
Ram Awalamb and Others Vs Jata Shankar and Others

Second Appeal No"s. 282 and 710 of 1967 and Civil Revision No. 1711 of 1965

Court: Allahabad High Court

Date of Decision: Sept. 18, 1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 20, 9#Specific Relief Act, 1877 â€” Section 39#Transfer of Property Act, 1882 â€” Section 105#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€” Section 143, 152, 175, 18, 209

Citation: AIR 1969 All 526 : (1968) 38 AWR 731

Hon'ble Judges: S.D. Khare, J; Rajeshwari Prasad, J; A.K. Kirty, J

Bench: Full Bench

Advocate: K.P. Singh, for the Appellant; Sankatha Rai, for the Respondent

Final Decision: Disposed Of

Judgement

S.D. Khare, J.

These two appeals and the civil revision have been referred to this Bench because a common question of law is involved in

them. The extent of the exclusive jurisdiction of revenue courts in certain matters, which are otherwise civil in nature, has been determined in

several cases decided by this Court and it was noticed in Second Appeal No. 710 of 1967 that there is an apparent conflict in two Division Bench

decisions of this Court, both pronounced in the year 1965.

2. No question was formulated for the opinion of the Full Bench in any of the two second appeals or the connected civil revision, and all of them

have got to be finally disposed of by this Bench. Each of these appeals and the civil revision shall, therefore, be considered separately after the

common question of jurisdiction has been discussed.

3. The suit which gave rise to Second Appeal No. 282 of 1967 was for the cancellation of three sale deeds executed by defendant no. 7, one

member of the family only (who, if separated, could have a half share in the joint family property) for self and as a guardian of the plaintiff. The

property sold was bhumidhari land. The alternative prayer was that if the transferor was held to be competent to transfer his interest in the property

the sale deed be cancelled to the extent of the other half share in the property belonging to the plaintiff. The relief of joint possession was also

sought.

4. So far as Second Appeal No. 710 of 1967 is concerned, the suit as originally filed was for permanent injunction against other co-sharers of the

bhumidhari plot restraining them from making constructions over the land of the holding. Later a prayer for demolition of the constructions made by

the defendants and for joint possession was added by way of amendment on the allegations that the constructions had been made during the

pendency of the suit.

5. Civil Revision No. 1711 of 1965 arises out of a suit against trespassers for demolition and possession and the closing of a door. The common

point for consideration is whether one or more or all of these suits were exclusively cognizable by revenue courts.

6. Another question which is common to the two appeals only and relevant for purposes of determining the question of jurisdiction is what is the

status of a co-bhumidhar and whether or not a bhumidhari property is subject to any personal law (e. g., Hindu Law governing joint family

property) so that the entire joint family could be deemed to be one single bhumidhar and no transfer could be made unless it was for legal necessity

or for the benefit of the estate.

7. It would be convenient to consider the second question first.

8. Hindu joint families have existed from times immemorial and they exist even now. However, it is by no means necessary that every Joint Hindu

family should be possessed of joint family property also. Where any property is ancestral or it is acquired by all the members of a joint Hindu

family or after having been acquired by one member of the joint family only it is thrown in the common stock it is regarded to be joint family

property or coparcenary property. "Until partition takes place, or only one member of the family is left, without having any male issue, the

coparcenary property remains with the family and upon the death of any one member only his interest devolves on the surviving coparceners. The

Karta or manager of the family alone has the right to transfer the property either for legal necessity or for the benefit of the estate.

9. The first question for consideration, therefore, is whether bhumidhari property governed by the provisions of the U. P. Zamindari Abolition and

Land Reforms Act ever become joint family property or coparcenary property.

10. A bhumidhari property is also property, and, therefore, it might be said that like any other property it should also be capable of becoming joint

family property or coparcenary property. On the other hand it can be contended that bhumidhari rights are new rights conferred upon individual

members of the family and where more than one member of the joint family become co-bhumidhars of a joint holding the joint family as such does

not become a bhumidhar as one single unit but each member of the family on whom bhumidhari rights are conferred becomes a separate unit so

that only those members of the family upon whom Bhumidhari rights conferred become and remain tenants-in-common and not joint tenants.

11. Thus where one or more members of a joint Hindu family become bhumidhar or bhumidhars u/s 18 of the Act the questions which might arise

for consideration are -

(a) Whether only those members of the family whose names were recorded as intermediaries or tenants in the revenue papers became bhumidhars;

(b) Whether, in cases where other members of a joint Hindu family were also intermediaries or tenants of that land, other members of the family

also became co-bhumidhars along with the recorded intermediaries or tenants;

(c) what was, after the commencement of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act), the status of

each member of a joint Hindu family the members of which had acquired interest in bhumidhari land by joint effort or from a common source;

(d) whether the notions of Hindu law regarding joint family could be involved to determine that status;

(e) whether in the case of certain tenancies (such as fixed rate tenancies) governed by personal law of tenants both with regard to the method of

devolution and right of transfer, the joint family as such could become a bhumidhari as one single unit;

(f) whether the right of transfer conferred on bhumidhars under the Act is also controlled by the personal law of the holder of that right

12. The consideration of questions (a) and (b) is not necessary for the purposes of these appeals and revision. But all the remaining questions from

(c) to (f) shall have to be considered and answered.

13. The scheme of the Act shall have to be examined in order to determine whether the intention of the Act was to confer bhumidhari rights only on

individual members of the family as separate units or whether the framers of the Act intended that in certain cases where the tenancy was of the

joint Hindu family the bhumidhari rights be deemed to be conferred on the entire joint Hindu family, as such, as one single unit.

14. The preamble to the Act says that It was intended ""to provide for the abolition of the zaimndari system, which involves intermediaries between

the tiller of the soil and the State in the Uttar Pradesh, and for the acquisition of their rights, title and interest and to reform the law relating to land

tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith.

15. After having been passed by the State Legislature the Act was sent for the assent of the President of India under, Article 201 of the

Constitution and the same was obtained on January 24, 1951. As from the date of the Notification, which was published in the U. P. Gazette

Extraordinary, dated July 1, 1952, all estates situated in Uttar Pradesh vested in the State (vide Section 4 of the Act). The term ""estate"" was

defined in Section 3(8) of the Act as follows:--

"Estate" means and shall be deemed to have always meant the area included under one entry in any of the registers described in Clauses (a), (b),

(c) or (d) and, in so far as it relates to a permanent tenure-holder, in any register described in Clause (e) of Section 32 of the U. P. Land Revenue

Act, 1901. as it stood immediately prior to the coming into force of this Act, or, subject to the restrictions mentioned with respect to the register

described in Clause (e), in any of the registers maintained u/s 33 of the said Act, or in a similar register described in or prepared or maintained

under any other Act, Rule, Regulation or Order relating to the preparation or maintenance of record-of-rights in force at any time and include

Share in, or of an "estate".

16. The "consequences of the vesting of an estate in the State are mentioned in Section 6 of the Act. All rights, title and interest of all the

intermediaries In every estate and in all sub-soil in such estates were to vest in the State, all grants and conferment of title of or to land in any estate

so acquired or of or to any right or privilege in respect of such land or its land revenue, whether liable to resumption or not were determined and all

rents etc. which were till then payable to an intermediary vested in the State and were made payable to the State Government. The policy of the

Act was that the tillers of the soil were not to be disturbed: rather enlarged rights were to be conferred on them.

Section 18 of the Act provides for the settlement of certain land with intermediaries or cultivators as bhumidhars. All lands

(i) in possession of or held or deemed to be held by an intermediary as sir or khudkasht or intermediary"s grove,

(ii) held by a fixed-rate tenant or a rent-free grantee as such,

(iii) held as such by an occupancy tenant, a hereditary tenant, or a tenant on patta dawami or istimrari, and

(iv) held by a grove-holder on the date immediately preceding the date of vesting were deemed to be settled by the State Government with such

intermediary, lessee, tenant, grantee, or grove-holder, as the case may be, who shall, subject to the provisions of the Act, be entitled to take or

retain possession as bhumidhar thereof.

17. A controversy arose as to who (the Intermediary or the Adhivasi) became the bhumidhar of the land which was in actual possession of an

Adhivasi Amending Act 20 of 1954 was passed and it conferred sirdari rights on all the Adhivasis.

18. From what has been mentioned above, it is abundantly clear that as from the date of vesting new rights were created in the tillers of the soil in

actual possession of the soil regardless of the consideration whether the land was a sir land of the proprietors or was entered in the names of the

tenants or the subtenants. The actual tillers of the soil became sirdars or bhumidhars according to the provisions of the Act. The interest in land

conferred upon the bhumidhars was a new right and, therefore, the question whether or not prior to the conferment of such rights the intermediary

or tenant had heritable or transferable rights in the land is hardly material. That position was made clear by the decision in the case of Rana Rana

Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, . Their Lordships held that bhumidhari right was a new right conferred upon an

intermediary and, therefore, it could not be sold in execution of a mortgage decree passed against the intermediary in respect of zamindari property

in which bhumidhari land was held as sir land. Nothing could be shown to us from which it could be inferred that the bhumidhari rights conferred on

a tenant could not be regarded to be new rights. The observations made by the Supreme Court in that case applied to the erstwhile Intermediaries

and tenants alike so that both classes acquired new rights only after Act 1 of 1951 came into force.

19. Sections 134 to 141 of the Act provide how a sirdar could acquire bhumidhari rights in the land held by him. He could do so by depositing ten

times the land revenue in the manner indicated under the provisions of the Act. Such person became entitled to the grant of a certificate u/s 137 of

the Act and Section 138 provided that where any person has become a bhumidhar, whether u/s 18 or u/s 134, in respect of a share of holding held

by him jointly with others who are sirdars, the bhumidhar may sue for partition of his share in the holding, and upon partition he shall be deemed to

be a bhumidhar of the land allotted to his share,

20. Section 152 of the Act provided that the interest of a bhumidhar shall be transferable subject to certain restrictions as contained in Sa 154 to

156 of the Act. Thus to the extent permissible under Sections 154 to 156 of the Act itself Section 152 of the Act gives full right to each bhumidhar

to make a transfer of his interest in the bhumidhari land. That right is not subject to any other restriction. In the Full Bench case of Ramji Dixit and

Another Vs. Bhrigunath and Others, a Hindu widow who was in possession of a family property and had become bhumidhar of the land held by

her was held to be entitled to pass absolute interest to her transferee. It was held in that case by Desai C. J.:-

An agricultural tenant has no religion and no personal law except as expressly provided in the Zamindari Abolition and Land Reforms Act. It

applies to Hindus, Muslim, Christians etc. regardless of their religion and, therefore, regardless of their personal law except as regards succession

in certain cases. It contains its own provisions regarding inheritance and transfers; and when it has left certain matters to be governed by the

personal law it has done so by an express provision. Personal law has never been applied proprio vigore to questions of inheritance and transfer of

tenancy rights as it has been applied to inheritance and transfer of proprietary rights.

21. We respectfully agree,

22. The next important section in the Act relating to bhumidhars is Section 171. It provides for a general order of succession on the death of a

male bhumidhar, sirdar or asami. The personal law of that tenant is not recognised for the purpose of the devolution of the interest of a deceased

bhumidhar and the general order of succession as laid down in Section 171 is applicable to Hindus, Muslims and Christians alike. Section 172 of

the Act provides for succession in the case of a female bhumidhar holding an interest inherited as a widow, mother or daughter after the date of

vesting and Section 174 of the Act provides for succession to a woman holding an interest otherwise in bhumidhari, sirdari or asami land.

23. Thereafter comes Section 175 -- a very important provision -- and it reads as follows:

In the case of a co-widow or co-tenure-holder, who dies leaving no heir entitled to succeed under the provisions of this Act, the interest in such

holding shall pass by survivorship.

It is thus evident that other persons holding bhumidhari interest in land were to hold it as tenants in common and not as joint tenants.

24. There is nothing in the provisions of the Act to indicate that the framers of the Act ever intended that a joint Hindu family should be considered

to be one single unit as bhumidhar. Had they envisaged any such contingency they were bound to indicate how succession was to be governed in

the case of a joint Hindu family. On the other hand the only inference which can be drawn from Section 175 of the Act is that a group of persons

holding x interest were to hold the same as tenants in common.

25. It is significant to note that the Act does not make any provision based on any particular personal law either in respect of

(a) the status of each bhumidhar, or

(b) his right of transfer, or

(c) the devolution of his interest after his death.

26. It can also be safely inferred from the provisions of the Act that the intention of the framers of the Act was to recognise only the tillers of the

soil (be they males or females) actually in occupation of the holding for conferring bhumidhari rights on them.

27. The joint family as such is never recorded as tenant in the Record of Rights prepared u/s 33 of the Land Revenue Act, and it is evident that u/s

18 of the Act the, bhumidhari rights which were to be conferred on tenants could not have been conferred on any joint family as such. It could only

be conferred on individuals who were or could be deemed to be the actual tillers of the soil and held it as tenants, and who, after conferment of a

new right, became tenants in common (vide Section 175 of the Act).

28. It has, however, been contended by the learned counsel for the appellant that in case the joint Hindu family could be a tenant of a holding prior

to the date of vesting -- there is nothing in Section 18 of the Act itself to suggest that the bhumidhari rights were not to be conferred on such a

tenant, to wit, the joint Hindu family. It is contended that after such rights are conferred on a joint Hindu family, it should continue to hold that

property subject to the provisions of the Hindu law till the time the joint Hindu family continued to exist,

29. In our opinion the contention of the learned counsel cannot be accepted for the following reasons--

(a) The scheme of the Act seems to be to make one law for persons of all castes and creeds and for that reason there is no mention of Hindu joint

family anywhere in the Act except in Chapter III (Assessment and Compensation) where for purposes of calculation of compensation only father

and his male lineal descendants are to be treated as one unit while the other members of the family are to be treated as separate units.

(b) The notions of Hindu law, or for that matter any personal law, could not be applied to bhumidhari rights, because:

(i) these are new rights conferred under the Act, and

(ii) the special provisions of the Act relating to status of a bhumidhar, transfer by him of his interests in bhumidhari land, and devolution of his

interests after his death are governed by the provisions of this special Act.

(c) It can be safely inferred from Section 175 of the Act that where there are more than one bhumidhar in any holding all the co-bhumidhars shall

be tenants in common and not joint tenants. That provision of law is applicable to members of a joint Hindu family having interest in bhumidhari

rights. The interest of each person in bhumidhari land passes according to the order of succession given in Sections 171 to 174 of the Act and not

by survivorship. The principle of survivorship amongst co-widows and co-bhumidhars can apply only when there is failure of heirs as mentioned in

Sections 171 to 174, (See *Dulli v. Imarti Devi* 196G All LJ 29).

(d) The notions of Hindu law will not apply to bhumidhari land because both the main incidents of a joint family property, to wit (i) devolution by

survivorship, and (ii) male issue of a coparcener acquiring an interest by birth (vide Mulla's Hindu Law 13th Ed. Para 221) are negated by the

provisions of the Act,

30. The question of the application of personal law to bhumidhari interest acquired either u/s 18 or u/s 134 of the Act was considered by a Full

Bench of this Court in the case of *Ramji Dixit and Another Vs. Bhargunath and Others*, and the two questions formulated by it were answered as

follows: --

Q. Ha) Whether a female who has inherited a holding before the enforcement of the Act from the last mala holder and has become a bhumidhar u/s

18 or has acquired bhumidhari rights under Sections 134 and 137 can transfer such holding ?

A; Yes.

Q. (b) If so, whether such transfer is valid and effective for her life or until remarriage or even beyond her life time.

A: Valid and effective beyond her lifetime.

Q: 2 (a) Whether a female who inherits a bhumidhari holding from a male bhumidhar can transfer such holding?

A: Yes.

Q: (b) If so, whether such transfer is valid and effective during her life or until remarriage or even beyond her lifetime?

A: Valid and effective even beyond her lifetime.

31. Under the Hindu law a widow of a joint Hindu family in possession of her husband's property had only a limited right of transfer over it and the

transfer was valid only during her lifetime. It was held by the Full Bench that the notions from personal law could not be imported to restrict the

rights of a bhumidhar to alienate her interest in the bhumidhari land and that her right to alienate was subject only to the provisions of the Act itself.

We respectfully agree with that view.

32. It was held in the case of Mahendra Singh v. Attar Singh 1967 All LJ 8 : AIR 1967 All 438 by a Division Bench of this Court to which one of

us was a party that the bhumidhari rights are special rights created by Act I of 1951 and these new rights are solely to be governed by the

provisions of the Act. Notions of Hindu law, or Mohamedan law, or any other personal law which would be applicable to other properties not

governed by any special law cannot be imported into the rights created by this Act.

33. Prior to the coming into force of Act 2 of 1901 a tenancy could be coparcenary property of a Joint Hindu family in this limited sense only that -

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(a) the tenancy rights enjoyed by a Hindu joint family could also be considered property, and

(b) the devolution of interest of a tenant upon his death was to take place according to personal law.

34. Where the tenancy belonged to all the members of the joint Hindu family it could be possessed and enjoyed by all such members and such

tenancies could, to that extent only, be described as joint family tenancies or coparcenary property. The position, however, changed to a very

great extent after Act II of 1901 came into force. Section 22 of Act II of 1901 provided for succession to tenants. However, no provision was

made in that Act regarding the status of old tenants where all the persons in whose favour the tenancy had been created or in whom the tenancy

was to vest were members of a joint Hindu family. In the absence of any specific provision in Act II of 1901 the devolution in the case of such old

tenancies could be by right of survivorship as in the case of joint tenants although new tenants were to be governed by the provisions of Section 22

of Act II of 1901.

35. The tenancy law underwent further change when U. P. Act III of 1926 came into operation. It was specifically provided (vide Section 26 of

Act III of 1926) that tenants falling under most of the categories and forming a joint Hindu family were to be regarded as tenants in common and

not joint tenants. When Act XVII of 1939 came into operation Section 38 of that Act again provided what had been laid down by Section 26 of

Act III of 1926.

36. In course of time cases under the various Tenancy Acts were decided and in some of them the personal law of Hindus regarding the devolution

of joint Hindu family property was applied to tenancy property also. In some of the reported cases which were decided prior to the coming into

force of Act III of 1926 it was held that a joint Hindu family could be a tenant. That in our opinion, amounted to saying that tenancy could be

regarded as joint property or coparcenary property. It is, however, significant to note that in none of those cases the extent to which a joint family

as such could be considered as a tenant was ever required to be considered.

37. The earliest case which has been cited before us is that of Bhup Singh v. Jai Ram 16 All LJ 459 : AIR 1918 All 384(2). governed by the Act

II of 1901. In that case the admitted case of the parties was that there was but one occupancy holding, that is to say, that all the lands in the two

villages constituted one holding as between the landlord and the several persons who were entitled to the occupancy holding and that the rent was

a joint one. After the death of the widow of the last male tenant of the holding the suit of his reversioners for possession over that holding was

decreed. It was held that the ordinary rules of Hindu law would prevail and the plaintiffs would be entitled to succeed.

38. The next case is that of Mt. Mindya v. Jhurya, 18 All LJ 769 : AIR 1820 All 217 (2)), governed by the same Act. In that case the tenancy

belonged to all the male members of 2 joint Hindu family. Upon the death of one of the members of the joint Hindu family the question arose

whether his interest was to devolve on his brother, who was joint with him, or on his widow, who could inherit if Section 22 of Act II of 1901 was

applicable. Under the provisions of Act II of 1901 there was no bar to the interest in old occupancy tenancy (where it was of the nature of a joint

tenancy) devolving by right of survivorship. The deceased tenant having remained joint with other members of the joint Hindu family, his interest in

the joint property could devolve by right of survivorship on the co-owner of the joint property. Hence it could not be inherited by his widow u/s 22

of N. W. P. Tenancy Act, II of 1901. It must be in this context that the following observations were made by Tudball, J., that where--

... two persons held an occupancy tenancy as a joint Hindu family we can see nothing in the Act to prevent a joint Hindu family as such

acquiring an occupancy tenure ... so long as the joint family exists the tenant in that case does not die and, therefore, Section 22 does not operate.

As the joint family in the present case owned the tenure the family still remains the tenant in spite of the death of Ram Ghulam.

39. The next case which has to be considered is Acharji Ahir Vs. Harai Ahir and Others, , governed by Act III of 1926. It was held in that case

by a Division Bench of this Court that --

the ordinary rule of Hindu law, that properties acquired while the family was joint and with the help of the ancestral or joint family property should

be regarded as joint family property, and that the burden of proof that it was self-acquired property of a single member should be on that member,

should be applied to a case where the property in question is tenancy".

It was further held that the new Tenancy Act also recognises the possibility of a joint family holding lands as an occupancy tenant though it had

modified the rule of succession for the future.

40. It is, therefore, clear from the observations made in this case that after the passing of Act III of 1926 the rule of survivorship could not be

applied to tenancy land and the succession was to be governed by Sections 24 and 25 which was applicable to Hindus, Muslims and Christians

alike.

41. The last reported case on this point is that of Mahabir v. Suba Lal 1965 All LJ 582. The learned Judge who decided this case held on the

basis Of the case of Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, that after the passing of the Act the entire property vested in

the State and what was conferred by Section 18 of the Act was a new right which the persons on whom it had been conferred never had, and that

they held it subject to the provisions of the Act. To that extent we respectfully agree. The learned Judge, however, further held that where several

members of a joint Hindu family became co-bhumidhars because they had been co-tenants under the earlier Tenancy Act they did not have any

coparcenary interest in the new rights acquired as bhumidhars but they continued to be the joint tenants of the land. We respectfully disagree with

this view. It has been held in several decided cases that the concept of joint tenancy of British law is unknown to Hindu Law except in the case of

coparcenary property -- vide Jogeshwar Narain Deo v. Ram Chund putt 23 Ind App 37 (PC) Mt. Bahu Rani v. Rajendra Baksh AIR 3933 PC

72 , Krishnaswami Sastrigal Vs. Avayambal Ammal and Another, , Thambireddi Seshureddi and Others Vs. Vangallu Mallareddi, . Koppula

Surareddy (died) and Others Vs. Koppula Venkata Subbareddi and Others, and Shridhar Ghose Vs. Harimohan Sahu, .

According to Halsbury's Laws of England (Vol. 32, Page 332) joint tenants are those who form one body of ownership. Each tenant has an

identical interest in the whole land and every part of it the title of each arises by the same act. The interest of each is the same in extent, nature and

duration. Thus joint tenancy connotes (four ideas--unity of title, unity of possession, unity of interest and unity of commencement of title. In a

tenancy-in-common also there may be unity of possession and where title is derived from a common sale deed or by inheritance from one person it

might very well commence at one and the same time. However, other ingredients which would be the main ingredients of the joint tenancy would

be missing. In our view having regard to the provisions of the Act it cannot be successfully argued that the co-bhumidhars hold the bhumidhari land

as joint tenants,

42. Relying on a division Bench case of this court a learned single Judge of this Court did not accept the case of 1965 All LJ 582 (supra) as laying

down good law: vide Mahendra Kumar v. Deputy Director of Consolidation 1968 All LJ 460.

43. Our attention has, however, been invited to an unreported case State of UP. v. Pradeen Sundar Narain Singh, (Civil Misc. Writ No. 2286 of

1965 (All)) decided by Division Bench of this Court dismissing a writ petition in limine. It was held that there was nothing objectionable in the

decision of the consolidation authorities that a bhumidhari interest could be held by a joint Hindu family as such, which, being a tenant, could

acquire bhumidhari rights u/s 18 of the Act. For reasons mentioned in the preceding paragraphs of this judgment we respectfully disagree with the

following observations made by a Division Bench of this Court that --

(a) a joint Hindu family as such, as one unit, can hold bhumidhari land,

(b) it shall, after the death of any member of the joint Hindu family devolve on the others by rights of survivorship.

44. Our conclusions can, therefore, be briefly summarised as follows:--

(1) Where members of a joint Hindu family hold bhumidhari rights in any holding, they hold the same as tenants in common and not as joint tenants.

The notions of Hindu law cannot be invoked to determine that status.

(2) Where in certain class of tenancies, such as permanent tenure holders, the interest of a tenant was both heritable and transferable in a limited

sense and such a tenancy could, prior to the enforcement of the Act, be described as joint family property or coparcenary property, the position

changed after Act I of 1951 came into force. Thereafter the interest of each bhumidhar, being heritable only according to the order of succession

provided in the Act and transferable without any restriction other than mentioned in the Act itself, must be deemed to be a separate unit

(3) Each member of a joint Hindu family must be considered to be a separate unit for the exercise of the right of transfer and also for the purposes

of devolution of bhumidhari interest of the deceased member.

(4) The right of transfer of each member of the joint Hindu family of his interest in bhumidhari land is controlled only by Section 152 of the Act and

by no other restriction. The provisions of Hindu law relating to restriction on transfer of coparcenary land, e. g., existence of legal necessity, do not

apply.

45. Now we proceed to consider the vexed question of the exclusive jurisdiction of revenue courts in civil matters coming before the courts.

46. The preamble to the CPC shows that the Act was enacted to consolidate and amend the law relating to procedure of the courts of civil

judicature.

47. Section 5 of the Code of Civil Procedure, 1908, defines ""revenue court"" as a court having jurisdiction under any local law to entertain suits or

other proceedings relating to the rent, revenue or profits of land used for agricultural purposes but does not include a civil court having original

jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of the civil nature. Section 9 of the Code of Civil

Procedure, 1908, provides:

The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their

cognizance is either expressly or impliedly barred"".

48. It is, therefore, evident that civil court has jurisdiction to try all suits of a civil nature except those of which its cognizance is barred, under any

local law.

49. In the case of Abdul Waheed Khan Vs. Bhawani and Others, their Lordships of the Supreme Court, while considering the bar of certain

provisions of Bhopal State Land Revenue Act to the jurisdiction of the Civil court, observed as follows:--

Under Section 9 of the Code of Civil Procedure, a civil court can entertain a suit of a civil nature except a suit of which its cognizance is either

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 its

contention. It is also equally well settled that a statute ousting the jurisdiction of the civil Court must be strictly construed.

50. The bar of the jurisdiction of civil court with regard to certain classes of cases relating to agricultural land is provided u/s 331 of the Act. The

relevant portion of that section reads as follows:--

Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything

contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, or proceeding mentioned in column 3 thereof;

(Or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or

application):

Provided that where a declaration has been made u/s 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they

relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation:-- If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for

from the civil court may not be identical to that which the revenue Court could have granted.

Thus the jurisdiction of a civil court shall be barred in respect of suits based on a cause of action for any of the reliefs

(a) mentioned in column 4 of Schedule II as being cognizable by revenue court,

or

(b) if on the same cause of action any relief could be obtained by means of any suit or application mentioned in column 4 of Schedule II of the Act,

the relief asked for from the civil court may or may not be identical to that which the revenue court would have granted. In other words, (a) above

relates to the class of cases where the jurisdiction of civil court is specifically barred. Under Clause (b) falls that class of cases where the

jurisdiction of the civil court is impliedly barred.

51. Almost a similar provision existed for barring the jurisdiction of civil courts also under the provisions of Act XVII of 1939. An almost identical

provision existed in Act III of 1926 also with, however, this difference only that the revenue court should in such cases have been capable of giving

adequate"" alternative relief. However, under the later Act relating to revenue law the words ""any relief occurred in place of ""adequate"" relief

52. As was held in the Full Bench case of D.N. Rege, Solicitor through Gopal Lal Mukhtaram Vs. Kazi Muhammad Haider and Another, the term

any relief"" will certainly bring within the jurisdiction of revenue courts more cases than could be tried by it exclusively under Act III of 1926 where

the word used was ""adequate"" (and not ""any""). However, the jurisdiction of civil courts with regard to agricultural land was not altogether

barred, and it was held that the revenue court had no jurisdiction where no plea of tenancy had been set up by the defendant within plaintiff's

knowledge before the institution of the suit.

53. While interpreting the scope and applicability of Section 242 of Act XVII of 1939 which was almost identical to Section 331 of Act I of

1951 to the class of cases where the jurisdiction of the civil court was only impliedly barred, it was held in the Full Bench case of D.N. Rege,

Solicitor through Gopal Lal Mukhtaram Vs. Kazi Muhammad Haider and Another, that the jurisdiction of a court primarily depends upon the

allegations made in the plaint but at the same time it was clear that the plaintiff could not either by hiding or misstating certain facts give jurisdiction

either to the civil court or to the revenue court. It was observed as follows:--

We think that it is very difficult in view of the provisions of Section 242 of the United Provinces Tenancy Act, 1939, to hold that the civil court

and revenue court can in any case have concurrent jurisdiction and we would hold, therefore, that the jurisdiction is not concurrent but depends on

the allegations made in the plaint provided those allegations are established to be true"".

54. It is the cause of action which determines the jurisdiction of a court. The term ""cause of action"" though nowhere defined is now very well

understood. It means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment -- vide

AIR 1949 78 (Privy Council)

55. If the basic evidence to support the two claims is different then the causes of action are also different, vide AIR 1949 78 (Privy Council) . For

example, there can be no doubt that the cause of action for a suit based on title will be different from the cause of action for a suit u/s 9, Specific

Relief Act. In the case of Yar Muhammad and Another Vs. Lakshmi Das and Others, the question arose whether the jurisdiction of the Civil Court

was barred by virtue of Section 242 of the U. P. Tenancy Act in respect of a suit filed u/s 9, Specific Relief Act, for obtaining possession over

agricultural land from which the plaintiff alleged his illegal dispossession within six months of the date of the suit. It was held that the cause of action

for a suit for possession based on title being different from the cause of action based on possession only u/s 9 of the Specific Relief Act the

jurisdiction of the civil court was not barred to entertain a case of the latter class.

56. It follows that in each and every case the cause of action of the suit shall have to be strictly scrutinized to determine whether the suit is solely

cognizable by a revenue court or is impliedly cognizable only by a revenue court, or is cognizable by a civil court.

57. Where in a suit, from a perusal only of the reliefs claimed, one or more of them are ostensibly cognizable only by civil court and at least one

relief is cognizable only by the revenue court, further questions which arise are whether all the reliefs are based on the same cause of action and, if

so, (a) whether the main relief asked for on the basis of that cause of action is such as can be granted only by a revenue court, or (b) whether any

real or substantial relief (though it may not be identical with that claimed by the plaintiff) could be granted by the revenue court. There can be no

doubt that in all cases contemplated under (a) and (b) above the jurisdiction shall vest in the revenue court and not in the civil court. In all other

cases of a civil nature the jurisdiction must vest in the civil court.

58. It was contended by Sri K. P. Singh (appearing for the appellant in Second Appeal No. 282 of 1967 and for the respondent in the connected

Second Appeal) that the Legislature has, by using the term "any relief" in Section 331 of the Act completely barred the jurisdiction of the civil court

in suits relating to agricultural land where any relief based on the same cause of action, whether or not the same is real or substantial, could be given

to the plaintiff by a revenue court. There is no force in this contention. In our view it is opposed to the observations made by the Supreme Court in

the following two cases:--

(i) Lala Ram Swarup and Others Vs. Shikar Chand and Another, , and

(ii) Abdul Waheed Khan Vs. Bhawani and Others, .

59. The case law of this Court also on the interpretation of Section 242 of Act XVII of 1939 or Section 331 of Act I of 1951 does not support

this contention.

60. It was observed by the Supreme Court in the case of Lala Ram Swarup and Others Vs. Shikar Chand and Another, that one of the points

which is often treated as relevant in dealing with the question about the exclusion of the civil court's jurisdiction is whether the special statute (in

that case the U. P. Temporary Control of Rent and Eviction Act, III of 1947) has used clear and unambiguous words indicating that intention.

Another test which is applied is:

Does the said statute provide for any adequate and satisfactory alternative remedy to a party that may be aggrieved?

61. It was laid down in the case of Abdul Waheed Khan Vs. Bhawani and Others, that a statute ousting the jurisdiction of the civil court must be

strictly construed.

62. The case law in this Court on this point might be classified under the following two heads:--

(a) Where several reliefs closely connected with each other can be claimed on the basis of the cause of action set forth in the plaint it has to be

examined which of them is the main relief and which others are ancillary reliefs. If upon a consideration of facts constituting the cause of action the

main relief is such which can be granted by the civil court the suit will be cognizable in the civil court which will proceed to grant the ancillary reliefs

also. On the other hand if the main relief is specifically cognizable by a revenue court only but ancillary reliefs may be such as could be granted by

the civil court the matter was cognizable only by a revenue court.

(b) The pith and substance of the allegation made in the plaint constituting the cause of action must be scrutinized in order to determine whether or

not if on the same cause of action any adequate or satisfactory alternative remedy could be available to the plaintiff in the revenue court. If the

answer to the scrutiny be in the affirmative, then the suit brought in the civil court must fail regardless of the consideration that in respect of the

reliefs actually claimed the suit was on the face of it cognizable by a civil court.

63. The decided cases of this Court, having a bearing on the above two propositions of law, might now be examined.

64. A suit for possession of a plot of land by uprooting the trees standing thereon was held by Kidwai, J. to lie in the civil court -- Puttu v. Bharat

Singh 1949 All WR (HC) 52. In the Full Bench case of Kanhaya Lal v. Huriyan ILR (1901) All 486 (FB), it was held that such suits were

cognizable in revenue court only because a suit u/s 93 of Act XII of 1881 could be brought. The two cases are under two different Acts.

65. Where the plaintiff claimed the relief of injunction and also the relief for settlement of account and for his share of profits of agricultural land it

was held that the relief of injunction was not the main relief but was only subsidiary to the relief for settlement of account and that suit was held by a

Division Bench of this Court to be cognizable by revenue court only: Syed Zahid Ali Sabzposh Vs. Syed Shahid Ali Sabzposh, .

66. It was held by a Division Bench of this Court in the case of Angnu v. Mahabir. 1954 All LJ 669 that a suit for demolition and possession

against a trespasser may lie in a civil court.

67. It was held by Asthana, J. In L. Deep Chandra v. L. Durga Pd. 1956 All LJ 955 that where the suit was for specific performance of the

contract of sale and also for possession and the main relief was for specific performance of the contract of sale, the suit was cognizable by the civil

court.

68. Where the suit was for injunction only, as a suit for declaration filed u/s 63 of the U. P. Tenancy Act in a revenue court was stayed, it was held

by a Division Bench of this Court that the suit was cognizable by a civil court vide Khaderu Mal v. Ram Karan Ahir 1961 All LJ 854. That was,

however, on the consideration that the suit for possession was stayed.

69. It was held by a Division Bench of this Court that where the suit was for cancellation of a sale deed on the ground of fraud and for possession

the main relief was for cancellation of document and, therefore, the ancillary relief for possession could also be granted by the civil court -- vide

Mewa and Others Vs. Baldeo, .

70. A suit for possession of agricultural land and for demolition of unauthorised constructions standing thereon brought against a trespasser was

held by a Division Bench of this Court to be cognizable by the revenue court only, because (as subsequently explained in 1966 All LJ 1084 : AIR

1967 AU 358 (supra)

(a) the definition of the word "land" under Act I of 1951 is different from that given in the U. P. Tenancy Act, 1939. Under Act XVII of 1939 any

land, as soon as it was built upon, ceased to be land but that was not so under Act I of 1951 and on that account earlier rulings of the Court

holding that the civil court had jurisdiction to entertain a suit for demolition and possession were not considered to be good law under the

provisions of Act I of 1951, and

(b) as against trespasser the relief of possession could always be considered to be the main relief and the relief of injunction an ancillary relief --

(Vide Mukteshwari Prasad Tewari v. Ram Wall. 1965 All LJ 1137).

71. In the following cases it was held that upon a consideration of the cause of action the real relief which could have been claimed was to

determine the forum of the suit.

72. In the case of Ram Sewak Lal Vs. Bashist and Others, decided by a Division Bench of this Court the suit was for a declaration that a consent

decree passed by the revenue court was void and ineffectual against the plaintiff. It was found that the real relief which the plaintiff sought in the suit

in appeal was a declaration of his status as a tenant of the plots in suit. It was therefore, held that in the circumstances the suit was one which was

contemplated by Section 59 of Act XVII of 1939 and should have been filed in the revenue court.

73. The case of Baiju v. Shambhu Saran. 1963 All LJ 1064 decided by a Division Bench of this Court was for injunction based on the allegations

that the plaintiff was a khudkasht holder but the defendant had got his name entered in the revenue papers and was interfering with his possession.

The defendant claimed to be the tenant in possession. The lower appellate court granted the decree of injunction. The second appeal filed before

the High Court was allowed on the ground that the civil court had no jurisdiction to decide the case because upon the facts of the case it was clear

that the plaintiff must seek a declaration as to his title and, therefore, the suit was one in which relief could be granted by the revenue court.

74. The next case referred to us is that of Union of India (UOI) Vs. Parvati Kuwar and Others, decided by Gangeshwar Prasad, J. Interpreting the

provisions of Section 242 of the Act XVII of 1939 the learned Judge observed that the suit was cognizable by the revenue court where the prayer

was for declaration that the plaintiff was an occupancy tenant of the land in suit and in the alternative claimed possession against a person who

according to the plaintiff relied upon invalid and ineffective lease deeds, although the cancellation of the lease deeds could not be done by the

revenue courts but that was hardly necessary.

75. In the case of Rohan v. Chiraunji, 1964 R. D. 199 it was held by Takru J, that although the relief for cancellation of the sale deed was also

incidentally claimed the main relief was for declaration under Sections 59 and 61 of the U. P. Act XVII of 1939.

76. The main point for consideration In all cases where on a definite cause of action two reliefs can be claimed is which of the two reliefs is the

main relief and which relief or other reliefs are ancillary reliefs. Where from facts and circumstances of the case the relief for demolition and

injunction is the main relief there could be no reason why the jurisdiction of the civil court should be barred On the other hand if it could be said

that the main relief that is to say, the real and substantial relief, could on that cause of action be of possession only then the suit will definitely lie in

the revenue court. In our opinion it is difficult to lay down any hard and fast rule that where the suit is brought against a trespasser the only relief

which the plaintiff should claim as an effective relief is that of possession and he need not try to obtain an injunction order and get the constructions

made by the trespasser demolished. The revenue courts have not. been empowered to grant the reliefs of injunction and demolition and in case the

defendant refuses to take away the materials from the land in dispute after the decree for possession has been passed against him the main object

of the plaintiff would be frustrated. A civil court will, therefore, have the power to entertain the suit where the main relief sought by the plaintiff is

that of injunction and demolition, a relief which could be granted by the civil court only. The relief of possession will be merely ancillary relief which

the civil court could grant after having taken cognizance of the suit for injunction and demolition. We respectfully agree with the view expressed by

Dayal and Seth, JJ. In the case of Mewa and Others Vs. Baldeo, that once the suit is maintainable for the main relief in the civil court then there is

no bar for the civil court to grant all possible reliefs flowing from the same cause of action. We, however, with great respect, differ from the view

taken by the Division Bench in the case of 1965 All LJ 1137 that whenever a suit is for demolition and possession against a trespasser it must

always be held that the main relief was that of possession. We are of the view that the determination of the question as to which out of the several

reliefs arising from the same cause of action is the main relief will depend on the facts and circumstances of each case,

77. Further we are of the view that where, on the basis of a cause of action--

(a) the main relief is cognizable by a revenue court the suit would be cognizable by the revenue court only. The fact that the ancillary reliefs claimed

are cognizable by civil court would be immaterial for determining the proper forum for the suit;

(b) the main relief is cognizable by the civil court the suit would be cognizable by the civil court only and the ancillary reliefs, which could be

granted by the revenue court may also be granted by the civil court

78. We are also of the view that the above principle will apply also to a suit for injunction and demolition relating to agricultural land and brought

against a trespasser. With great respect to the Hon^{ble} Judges who took a different view it is not possible for us to arrive at the conclusion that as

against trespassers the main relief must always be that of possession only. The argument that the definition of the land has equally changed and,

therefore, the old case-law on the point cannot be at all accepted as good law has not appealed to us. It has to be remembered that so far as the

plaintiff is concerned he never intended to make any construction on his land and wants to get back its vacant possession. Therefore, the slight

change in the definition of land (so as to exclude the land built upon) can hardly affect the question of jurisdiction.

79. We now proceed to dispose of the two Second Appeals and the connected civil Revision referred to this Bench for disposal.

80. Civil Revision No. 1711 of 1965; This revision application is directed against an order of the Munsif dated 7-8-1965 deciding the issue of

jurisdiction against the defendant and holding that the suit for demotion and possession, was maintainable in the civil court.

81. It is contended by the learned counsel for the applicant that the plaintiff need not have sued for demolition of the constructions made because

under section, 209 of the U. P. Zamindari Abolition and Land Reforms Act -- vide Schedule II, Item 24 -- the revenue court was empowered to

grant the plaintiff the relief for possession and for damages. In our opinion this contention has no force because the relief of possession and

damages could not be real and substantial alternative relief.

82. It appears from the judgment of the learned Munsif that the real and substantial relief sought in the suit was that of injunction and demolition and

the relief of possession was merely an ancillary relief. The learned Munsif rightly held that where the revenue court was not competent to grant all

the reliefs arising out of one and the same cause of action and the main relief was that of injunction and demolition the suit would lie in the civil

court.

83. There is no force in this revision application and it is, therefore, dismissed with cost.

84. Second Appeal No. 282 of 1967:--There is no force in the contention that the suit giving rise to this appeal was not cognizable by the civil

court. The suit was for cancellation of three sale deeds and in the alternative for the cancellation of those very sale deeds to the extent of one-half

share belonging to the plaintiff, who in the latter event also claimed joint possession along with the defendants, who made the purchase by means of

those sale deeds.

85. The sale deeds were voidable and not void. Even in case of the alternative relief with regard to one half of the property only the sale deed must

be held to be voidable because the sale had been made by the defendant no. 7, an elder brother of the plaintiff on behalf of the plaintiff also. In the

present case the suit could not be said to be barred by Section 331 read with Section 209 of the Act for the simple reason that Section 209 of Act

I of 1951 applied only to suits against trespassers and where the suit for joint possession is instituted by one co-sharer against the other it can have

no application. The opening words of Section 209 read as follows:--

A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force.

A suit for ejectment directed against such persons only (i.e., trespassers) could be filed u/s 209 of the Act: Vide Ram Dass Vs. Board of Revenue

and Others, . The jurisdiction of the civil Court, therefore, would not be barred u/s 331 read with Section 209 of the Act, in a suit for joint

possession against co-sharers.

88. Both the reliefs claimed in the suit were cognizable by the civil court only. It has, however, been contended by the learned counsel for the

respondent that upon the same cause of action a suit for declaration or for partition could have been brought and any of such suits, if, instituted,

could have been cognizable by a revenue court. The argument, therefore, is that the jurisdiction of the civil court is barred by implication.

87. The question that arises for consideration, therefore, is whether the cause of action for a suit for partition is the same as the cause of action for

cancellation of the sale deed.

83. In our opinion this question must be answered in the negative. It is true that both kinds of suits would be based on the plaintiffs title. However,

in a suit for cancellation of a sale deed it will have to be established that the title did not pass as a result of the sale deeds ostensibly transferring

plaintiff's share as the transferor had no authority to make any transfer on his behalf. On the other hand, in a suit for partition all that has to be

established is the extent of the plaintiff's share and the fact that he does not want to keep the property joint any longer. In such circumstances both

the suits cannot be said to be based on one and the same cause of action.

89. At one time it was doubted whether relief for joint possession need at all be granted because in some cases it would be an incomplete or

ineffectual relief, not even being capable of any effective execution through court. However, now the law is well settled that a decree for joint

possession may be granted (vide Full Bench cases of (1) Bhairan Rai v. Saran Rai, ILR (1904) All 588 (FB) and (2) Hanuman Prasad Narain

Singh v. Mathura Prasad Narain Singh AIR 1933 All 472 (FB)). Order 21, Rule 36, C. P.C. provides for the mode of execution of such decrees.

90. A document under which the plaintiff's share also purports to have been transferred by a person not authorised to do so can be cancelled

through court to the extent of the plaintiff's share and after a decree has been passed in his favour information regarding the same has to be sent to

the registration department for making a note in their register. To have a document adjudged void or voidable is provided for u/s 31 of the Specific

Relief Act and cannot be considered to be altogether unnecessary, because after a lapse of several years the unchallenged existence of such

documents can cause serious difficulty to the plaintiff in establishing his title to the land of his share. The parties may, after the sale deeds have been

cancelled, like to hold the land as co-sharers. They need not in all cases be forced ""to get the holding partitioned. The plaintiff was not bound to

ask for a mere declaration of his title in respect of the joint land when he could pray for cancellation of the entire sale deed or at least a part of it. In

short, the reliefs for declaration and partition could not be said to be effective alternative relief for the cancellation of the sale deeds in respect of

the whole or part of the joint property. There is ample authority for the proposition that a suit for joint possession could be filed and the relief

claimed could not be considered to be an unnecessary relief. The jurisdiction of the civil court to entertain the suit out of which this appeal arises

was not even impliedly barred.

91. The courts below decided the case on appreciation of evidence and decreed the plaintiff's suit. In other matters the appeal is concluded by

findings of fact.

92. No other question, of law arises.

93. There is no force in this appeal and it is dismissed with costs.

94. Second Appeal No. 710 of 1967:--This second appeal arises out of a suit for injunction restraining the defendants from making any

construction on the land in suit, for removal of the constructions made by the defendants during the pendency of the suit and for joint possession.

All the three reliefs claimed were cognizable by the civil court only, and therefore, the courts below rightly decided the question of jurisdiction, in

favour of the plaintiff.

95. The view taken in some of the cases was that as between co-sharers the relief of partition may be an affective relief and, therefore, the relief for

injunction, demolition and joint possession may not be granted. It is not at all necessary to consider that point in detail because ""where a

discretionary relief is disallowed on the ground that in the circumstances of the case it was not a proper relief (vide Section 39, Specific Relief Act)

it could not be said that the civil court had no jurisdiction to entertain the suit as originally brought before it. The civil court, and no other court, had

the power to grant the relief for injunction, demolition and joint possession provided the same was considered to be an equitable-relief. Where it

could not be considered to be an equitable relief the suit would fall not because the civil court had no jurisdiction to entertain it but because it did

not consider that the relief prayed for was an equitable relief.

98. The findings of fact recorded by the lower appellate court are in favour of the plaintiff-appellant. The plaintiff's case was that he and

defendants Nos. 2 to 10 were the co-owners of the plot in village Prem Chak and defendant no. 4 had sold the northern portion of that plot to

defendant no. 1 and Smt. Hamidan and the transferees had made the constructions in dispute. The lower appellate court, after recording a finding

that the plaintiff is a co-sharer, dismissed the suit on the ground that the remedy of the plaintiff lay by means of a suit for partition and not by

seeking the relief of demolition and possession.

97. In a suit of this nature the court may feel persuaded to grant both the reliefs if the evidence establishes that the plaintiff cannot be adequately

compensated at the time of the partition and that greater injury will result to him by the refusal of the relief than by granting it. On the contrary, if

material and substantial injury will be caused to the defendant by the granting of the relief, the court will no doubt be exercising proper discretion in

withholding such relief. The court in exercising its discretion will be guided by considerations of justice, equity and good conscience. It is, however,

not possible for the court to lay down any inflexible rule as to the circumstances in which the relief for demolition and injunction should be granted

or refused. We are supported in this view by the Full Bench case of Chhedi Lal and Another Vs. Chhotey Lal, .

98. The learned District Judge has, after recording all the findings in favour of the plaintiff, refused to grant him the relief for injunction, demolition

and joint possession on the main ground that the transferee of defendant no. 4 must, be deemed to be co-sharer of the plaintiff in respect of a

portion of a big plot and, therefore, the proper relief to be sought in the case was that of partition. The lower appellate court has not thought it

proper to give the question the consideration it deserved and to discuss the evidence of the parties with regard to the balance of convenience of the

parties in case the relief was granted or refused. In view of the fact that the case has not been decided keeping that point of view into consideration

and it has been assumed that in all cases between co-sharers the relief for injunction, demolition and possession must be disallowed and the only

proper relief to be granted would be the relief for partition the appeal shall have to be allowed and the case remanded to the lower appellate court

for decision in accordance with law in the light of the observations made above.

99. The second appeal is allowed and the decree of the lower appellate court is set aside and the appeal is remanded to the first appellate court

with the direction that it be restored to its original number and be heard and decided in accordance with law in the light of the observations made in

this judgment. Costs shall abide the result.

R. Prasad, J.

100. I am in respectful agreement with the view taken by my brother Khare, J. in respect of questions involved in this case.

101. The Full Bench decision of this Court In Ramji Dixit and Another Vs. Bhrigunath and Others, referred to by my brother Khare, J. in his

judgment was the subject matter of Civil Ramji Dixit and Another Vs. Bhrigunath and Others, in the Supreme Court and the Supreme Court

dismissed the appeal on the 12th January 1968. The majority view taken by this Court was confirmed. In view of that decision of the Supreme

Court, there is no manner of doubt that the notions of personal law cannot be imported to restrict the right of Bhumidhari to alienate interest in the

Bhumidhari land, that such right to alienate is subject only to the provisions of the Act itself.

102. I also take this opportunity of expressing my view that the introduction of the expression ""any relief"" in Section 331 of the U. P. Zamindari

Abolition & Land Reforms Act in place of the expression used earlier, ""adequate relief"" was not really intended to imply that the relief

which the revenue court can grant, need not be a relief adequate to the relief claimed in the civil court. A relief which fails to relieve cannot be a

relief at all. In spite of change introduced in the language of the provision, the relief which the revenue court should be in a position to grant must be

a real relief to the plaintiff. In none of the three cases that came up before this Full Bench, can it be said in view of the facts thereof, that the

revenue court could be in a position to grant real relief to the plaintiff to which he is entitled in law.

A.K. Kirty, J.

103. I agree with the conclusions arrived at by my brother, Khare, J. and concur with the decision that Civil Revision No. 1711 of 1965 and

Second Appeal No. 282 of 1967 should be dismissed and Second Appeal No. 710 of 1967 should be allowed as ordered in the judgment of my

brother.

104. Besides the reasons given by my brother I respectfully desire to mention that from the under-noted provisions contained in Sections 143 and

331 of U. P. Act I of 1951 also it would appear that, except as provided under that Act, the Bhumidhar will not be governed by the personal law

to which he is subject but by the provisions of the Act.

105. Section 143(1) :-- ""Where a bhumidhar uses his holding or part thereof for a purpose not connected with agriculture, horticulture, or animal

husbandry which includes pisciculture and poultry farming, the Assistant Collector in charge of the Sub-Division may, suo motu or on an

application, after making such enquiry as may be prescribed, make a declaration to that effect.

(2) Upon the grant of the declaration mentioned in Sub-section (1) the provisions of this Chapter (other than this section) shall cease to apply to

the bhumidhar with respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is

subject.

Section 331(1):-- ""Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II, shall,

notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application, or proceeding mentioned in

column 3 thereof.

Or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or

application:

Provided that where a declaration has been made u/s 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they

relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof

BY THE COURT

106. Civil Revision No. 1711 of 1965 and Second Appeal No. 282 of 1967 are dismissed with costs. Second Appeal No. 710 of 1967 is

allowed and the judgment and decree of the lower appellate court are set aside. The appeal is remanded to the first appellate court with the

directions that it be re stored to its original number and be heard and decided in accordance with law in the light of the observations made by this

Court Costs shall abide the result.