

*Before Hon'ble R. P. Sethi, J.*

ROSHAN LAL,—*Appellant.*

*versus*

MUNICIPAL COMMITTEE, NATHA,—*Respondent.*

R.S.A. No. 1473 of 1995

17th August, 1995

*Code of Civil Procedure, 1908—S. 9—Jurisdiction—Distinction between absence of jurisdiction and error in exercise of jurisdiction.*

*Held* that the limitation imposed upon the Civil Court may be territorial or pecuniary or may refer to the subject matter of litigation or the nature of the litigation or the class of rank to which the dispute refers to. The distinction between the absence of jurisdiction and error in exercise of it is to be properly understood and interpreted. The exclusion of the jurisdiction can be specific or be assumed by a strong implication.

(Para 2)

*Further held*, that despite the exclusion of jurisdiction the Civil Court would be entitled to entertain a suit and decide the lis if it is urged that the power under the special statute has been exercised in contravention with the provisions of law or by a person not authorised under the law to decide the same or that the question to be determined was beyond the scope of the enactment. The Civil Court may also be justified to entertain the suit if it is proved that the authority exercising the power have exceeded the powers conferred upon it under a special statute.

(Para 4)

R. K. Aggarwal, Advocate, *for the Appellant.*

#### JUDGMENT

*R. P. Sethi, J.*

(1) The suit of the appellant for issuance of an injunction restraining the defendant/Municipal Committee from recovering the amount demanded as arrears of house tax with respect to the property and the years detailed in the plaint was dismissed by the Courts below mainly on the ground that the Civil Court had no jurisdiction to entertain the suit. Even on merits, the plaintiff-appellant was held liable to pay the aforesaid amount to the respondent-Committee. It has been now argued that the Courts below were not justified in holding that the Civil Court had no jurisdiction to entertain the suit and grant the relief.

(2) Section 9 of the Code of Civil Procedure, 1908 provides that the Court shall have the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The question of jurisdiction of a Court to try the suit has nothing to do with the plaintiff's right to sue. The limitation imposed upon the Civil Court may be territorial or pecuniary or may refer to the subject matter of litigation or the nature of the litigation or the class of rank to which the dispute refers to. The distinction between the absence of jurisdiction and error in exercise of it is to be properly understood and interpreted. The exclusion of the jurisdiction can be specific or be assumed by a strong implication. The Legislature has the power to bar the jurisdiction of the Civil Court with respect to a particular class of cases of a civil nature provided that in doing so the Legislature keeps itself within the field of legislation confined to its charge and does not contravene any provision of the Constitution.

(3) The Punjab Municipal Act, 1911 was enacted to make better provision in the administration of the municipalities in the State. Section 3(i) of the Act defines the annual value of the property for the purposes of the Act. Section 84 provides for an appeal against the assessment or levy of any or against the refusal to refund any tax under the Act. The appeal is to be filed before the authority mentioned in the Section and disposed of according to the procedure prescribed therein. Section 86 of the Act provides that no objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in the Act. Section 86 of the Act, therefore, by a very strong implication ousts the jurisdiction of the Civil Court to determine and decide the question regarding the valuation or assessment or the liability of a person to be assessed or taxed. Alternative remedy to the aggrieved party has been provided under Section 84 of the Act.

(4) It is true that despite the exclusion of jurisdiction the Civil Court would be entitled to entertain a suit and decide the lis if it is urged that the power under the special statute has been exercised in contravention with the provisions of law or by a person not authorised under the law to decide the same or that the question to be determined was beyond the scope of the enactment. The Civil Court may also be justified to entertain the suit if it is proved that the authority exercising the power have exceeded the powers conferred upon it under a special statute.

(5) The Supreme Court in *Munshi Ram v. Chheharta Municipality* (1), considered the scope of Section 9 of the C.P.C. and Section 84 and 86 of the Panjab Municipal Act and held :—

“It is well recognised that where a Revenue Statute provides for the person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this Principle, it is clear that Sections 84 and 86 of the Municipal Act bar, by inevitable implication, the jurisdiction of the Civil Court, where the grievance of the party relates to an assessment or the principle of assessment under this Act.”

The Court confirmed its earlier judgment in *Firm Seth Radha Kishan v. Administrator Municipal Committee, Ludhiana* (2).

(6) The reliance of the learned counsel on *Firm Surajmal Bansidhar v. Municipal Board, Ganganagar* (3), is misplaced. The Supreme Court in that case did not consider the applicability of Section 9 of the C.P.C. and decided only, “the applicability of the provisions of the Limitation Act to a claim regarding the levy of tax by the Municipal Board.

(7) The reliance of the learned counsel for the appellant on *Tejinder Kaur v. M.C. Tarn Taran* (4), and *M.C. Bhatinda v. Krishan Lal and another* (5), is also misplaced as the facts of these cases and the points of law adjudicated therein was not identical to the points of law to be determined in this appeal.

(8) There is no merit in this appeal which is accordingly dismissed in limine.

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J.S.T.

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(1) A.I.R. 1979 S.C. 1250.

(2) A.I.R. 1963 S.C. 1547.

(3) 1979 A.I.R. S.C. 246.

(4) 1983 P.L.J. 335.

(5) 1986 P.L.J. 651.