

Waryam Singh and another v. The Financial Commissioner,
Taxation, Punjab and others (S. S. Sandhawalia, C.J.)

appeal is not a continuation of the suit and, therefore, stands on a different footing. Section 13 of the Act, therefore, cannot be made applicable to appeals. The argument is without merit and it is also based on fallacious assumption. Section 13 does not bar the suits alone. It is specifically made applicable to civil Courts inasmuch as they have been debarred from entertaining or adjudicating upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in the Panchayat under the Act. An appeal is a continuation of the suit and it was so held in *The Karnal Co-operative Farmers Society Ltd., Pehowa v. Gram Panchayat, Pehowa and others*, (supra). It was further clarified that a suit could not be held to include an appeal in the context of section 13B of the Act. In the instant case, the implications of section 13B of the Act are not under issue. Even otherwise, in view of the fact that section 13 of the Act bars the jurisdiction of the civil Court the point whether an appeal is a continuation of the suit or not loses all relevance.

(12) Section 13 of the Act is applicable to a civil Court. The appellate Court hearing an appeal against the decree of the trial Court is a civil Court. The issue under consideration before the lower appellate Court is covered by section 13 of the Act. The appellate Court being a civil Court is thus debarred from adjudicating upon that issue. Under these circumstances, the lower appellate Court was right in holding that the appeals as well were hit by section 13 of the Act and consequently in setting aside the decrees under appeals being without jurisdiction and leaving the aggrieved party to seek remedy from the appropriate forum.

(13) In view of discussion above, both the appeals fail and are dismissed with no order as to costs.

S.C.K.

Before S. S. Sandhawalia C.J. and Harbans Lal J.

WARYAM SINGH and another,—Petitioners.

versus

THE FINANCIAL COMMISSIONER, TAXATION PUNJAB and
others,—Respondents.

Civil Misc. No. 139 of 1978 in

Civil Writ No. 7524 of 1975.

January 29, 1979.

Constitution of India 1950—Articles 136 and 226(3)—Remedy by way of special leave to appeal to the Supreme Court—Whether bars the maintainability of a writ petition under Article 226(3).

Held, that the alternative remedy referred to in Article 226(3) of the Constitution of India 1950 necessarily means a specific remedy provided as such by law and would not bring within its ambit a general remedy by way of a suit or by moving the Supreme Court to invoke jurisdiction under Article 136 of the Constitution of India for such relief. (Para 3).

Case referred, by Hon'ble Mr. Justice R. N. Mittal to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Harbans Lal finally decided the case on 29th January, 1979 and again referred the case to the Single Bench for final decision.

Application under section 151 of C.P.C. praying that this Hon'ble Court may be pleased to hold that the present writ petition has abated in view of the provisions of the Constitution (Forty Second Amendment) Act, and

(b) Writ petition may be dismissed on the ground that necessary parties have not been added in the writ petition.

K. P. Bhandari, Advocate, for the Petitioners.

L. S. Wasu, Advocate, for the respondents.

S. S. Sandhawalia, C.J.

(1) Whether the existence of a remedy by way of special leave to appeal to the Supreme Court under Article 136 of the Constitution is an alternative remedy which would bar the maintainability of a writ petition under Article 226(3), is the meaningful question which has necessitated this reference to the Division Bench.

(2) It is wholly unnecessary to advert to the facts of the case. Mr. K. P. Bhandari, learned counsel for the respondents with his illimitable fairness has conceded that the solitary precedent on the point is now categorically against the stand he takes. Learned counsel has also not addressed any meaningful contention on principle in support of his stand.

(3) An identical issue arose before a Division Bench of the Calcutta High Court in *Dabur (Dr. S. K. Burman) Pvt. Ltd., etc. v.*

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State of West Bengal, etc. (1). After an elaborate discussion it was held *inter alia* that the alternative remedy referred to in Article 226(3) necessarily means a specific remedy provided as such by law and would not bring within its ambit a general remedy by way of a suit, or by moving the Supreme Court to invoke jurisdiction under Article 136 of the Constitution of India, for such relief. In so holding the learned Judges placed reliance on the Full Bench decision in *Abad Cotton Manufacturing Company v. Union of India*, (2) and an earlier Division Bench judgment of the Calcutta High Court in *Mahindra Mohan Sarkar v. I.T.C., Siliguri*, (3).

(4) It appears to us rather wasteful to tread the same ground all over again and it would amply suffice to say that we entirely agree with the view expressed in *Dabur (Dr. S. K. Burman) Pvt. Ltd.'s case* (supra). Following the same we would return the answer in the negative to the question formulated at the very beginning of this judgment.

(5) The reference on the legal point having been answered, the case would now go back to the learned Single Judge for decision on merits.

S.C.K.

Before S. S. Sandhawalia C.J. and Harbans Lal, J.

BRIJ MOHAN SINGH ETC.,—Appellants.

versus

STATE OF PUNJAB and others,—Respondents.

Letters Patent Appeal No. 390 of 1975.

February 15, 1979.

Motor Vehicles Act (IV of 1939)—Section 110-CC—Award of interest on compensation—Discertion vested in the Tribunal—Nature

(1) 1978 Labour and Industrial Cases 1575.

(2) 1977 Gujarat 113.

(3) 1977 Tax. L.R. 1537.