

**Paper submitted for work shop dated 21.06.2025 on the topic –
Section 9 with reference to jurisdiction under various special
enactments:**

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Section 9 of Civil Procedure Code declares that 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.

02. Section 9 only deals with the jurisdiction of the Court to try suit. However, for instituting a suit two pre-requisites must be fulfilled. The first requirement which is fundamental to the maintainability of a Civil Suit is the existence of a cause of action as held in **Bharat Aluminum Co. Vs. Kaiser Aluminum Technical services Inc.** [2012 (9) SCC 552]. The cause of action must be live; neither dead nor in the womb. It was further held therein that cause of action should not be contingent / speculative. If the plaint does not disclose a cause of action, it shall be rejected at the threshold under order 7 rule 11(a) C.P.C.

03. The other pre requisite for instituting a suit is that the plaintiff must have right to sue. As far as right to sue is concerned it is a common law or inherent right. Unlike appeal right to sue need not be provided and has generally not been provided by any statute. Certain statutory provisions only recognize the right of aggrieved party to institute suit. In **Ganga Bai Vs. Vijai Kumar**, [AIR 1974 SC 1126], it has been held that there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute and for a suit for its maintainability requires no authority of law and it is enough that no statute bars

the suit.

04. In **Shiv Kumar Chadha Vs. Municipal Corpn. Of Delhi**, [1993 (3) SCC 161] it was held that under classical law the position is that where there is a right there is a remedy. The position regarding special Acts creating rights and liabilities was also clarified para 11, which is quoted below:-

“11. In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right was being affected, could approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy-ubi jus ibi remedium. As no internal remedy had been provided in the different statutes creating rights or liabilities, the ordinary Civil Courts had to examine the grievances in the light of 5different statutes. With the concept of the Welfare State, it was realised that enactments creating liabilities in respect of payment of taxes obligations after vesting of estates and conferring rights on a class of citizens, should be complete codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities”.

05. **Barred Expressy or impliedly:-**

As far as expressed bar mentioned is concerned, it does not create much difficulty. However, the problem arises in the case of implied bar of suit by some other Act. This question has exhaustively been dealt with by the Constitution Bench judgment of the Supreme Court reported in **Dhulabhai Vs. State of M.P.**,

[AIR 1969 SC 78]. The Hon'ble Supreme Court enunciated 7 points, which are extracted below:-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply”.

06. **Plea regarding lack of jurisdiction/Remedies against null and void**

decrees and orders:

As a general principle, if a court has got no jurisdiction to try and decide a suit, it cannot be conferred jurisdiction by consent, either express or implied (e.g. by absence of objection at appropriate time). A decree without jurisdiction is nullity and may be questioned at any stage including execution or even in collateral proceedings as held in **Kiran Singh Vs. Chaman Paswan**, [AIR 1954 SC 340]. In para 6, it was held as follows:-

“it is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject matter of action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties”.

07. In **Ramesh Chand Ardawatiya Vs. Anil Panjwani**, [AIR 2003 SC 2508], it was held in para 19 as follows:

“19.Where there is a special tribunal conferred with jurisdiction or exclusive jurisdiction to try a particular class of cases even then the civil court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the civil court is not to be readily inferred. (See Dhulabhai v.State of M.P, (1968) 3 SCR 662) An objection as to the exclusion of the civil court’s jurisdiction for availability of alternative forum should be taken before the trial court and at the earliest, failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice”.

08. **Cases of lack of jurisdiction may broadly be divided into three categories:-**

(1) Pecuniary and territorial jurisdiction: Such defect is not absolutely fatal and as per section 21 C.P.C., if objection is not raised at the earliest opportunity and there has not been failure of justice then lack of pecuniary or territorial jurisdiction will not vitiate the decree.

(2) The next is of that type regarding which objection may be raised at late stage of the suit or even for the first time in appeal (e.g. bar of limitation). The distinction has aptly been described in para 11 of **Dhurandhar Prasad Singh Vs.**

Jai Prakash University, [AIR 2001 SC 2552], as follows:

“11. In the case of Ittyavira Mathai Vs. Varkey Varkey and another [AIR 1964 S.C. 907], the question which fell for consideration before this Court was if a Court, having jurisdiction over the parties to the suit and subject matter thereof passes a

decree in a suit which was barred by time, such a decree would come within the realm of nullity and the Court answered the question in the negative holding that such a decree cannot be treated to be nullity but at the highest be treated to be an illegal decree”.

(3) The third type of jurisdictional defect, which may be described as jurisdictional defect of highest order, is such which renders the decree nullity and liable to be questioned even in execution or collateral proceedings. It is termed as lacking jurisdiction over the subject matter, lacking competence of the Court to try the case or inherent lack of jurisdiction. In **Hasham Abbas Sayyad Vs. Usman Abbas Sayyad** [AIR 2007 SC 1077] it was held:-

“23. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the C.P.C.; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.”

09. **Creation of special forum during the pendency of proceedings:-**

Regarding the jurisdiction, if there is change of law during pendency of suit or appeal, it will have to be taken into consideration. In **Lachmeshwar Prasad Vs. Keshwar Lal** [AIR 1941 SC 5] and **Pasupuleti Venkateswarlu Vs. Motor & General Traders** [AIR 1975 SC 1409], it has been held that change in law as well as material change in facts shall be taken note of even by the Highest Court, which include constitution of special Tribunal or Court with a provision for

transfer of pending suits or appeals is made e.g. in Administrative Tribunal Act, Armed Forces Tribunal Act, Recovery of debts Due to Banks etc. Act. Similarly when pecuniary limit of jurisdiction is enhanced and the provision for transfer of pending cases is made, it shall be taken note of. Conversely if Court had no jurisdiction when suit was instituted but due to change in law it acquires jurisdiction at the stage of trial, hearing or disposal, then it will have to decide the suit on merit as held in **Sudhir G. Angur Vs. M. Sanjeev** [AIR 2006 SC 351]. Same principle will apply to applications including revisions vide **Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers** [AIR 2003 SC 2434]. However right of appeal, which is a vested right, as available on the date of institution of suit, cannot be curtailed by change of law vide **Videocon International Vs. Securities & Exchange Board of India** [AIR 2015 SC 1042].

10. **Bar created by C.P.C. itself:-**

Section 9 C.P.C. itself limits the jurisdiction of the Courts by making it subject to its provisions, as per its portion within brackets i.e. (subject to the provisions herein contained). Following provisions of C.P.C. bar the suits.

(1) **Section 11 C.P.C. (Res Judicate):-**

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

(2) **Section 12 C.P.C.:-**

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

(3) **Section 47 (1) C.P.C.:-**

All questions arising between the parties to the suit in which the decree was passed or their representative and relating to the execution discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit.

(4) **Section 144(1) C.P.C.:-**

Restitution on reversal of decree may be obtained only from the court which passed the decree as provided under. Section 144 (2) says “No suit shall be instituted for the purposes of obtaining any restitution or other relief which could be obtained by applicant under sub-section (1)”.

(5) **Order II Rule 2 C.P.C.:-**

This rule provides that if part of the claim or some relief flowing from the cause of action is not claimed in the suit, it cannot be claimed through another suit.

(6) **Order 23 Rule 1(4) C.P.C.:-**

Where the plaintiff- (a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3) he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject – matter or such part of the claim.

(7) **Order 23 Rule 3-A C.P.C.:-**

No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

11. **SPECIAL ACTS:**

Benami Transactions (Prohibition) Act 1988 Section 4 of Benami Transactions (Prohibition) Act 1988, quoted below, bars the suit to enforce any right in respect of benami property:-

Section 4. Prohibition of the right to recover property held benami-

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such

capacity.

12. The section is prospective and does not affect suit or other proceedings pending on the date of its enforcement (19.5.1988) vide **R.Rajagopal Reddy Vs. Padmini Chandrasekharan** [AIR 1996 SC 238].

13. However, the Act does not prohibit such suit, defence or plea if property is purchased by a person in favour of his wife or unmarried daughter as held in **Nand Kishore Mehra Vs. Sushila Mehra** [AIR 1995 SC 2145] and **Rebti Devi Vs. Ram Dutt** [AIR 1998 SC 310]. In **C. Gangacharan Vs. C. Narayanan**, [AIR 2000 SC 589], it has also been held that suit for possession on the plea that plaintiff sent money to defendant from abroad to purchase property in plaintiff's name but defendant purchased in his own name is not barred by the Act as the suit is against trustee. Similarly in **P.V.G. Raj Reddy Vs. P.N.Reddy**, [AIR 2015 SC 2485] it has been held that suit for declaration, cancellation of sale deed and for possession on the plea that plaintiffs sent money to defendants from abroad for purchasing property in plaintiff's name but defendants purchased one property in the name of their close relation and the other jointly in the names of plaintiff's son and son of defendants 1 and 2 is not barred by the Act.

14. **Recovery of Debts Due to Banks and Financial Institutions Act (RDDB Act) 1993,**

Section 18 prohibits the Civil Court to exercise any jurisdiction in relation to the matters specified in Section 17. Under Section 17 of the Act Tribunal is constituted to exercise the jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts. (by virtue of Section 1(4) of the Act, the provisions of the Act do not apply where the amount of debt

due to any bank etc. is less than Rs. 10 lacs). Debt has been defined under Section 2(g), which means any liability (inclusive of interest) which is claimed as due from any person by a bank or financial institution or consortium of banks or financial institutions. Under Section 31 of the Act it is provided that —every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding cause of action where on it is based is such that it would have been if it had arisen after such establishment within the jurisdiction of such tribunal shall stand transferred on that date to such Tribunal.

15. In **Allahabad Bank Vs. Canara Bank**, [AIR 2000 SC 1535] it has been held that the word ‘proceeding’ in Section 31 includes execution also. The said authority has been followed in **Punjab National Bank Vs. Chajju Ram** [AIR 2000 SC 2671]. In the latter authority it has been held that if the principal amount is less than Rs. 10/- lacs but after adding the interest awarded by the decree the total amount becomes more than Rs. 10 lacs then execution is to be transferred to the Tribunal.

16. **Under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) of 2002.**

The jurisdiction of the Civil Court is barred under Section 34 which reads as :

“No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under

RDDDB Act 1993.”

Under Section 17 of the Act it is provided that any person (including borrower) aggrieved by any of the measures referred to in Section 13(4) taken by the secured creditor may make an application to the DRT. Thereafter, under Section 18 it is provided that any person aggrieved by any order made by the DRT may also prefer an appeal to Debt Recovery Appellate Tribunal. The Supreme Court in **Mardia Chemicals Ltd. Vs. Union of India**, [AIR 2004 SC 2371] examined the scope of Section 34 and held that the jurisdiction of the Civil Court is barred even in respect of measures which have not been taken but may be taken in future. Accordingly, suit is barred even if no measure has yet been taken under SARFAESI Act 2002 and remedy of approaching DRT would be available only when action is taken. In **Jagdish Singh Vs. Hiralal**, AIR 2014 SC 371, following the authority of Mardia Chemicals it was held that suit seeking declaration of title to the mortgaged property, partition and injunction is not maintainable if the matter is covered by SARFAESI Act. In the said case auction had taken place in November, 2005. It was also confirmed but possession had not been granted to the auction purchaser when civil suit was instituted in 2007.

17. **Administrative Tribunals Act 1985**

The jurisdiction of all Courts (including Civil Court) except of Supreme Court or Labour Court/ Industrial Tribunal is barred by Section 28 of Administrative Tribunals Act 1985 in respect of Government employees' service matters as defined under section 3(q) and not excepted by section 2 of the Act. However Supreme Court in **L. Chandra Kumar Vs. Union of India**, [AIR 1997 SC

1125] has held that even though at the initial stage even jurisdiction of High Court under articles 226 or 227 of the Constitution (writ petition) is barred but against judgment or order passed by the Tribunal, High Court can entertain writ petition, which must be heard by Division Bench.

18. **Armed Forces Tribunal Act 2007**

The jurisdiction of Civil Court is barred by section 33 of Armed Forces Tribunal Act 2007 in respect of service matters of persons subject to the Army Act 1950, Navy Act 1957 or the Air Force Act 1950. In **Union of India Vs. S.K. Sharma** [AIR 2015 SC 2465] it has been held that High Court cannot entertain writ petition under article 226 or 227 of the Constitution against decision of Armed Forces Tribunal.

19. **Industrial Disputes Act 1947**

In respect of labour matters, suit is not maintainable if grievance is made regarding violation of rights which are created by Industrial Disputes Act 1947 or sister laws like Industrial Employment (standing orders) Act 1946 (Standing Orders certified there under). Such grievance can be made only before the forum created under the Industrial Disputes Act i.e. Labour Court or Industrial Tribunal. This aspect has been considered by the Supreme court in several authorities including **Premier Automobiles Ltd. Vs. K.S. Wadke of Bombay**, [AIR 1975 SC 2238]

20. **Wakf Act 1995**

Sections 6 and 7 of the Act provide for determination of certain disputes

regarding waqf only by the Waqf Tribunal.

(1) Section 83(1): Constitution of Tribunals,etc.-

“The state Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessess of such property, under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal”.

(2) Section 85 provides for bar of jurisdiction of Civil Court etc.

“Bar of jurisdiction of Civil Court, revenue Court and any other authority:-No suit or other legal proceedings shall lie in any Civil Court, Revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

21. Supreme Court has considered these provisions in the following cases:-

1. In **Sardar Khan Vs. Syed Nazmul Hasan (Seth)**, [AIR 2007 SC 1447], it was held that the jurisdiction of Waqf Tribunal does not extend to the suits pending on the date on which Waqf Act was enforced in view of Section 7(5).

2. In **Board of Wakf, West Bengal Vs. Anis Fatma Begum**, [2010 (14) SCC 588], it was held that Waqf Tribunal has got exclusive jurisdiction to deal with the questions relating to demarcation of waqf property.

3. In **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf**, [AIR 2010 SC 2897] it was held that suit for eviction against the tenant from the property which is admittedly waqf property has to be filed before the Civil Court and not before the

Waqf Tribunal.

4. In **Faseela M. Vs. Munnerul Islam Madrassa Committee**, [AIR 2014 SC 2064], the Mutawalli, Madrassa Committee had filed a suit for eviction against the tenant before the Waqf Tribunal. The tenant denied that the property was Waqf's property. The Supreme Court held that Waqf Tribunal had no jurisdiction and Civil Court was competent to entertain the suit.

22. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (AP Endowments Act)

Section 151 of the Act declares that "No suit or other legal proceeding in respect of administration or management of an institution or endowment or any other matters of dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law except under and in conformity with the provisions of this Act."

23. In **S.Anjana Reddy vs Palvoi Ranga Reddy And 3 Others** [AIR 2017 (NOC) 355 (HYD.)], it was held that in view of section 151 of the Act, the Civil Court has no jurisdiction and the Tribunal and priviously, the Deputy Commissioners have exclusive jurisdiction. It was further held that in view of the Apex Court's judgement in Omprakash Singh Vs. M.Lingamaiah the Tribunal shall be deemed to be a civil Court and can go into and decide the title dispute.

24. **Limitation Act,1963**

Section 3(1) Limitation Act prescribes as follows:-

Subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted, appeal preferred and application made after the prescribed period

shall be dismissed although limitation has not been set up as a defence.

25. **Consumer Protection Act 1986 provides additional forum**

Consumer Protection Act 1986 through its section 3 provides an additional forum for the relief to a consumer and does not bar the jurisdiction of the Civil Court vide *Ethiopian Air Lines v. Ganesh Narain Saboo*, AIR 2011 SC 3495 (3 judges) para 14 of which is quoted below:

“14. The learned counsel for the appellant submitted that the Act specifically states in Section 3 that the provisions of this Act shall be in addition to and not in derogation to any other law for the time being in force. The learned counsel for the appellant also submitted that this court in the case of *State of Karnataka v. Vishwabharathi House Building Co-operative Society and other* (2003) 2 SCC 412: (AIR 2003 SC 1043: 2003 AIR SCW 558) in paragraphs 46 and 47 observed as under:

“46. By reason for the provisions of Section 3 of the Act, it is evident that remedies provided there under are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authority.

47. The said Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the act itself.”

26. **Companies Act 1956**

In **Dwarka Prasad Agarwal Vs. R.C. Agarwal**, [AIR 2003 SC 2697], after quoting sections 9 and 10 of Companies Act, it has been held that suits before civil court against alleged illegal dispossession of one party by the other from company premises (printing press) and for injunction and possession in respect thereof are maintainable. In **Maharaja Exports and another Vs. Apparels Exports promotinal Council**, [1986 (60) CC 353] the Delhi High Court held:-

"Under Section 9 of the Civil Procedure Code, 1908, civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil Courts in matters covered by the provisions of the Act. In certain cases like winding-up of companies, the jurisdiction of civil Courts is impliedly barred. Where a person objects to the election of Directors and claims a decree for declaration that he was one of the Directors, there is no provision which bars the civil Court, either expressly or by implication, from trying such a suit."

27. In **Nazir Hoosein Vs. D. Bhattena** [AIR 2000 SC 2327] the maintainability of suit challenging the resolution of meeting of Board of Directors of a company (Indian Automotives Racing Club) was not doubted.

28. **A.P.Co-operative Societies, 1964:**

Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, provides adjudication of disputes with regard to constitution, management or the business of the society and the Registrar is the adjudicating authority and thereby impliedly bars the jurisdiction of civil courts. With regard to non-

members claim, the Apex Court in **Velagacharla Jayaram Reddy v. M. Venkata Ramana**, [2022 SCC OnLine SC 34], has held that the APCS Act has made a provision for members of a Cooperative Society to approach the cooperative Officer designated, when there is a dispute amongst the members of a society or the member/members against the Society etc. Observing that the plaintiffs apart from being non-members, who could not have invoked the provisions of the APCS Act, were also rival claimants and competitors for allotment of the same plot, the Bench held that the members i.e. former office bearers had made a common case with the non-members and in furtherance of the same, the plaintiffs had sought for a declaratory relief to declare the registered sale deed as null and void which is impermissible under the Act. Hence, keeping in perspective the subject matter, the relief sought and the parties involved, the Bench opined that the High Court was justified in rejecting the relief claimed by the appellants.

29. Despite the rules framed under the Act, enabling the Tribunal to execute the orders, including the attachment and sale of immovable properties, there are certain grey areas. After sale of property, there is no provision for delivery of possession. There are no provisions to deal with third party objections for the delivery of property.

30. There was a big jolt with regard to the jurisdiction of Tribunal by the Larger Bench of Apex Court in **Pandurang Ganapathi Chaugule Vs. Visweswararao Patel Murgh Sahakari Bank** (AIR online 2020 SC 527). The Hon'ble Apex Court held that the banking activity of the Co-operative banks registered under the State Legislation and the Multi-State level Co-operative Societies, registered under MSCS Act, 2002 are governed by central list under List I Entry 45, but not the state list under List II Entry 32 of the Constitution of India and only the parliament has legislative competence to make laws. In fact, way back in 2005, our Hon'ble High Court in **M. Babu Rao and others Vs. Deputy Registrar of Co-operative Society** (2005 (4) ALD 582), declared that the Banks under Co-operative societies cannot invoke Sections 61 and 71 (1) of APCS Act and stuck

down the words '**or financing bank**' in Section 71 (1) of APCS Act, 1964. The Hon'ble High Court has held that any award or order passed, certificate issued or any order in execution proceedings by the Registrar on any claim or application of a Co-operative bank is null and void and inoperative and inherently without jurisdiction.

31. **The A.P. Mutually Aided Cooperative Societies Act, 1995:-**

Similar provision is available under Section 37 of A.P. Mutually Aided Co-operative Societies Act, 1995, which impliedly barred by the Civil Court's jurisdiction. In Dr. K. Satyavathi vs Dhatri Mutually Aided Co-Operative Society [2004(3)ALD738], it was held,

"8. As seen from the facts and circumstances of the case, the petitioner-plaintiff is an ex-Chairperson of the defendant Society and now continuing only as a shareholder. Thus, the dispute now raised is touching the Management and business of the Defendant Co-operative Society and the lis is incidentally connected therewith. Therefore, the plaintiff comes within the ambit of [Section 37\(1\)\(a\)](#) of the A.P. Mutually Aided Co-operative Societies Act, 1995, and as a necessary corollary, the disputes has to be referred to the Co-operative Tribunal for decision. An exception is carved out to this Rule that no dispute shall be referred to the Co-operative Tribunal for decision unless the disputed parties exhausted all the remedies available to them in the bye-laws for the settlement of the dispute. Thus by virtue of [Section 37](#) read with Bye-Law 51, the jurisdiction of Civil Court is expressly barred and the civil suit is not maintainable."

32. **Evacuee Property Act, 1950**

Administration of Evacuee Property Act 1950 (since repealed in 2005) was a complete code in itself. Under Section 7 custodian had to determine as to whether

a particular person had or had not become evacuee and whether property in dispute belonged to him. By virtue of Section 46 Civil or Revenue Court could not decide any question which was to be decided by custodian. Accordingly the jurisdiction of Civil Court to decide both the above questions or any one of them was held to be barred, as held in **Custodian Evacuee Property Punjab Vs. Jafran Begum** [AIR 1968 SC 169].

33. **The Family Courts Act, 1984**

The Family Courts Act 1984 confers jurisdiction upon a family court in respect of matrimonial disputes defined under Explanation to Section 7(1) Explanation to Section 7(1) and sub section (2) of Section 7 are quoted below:-

Section 7 (1).....

Explanation: The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely,-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- 150(b) such other jurisdiction as may be conferred on it by any other enactment.

Section 8 (a) and (b) quoted below excludes the jurisdiction of District court or any subordinate Civil Court in respect of matrimonial matters.

8. Exclusion of jurisdiction and pending proceedings- Where a Family Court has been established for any area,-

- (a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;

- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

34. Suit relating to property of divorced spouses is maintainable before Family Court **K.A. Abdul Jaleel Vs. T.A. Shahida** [AIR 2003 SC 2525].

35. **Absence of statutory provision of laws:-**

Petitions are being filed by muslim men for divorce. They are relying on

Settu Vs. Reshma Sulthana [I (2022) DMC 255 (DB)], wherein it was observed,

“9. If any muslim man wants to get a decree of divorce or dissolution of marriage by coming to the Court, he should have the support of the statute. The Government should encourage people coming to the Court for dissolution of marriage especially Muslim men. It should not be mistaken that the Courts are interfering with personal laws. Options should be available to the people to get relief either to follow religious practices or through Courts. Getting relief through Court is in addition to the procedure laid down as per religious practices. The traditional barriers can be broken only by allowing the muslim men to approach the Court.”

36. In this connection, it is relevant note the arguments submitted by the *Amicus Curiae* in **Settu Vs. Reshma Sulthana case**. It reads as follows:

“7.Mr.Ajmal Khan, learned Senior Counsel and *Amicus Curiae* would submit that as per the provisions of the [Dissolution of Muslim Marriages Act](#), 1939 only the wife alone can maintain the application as there is no right available for the muslim women under any other Act to get the marriage dissolved in case she is subjected to cruelty or any other grounds. It is the right given to the muslim women to safeguard their rights and also to get rid of failed marriage. The learned *Amicus* would rely on the judgment of the Kerala High Court in the case of [K.C.Moyin v. Nafeesa and others](#) reported in AIR 1973 Kerala 176. He would rely upon paragraphs 5 to 13 of the said decisions and much emphasis was placed on paragraph 13 wherein the judgment of the Hon'ble Apex Court was referred to in which it has been specifically stated that once an enactment comes into existence laying down the principles of law governing rights of parties, it is not permissible for Courts to travel behind it or for the parties to avoid it. The

rights of Muslim women to obtain divorce from their husbands have been codified by the Act and it is not permissible to travel beyond it and decide the rights of parties.

8.The Amicus curiae would submit as the law stands as on date, the Husband cannot invoke the provisions of [Dissolution of Muslim Marriages Act, 1939](#) and therefore the order passed by the Family Court, Dharmapuri cannot be found fault with."

37. Despite the above judgment, it is clear that there is no statutory law for grant of divorce to muslim men. It may be relevant at this stage that the Jharkhand High Court in **Md.Yusuf Vs. Nasreen Begum** [F.A. No. 187 of 2016 - dated 18.06.2018] observed as follows:

"4. Learned Family Court discussed the provisions of Mohammedan Law under Chapter-16 of the Mulla's Commentary. It also referred to the provision of Section 307(3) of the Mohammedan Law, which provides that the contract of marriage under Mohammedan Law may be dissolved by judicial decree at the suit of the husband or wife. On this contention, raised by the petitioner-husband, learned Trial Court dealt with the relevant provisions under Part A, B and C of Chapter-16 whereunder divorce can be granted by the spouses. Relevant findings of the learned Trial Court on the instant issue are being quoted hereinbelow:

"10. Heard the parties and peru Begumsed the record. Chapter-16 of the Mulla's Commentary on Mohammedan Law is divided into three parts i.e. Part A, B and C. First part relates to divorce by husband and it mentioned that when divorce proceeds from husband it is called "Talak" and when it is effected by mutual consent it is called as "Khula" or "Mubarrat". Para 308-316 deals with different forms of Talak and in none of these provisions there is a mandate to go for a decree of divorce by the husband. Thereafter, 317, 318 deals with certain species of constructive divorce where on account of certain acts of the husband

some right is created with the wife to obtain a decree of divorce. Here also husband does not have right to approach the court for a judicial divorce. 319 and 320 deals with "Khulla" and 321 and 322 are also modes of separation, but not judicial divorce. The second part i.e. Part-B relates to judicial divorce at suit of a wife and Part-C deals with consequences/affects of divorce, hence under the whole Chapter of divorce at Chapter 16 there is no provision to show that Muslim husband is entitled to approach the court for a decree of divorce."

5. Even though the learned counsel for the appellant has again harped on the same provision under Chapter-16 of the Mohammedan Law to bring home the point that Muslim husband is also entitled to seek divorce through a judicial decree as per Section 307(3) but in none of the subsequent Sections provided in paragraph 308-316, dealing with the different forms of Talak, husband has been given a mandate to go for a decree of divorce. On the contrary, provision under Section 323 under part B refers to the various grounds available to Muslim woman for seeking dissolution of marriage through a suit: (1) the whereabouts of the husband are unknown for a period of four years (Section 324); (2) failure of the husband to provide for the maintenance of the wife for a period of two years (Section 325); (3) sentence of imprisonment on husband for a period of seven years (Section 326); (4) failure without reasonable cause to perform marital obligations (Section 327) ; (5) impotence of husband (Section 328); (6) insanity of husband (Section 329); (7) repudiation of marriage by wife (Sections 330 and 273); (8) cruelty of husband (Section 331); and (9) any other grounds recognized by Muslim law (Section 332). First part A relates to divorce by husband and when divorce proceeds from husband it is called "Talak" and when it is effected by mutual consent it is called as "Khula" or "Mubarrat". Sections 308 to 316 deal with different forms of Talak by the husband.

6. Despite indulgence granted, the learned counsel for the appellant has not been able to show any other provision of law or judgment on

the point where such a suit for dissolution of marriage on the part of the Muslim husband under Mohammedan Law is maintainable.

7. Learned counsel for the respondent-wife argued in support of the view taken by the learned Family Court. He submits that none of the provisions under Mohammedan Law permits the husband to obtain the decree of divorce through a judicial declaration. However, other forms of divorce are available to the husband to be exercised, as per the condition stipulated thereunder. Learned Family Court has rightly held that the instant suit is not maintainable.”

38. Later, the same Court in **Md.Monawar Alam Vs. Arshi Begum @ Mrs.Arshad Begum** [2021 Latest case law 4404 Jharkhand] followed the judgment in Md.Yusuf's case. The relevant part of the judgment reads as follows:

“5. On consideration of the legal position, we are satisfied that the impugned judgment dated 15.06.2021 passed in Original Suit No. 67 of 2021 by the court of learned Principal Judge, Family Court, Jamshedpur does not suffer from any error of law or facts warranting interference in this appeal. Accordingly, this appeal is dismissed at the stage of admission.”

With this I conclude.

I thank the Hon'ble District Judge for giving me the opportunity to present this paper.

Yours faithfully

Sri T. Venkateswarlu,
Judge, Principal Family Court,
Vijayawada.