A SHRI PANCH NAGAR PARAKH MANDSAUR

v.

PURUSHOTTAM DAS

AUGUST 18, 1999

B [M. JAGANNADHA RAO AND M.B. SHAH, JJ.]

Tenancy and Land Laws:

Madhya Bharat Land Revenue and Tenancy Act, 1950—Madhya
C *Pradesh Land Revenue Code, 1959—Qanoon Ryotwari Gwalior State Sambat 1974 (1917 AD), Section 275 Mortgage executed in year 1934 when Ryotwari Act was in force—Suit for redemption of mortgage of agricultural lands—Limitation for—Held, the suit was barred under Section 275 of the Ryotwari Act—Also the question whether the jurisdiction of civil court is expressly or*
D *impliedly barred under Ryotwari Act for any other relevant applicable laws requires reconsideration—If filing of civil suit is not barred expressly or impliedly, a civil suit would be maintainable and the limitation period for redemption of the mortgage would depend on the Limitation Act applicable in the State at the relevant time prior to 1950 and thereafter—Attention of the High Court not focussed on this question—Matter remitted to High Court*
E *for decision on merits after verification of applicable local laws Bar of jurisdiction of civil courts—Suit for redemption of mortgage—Civil Procedure Code, 1908, Section 9—Limitation Act, 1963, Article 61—Redemption of mortgage of agricultural land.*

F *Qanoon Ryotwari Gwalior State Sambat 1974 (1917 AD), Section 275—Held, for redemption of mortgaged tenancy rights the procedure prescribed under Section 275 to be followed and the martgage was required to be redeemed within three years.*

Madhya Pradesh Land Revenue Code, 1959, Section 158—Mortgage
G *executed in 1934 when Ryotwari Act was in force—Whether mortgagee can become a bhumiswami under Section 158 of the 1959 Code—Held, matter requires consideration of various provisions of the Madhya Bharat Land Revenue and Tenancy Act, 1950 as well as 1950 Code—Matter remitted to High Court for fresh consideration on merits after consideration of all*
H *applicable local laws.*

Relying upon a registered mortgage deed executed in 1934 by one H who was the power of attorney holder of D, respondents-heirs of deceased D, filed a suit in 1968 for redemption of 1/3rd share in agricultural land. The deed prescribed 11 years as the mortgage period with a specific condition that the mortgage money was not to carry interest and the mortgage was made in favour of appellant-Community. Trial court decreed the suit for redemption of possessory mortgage on payment of mortgage money and cost and the same was confirmed in Appeal and Second Appeal. Hence this appeal.

A

B

It was contended by the appellant that the suit for redemption was not to be governed by the Limitation Act, 1963 as under the Qanoon Ryotwari, Gwalior State Sambat 1974 (1917AD) ("Ryotwari Act"), there was specific provision for redemption of mortgage of '*Pukhta Maurusi*' (class of tenants); that original mortgagor was 'Pukhta Maurusi' tenant and for redemption of such mortgage, rights of the parties were governed by the Ryotwari Act; that the three years' period of limitation for redemption of such mortgage was provided under Section 275 of Ryotwari Act; that right to sue accrued after eleven years from the date of execution of the mortgage deed, i.e. in July 1945 and the limitation of three years under the Ryotwari Act was over in July 1948; that under Ryotwari Act the tenancy rights of '*Pukhta Maurusi*' tenants were transferred to mortgagee in possession; and that under M.P. Land Revenue, 1959, appellant had become *'Bhumi swami'*.

C

D

Respondents did not dispute that the provisions of Ryotwari Act were applicable to the lands in dispute. One year before the execution of the mortgage, eight sections of Qanoon Mal, Gwalior State, Samvat 1983 (1926 AD) were incorporated into the Ryotwari Act. In August 1950, Ryotwari Act and some provisions of Act of 1926 were repealed by Madhya Bharat Land Revenue and Tenancy Act, 1950 which was then repealed by M.P. Land Revenue Code, 1959.

E

F

Allowing the appeals and remanding the matter to High Court, the Court.

HELD: 1. Suit for redemption of mortgage executed in July 1934 is obviously time barred on the basis of Section 275 of the Qanoon Ryotwari, Gwalior State, 1974 (1917 A.D.). Still, however, the next question that would require consideration is whether the jurisdiction of the civil court is expressly or impliedly barred in view of the provisions of the Ryotwari Act or other relevant laws applicable. Where there is an express bar of jurisdiction of the

G

H

A civil court under the provisions of the Ryotwari Act then the question of finding out implied exclusion is not allowed. However, in cases where there is no express provision excluding jurisdiction of civil courts, it would be necessary to enquire and determine whether it is impliedly barred. For this purpose, the scheme of the Ryotwari Act and the relevant provisions are required to be examined to find out whether the statute provides right and B remedy and whether the scheme of the Act is such that the procedure provided therein will be conclusive giving finality and thereby excluding the jurisdiction of the court in respect thereof. Attention of the High Court was not at all focused on this question. Under the Ryotwari Act, pukhta maurusi (class of tenants) was entitled to mortgage its right and the mortgagee C stepped into his shoes and special procedure was prescribed for redemption of such mortgage within a period of three years. However, if filing of a civil suit was not expressly or impliedly barred, a civil suit would be maintainable. In such eventuality, the limitation for redemption of the mortgage would be different. It would depend upon the Limitation Act applicable in the said State at the relevant time prior to 1950 and thereafter. In this view of the matter, D the relevant provisions of the Civil Procedure Code and the Limitation Act applicable in the said State where the agricultural lands are situated are required to be examined and considered for deciding whether civil court's jurisdiction is expressly or impliedly barred, whether the right of redemption was barred by the period of limitation prescribed under the Limitation Act E applicable to that State. [558-B-H]

2. The other question which requires consideration is whether the appellant has become bhumi swami under the provisions of the Madhya Bharat Land Revenue Code, 1959. By the deed executed in favour of the appellant, he stepped into the shoes of the mortgagor and has acquired the F right as pukhta maurusi subject to the right to redemption. As such this question would also require further consideration by taking into consideration various provisions of the Madhya Bharat Land Revenue and Tenancy Act, 1950 as well as the Madhya Pradesh Land Revenue Code, 1959. [559-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 235 of 1995 G Etc.

From the Judgment and Order dated 30.9.91 of the Madhya Pradesh High Court in C.S.A. No. 460 of 1976.

Shiv Dayal Shrivastava, S.K. Bagga, Seeraj Bagga, Ms. Tanuj Sharma H and Ms. Shurestha Bagga for the Appellant.

Ashok Chitale, Sushil Kumar Jain, A. Misra, L. Singh, Ms. Anjali Doshi and Umesh Bohre for the Respondent. A

The Judgment of the Court was delivered by

SHAH, J. These two appeals between the same parties arise out of mortgage of two pieces of agricultural land in Mandsaur—one mortgage deed is executed on 18th June, 1932 and another on 26th July, 1934. At present, we would refer to the facts of Civil Appeal No. 235 of 1995. Relying upon registered mortgage deed executed on 26.7.1934 by one Hardeodas who was the power of attorney holder of Dwarkadas, respondents-heirs of the deceased Dwarka Das-filed Civil Suit No.112-A/68 on 10th August, 1968 before the Civil Judge, Mandsaur for redemption of 1/3rd share in agricultural land bearing survey No.1639 situated at Mandsaur. The deed prescribed eleven years as the mortgage period with a specific condition that the mortgage money was not to carry interest and mortgage was made in favour of appellant which is a Community, namely, Shree Panch Nagar Parakh Jankoopura, Mandsaur. The Trial Court decreed the suit for redemption of possessory mortgage on payment of mortgage money and cost which is confirmed in Appeal and Second Appeal. B C D

It has ben contended by learned counsel for the appellant that courts below committed patent error in arriving at the conclusion that suit for redemption filed by the plaintiff would be governed by the Indian Limitation Act, 1963 without appreciating the fact that there was specific provision under the Act known as 'Qanoon Ryotwari' for redemption of mortgage of Pukhta Maurusi (class of tenants). It is submitted that Dwarkadas, original mortgagor was 'Pukhta Maurusi' tenant and for redemption of such mortgage, the rights of the parties were governed under the special provisions of Qanoon Ryotwari, Gwalior State Samvat 1974 (1917 A.D.) (hereinafter referred to as "the Ryotwari Act"). It is contended that three years' period of limitation for redemption of such mortgage is provided under Section 275 of the Ryotwari Act. Hence, the suit filed in 1968 was on the face of it barred by period of limitation. According to the learned counsel, right to sue accrued after eleven years from the date of execution of the mortgage deed, i.e. on 26.7.1945 and three years' period would be over in the month of July 1948. It is his further contention that the mortgage in possession of tenancy rights of Pukhta Maurusi gets his rights transferred in his favour under the provisions of the Ryotwari Act. Secondly, the learned counsel submitted that under the Madhya Pradesh Land Revenue Code, 1959 appellant became Bhumi-Swami. E F G H

A At the time of hearing of the appeal as well as in the written submissions made by the respondents, it is not disputed that the Ryotwari Act was applicable to the lands in dispute. On 17th August, 1933, eight sections of Qanoon Mal Gwalior State Samvat 1983 (1926 A.D.), namely, Sections 268, 269, 271, 272, 274, 275, 278 and 280 were engrafted into the Ryotwari Act. On 15th August 1950, the Madhya Bharat Land Revenue & Tenancy Act, Samvat 2007 B (66 of 1950) became applicable to land tenures in Mandsaur and it repealed Qanoon Ryotwari and certain provisions of Qanoon Mal. The 1950 Act was repealed on 2nd October, 1959 by Madhya Pradesh Land Revenue Code, 1959 (Act No. 2 of 1959).

C For considering the first contention whether the suit filed in 1968 is barred by the period of limitation as prescribed under Section 275 of the Ryotwari Act, we would first refer to relevant provisions of the said Act:-

"Section 1. (1) It is expedient that this Act shall be called 'Qanoon Ryotwari Gwalior State, Samvat 1974'.

D

(2)...

(3)...

(4) This Act shall come into force on 1st October, 1917."

E *DEFINITIONS*

Section 2. "In villages, *where there is no intermediary like Zamindar, Mustajar, Supurdidar, between the State and the tenant, and rent is recovered by the Government directly from the tenant,* such F administration is called '*Ryotwar*i', and such villages are called 'Ryotwari villages'."

Section 5. "'Pukhta Maurusi' means a Maurusi tenant who got Maurusi Patta at the time of settlement or who has become Maurusi during the current settlement. *He shall have also the right to transfer his Pukhta* G *holding.*"

TENANTS

CLASSES OF TENANTS

Section 65. In a Ryotwari village there shall be the following classes H of tenants:-

(1) Those tenants who got Patta Maurusi at the time of last settlement or who acquired maurusi rights shall be called "Pukhta Maurusi" and *such tenants shall also have the right of transfer.* A

(2) Saqitul Milkayat.

(3) "Haquiat Mutafarriq" and "Sharah Muayyan" tenants shall retain their rights and *shall also have the right of transfer provided that* on transfer of holding by such tenants, the class of the transferee shall be "Pukhta Maurusi", and *shall be assessed to full rent without concession to him*" B

(4) Ghair Dakhilkar.

C

"71. A tenant who acquires title to tenancy by succession or sale or mortgage or in any other mode, must report to the Patwari of the village about the acquisition of such title. If the person acquiring title is a minor or is otherwise disabled, his guardian or such other person who is manager of his property shall report to the Patwari in writing and obtain acknowledgement. D

(a) In case of transfer by sale, mortgage with possession or gift, it shall be the duty of the transferee to make such report to the Patwari before taking possession...."

Section 275. "If a suit for redemption or for recovery of mortgage money on the basis of a registered deed of mortgage is to be instituted, it shall lie in the court of the Tehsildar within three years on a stamp paper of 8 annas. The appeal from the order of the Tehsildar shall lie to the court of Suba (Collector) and the decision of the Collector shall be final." E

F

Section 278. "The status regarding rights and liabilities of the purchaser or the mortgage of Dakhilkar land shall be the same as of the transferor."

On the basis of aforesaid provisions, learned counsel for the appellant submitted that the suit filed in 1968 was, on the face of it, time barred and the courts below manifestly erred in holding that Article 61 of the Indian Limitation Act. 1963 which prescribes period of limitation of thirty years would be applicable to the suit filed by the respondents. G

Prima facie, it appears that there is total non-application of mind by the courts below with regard to Section 275 of Qanoon Ryotwari which was in H

A force at the relevant time and was applicable to the lands in dispute. The said section specifically provides that suit for redemption or for recovery of mortgage money on the basis of a registered deed is to be instituted within three years in the court of Tehsildar. Further, appeal against the said order is to be filed in the court of Suba (Collector) and the decision of Suba shall be final. These provisions are made with regard to Ryotwari villages in Gwalior B State. Section 2 as quoted above, inter alia, provides that in villages where there is no intermediary like Zamindar, Mustajar, Supurdidar between the State and the tenant and the rent is recovered by the Government directly from the tenant such administration is called Ryotwari and such villages are called Ryotwari villages. As per Section 65 in Ryotwari villages, tenants were of four C classes, namely, (1) Pukhta Maurusi (2) Saqitul Milkayat (3) Haquiat Mutafarriq and Sharah Muayyan and (4) Ghair Dakhilkar. Admittedly, in the present case, the mortgagor who mortgaged his rights was belonging to 'Pukhta Maurusi' class of tenants. He transferred his rights by executing a mortgage deed a copy of which is produced in this appeal which inter alia recites that "I am in possession and occupation of this land as "Pukhta Maurusi," "And as D regards payment of mortgage money, it is agreed that after the expiry of 11 years. I shall pay mortgage money Rs. 101 and get the mortgage property redeemed. *Whatever the rights I have in the land mortgaged the same will be the rights of the said Panchan mortgagees*". Admittedly, the aforesaid document is registered with the Tehsildar, Mandsaur on 27.7.1934. Section 278 E quoted above provides that the status regarding rights and liabilities of the purchaser of the mortgagee of Dakhilkar land shall be the same as that of the transferor. The mortgage deed as quoted above also provides to the same effect that whatever rights mortgagor was having the same will be the rights of the mortgagee. At this stage, we would mention one submission made by the learned counsel for the respondents to the effect that on the basis of F mortgage deed, mortgagee would not get the same rights of a tenant-mortgagor. The said submission is without any substance. Firstly, because of executing the mortgage deed, mortgagor has transferred his rights under Sections 5 & 65 of the Ryotwari Act. 'Pukhta Maurusi' (tenant) was entitled to transfer or mortgage his rights and the tenant, Dwarka Das, who was 'Pukhta Maurusi' G mortgaged his tenancy rights with a specific mention that whatever rights he was having in the land were mortgaged and the same would be the rights of the mortgagees. Hence, by the said deed, what was mortgaged was tenancy rights and the mortgagee stepped into his shoes and acquired the tenancy right as 'Pukhta Maurusi' subject to right of redemption. Further, under Section 278 of the Ryotwari Act mortgagees were having the same status qua H the State. Under Section 275, suit for redemption of mortgage was required

to be filed before the Tehsildar within 3 years from the date when the cause of action arose. A

The High Court held that period of 30 year as provided in Article 61 of the Indian Limitation Act, 1963 would be applicable as the suit was filed in the year 1968, and, therefore, it was within time. The High Court rejected the contention that Section 29 of the Indian Limitation Act would be applicable B and the suit which was barred before the Indian Limitation Act came into force would not be revived by holding that nothing could be shown from the provisions of the Gwalior Acts that the suit in Civil Court would have become barred before coming into force of the Indian Limitation Act, 1963 and the Court was not concerned with the aspect of the bar of limitation before a C Revenue Court as the suit was filed in Civil Court. From the said finding, it is apparent that the High Court erred in not applying its mind to the relevant provisions of the Act particularly Section 275 nor to any other provision of the Qanoon Mal and its effect by considering whether Civil Court was having jurisdiction in the matter or whether it was within exclusive jurisdiction of Revenue authority. D

The learned District Judge has dealt with this aspect of the matter to some extent by holding that even though Section 275 is applicable but it does not bar the civil suit by holding that Section 377 of Qanoon Mal Gwalior State which bars civil courts' jurisdiction, was not adopted by the Ryotwari Act. The learned Judge unfortunately had not quoted the entire section nor E discussed the issue in detail.

However, at the time of hearing of this matter, the learned counsel for the parties have given a translated version of Section 377 which is as under:-

> *Section 377* (1) Subject to the provisions of Section 313, those suits F which are provided in this Act as entertainable in a Revenue Court, shall not be maintained in a civil court unless otherwise expressly provided in this Act.
>
> (2) Those matters which have once been decided by a competent G court, shall not be entertained a second time between the same parties about the same subject-matter.

It is true that from the Ryotwari Act, no express provision barring civil courts jurisdiction is pointed out. However, Qanoon Ryotwari was a special statute dealing with rights of various classes of tenants and special procedure H

A is prescribed for registration of a mortgage deed with the Tehsildar and its redemption and recovery of mortgage money. For such classes of tenants, method of execution of the document and for recovery of money and property, exclusive jurisdiction is given to Tehsildar which was speedy and inexpensive remedy. Specific shorter period of limitation is also provided therein. Prima facie—(subject to further consideration), it appears that the said Act is a self-contained Code which expressly provided for rights and liabilities, prescribed procedure, remedy of appeal and finality of such decisions. Further, the Ryotwari Act specifically dealt only with the rights of tenants who were directly paying rent to the Government. There was no intermediary like Zamindar, Mustajar, Supurdidar as provided in Qanoonmal Gwalior State (for short "the said Act"). Under Section 2 (13) of the said Act Zamindar means a person who has heritable and transferable proprietary rights in village or part of a village or specified plot of land, and who was entitled to recover rent from tenants and was liable to pay revenue to the Government. Under Section 60, a Zamindar was entitled to sell, gift or mortgage his village or part of village or land of a village in his possession, by a registered document. Section 94 provided for a suit for redemption of mortgage or for recovery of mortgage money on the basis of registered deed which was required to be filed in civil court. As against this under the Ryotwari Act, the persons holding land were direct tenants and were directly paying rent to the State Government. In that context, Sections 275 and 278 are required to be considered. Further under the Ryotwari Act, tenants as described under Sections 5 and 65 were entitled to transferor mortgage their tenancy rights. Under Section 278, rights and liabilities of the purchaser or the mortgagee of the land qua the State were the same as of transferor. For the redemption of mortgage of such tenancy rights, the procedure prescribed in Section 275 was required to be followed and the mortgage was required to be redeemed within the specified period of 3 years. Result would be if the suit is not filed before the Tehsildar within the period of 3 years, the tenant who has mortgaged his tenancy rights would lose his right to redeem the tenancy rights which he had mortgaged. According to the condition in the mortgaged deed, right of redemption accrued to Dwarka Das on 26th July, 1945, that is, after the expiry of 11 years as agreed. If 3 years period of limitation as provided in Section 275 is taken into consideration, the suit before the Tehsildar was required to be filed on 26th July, 1948. Admittedly, in the present case, Qanoon Ryotwari was in force. It was repealed by Madhya Bharat Land Revenue & Tenancy Act (66 of 1950) which came into force on 15th August, 1950. Hence, before the repeal of the Act, rights of the mortgagee under the Ryotwari Act were crystalised.

The learned counsel for the respondent however, submitted as under:- A

(1) The remedy as provided in the Section 275 has been created in the interest of the agriculturist to have an inexpensive summary remedy but that did not mean that laws relating to limitation or civil procedure are not applicable.

(2) It was an optional remedy to the mortgagor. B

(3) It cannot be accepted that within the short period of 3 years, mortgagor's precious rights to redeem got extinguished.

(4) The Gwalior Limitation Act provided for limitation of 30 years for filing a civil suit. C

Firstly, it is to be noted that before the Courts below respondent have never contended that the Gwalior Limitation Act was applicable. In the present case, for the first time, this contention is raised before this Court that too only in written submissions after arguments were over, and, therefore, it is difficult for us to appreciate and deal with the same. Secondly, as stated earlier, D Ryotwari Act was the special law enacted by the State for dealing with the rights of the tenants who were direct tenants of the State and were required to pay rent directly to the State. Their rights were governed by the said Act. The Act permitted transfer or mortgage of their tenancy rights. In such a situation, a shorter period of 3 years was provided for redemption of the mortgage of the tenancy rights. In that set of circumstances, the contention E that such interpretation will not protect agriculturists and that it would destroy precious rights to redeem tenancy rights of the mortgagor would have no bearing.

Further, the Ryotwari Act was repealed by the Madhya Bharat Land Revenue & Tenancy Act (hereinafter referred to as "the Madhya Bharat Act") F which came into force on 15th August, 1950. The Preamble of the said Act provides that it was for consolidating and declaring the law relating to revenue administration in the United States of Gwalior, Indore and Malwa (Madhya Pradesh) and the land revenue, land tenure and other matters connected with land in the Ryotwari tracts or villages of the United State. G Section 3 specifically repeals all other Acts, laws, rules relating to matter connected with Ryotwari villages in force. The said Act further provides for the establishment of Revenue Courts having jurisdiction, powers and for the procedure including the procedure of filing the appeals and period of limitation. Revenue Court as defined mean all or any of the authorities mentioned in sub-section (vii) of Sections 4 which includes Suba, Additional Suvas, Naib H

A Subas. Chapter VI deals with tenancies and sub-tenancies. This Act also provided for special procedure with regard to the mortgage of tenancy rights by 'Pakka tenant' which includes 'Pukhta Maurusi' as defined in Section 54(vii) Section 54 gives the definitions, inter alia, of Rent, the Ryotwari village and pakka tenant. Pakka tenant is defined in Section 54 (vii) as under:-

B

> "Pakka tenant—means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding as a "Ryot Pattedar", "Mamuli Maurusi", "Gair Maurusi" and "Pukhta Maurusi" when this Act comes into force or who may in future be duly recognised as such by a competent authority."

C It also provides as to how a mortgage is to be executed by a Pakka tenant and various consequences of a usufructuary mortgage. The section dealing with mortgage indicates that usufructuary mortgage by a pakka tenant can be for a specific period not exceeding six years and it would be valid if it has been duly registered in accordance with law and that it is deemed to D be satisfied and redeemed after the expiry of the period of mortgage without payment of mortgage money. Further, the mortgagee in possession shall be deemed to be a trespasser and is liable to ejectment in accordance with the provisions of the Act. However, it saves the validity of a mortgagee properly and legally executed prior to the commencement of the Act. In case of simple mortgage it bars the jurisdiction of the civil court form granting any interest E on loans advanced on the land not greater than what is provided in sub-Section (7) of Section 72.. Section 72 reads as under:-

> "72. Mortgage—
>
> (1) A pakka tenant may mortgage his rights in the whole or any part F of his holding by way of simple or usufructuary mortgage to a bona fide agiculturist for a period of not more than six years, provided that an area of at least 15 acres on Pakka tenure is left with him in his possession free of any encumbrance or charge or any kind.
>
> G (2) Notwithstanding anything contained in any enactment for the time being in force, a mortgage deed effecting a mortgage for a period of more than 6 years shall not be registered.
>
> (3) No mortgage shall be deemed to be valid until the mortgage deed effecting such a mortgage has been duly registered in H accordance with the law of registration in force for the time

being.

(4) A usufructuary mortgage effected under this section shall be deemed to have been satisfied and redeemed after the expiry of the period for which the mortgage was effected without the payment of the mortgaged money.

(5) If the mortgagee does not handover possession of the land mortgaged to him under this section after the expiry of the period of mortgage to the mortgagor or in case of his death to his legal heir, he shall be deemed to be a trespasser and shall be liable to ejectment in accordance with the provisions of this Act.

(6) On the dispossession of a trespasser under sub-section (5), the Pakka tenant, or if he is dead his legal heir shall, under orders of the Tehsildar be placed in possession of the land on payment of arrears, if any.

(7) The loan advanced by the mortgagee to the Pakka tenant on the simple mortgage of the land under this Section shall not bear interest of more than 6% per annum and the total amount of interest shall not exceed an amount more than half the sum of the principal.

(8) Notwithstanding anything contained in any other law for the time being in force, no civil court shall allow as interest on loans advanced on land under this section, a sum greater than what is provided for in sub-section (7).

(9) Nothing in this section shall effect the validity of a mortgage properly and legally executed prior to the commencement of this Act.

(10) The provisions of this section shall not apply to a mortgage or a charge in favour of a registered co-operative credit society executed under the law for the time being in force."

The object of the said provisions is to protect such tenants. Sections 79 and 80 provide the procedure of surrender of tenancy rights by a Pakka tenant and also the consequences of not cultivating his holding of agricultural land by a Pakka tenant. The Code also provides the procedure for eviction of unauthorised transferors by considering them as trespassers. Section 147 bars the civil court's jurisdiction to obtain a decision or order on any matter

A which the Government are, or a Revenue Officer is empowered to determine, decide or dispose of. Special period of limitation is also provided for the applications or suits which are required to be filed under the Code. Thereafter, the Madhya Bharat Land Revenue & Tenancy Act was repealed by Madhya Bharat Land Revenue Code which came into force from 2nd October, 1959 which also provides special procedure.
B

In this view of the matter, it would be difficult to hold that rights which were crystalised under the Ryotwari Act are in any way affected. Suit for redemption of mortgage executed in July, 1934 is obviously time barred on the basis of Section 275 of the Ryotwari Act. Still, however, the next question
C which would require consideration is whether the jurisdiction of the Civil Court is expressly or impliedly barred in view of the provisions of Ryotwari Act or other relevant laws applicable. Where there is an express bar of jurisdiction of the Civil Court under the provisions of the Act then the question of finding out implied exclusion would not arise. However, in cases where there is no express provision excluding jurisdiction of the Civil Court,
D it would be necessary to enquire and determine whether it is impliedly barred. For this purpose, the scheme of the Act and the relevant provisions are required to be examined to find out whether the statute provides right and remedy and whether the scheme of the Act is such that the procedure provided therein will be conclusive giving finality and thereby excluding the
E jurisdiction of the Court in respect thereof. Attention of the High Court was not at all focused on this question. As discussed above, under the Ryotwari Act, Pukhta Maurusi was entitled to mortgage his rights and the mortgagee stepped in his shoes and special procedure is prescribed for redemption of such mortgage within a period of three years. However, if filing of civil suit is not expressly or impliedly barred, civil suit would be maintainable. In such
F eventuality the limitation for redemption of the mortgage would be different. It would depend upon the Limitation Act applicable in the said State at the relevant time prior to 1950 and thereafter. In this view of the matter, the relevant provision of Civil Procedure Code and the Limitation Act applicable in the said State where the agricultural-lands are situated are required to be
G examined and considered for deciding whether the Civil Court's jurisdiction is expressly or impliedly barred. If not barred, whether the right of redemption was barred by period of limitation prescribed under the Limitation Act applicable in that State.

The next question which requires consideration is whether the appellant
H has become Bhoomi Swami under the provisions of Madhya Bharat Land

Revenue Code, 1959. That contention was rejected by the High Court by observing that entire edifice of this contention would collapse on account of lack of factual foundation of the appellant being a tenant of the respondent at any point of time. It was held that appellant was a mortgagee and legal character of his possession was that of a mortgagee and hence, he cannot acquire the rights of the Bhoomi Swami. As stated above, we have arrived at the conclusion that by the deed executed in favour of the appellant, he stepped into the shoes of mortgagor and has acquired the tenancy right as Pukhta Maurusi subject to right of redemption. In this view of the matter, this question also would require further consideration by taking into consideration various provisions of Madhya Bharat Land Revenue and Tenancy Act, 1950 as well as Madhya Bharat Land Revenue Code, 1959.

The High Court has not considered the aforesaid two questions in its proper perspective which requires consideration of local laws in force at the relevant time in the State where the lands in dispute are situated. Hence, for deciding the aforesaid two questions, the matter is required to be remitted to the High Court. The Court would decide the same on merits and dispose of the appeals after giving an opportunity of hearing to the parties and after verifying the local laws applicable and prevailing at the relevant time.

Questions involved in Civil Appeal No. 1088 of 1992 are also similar. Hence, the same is also required to be remitted to the High Court for deciding the said questions.

In the result, the judgment and decree passed by the High Court dismissing the appeals is set aside. The appeals are, accordingly, allowed and remitted to the High Court of Madhya Pradesh for deciding the same. There shall be no order as to costs.

R.K.S. Appeals allowed.