years from the date of dispossession. The remedy for restoration of possession is not available to anyone else except to a pakka tenant who has been dispossessed otherwise than in accordance with law. When such an application is moved by an applicant for restoration of his possession, the first thing what the court is required to enquire into and find
G out is whether the applicant is a pakka tenant or not. The applicant under Section 91 of the Act has to prove and establish that he is a pakka tenant and he has been dispossessed otherwise than in due course of law. Thus, Section 91 of the Act requires the Court to go into the title of the applicant who has applied for restoration of possession. In view of nature of enquiry which is required to be made by the Court, the proceedings under Section
H

91 of the Act cannot be termed as summary in nature and akin to Section 6 of the Specific Relief Act. Under Section 6 of the Specific Relief Act, a person who has been dispossessed otherwise than in due course of law can claim restoration of possession without proving his title to the land. He can succeed merely by establishing that he was in possession over the land and has been dispossessed otherwise than in accordance with law. We do not, therefore, find that proceedings under Section 91 of the Act is akin to Section 6 of the Specific Relief Act. Learned counsel appearing for the respondent then pointed out that Section 91 is in *pari materia* to Section 250 of M.P. Land Revenue Code and a Full Bench of M.P. High Court while interpreting Section 250 of the Code has held that proceedings under Section 250 of the Code is summary in nature and, therefore, in view of the said decision the proceedings under Section 91 of the Act has to be held as summary in nature. In the case of *Nathu* v. *Dilbande Hussain*, AIR (1967) M.P. p.14 which was subsequently approved in the case of *Ramgopal* v. *Chetu Batte*, AIR (1976) M.P. p.160, it was held by the Madhya Pradesh High Court that proceedings under Section 250 of the Code are summary in nature and it is open to the plaintiff to file suit for recovery of possession without resorting to remedy available under Section 250 of the Code. It is true that the courts while construing a provision of an enactment often follow the decisions by the courts construing similar provision of an enactment in *pari materia*. The object behind the application of the said rule of construction is to avoid contradiction between the two statutes dealing with the same subject. But in the present case , what we find is that the Madhya Bharat Land Revenue and Tenancy Act contains one integrated scheme providing for remedy to a pakka tenant claiming restoration of possession under sections 91 and 93 of the Act. The Madhya Bharat Land Revenue and Tenancy Act was repealed by M.P. Land Revenue Code. In repealing Act i.e., M.P. Land Revenue Code we do not find any provision like Section 93 of the Act. We are, therefore, of the view that Sections 91, 92 and 93 of the Act are not *pari materia* with the provision of Section 250 of the M.P. Code. It is not sound principle of construction to interpret a provision of an enactment following the decisions rendered on similar provision of an enactment when two statutes are not in *pari materia*. For the aforesaid reasons we find that Sri U.N. Bachawat is absolutely correct when he contended that proceeding under Section 91 of the Act is not summary in nature.

Coming to the next question whether the plaintiff could have brought a suit for restoration of possession under Section 93 of the Act without

A resorting to remedy provided under Section 91 of the Act, it is necessary to look into the relevant provisions of the Act. An analysis of Sections 91 read with Section 93 shows that the recourse to a civil court is not available to a pakka tenant who has been dispossessed unless he exhausts the remedy under Section 91 of the Act. In this connection the use of the expression in Section 93 of the Act "that no order passed under Sections 91 and 92 shall preclude any person from establishing such rights" shows that a pakka tenant who has been dispossessed and claims recovery of possession is first required to take recourse to the remedy available under Section 91 of the Act. This matter may be examined from another angle. Section 9 of the Code of Civil Procedure provides that the civil courts shall have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred. Section 147 of the Act runs as thus :

> "147. Exclusive jurisdiction of Revenue Authority -Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted or application made, to obtain a decision or order on any matter which the Government are, or a Revenue Officer is, by this Act, empowered to determine, decide or dispose of."

If Section 93 of the Act for the time being is kept out of sight, it could be easily said that any civil suit by a pakka tenant for recovery of possession is barred by virtue of Section 147 of the Act. The provisions of the Act besides conferring right on a pakka tenant for restoration of possession of the land from which he has been dispossessed provides for complete procedure and machinery for getting the relief of restoration of possession. The scheme envisaged under the Act which comprises of Sections 91, 92 and 93 of the Act shows that where a pakka tenant who has been dispossessed without due course of law and such a pakka tenant wants restoration of possession, there is implied exclusion of the jurisdiction of the civil court to grant relief to a pakka tenant. In such a situation a pakka tenant who has been dispossessed is at first instance required to file an application for restoration of his possession before the Tehsildar under Section 91 of the Act. In view of the matter, it cannot be said that remedy available under Section 91 of the Act is discretionary and it is open to a pakka tenant either to take recourse to Section 91 of the Act or file suit under Section 93 of the Act. If such a suit is filed in a civil court at the first instance without resorting to the remedy under Section 91 of the Act, the same would be not maintainable. We, therefore, uphold the contention of Shri Bachawat that unless remedy con-

templated under Section 91 of the Act is resorted to, there would be no cause of action to a pakka tenant for filing a suit under Section 93 of the Act. A

The third question that arises for consideration in this case is whether once a remedy available under Section 91 of the Act is resorted to the period of limitation for adverse possession is arrested. In other words, whether filing an application under Section 91 of the Act causes an interruption to the continuity of adverse possession. B

Article 65 of the Limitation Act runs as under :

"65	For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff"

C

For bringing a suit for possession of immovable property the period of limitation is 12 years when the possession of a defendant becomes adverse to the plaintiff. Once a suit for recovery of possession is instituted against a defendant in adverse possession his adverse possession does not continue thereafter. In other words, the running of time for acquiring title by adverse possession gets arrested. D

In *Sultan Khan* v. *State of M.P. & Anr.*, (1991) M.P. Law Journal p.81 it was held as under : E

> "It is true that in instant case no suit for recovery of possession was filed but only proceedings under Section 248 of the Code were filed. Section 248 of the Code only provides an alternative forum for recovery of possession and therefore, proceedings under this provision will have the same effect as a suit in a regular Civil Court. Since a suit for recovery of possession is sufficient to interrupt the adverse possession, proceedings under Section 248 of the Code must have the same effect. F

In *Sultan Jehan Begum & Ors.* v. *Gul Mohd. & Ors.* AIR (1973) Madhya Pradesh p.72 it was held that very institution of the suit arrests the period of adverse possession of the defendant. G

In *Ragho Prasad* v. *P.N. Agarwal & Ors.*, (1969) Allahabad Law Journal p.975 it was held as under: H

A "It is not possible to hold that if the defendant has been in adverse possession before the institution of the suit, such adverse possession continues to run even after the institution of the suit so as to prescribe a good title in favour of the defendant."

The legal position that emerges out of the decisions extracted above is that B once a suit for recovery of possession against the defendant who is in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. We are in respectable agreement with the said statement of law. In the present case, as soon as the predecessor-in-interest of the applicant filed an application under Section 91 of the Act for C restoration of possession of the land against the defendant in adverse possession, the defendant's adverse possession ceased to continue thereafter in view of the legal position that such adverse possession does not continue to run after filing of the suit, we are, therefore, of the view that the suit brought by the plaintiff for recovery of possession of the land was not barred by limitation.

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For the aforesaid stated reasons this appeal deserves to succeed. We accordingly set aside the judgment under challenge. The appeal is allowed. There shall be no order as to costs.

V.S.S. Appeal allowed.