

**BROCHURE
ON
JURISDICTION OF CIVIL COURT
VIS-À-VIS
REVENUE OR CONSOLIDATION COURT**



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JUSTICE S.U.KHAN*

Synopsis

- I. Disputes in respect of all types of void sale deeds, or any interest in agricultural land including son ship are to be decided only by Consolidation Courts.
- II. Voidable sale deeds can be set aside only by Civil Court.
- III. In between Civil Court and Revenue Court, jurisdiction to deal with void deeds is of Civil Court if situation before the execution of the deed is not questioned (executed by imposter or fraud in respect of its character) otherwise (unrecorded tenure holder having share) of Revenue Court.
- IV. If fraud is played, bar of section 49 U.P.C.H. Act does not apply.

DISCUSSION**

The bar of jurisdiction of Civil Court to take cognizance of suits challenging transfer deeds of agricultural land on the ground of being void or voidable and seeking cancellation thereof has been a complicated question. Either it is pleaded that in view of Section 331(1) read with section 229-B of U.P. Zamindari Abolition and Land Reforms Act, hereinafter referred to as U.P. Z.A.L.R. Act Civil Court has got no jurisdiction and the suit is cognizable only by Revenue Court or that in view of Section 5(2) or Section 49 of U.P. Consolidation of Holdings Act hereinafter referred to as U.P.C.H.Act only consolidation authority has (had) the jurisdiction. (All the four sections are quoted in the Appendix at A).

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** Based on almost all the authorities of Supreme Court (19 in number) and a Full Bench authority of Allahabad High Court (*Ram Padarath*) on the point and four more authorities of Supreme Court, including two on Bihar Consolidation of Holdings Act.

Under Section 5(2) of U.P.C.H. Act, upon the start of consolidation operations, any suit regarding agricultural land pending at any stage, even High Court or Supreme Court, abates and affected person has to approach consolidation authority concerned for redressal. In *Chattar Singh*^{1A} relying upon *Ram Adhar*¹⁶ appeal pending before Supreme Court along with suit was abated and it was held that 'It is open to the parties to work out their rights before the appropriate consolidation authorities'. Following both these and other authorities under Bihar Consolidation of Holdings Act in *Paras Nath Rai Vs. State of Bihar AIR 2013 SC 1010* (under Bihar Consolidation of Holdings Act.), it has been held that if the appeal is pending, then it abates and all proceedings from its commencement '*comes to a naught and no decision in the proceedings at any stage would have impact on adjudication of claims by the parties under the Act.*' (Para 8) There is no need to expressly set aside the decree of court below. It is done only when appeal is allowed.

However, if preliminary decree in partition suit declaring right and share has become final and is not under challenge in appeal, revision etc. and only proceedings for preparation of final decree are pending, then only final decree proceedings, at whatever stage, they may be abate but preliminary decree remains intact vide *Mool Chand*^{1B}. This point has also been discussed in *Paras Nath*, Supra.

Section 49 deals with bar of Civil or Revenue Court's jurisdiction and resjudicata, actual as well as constructive (could or ought). If a claim could be made during consolidation operations but it was not done then there after it cannot be raised in any court including Civil Court.

Different considerations apply to void and voidable deeds.

- **Void Deeds,**
(Two Categories)

There are certain types of void deeds regarding which jurisdiction of Civil Court is barred by Section 5(2) or 49 of U.P.C.H. Act but not by Section 331 (1) of U.P.Z.A.L.R. Act.

Void deeds may be divided in two categories. The *first category* is of those deeds challenge to which is basically directed against the state of affairs existing prior to their execution i.e. the allegation that transfer deed having been executed by recorded tenure holder is void to the extent of share of plaintiff or of someone else who was also co-sharer but his name was not entered in the revenue record, and the seller was recorded in the representative capacity. *Second category* is of those deeds which are challenged independently without questioning the prior state of affairs e.g. executed by imposter or fraudulent misrepresentation made regarding character of deed.¹

Civil Court or Consolidation Authority

In respect of both the categories of void deeds if U.P.C.H. Act is applicable then only the authorities there under have got the jurisdiction and the jurisdiction of Civil Court (as well as of Revenue Court) is totally barred, vide *Gorakh Nath*², *Audhar*³ and *Narendra Singh*⁴ (first category), *Dularia*⁵ (second category) and *Madan Mohan*⁶. The reason is that jurisdiction of authorities under U.P.C.H. Act is very wide, vide *Gorakh Nath*² (paras 4&5) *Ram Padarath*⁷ (paras 21 and 23 quoted in Appendix at B-1) and *Sita Ram*⁸ (Paras 6 and 14, quoted in appendix at B-2). Claims cognizable by Consolidation Authorities can be entertained neither by Civil Court nor by Revenue Court. U/s 5(2)(a) apart from declaration of right, correction of record and adjudication of any other right provided under the Act can also be done.

Civil Court or Revenue Court

However, if U.P.C.H. Act does not apply then the jurisdiction to take cognizance of suits in respect of first category of void deeds is of revenue courts (vide *Azhar Hasan*⁹, *Sri Ram*¹⁰, *Kamla Prasad*¹¹) and in respect of second category of void deeds is of Civil Court (vide *Ram Padarath*⁷, *Bismillah*¹², *Sri Ram*¹⁰). The reason is that the allegation that the recorded tenure holder was recorded in representative capacity and unrecorded tenure holder had also share (first category) basically requires 'declaration of right', the words used in section 229-B of U.P.Z.A.L.R. Act. If such declaration is granted the deed would automatically become void to the extent of share of unrecorded tenure holder without deciding anything further.

Regarding second category of void deeds, initially there was lot of confusion. The position has been clarified and confusion has been cleared to a great extent by the Full Bench authority of Allahabad High Court reported in *Ram Padarath*⁷ which has

virtually been approved by Supreme Court in *Bismillah*¹² and *Sri Ram*¹⁰. It has been held that if U.P. C.H. Act is applicable, such type of void deeds can/ could be challenged only before consolidation authorities but if the said Act is not applicable then Civil Court will have jurisdiction in preference to revenue Court. (It was a case of impersonation and as U.P.C.H. Act was not applicable hence it was held that Civil Court had jurisdiction)

Para 41, the last para, of *Ram Padarath*⁷ is quoted below:-

“41. We are of the view that the case of Indra Deo v. Smt. Ram Piari, 1982 (8) ALR 517 has been correctly decided and the said decision requires no consideration, while the Division Bench case, Dr. Ayodhya Prasad v. Gangotri, 1981 AWC 469 is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will, be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court.”

Paras 2, 8, 21, 23 and 36 are quoted in the Appendix at B-1.

Section 31 of Specific Relief Act (relied upon by the Full Bench to justify the jurisdiction of Civil Court) provides as under:-

31. When cancellation may be ordered.- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument had been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer

shall note on the copy of the instrument contained in his book the fact of its cancellation.

(Word void is used before the word voidable in the section).

Accordingly, in respect of void deeds of second category suit for Cancellation may be filed in Civil Court if U.P.C.H. Act does not apply. Such deeds do not require any declaration. The declaration, if any, automatically follows the cancellation. However, first type of deeds basically and firstly require declaration of right. The cancellation automatically follows the declaration. (This view has been taken in *Jairam Singh v. I A.D.J. Bijnor, 2007 (102) RD 332* delivered by me)

However, in respect of void deeds it is not always necessary to seek their cancellation. The aggrieved party has got two options; either he may seek cancellation or in any proceedings wherein he may be either plaintiff/ objector or defendant/ opposite party, he may assert that the deed being void should be ignored vide *Asharfi Lal*¹⁹ (paras 13 & 14 quoted in end note) and *Prem Singh*²⁰.

- **Fraud in consolidation proceedings:-**

However, bar of Section 49, U.P.C.H. Act does not apply if fraud has been played upon a party in Consolidation proceedings, as held in *Karbalai Begum*¹³.

- **Sonship to be decided in Consolidation Proceedings:-**

If in proceedings before consolidation authorities someone claims right to agricultural land on the basis that his deceased father had right therein, and the son ship is denied by the opposite party, then obviously the consolidation authority will have to decide this issue. The jurisdiction to decide right includes the jurisdiction to decide son ship (or any other sort of heirship), if relevant and disputed.

However in a recent authority of the Supreme Court reported in *Amar Nath*¹⁴ it has been held that son ship cannot be decided by consolidation courts and for this proposition support has been sought from *Suba Singh*¹⁵. The facts in the case of *Amar Nath*¹⁴ were that over the agricultural land in dispute only the name of Kewla Devi, Respondent no. 1 was recorded in the revenue records. The appellant Amar Nath filed objections during consolidation claiming half share in the land on the ground that he was son of Kewla's father's brother. The son ship was denied by Kewla. The objections were dismissed as not pressed by order of consolidation officer dated 14.2.1970. After conclusion of consolidation Amar Nath instituted suit before Civil

Court for possession and for quashing of order of Consolidation Officer dated 14.2.1970 on the ground that fraud was played on him and he had no knowledge of the order.

Paras 10 and 11 of *Amar Nath*¹⁴ are quoted below:-

“10. Answer to point No. 2:

The question whether the original suit of the appellant was barred under Section 49 of the UP Consolidation of Land Holding Act and Section 331 of the UP Zamindari Abolition and Reforms Act, we answer in the negative. The suit was not barred under the aforesaid provisions as the UP Zamindari Abolition and Land Reforms Act has no jurisdiction to deal with the subject matter. On the issue of Section 49 of the UP Consolidation of Land Holdings Act, we hold that the present case is not barred under this section as it is a suit for possession of the suit schedule property based on title, which is not within the jurisdiction of the authorities under the aforesaid Act. In the case of Suba Singh v. Mahendra Singh & Ors., (1974) 1 SCC 418, it was Observed by this Court that Section 49 does not bar jurisdiction of civil courts in matters of title to the land stating that-

“9..... The result is that the plea of bar of the civil courts' jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has not substance.....”

Therefore, since the present case too involves a question of 'son ship' of the plaintiff who is the appellant herein, there is no bar to the jurisdiction of civil courts under Section 49 of the aforesaid Act, in deciding the question of the appellant's right to the land he has inherited from his father.”

“11. Answer to point nos.3 and 4:.

The order of the Consolidation Officer dated 14.2.1970 was obtained on the basis of fraud by the defendants. We feel that the Consolidation Officer has also committed fraud on the appellant, by accepting withdrawal of his objection and not going into the issue of whether he is the s/o Baij Nath or not, and therefore whether he is the rightful heir, with a right in half share of the disputed property. The Consolidation Officer has not discharged his duties properly and keeping with law has not given details

of the objection or why the objection was not pressed by the appellant in his order. He has permitted a gross miscarriage of justice to continue by recording of the name of defendant no.1 as the only rightful heir to the land in dispute. In the case of S. Partap Singh v. State of Punjab, AIR 1964 SC 72, Ayyangar J. in his portion of the judgment at para 6 has quoted Lord Denning (in the case Lazarus Estates Ltd. v. Beasley 1956 1 All ER 341 at p.345) stating:

"No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud."

The Consolidation officer without examining the alleged statement made on behalf of the appellant and verifying the correctness of the same has accepted the withdrawal of his objection and has passed the order without examining the rights of the parties with reference to the documents in relation to the suit schedule property."

Criticism of Amar Nath Case

With respect it is submitted that the above view contained in para 10 requires reconsideration as it has not taken into consideration the amendments made in U.P.C.H.Act in 1958 and 1966 while *Suba Singh*¹⁵ interpreted the Act as it stood in 1956. The view is directly in conflict with *Sita Ram*⁸ wherein it was held that view taken in *Suba Singh*¹⁵ was not applicable to the cases under the amended Act. In both the cases title on the basis of son ship was disputed, and in *Sita Ram*⁸, earlier authority of *Suba Singh*¹⁵ was relied upon by the appellant, but the contention was rejected. In *Sita Ram*⁸ relevant provisions of the Act prior to amendments of 1958 and 1966 were given in para 7. Thereafter, details of extensive amendments of 1958 and further amendment of 1966 were given in paras 8 and 9 respectively. *Ram Adhar*¹⁶ was discussed in para 10 and *Gorakh Nath*² in paras 11 and 12. In para 13 it was categorically held that son ship as basis of title had to be decided by Consolidation Court and jurisdiction of Civil Court was expressly barred by Section 49 of the Act. In para 14 the contrary view taken in *Suba Singh*¹⁵ was held to be applicable only to the cases arising under the Act before its amendment in 1958 and 1966. It was observed that under un-amended Act Consolidation Authorities had no jurisdiction to decide title and title dispute, if raised at appropriate stage during consolidation had to be referred to arbitration, which provisions had been deleted in 1958 and Consolidation Authorities had themselves been authorized to decide such disputes. It was also

pointed out that initially rigour and reach of Sections 5 and 49 was not so strict and extensive as it was made by amendments of 1958 and 1966. (paras 6, 10, 13 and 14 of *Sita Ram*⁸ quoted in the appendix at C). The view is also in direct conflict with *Asharfilal*¹⁹, a judgment by a larger Bench of three judges, holding that son ship has to be decided by consolidation authorities.

Moreover, in *Suba Singh*¹⁵ death had occurred (cause of action had arisen) after *chak* had been carved out hence, it was held that stage of objection (which if raised could be referred to arbitration as per the un-amended Act) was already over.

The view that suit for possession based on title is not barred under Section 49 of the Act is also directly in conflict with *Ram Adhar*¹⁶ a larger bench of three judges discussed in para 10 of *Sita Ram*⁸ (quoted in Appendix at B-2)

As far as view expressed in para 11 of *Amar Nath*¹⁴ is concerned it is submitted that under Order 23, R. 1 C.P.C. the Court has got no power to inquire as to why plaintiff is withdrawing his suit except when he is minor or person of unsound mind. In *Hulas Rai*¹⁷ and *K.S. Bhoopathy*¹⁸ Supreme Court has held that under no circumstances Court can refuse to dismiss a suit as withdrawn except where permission to file fresh suit on the same cause of action is sought.

However, the view taken in *Amar Nath*¹⁴ may be justified on the basis of the authority of *Karbalai Begum*¹³ wherein it has been held that if fraud is played upon a party in consolidation then bar of Section 49 does not apply.

- **Voidable Deeds:-**

It is provided under Section 19 & 19A of Contract Act that when consent to an agreement is caused by coercion, fraud, misrepresentation or undue influence, the agreement is voidable contract. (Plea of coercion is seldom taken.) As mentioned under end note no. 1, fraudulent misrepresentation as to contents of a document makes it voidable.

Voidable transfer deeds necessarily require cancellation otherwise their effect cannot be avoided. Accordingly, for cancellation of such deeds neither consolidation authorities nor revenue Courts have got jurisdiction only Civil Court can cancel a voidable transfer deed. In *Gorakh Nath*² after holding that the deed in dispute was void hence consolidation authorities had the jurisdiction, it was observed in para 5 as follows:

“but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed and therefore it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.”

Even though the word voidable has not been used in the above para but it has been interpreted to relate to voidable deeds in the authorities reported in *Bismillah*¹², paras 5 & 6 *Dularia Devi*⁵, para 5 and *Ram Sakal Singh v. Masamat Monako Devi*, AIR 1998 SC 277 (the principle was applied to Bihar Consolidation Act.) In *Sita Ram*⁸ also the above principle recognized in *Gorakh Nath*² was mentioned in latter part of para 12.

In *Sri Ram*¹⁰ the principle laid down in *Gorakh Nath*² has been explained (after quoting its above quoted portion in para 5) in the following manner:-

“6. The said decision is distinguishable and is of no help to the case of the respondent. The observation quoted above has to be understood in the context of the fact of the case. In the said case, the plaintiff had filed a suit for cancellation of the sale deed to the extent of half share claimed by the plaintiff and also an award of possession of the plaintiff’s share. In the suit, it was alleged that the vendor had no title to the extent of half share in the land and, therefore, the sale deed to that extent is void. In the said case there was no prima facie title in favour of plaintiff and his title to the land and delivery of possession was required to be adjudicated.

In *Asharfi Lal*¹⁹ the principle was applied to earlier decree which was sought to be avoided. Reliance was placed upon *Gorakh Nath*², *Dularia Devi*⁵ and *Sita Ram*⁸.

- **Stage of Objection:-**

The objection to jurisdiction has to be taken in the written statement otherwise issue in that regard will not be framed and by virtue of sub-section (1-A) of Section 331 of U.P.Z.A.L.R. Act question of jurisdiction would not be open to be taken up before Appellate or Revisional Court. Similarly, if objection is taken and issue is framed the said issue, on the request of the defendant, should be tried as preliminary issue. If it is not done and the issue is decided in the final judgment, holding the suit to be maintainable and decreeing the same, the defendant will not be able to challenge the same in appeal as it is almost impossible to show failure of justice after full length trial.

End Notes

^{1A} *Chattar Singh Vs. Thakur Prasad Singh, AIR 1975 SC 1499 (Three Judges)*

^{1B} *Mool Chand v. Dy. Director Consolidation, AIR 1995 SC 2493*

¹ *Ningawwa v. B.S. Hireknrabnar, AIR 1968 SC 956*. In this case it has been held that if fraudulent misrepresentation is made as to character of a document then it is void and if such misrepresentation is as to contents of document then it is voidable. In *Bismillah*¹² after referring to this authority it has been held in para 6 (quoted in Appendix at B-3) that sometimes it is difficult to distinguish between character and contents of a document. This authority (Ningawwa) has also been referred in *Prem Singh*²⁰

² *Gorakh Nath v. Hari Narain AIR 1973 SC 2451* (facts given in para 1). Judgment of the High Court deciding Second Appeal on merit, after refusing to abate the same u/s 5(2) of U.P.C.H. Act set aside by the Supreme Court and the aggrieved party permitted to approach consolidation authority concerned for redressal of his grievance that his uncle was recorded in representative capacity and he (the nephew) had also share in the agricultural land in dispute, hence sale deed executed by the uncle was void to the extent of share of the nephew.

³ *Audhar v. Chandrapati, 2003(11) SCC 458:2003 (95) RD 481 (SC)*. Widow the sole recorded tenure holder gifted the property to her daughters. The gift deed was challenged in civil suit by the sons of brothers of widow's late husband on the ground that the widow had only a limited estate. During pendency of appeal, consolidation started hence same dispute was raised before consolidation authorities who decided that widow had full right in her late husband's agricultural property. Supreme Court held that the question was rightly decided and it could only be decided by consolidation authorities. (Paras 15 and 17)

⁴ *Narendra Singh v. Jai Bhagman, AIR 2005 SC 582*. The recorded tenure holder executed an agreement for sale. Thereafter, suit for specific performance was filed against him wherein he pleaded that the agricultural land in dispute being a joint family property, along with him, his sons were also tenure holders even though their names were not mentioned in the revenue record. Consolidation had already taken place. The Supreme Court held that such plea was barred by Section 49 of U.P.C.H. Act.

⁵ *Dularia Devi v. Janardan Singh, AIR 1990 SC 1173*. Instead of only gift deed in favour of daughter two documents fraudulently got executed by the illiterate widow; one requisite gift deed and the other sale deed in favour of others. (Probably, one deed in respect of part of the agricultural land and the other in respect of rest of the same.) It

was held that regarding sale deed fraudulent misrepresentation was as to its character hence it was void and suit before Civil Court for its cancellation was barred u/s 49 of U.P.C.H. Act (Ningawwa¹ and Gorakh Nath² relied). The plaintiff widow was permitted to seek relief in the proceedings pending before the consolidation authorities.

6 ***Madan Mohan Misra v. Chandrika Pandey, 2009 (107)R.D.2 (SC)*** Suit for partition of agricultural land decreed. Suit for cancellation of the said decree instituted before Civil Court during pendency of which the defendant (decree holder of earlier decree) executed a gift deed of the property which had come to her share in earlier partition decree. The gift deed also challenged through amendment in the second suit which ultimately abated u/s 5(2) of U.P.C.H. Act. Plaintiff of second suit did not file any objection before the consolidation authority. However, after about 20 years he instituted fresh suit for injunction before Civil Court. It was held that the suit was barred by Section 49 of the Act.

7 ***Ram Padarath v. A.D.J., 1989 A.W.C. 290: 1989 R.D. 21 (FB)*** (Paragraph numbers given in AWC but not in R.D.) (Paras Nos. 2, 8, 21, 23 & 36 quoted in Appendix at B)

8 ***Sita Ram v. Chhota Bhondey, AIR 1991 SC 249.*** Objection of nephew that his uncle was recorded in representative capacity and the objector had also share accepted by consolidation authorities. The judgment of Consolidation authorities was challenged in suit instituted before civil court. It was held that Consolidation Authorities had jurisdiction to decide the matter hence civil suit was barred. Before consolidation authorities as well as Civil Court the uncle had questioned the son ship and had asserted that objector/ defendant was not son of his brother. (Paras 6, 10, 13 and 14 quoted in Appendix at C)

9 ***Azhar Hasan v. D.J. Saharanpur, AIR 1998 SC 2960 (3 judges).*** The plea that tenants / occupants were wrongly recorded as Sirdar / Bhumindhar on Zamindari abolition hence sale deed executed by them was illegal and liable to be cancelled cannot be raised in civil suit. It can be agitated only before Revenue Court.

10 ***Sri Ram v. A.D.J., AIR 2001 SC 1250.*** Suit before the Civil Court was filed for cancellation of a sale deed of agricultural land on the ground of impersonation. The Supreme Court after quoting last paragraph of *Ram Padarath* (para 41) held that the suit was maintainable before the Civil Court. However, in para 7 of the said authority it was

further observed that suit by unrecorded tenure holder would be maintainable before Revenue Court.

“ 7. On analysis of the decisions cited above, we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil Court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue Court- reason being that in such a case, prima facie, title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil Court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession.”

11 ***Kamla Prasad v. Sri Krishna Kant Pathak, 2007 (4) SCC 213: 2007 (102) RD 378.***

After quoting last two sentences of the above para 7 of *Sri Ram* it was held that recorded tenure holder cannot question the sale deed executed by him in Civil Court on the ground that proforma defendants, even though not recorded in the revenue records, had also share and such suit would be maintainable only before revenue Court.

12 ***Bismillah v. Janeshwar Prasad, AIR 1990 SC 540.*** Instrument of agency only for managing properties intended to be executed. The agents had fraudulently inserted the clause permitting them to sell. Agents sold to their relatives. Held that suit for cancellation of instrument of agency and sale deed and for possession was maintainable before Civil Court as instrument of agency might be voidable even though word ‘void’ was used in the plaint. At the end of para 6 (quoted in Appendix at B-3) it was observed that prima facie appellant seemed to proceed on the premise that she could not ignore the sales but that the sales required to be set aside before she was entitled to possession and other consequential reliefs. It was further held that even if the document was void, suit before civil court was maintainable in view of Full Bench authority of *Ram Padarath*⁷.

13 ***Karbalai Begum v. Mohd. Sayeed, AIR 1981 SC 77***

14 ***Amar Nath v. Kewla Devi 2014 (32) LCD 881: 2014 (124) RD 6 (SC)***

15 ***Suba Singh v. Mahendra Singh, AIR 1974 SC 1657***

16 ***Ram Adhar Singh v. Ram Roop Singh, AIR 1968 SC 714 (3 judges)***

17 ***M/s Hulas Rai Baij Nath v. Firm K.B. Barsand Co., AIR 1968 SC 111***

18 ***K.S. Bhupathy v. Kokila, AIR 2000 SC 2132***

Asharfilal v. Koili, AIR 1995 SC 1440 (3 judges). A minor whose father had died and mother had remarried instituted declaratory suit u/s. 229-B of U.P.Z.A.L.R. Act through his grandmother (mother's mother) in respect of agricultural land left behind by his father. The sister of the minor's father who was defendant in the suit denied the son ship of the plaintiff. The suit was dismissed and the appeal was also dismissed. Thereafter, consolidation proceedings started in which minor again claimed the land through objection contending therein that earlier decree was not binding upon him as his guardian in the suit (grandmother) was grossly negligent in conducting the proceedings.

The consolidation authorities (C.O., appellate court SOC and revisional Court DDC) passed non-concurrent judgments. The High Court held that the earlier decree unless set aside was binding upon minor. The Supreme Court reversed the said view. It held that in view of section 44 Evidence Act the minor could show that the earlier decree was result of such gross negligence of guardian from which an inference of fraud or collusion could be drawn and thereupon the earlier decree would not be binding upon him (para 14)

Section 44 of Evidence Act: *Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.*

The Supreme Court further held that in such situation both the courses were open to the minor. He could file suit for cancellation of earlier decree or could avoid the same. Last two sentences of para 13 and para 14 are quoted below:

“13.....In the instant case, the High Court has proceeded on the basis that it is permissible for a minor to file a suit to set aside a decree on the ground of gross negligence on the part of his next friend. We are in agreement with the said view.”

“14. The question for consideration is whether, apart from filing a separate suit for setting aside a decree on the ground of gross negligence on the part of his next friend, it is permissible for a minor to avoid a decree, if relied upon in a subsequent proceeding, on the ground that the said decree was obtained on account of gross negligence on the part of his, next friend in the previous suit. This would be permissible only if Section 44, of the Evidence Act can be invoked. As pointed out earlier, the Privy Council in Talluri Venkata Seshayya v. Thadikonda Kotiswara Rao (AIR 1937 P. C. 1) (supra) has laid down that Section 44, of the Evidence Act cannot be extended to cases of gross negligence. But in the said case the Privy Council has

observed that the Court cannot treat negligence, or gross negligence, as fraud or collusion, unless fraud or collusion is the proper inference from the facts. In other words, in cases where an inference of fraud or collusion can be drawn from the negligence or gross negligence of the next friend it would be permissible for a minor to avoid the judgment or decree passed in the earlier proceeding by invoking Section 44, of the Evidence Act without taking resort to a separate suit for setting aside the decree or judgment.”

20 ***Prem Singh v. Birbal, 2006 (101 RD 260 (SC): 2006 (5) SCC 353***

APPENDIX

Relevant Provisions & Important Cases.

A. RELEVANT PROVISIONS

I. U.P. Consolidation of Holdings Act

❖ Section 5(2)

Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely:-

(a) Every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceedings is pending, stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated;

(b) Such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made there under.

❖ Section 49

Bar to civil Courts jurisdiction – Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a notification has been issued under sub-section (2) of section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no

Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act.

II. UP ZAMINDARI ABOLITION AND LAND REFORMS ACT.

❖ Section 331(1) and (1-A)

(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 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof, or of 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 under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar 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 would have granted.

(1-A) Notwithstanding anything in sub-section (I), an objection, that a court mentioned in Column 4 of schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceedings, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

❖ Section 229 –B

229 – B . Declaratory suit by person claiming to be an asami of a holding or part thereof.(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be.

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the land-holder shall be impleaded as defendant.

(3) the provisions of su-section (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be a [bhumidahr] [***] with the

amendment that for the word “landholder” the word “the State Government and the [Gaon Sabha] are substituted therein.]

B. IMPORTANT CASES-

(1) **Ram Padarath v. II A.D.J. Sultanpur, AWC 1989 All 290**
(Paras 2, 8, 21, 23 & 26)

“2. In the case under reference relief of the cancellation of the sale – deed and permanent injunction was claimed on the ground that the same was executed by someone personating for the plaintiff who still continued to be tenure –holder in possession of the land in question.”

“8. On the finding that a particular instrument or document was void because of any- reason, it will be of no legal consequence and binding on anyone without even its cancellation. but existence of such a document or instrument, more particularly for a substantial period may cause injury to the person whose rights are affected by it and place his right and title over any property in doubt and dispute and may create application and give rise to unnecessary litigations. But for those who are aware of any judgment holding a particular document or instrument to be void or supposed to be aware of it, others can be misled by its existence if it does not contain any endorsement of its cancellation subsequent to its execution by any competent court of law. Reasonable apprehension of serious injury from a void document provides a cause of action to a person to approach the competent court of law, that is, civil court for its cancellation. But this entitlement goes into background or becomes restricted if because of certain statutory constraints, restraints and prescription some other relief can be claimed or is to be granted by adjudging the document or instrument void and thereby declaring it to be legally ineffective and of no consequence. Such a situation can arise if apart from cancellation, some other relief is claimed which is real relief and the claim for which provides the proximate ground or reason for approaching the court of law or when any other relief can be claimed or involved in the matter cropping up because of the evidence of void document or instrument. There can be other situation also, all of which can be created by statutory provisions as the jurisdiction of civil court can be ousted only by some specific provisions of law or by necessary implication sprouting out of statutory provisions. Such a situation arises when more than one reliefs are claimed in any action pertaining to agricultural land. If the relief claimed or the real and the main relief is one which is mentioned in Schedule II to U. P. Zamindari Abolition and Land Reforms Act, the same can be granted by the revenue court only and the jurisdiction of civil court to grant such a relief or reliefs is ousted by Section 331 of the said Act.”

“21. The jurisdiction of the consolidation authorities is wider than civil and revenue courts. Section 5 (2) of U. P. Consolidation of Holdings Act provides that any suit pending in the trial court or in appeal before any appellate court in which right, title and interest over land is involved will stand abated. In view of the said provision of any appeal, may it be a special appeal, pending before Hon'ble Supreme Court would abate.. Adjudication of right, title and interest over 'land' by the consolidation authorities is final. Section 8 of the U. P. Consolidation of Holdings Act provides for revision of the village map after provisional consolidation Scheme for unit is prepared. Sec. 8;...A of the said Act provides for preparation of Statement of Principles, while Sec. 9 provides for issue of extracts from records and statements and publication of records mentioned in Section 8 and Section 8-A and issue of notice for inviting objection. Section 9-A provides for disposal of cases relating to claim to land and partition of joint holding. The order passed by the consolidation officer is subject to appellate and revisional jurisdiction. Even if rights are claimed on the basis of void sale-deed or questioned before the consolidation authorities, the consolidation authorities, after recording a finding on the same that it was void sale-deed can determine the rights, title and interest in the land in accordance with law ignoring the said deed on the ground that it was void. The entries are to be corrected by the consolidation authorities themselves and one has not to approach the authorities under U. P. Land Revenue Act after decision by civil or revenue court to correct the papers in accordance with their judgment and decree. If a document is cancelled by civil court then entry is to be made by the registering officer on the copy as provided in Section 31 (2) of the Specific Relief Act, which gives seal to the legal ineffectiveness of the said document. But after determination by consolidation authorities the right, title of the parties taking into consideration void document, the entries will be corrected. After consolidation operations are over, the question 'cannot be raised or raked up before any civil or revenue court thereafter in view of Section 49 of U. P. Consolidation of Holdings Act which puts a bar on the jurisdiction of civil or revenue court not only to adjudicate such right and title or interest over land adjudicated by consolidation authorities or which could have been raised, before them, but was not raised. The jurisdiction of consolidation authorities is thus wider than that of civil court and revenue court.”

“23.The jurisdiction of the consolidation authorities or courts is wider than that of civil or revenue court and adjudication by them is final and cannot be responded by any civil or revenue court in view of bar for the same contained in Section 49 of U. P. Consolidation of Holdings Act which even bars, the case which should have been raised before the

consolidation authorities, but not raised. The decisions given under U. P. Consolidation of Holdings Act even in respect of void documents do not throw light conclusively regarding jurisdiction of civil court and revenue court with reference to Section 331 of U. P. Zamindari Abolition and Land Reforms Act. The provisions of Section 331 of the 'Act' cannot be interpreted with reference to the provisions of or language used in U. P. Consolidation of Holdings Act. It is sound principle of interpretation that provisions of another Act are not to be taken as guide for interpreting the provisions of another Act which are not in pari materia with the former Act. The cases under U. P. Consolidation of Holdings Act regarding the jurisdiction of consolidation authorities throw great light on the question of extent or exclusiveness of the jurisdiction of revenue and civil court but they do (not ?) decide or resolve this controversy fully.”

“36. In the case of void document said to have been executed by a plaintiff during his disability or by someone impersonating him or said to have been executed by his predecessor whom he succeeds, the relief of cancellation of the document is more appropriate relief for clearing the deck of title and burying deep any dispute or controversy on its basis in presenti or which may take place in future. The document after its cancellation would bear such an endorsement in Sub- Registrar's register and would be the basis for correction of any paper and revenue record including record of register. Section 31 of the ' Specific Relief Act itself prescribes as to who can seek relief of cancellation. A third person cannot file a suit for cancellation of a void document. If in fact no. decree for cancelation was needed and real and effective relief could be granted by the revenue court only, the civil court decree would even then be valid and not void if no objection to the same was taken before the trial court. If such an objection was taken before the trial court before framing of issues and objection continued to be taken before appellate and revisional court and there has been failure of justice because of change of forum then the civil court decree could be said to be without jurisdiction.”

(2) **Sita Ram v. Chhota Bhonev, AIR 1991 SC 249 (Paras 6,10,13 & 14)**

“6. From a perusal of S. 49 it is evident that declaration and adjudication of rights of tenure-holders in respect of land lying in an area for which a notification has been issued under S.4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or

proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Act has been taken away. The language used in S. 49 is wide and comprehensive. Declaration and adjudication of rights of tenure-holders in respect of land lying in the area covered by the notification under S. 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act would cover adjudication of questions as to title in respect of the said lands. This view also finds support from the other provisions of the Act and the amendments that have been introduced therein.”

“**10.**In *Ram Adhar Singh v. Ramroop Singh*, (1968) 2 SCR 95: (AIR 1968 SC 714) this Court has dealt with the question whether a suit for recovery of possession filed by the plaintiff claiming to be ‘Bhoomidar’ of the land and asserting that the defendant was a trespasser and not entitled to remain in possession of the property was covered by S. 5(2) of the Act as amended by U.P. Act No. 21 of 1966. After considering the various provisions of the Act this Court held that “disputes of the nature which exists between the parties in the present litigation are all now within the jurisdiction of the authorities constituted under the act to adjudicate upon” and on that basis it was held that the suit had abated under S. 5(2).”

“**13.**In the instant case respondent no. 1 was claiming an interest in the land lying in the area covered by notification issued under S. 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his other brothers. This claim which fell within the ambit of S. 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the Civil Court to entertain the suit in respect of the said matter was expressly barred by S. 49 of the Act and the suit of the appellant was rightly dismissed on that ground.”

“**14.** *Suba Singh v. Mahendra Singh* (AIR 1974 SC 1657) (Supra), on which reliance has been placed by the learned counsel for the appellant, has no application to the present case. That case related to the year 1956 i.e. before the Amendment Act of 1958. At that time provisions, relating to arbitration were contained in Ss. 12(4) and 21 (1) of the Act. The provisions of S. 49 of the Act which were in force at that time had a narrower scope and the jurisdiction of the Civil Court was barred "with respect of any matter arising out of consolidation proceedings or with

respect to any other matter in regard to which a suit for application could be filed under the provisions of the Act." In that case after the scheme for consolidation under S. 23 of the Act had been confirmed one Jag Ram, who was held to be a Bhoomidar under the Scheme, had died. Jag Ram had four sons including Ram Bhajan who had predeceased Jag Ram. The Plaintiff-appellant claimed himself to be the son of Ram Bhajan and had applied for mutation in the consolidation proceedings on that basis which was allowed. Thereafter he approached the Civil Court for partition of the property of Jag Ram. The question was whether the said suit was barred by S. 49 of the Act. This Court held that it was not so barred on the view that the question as to who were the heirs of Jag Ram was not a matter arising out of consolidation proceedings and further that the said question of inheritance to the state of Jag Ram arose after the consolidation operations had been substantively completed. In this context this Court has observed that there is no provision in the Act for any dispute of title which arises subsequent to confirmation of the statement under S. 23 to be decided by way of arbitration or otherwise and that the consolidation authorities had no jurisdiction to determine finally the complicated question of title when the cause of action had arisen subsequent to the finalization, publication and even implementation of the consolidation (operations?) have-so far as Jag Ram was concerned. This would show that in this case this Court was considering the question whether a dispute as to title which arises subsequent to confirmation of the statement under S. 23 could be adjudicated upon by the consolidation authorities. As pointed out earlier the position has been changed after the amendments that have been introduced in the Act by the Amendment Acts of 1958 and 1966."

(3) **Bismillah v. Janeshwar Prasad, AIR 1990 SC 540 (Para 6)**

"6. The common law defence of non est factum to actions on specialties in its origin was available where an illiterate person to whom the contents of a deed had been wrongly read executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature., in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended".

Authorities drew a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

In **Foster v. Mackinnon, (1869) LR 4 CP 704**. Mackinnon, the defendant was induced to endorse a bill of exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said :

".....The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the 'actual contents' of the instrument."

This decision was referred to with approval by this Court in **Ningawwa v. Byrappa in (1968) 2 SCR 797: (AIR 1968 SC 956)**. It was observed

".....It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded"

This would be a voidable transaction. But the, position was held to be different if the fraud or misrepresentation related to the character of the document. This Court held:

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable"

However **the House of Lords in Saunders v. Anglia Building Society, (1971) AC 1004**, reviewed the law and held that the essential features and the doctrine, as expressed by Byles, J. in *Foster v. Mackinnon*, had been correctly stated. Lord Reid, however, observed :

"The plea of *non est factum* could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really

a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing."

However the distinction based on the character of the document and the contents of the document was considered unsatisfactory. The distinction based on the character and contents of a document is not without its difficulties in its practical application; for, inconceivable cases the 'Character' of the document may itself depend on its contents. The difficulty is to be resolved on a case by case basis on the facts of each case and not by appealing to any principle of general validity applicable to all cases. Chitty on Contracts (General Principles, 25th Edition, Para 343) has this observation to make on Saunders' decision:

".....It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity had signed a written document embodying contractual terms. But it was nevertheless held that in exceptional circumstances the plea was available so long as the person signing the document had made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated on the disparity between the effect of the document actually signed, and the document as it was believed to be (rather than on the nature of the mistake) stressing that the disparity must be "radical", "essential", "fundamental", or "very substantial"."

In the instant case, prima facie appellant seems to proceed on the premise that she cannot ignore the sales but that the sales require to be set aside before she is entitled to possession and other consequential reliefs.

JURISDICTION OF CIVIL COURTS VIS-A-VIS REVENUE COURTS

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1(A). Definition of “land” under UPZA & LR Act, 1950 : The word “land” has been defined u/s 3(14) of the UPZA & LR Act, 1950 thus : “*Land*” [except in Sections 109, 143 and 144 and Chapter VII] means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.”

1(B). Land u/s 3(14) of the UPZA & LR Act, 1950 : Where the disputed plot (banjar land) was not used for purposes of agriculture, horticulture or animal husbandry, pisci-culture or poultry farming but were used for industrial purposes, it has been held that such land does not fall within the purview of “land” defined u/s 3(14) of the UPZA & LR Act, 1950. See :

(i) **M/s. Swatantra Bharat Paper Mills Ltd. vs. State of U.P., AIR 2009 (NOC) 2919 (All— DB)**

(ii) **State of U.P. vs. Sarjoo Devi, (1977) 4 SCC 2 (DB)**

1(C). Land used for educational purposes for running a college not to be treated as 'agricultural land' u/s 3(14) even if it is recorded as agricultural land : Land used for educational purposes for running a college cannot be treated as 'agricultural land' u/s 3(14) even if it is recorded as agricultural land. See : **Hari Sagar Educational Trust Vs. Uttranchal Gramin Bank, 2011(114) RD 594 (Uttarakhand)**

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- 1(D). **Tank to be treated as land** : A tank is connected with agricultural purposes and hence it is 'land'. See : **Town Area Committee vs. Nathoo Ram, 1988 RD 103 (All)**
- 1(E). **Land submerged under water not to be treated as 'land' u/s 3(14)** : A land which remains submerged with water and which cannot be used for any purpose contemplated by Sec. 3(14) of the UPZA & LR Act, 1950 cannot be regarded as land nor it can serve the purposes contemplated by the preamble of the UP Imposition of Ceiling on Land Holdings Act. See : **Smt. Rani Prem Kunwar vs. District Judge, Bareilly, 1978 ALJ 436 (All)**
- 1(F). **Pasture land not to be treated as land u/s 3(14)** : The term land does not cover pasture land. The revenue court is not the forum for suit in respect of pasture land. See : **Om Prakash vs. DDC, 1986 ALJ 399 (All)**
- 1(G). **'Bhita' to be treated as land u/s 3(14)** : A bhita (land surrounding the tank) is land. There is no absolute bar for a person to acquire Khudkasht or tenancy right in bhita land. Bhita if present in shape of grove, its owner in possession since 1288-F of trees situate on bhita acquires rights of grove holder and becomes Bhumidhar. See : **Bhillar vs. DDC, Jaunpur, 1983 RD 299 (All)**
- 2(A). **Jurisdiction is conferred by law & not by the consent of parties or their counsel** : Jurisdiction on court is conferred by law & not by the consent of parties or their counsel. No amount of waiver or consent can confer jurisdiction on a court which it inherently lacks or where none exists. See : **Vithalbhai (P) Limited Vs. Union Bank of India, (2005) 4 SCC 315.**
- 2(B). **Tests for determining jurisdiction of civil or revenue court** : If the court is competent to grant the main relief asked for in the plaint then the ancillary relief can also be granted by that court. The twin tests for determination of the jurisdiction of civil or revenue courts depend upon :
- (i) Cause of action
 - (ii) Main relief. See :
 - (i) **Ram Mangal vs. Bindhyachal, 1964 ALJ 1026**
 - (ii) **Mohd. Khalil Khan vs. Mahbub Ali, AIR 1949 P.C. 78**
 - (iii) **Indra Deo vs. Smt. Ram Pyari, 1982 ALJ 1308**
 - (iv) **Ram Awalamb vs. Jata Shanker, 1968 RD 470 (All—F.B.)**
- 2(C). **Test of main & ancillary relief to determine jurisdiction** : If the main relief is cognizable by revenue court and ancillary relief by civil court then suit shall be cognizable by revenue court. But if the main relief is cognizable by civil court and ancillary relief by revenue court then suit shall be cognizable by civil

court only. The above principle will apply to suit for injunction and demolition relating to agricultural land brought against trespassers. See :

(i) **Ram Awalamb vs. Jata Shanker, 1968 RD 470 (All—F.B.)**

(ii) **Chhedhi vs. Smt. Indrapati, AIR 1972 All 446**

2(D). **“Cause of action” & its meaning** : Cause of action implies right to sue. Material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. The entire bundle of facts pleaded, however, need not constitute cause of action. See :

(i) **Kusum Ingots vs. Union of India, (2004) 6 SCC 254**

(ii) **Union of India vs. Adani Exports Ltd., (2002) 1 SCC 567**

(iii) **National Textile Corp. Ltd. vs. Haribox Swalram, (2004) 9 SCC 786**

(iv) **Ram Mangal vs. Bindhyachal, 1964 ALJ 1026**

2(E). **Maintainability of suit to be decided on the basis of pleadings and the reliefs claimed in the plaint** : The question of maintainability of a suit can be decided on the basis of the averments contained in the plaint and the stated reliefs claimed in the plaint and not from the effect which the decree may cause. Defence plea taken in the written statement cannot be looked into for the purpose of deciding maintainability of the suit. See :

(i) **Ramesh Chand Vs. Anil Panjwani, (2003) 7 SCC 350**

(ii) **Saleem Bhai Vs. State of Maharashtra, AIR 2003 SC 759**

(iii) **Smt. Sumitra Devi vs. Ist ADJ, Basti, 1999 (90) RD 658 (All)**

(iv) **Ashok Kumar Srivastav Vs. National Insurance Company Ltd., (1998) 4 SCC 361**

(v) **M/S Bharat Petroleum Corp. Ltd Vs. Smt. Parvati Devi, 1998 (32) ALR 149**

(vi) **T. Arvindandam Vs. Satyapal, AIR 1977 SC 2421**

3. **Evidence when can be taken to decide jurisdiction?** : Where a civil suit for injunction & cancellation of sale deed was filed on the ground that the sale deed was executed by an impostor after the death of the recorded Bhumidhar, i.e. the father of the plaintiff and there was controversy regarding the date of death of the plaintiff's father (the deceased bhumidhar), it has been held that such controversy should be decided on the basis of evidence by the civil court as such question can only be decided by the civil court on the basis of evidence led by the parties and the suit would not be barred by Sec. 229-B r/w. 331 of the UPZA & LR Act, 1950 as the plaintiff had not claimed that she should be declared as bhumidhar because she was already recorded as such after the death of her father. When facts are in dispute, court ought to record evidence for determining jurisdiction. See :

(i) **Smt. Sharda Devi vs. ADJ (Special Judge), Gorakhpur, 1998 (89) RD 278 (All)**

(ii) **Ganga vs. Buddhi Ram, 1965 RD 300 (All)**

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4. **Civil Court competent to decide its jurisdiction** : A Civil Court is competent under CPC to decide its own jurisdiction. A Civil court has powers to decide the preliminary issues as to the maintainability of the suit or the bar of res-judicata or estoppel. See : **Thirumala Tirupati Devasthanams Vs. Thallappakka Ananthacharyulu, (2003) 8 SCC 134**
- 5(A). **Stage of raising plea of want of jurisdiction** : In the year 1969 Sec. 331 of the UPZA & LR Act 1950 was amended by adding sub section (1-A) to it with the result that if the plea of want of jurisdiction was not raised before the trial court, the same cannot be raised in appeal, revision or in execution proceedings. Even if the plea of want of jurisdiction was taken in the trial court, the same can not be raised before the appellate or revisional court unless there has been a consequent failure of justice. The earlier contrary Supreme Court Decision rendered in the case of Chandrika Misir Vs. Bhaiya Lal, AIR 1973 SC 2391 remains no longer relevant law on the subject in view of the newly added section 331 (1-A). The plea of want of jurisdiction can thus be raised before the appellate or revisional courts only if the two conditions, noted below, are fulfilled :
- (1) That the objection regarding want of jurisdiction was taken in the court of first instance.
 - (2) There has been a consequent failure of justice. See :
 - (i) **Sec. 331 (1-A), UPZA & LR Act, 1950**
 - (ii) **Parashuram Tewari Vs Bhanu Pratap Tewari, 1974 R.D. 176 (All)**
 - (iii) **Nasirudeen Vs Ram Swarup, 1978 ALJ 316 (All--D.B.)**
- 5(B). **Stage of rejecting plaint U/O. 7, rule 11 CPC** : O. 7, rule 11(d) applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It does not apply in case of any disputed question. Rejection of the plaint u/r.11 does not preclude the plaintiff from presenting a fresh plaint in terms of rule 13. O.7. Rule 11 is applicable at any stage of the suit subject to above position of law. O.7, rule 11 even casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of rule 11 O.7 CPC even without the intervention of the defendant. See :
 - (i) **Popat and Kotecha Property Vs. State Bank of India Staff Association, (2005) 7 SCC 510**
 - (ii) **Sopan Sukhdeo Sable Vs. Asstt. Charity Commissioner, (2004) 3 SCC 137**
 - (iii) **Saleem Bhai Vs. State of Maharashtra, (2003) 1 SCC 557**
- 5(C). **Jurisdiction of Civil Court & the stage of application of O.7, R-11 CPC** : If the suit is barred by some law and is not maintainable, the provisions u/o.7, Rule 11 CPC can be exercised both at the threshold of the proceedings, and in the absence of any statutory restriction, at any stage of the subsequent proceedings. However, preliminary objection regarding maintainability of the

suit due to want of jurisdiction should be raised at the earliest, though the power of the court to consider the same at a subsequent stage is not taken away. See :

(i) **Vithalbai (P) Ltd. Vs. Union Bank of India, (2005) 4 SCC 315**

(ii) **Samar Singh Vs. Kedar Nath, 1987 Suppl. SCC 663**

5(D). Return of plaint u/o. 7, rule 10 CPC for want of jurisdiction : (A) If a civil suit is found barred by the (trial or appellate) court u/s 331 of the UPZA & LR Act, 1950, it should not record any finding in respect of other points involved in the suit. It should rather return the plaint u/o. 7, rule 10 CPC. See : **Smt. Shail Kumari vs. Abhilakh, 1998 RD 272 (All)**

5(E). Remedy of plaintiff where revenue and civil court both returning plaint stating want of jurisdiction : Where the revenue court had earlier dismissed the suit by stating that it had no jurisdiction in the matter and on presentation of the plaint before the civil court, it also observed that it had no jurisdiction and returned the plaint for presentation before the revenue court, it has been held that the previous order of the revenue court that it had no jurisdiction in the matter could not bar the subsequent suit before the revenue court. It was the latter decision of the civil court that operated as res judicata and not the previous decision of the revenue court. See : **Raghunath vs. Ram Khelawan, AIR 1970 All 26 (F.B.)**

6(A). Injunction suit in civil court in respect of agricultural land : A recorded tenure holder under the provisions of UPZA & LR Act 1950 having prima facie title over the agricultural land in his favour and being in possession can file a civil suit seeking cancellation of void document/sale deed brought about through fraud and impersonation. In such a case the plaintiff need not file a suit for declaration of title before the revenue court as his title is not in doubt and the Civil Court could have jurisdiction to decide the suit of such tenure holder for cancellation and injunction. A suit by the recorded tenure holder for void document is not barred u/s 331 of the UPZA & LR Act 1950 and the suit is maintainable u/s 9 of the CPC. See :

(i) **Shri Ram vs. 1st ADJ, (2001) 3 SCC 24**

(ii) **Chheda Singh vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three-Judge Bench)**

6(B). Suit for injunction, demolition and joint possession to lie in civil court : The civil court, and no other court has 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 fail 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. See : **Ram Awalamb vs. Jata Shanker, 1968 RD 470 (All—F.B.)**

6(C). Civil suit in respect of agricultural holding and house property & jurisdiction of civil court : The civil court had no jurisdiction to declare the rights of the plaintiff's to the agricultural land and the proper remedy for them

was to file a suit u/s 229-B of UPZA & LR Act for a declaration of their rights, but in view of the fact that the suit involves a declaration of the plaintiff's rights to the house property also, over which the revenue courts have no jurisdiction, the plaint could not be ordered to be returned and the proper order which should be passed would be to reject the plaint in so far it relates to agricultural land leaving it open to the plaintiff to file a suit for declaration of the rights in respect thereto in a revenue court of competent jurisdiction. See : **Smt. Sudama vs. Hansraj, 1981 RD 116 (All)**

7. **Civil suit for setting aside sale deed and recovery of possession when not barred u/s 331** : Where the party in her suit prima facie proceeded on the premise that she could not ignore the sales but that the sales require to be set aside before she would be entitled to possession and other consequential reliefs, the suit would not be barred u/s 331 of the UPZA & LR Act, 1950 and the civil court would have jurisdiction to entertain it. See : **Smt. Bismillah vs. Janeshwar Prasad, AIR 1990 SC 540**

8. **Grove land and injunction** : If the land in dispute is grove land and not abadi, then no suit for injunction can be filed in civil court. In such matters the civil court should relegate the plaintiff to seek appropriate relief before the revenue court. See : **Bauram vs. Munni, 2008 (26) LCD 1220 (All)**

- 9(A). **Suit for injunction, declaration or possession in respect of trees alone standing on agricultural land & jurisdiction of civil court** : In a suit for injunction or for possession in respect of trees alone, the question regarding title in land is not at all relevant because ownership of trees is different from ownership in land. The ownership in trees is not synonymous with rights of grove-holder/Bhumidhar in the land over which the trees stand. Land Record Manual also does not contemplate entries regarding ownership in trees as the land records are concerned with those who own or hold land and the entries in revenue records are the UPZA & LR Act and, as such, no suit for declaration, injunction or possession can be filed in respect of trees alone in the revenue court under any provision of the UPZA & LR Act enumerated in IVth Schedule in the Act. Thus, the jurisdiction of the civil court to entertain and decide the present suit would not be barred by Sec. 331(1) of the said Act. The ownership in trees and the ownership in the land, on which they are situated, are two distinct and separate matters. There was nothing in the provisions of the U.P. Tenancy Act, nor one is found in UPZA & LR Act, providing that the tenure-holder would be the owner of the trees situated thereon although the same were not planted or held by him as owner thereof. Merely because the trees stood on the holding of a tenant, he will not be deemed to be owner of the trees as well, nor the trees would be deemed to have vested in him as was envisaged in rule 26-A, which was held to be ultra vires in 1967 ALJ 21. If the trees have not been planted by the tenant himself on the land of his holding, he would not be

deemed to be owner of trees situated on such land. The trees will continue to belong to a person who had, in fact, planted those trees or had held them as such. The owner of the trees and his transferee would not get a right in the land itself, but he will have a right to maintain the trees which he has planted or of which he becomes the owner by transfer. Merely because the trees, situated on the land in question will preclude the land or portion thereof from being used for cultivation or for any other purpose, will not operate to extinguish the rights of the owners of the trees situated on the holding belonging to another. Held, appellants did not become owners of the trees merely on the ground that they were tenure-holders of the land, although those trees were not planted by them and they had never been in possession over the same. See : *Lalta Singh vs. Patiraj Singh*, 1983 ALJ 473 (All—L.B.)

9(B). Suit for injunction when defendant's name recorded in revenue record :

Where a civil suit for injunction by plaintiff was filed to restrain defendants from dispossessing the plaintiff and from transferring the disputed land to someone else but the name of defendants was already recorded in revenue record, it has been held that such a suit u/s 208 of the UPZA & LR Act, 1950 falls within serial no. 23 of Schedule II providing relief before the revenue court. Such a suit is not maintainable in civil court and being cognizable by revenue court only, the plaint should be returned to the plaintiff. See : ***Kamla Shankar vs. 3rd ADJ, Mirzapur, 1998 (89) RD 484 (All)***

9(C). Sec 229-B, 229-D, 331 of the UPZA & LR Act, 1950 & The Power of Civil Court to grant Injunction :

If the name of the plaintiff is not recorded as tenure holder of the agricultural land in the revenue records and the question of declaration of title is involved, the jurisdiction of the civil court to entertain injunction suit and grant interim injunction would be barred u/s 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 as the civil court can not direct for the expunction or correction of the entries in revenue records and the same can be done only by the revenue courts. The remedy of the plaintiff in respect of the agricultural land under such facts and circumstances would be a suit for declaration of title before the revenue court u/s 229-B of the UPZA & LR Act, 1950 and interim injunction can also be granted by the revenue court u/s 229-D of that Act. But where the name of the plaintiff is recorded in the revenue records as tenure holder of the agricultural land and no question of the declaration of title is involved, the plaintiff can institute a suit in civil court for injunction against the defendant for restraining him for transferring any construction etc on such land or cutting trees etc standing thereon. See....

- (i) ***Kamla Shankar Vs. 3rd ADJ, Mirzapur, 1998 (89) R.D. 484 (All)***
- (ii) ***Magan Lal Chaturvedi Vs. District Judge, Mathura, 1998 ALJ 2323 (All)***

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- (iii) **Deokinandan Vs. Surajpal, 1996 ALJ 144 (SC)**
 - (iv) **Tej Bhan Singh Vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)**
 - (v) **Surya Narayan Pandey Vs. Addl. Civil Judge, Gyanpur, 1995 R.D. (H) 50 (All)**
 - (vi) **Jyoti Ram Vs. District Judge, Saharanpur, 1995 RD 99 (All)**
 - (vii) **Tej Bhan Singh Vs. IX ADJ, Jaunpur, 1994 R.D. 476 (All)**
 - (viii) **Indra Pal Vs. Jagannath, 1993 ALJ 235 (All)**
 - (ix) **Bhagwat Prasad Vs. Jitendra Narain, 1991 ALJ 971 (All)**
 - (x) **Chandra Deo Pathak Vs. Swami Nath Pathak, 1987 R.D.51 (All)**
 - (xi) **Vijai Singh Vs. 2nd ADJ Bulandshahar, 1982 ALJ 725 (All)**
 - (xii) **1980 R.D. 32 (Summary of Cases-43) (All-L.B.)**
 - (xiii) **Jai Singh Vs. Hanumant Singh, 1979 ALJ 645 (All)**
 - (xiv) **Kishori Lal Vs. Shambhoo Nath, 1978 ALJ 1273 (All)**
 - (xv) **Parsottam Vs. Narottam, 1970 ALJ 505 (All-D.B.)**
- 9(D). Expunction of name from revenue record & civil suit for injunction regarding house, sahan, ghera, sariya, well, trees etc. :** A suit for permanent injunction in respect of house, sahan, ghera, sariya, well and trees on plot is not barred u/s 330 and 331 of the UPZA & LR Act, 1950. Such suit cannot be thrown away by civil court because revenue court can not grant relief in respect of house etc. Such relief is grantable only by civil court. The fact of entry of the name into revenue records on the basis of compromise filed by impostor can be proved by leading evidence and that exercise can only be done by civil court and not by revenue court. Civil court will have jurisdiction in such a suit. See : **Smt. Lakhpata vs. 2nd ADJ, Faizabad, 1998 (4) AWC 696 (All—L.B.)**
- 9(E). Declaration of title over agricultural land :** If the name of the plaintiff is not recorded in revenue records as tenure holder of the agricultural land and the question of declaration of title is involved, the jurisdiction of the civil court in relation to such agricultural land would be barred u/s 331 of the UPZA & LR Act 1950 as the revenue court would have exclusive jurisdiction under section 229-B of the act to declare the title over the agricultural land. See : **Smt. Shail Kumari Vs. Abhilakh, 1998 RD 272 (All)**
- 9(F). Every civil suit of declaration not always barred by Sec. 331 :** It is not every civil suit that is barred u/s 331 of the UPZA & LR Act, 1950. Sec. 331 r/w. Schedule II bars jurisdiction of the civil court only in respect of such reliefs which are mentioned in schedule II and for their adjudication another authority has been prescribed thereunder. The categories of declaration to stand not be granted by a civil court or those mentioned against Serial No. 34 and they are of the types specified in sections 229, 229-B and 229-C of the UPZA & LR Act, 1950. A civil suit for declaration of bhumidhari rights and for ejection of the persons in possession over the agricultural land is barred u/s 331. See : **Kali Prasad vs. DDC, 2000 (91) RD 549 (SC)**

10(A).Effect of non-declaration u/s 143 & the jurisdiction of civil court : Where an injunction suit was filed in respect of banjar land having certain constructions on it but the land was still recorded as banjar land in the revenue records, it has been held that the civil suit was barred u/s 331 and mere existence of certain constructions over a Bhumidhari land or banjar land would not take it out of purview of the provisions of UPZA & LR Act, 1950 unless a declaration is made u/s 143 of the aforesaid Act. See :

(i) **Basti Ram vs. Nagar Nigam, Ghaziabad, 2000 (18) LCD 138 (All)**

(ii) **indrajeet Singh vs. Arjun Singh, 1983 ALJ 388 (All)**

(iii) **Shiv Prasad vs. Thakur Prasad, 1986 RD 253 (All)**

10(B).Jurisdiction of civil court when agricultural land with construction not declared Abadi u/s 143 : Land does not cease to be agricultural, so long as it is held or occupied for the purposes of agriculture, and even if a Sirdar raises constructions on the land held by him as such, it cannot be said that the provisions of the UPZA & LR Act cease to have an application thereto. A bhumidhar could use land for any purpose other than agricultural, but so long as a declaration u/s 143 is not obtained by him, it continues to be governed by the provisions of the UPZA & LR Act, and he could not make a transfer of the land or deal with it otherwise on the ground that the land had become abadi and he could deal with it in any manner he liked. And the jurisdiction to grant a declaration u/s 143 vested exclusively in the revenue Courts. If the question whether certain land has ceased to be used for agricultural purposes is raised before a Civil Court it is bound to refer the question to the Revenue Court vide Sec. 331-A of the UPZA & LR Act. See : **Magnu Ahir vs. Mahabir, 1981 (7) ALR 308 (All)**

10(C).Change of user of land must for declaration u/s 143 : Mere construction of a boundary wall over a particular portion of land will not change the nature of land. It will not cease to be bhumidhari land unless the user is changed. u/s 143 of the Act it is only where a bhumidhari with transferable rights uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry that the land can be declared being used for such purpose and it will cease to be bhumidhari but unless a land is put to such a use, no such declaration u/s 143 can be made under said provisions. See : **Smt. Urmila Devi vs. Pooran Chand Dabar, 1999 (17) LCD 201 (All—D.B.)**

10(D).Change of user of land and effect of non declaration u/s 143 : Allahabad High Court, while considering the provision of section 143(2) of the U.P.Z.A. and L.R. Act has observed *inter alia* in paragraph 8 of the judgment as under : *"It would appear that till such time that a declaration is not granted under sub-clause 2 of the above section the results set out in this sub-section do not follow. The use of the words 'upon the grant of the declaration' are significant and no other construction is possible. The contention of Counsel for the respondent that even though no declaration has been granted under section 143 sub-clause*

2 inasmuch as the land in dispute was not being used for a purpose connected with agriculture, horticulture etc. does not appear to be sound. In case the intention to the legislature was that as soon as land which had been previously held for the purpose connected with agriculture etc. ceased to be used for that purpose, the provisions of the U.P.Z.A. and L.R. Act or Ch. VIII would not apply, it would not have been necessary for it to enact section 143. In fact in case such an interpretation is put, the provisions of section 143 of the Act become redundant. It is plain that till such time that a Bhumidhar does not get the requisite declaration he continues to be governed by the provisions of the U.P.Z.A. and L.R. Act irrespective of the fact as to whether he uses his land for purposes connected with agriculture, horticulture etc. or not." See :

- (i) **Kehar Singh Vs State of UP, 2011 (112) RD 357 (All) (para 20)**
- (ii) **Alauddin alias Makki Vs Hamid Khan, 1971 RD 160 (All)**

11(A). Suit for cancellation of sale deed when plaintiff recorded as tenure holder :

A recorded tenure holder under the provisions of UPZA & LR Act, 1950 having prima facie title over the agricultural land in his favour and being in possession, can file a civil suit seeking cancellation of void document/sale deed brought about through fraud and impersonation. In such a case the plaintiff need not file a suit for declaration of title before the revenue court as his title is not in doubt and the Civil Court could not have jurisdiction to decide the suit of such tenure holder for cancellation and injunction. A suit by recorded tenure holder for cancellation of void document is not barred u/s 331 of the UPZA & LR Act 1950 and the suit is maintainable u/s 9 of the CPC. Civil suit seeking cancellation of the deed on the ground that it was obtained by impersonation and the plaintiff had not executed it, lies in the civil court. See :

- (i) **Kishori Prasad Vs. 3rd ADJ, Varanasi AIR 2003 All 58**
- (ii) **Shri Ram Vs. 1st ADJ, (2001) 3 SCC 24**
- (iii) **Chheda Singh Vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three-Judge Bench)**
- (iv) **Smt. Chhanga Vs. 1st ADJ Jaunpur, 1998 (89) R.D. 647 (All)**
- (v) **Smt. Rasheedan vs. Amar Singh, 1998 (16) LCD 177 (All)**
- (vi) **Ram Padarath Vs. 2nd ADJ, Sultanpur, 1989 AWC 290 (All-F.B.)**
- (vii) **Pancham Vs. Ram Gen, AIR 2010 (NOC) 665(All).**

11(B-1). Suit for cancellation of sale deed when plaintiff not recorded as tenure holder :

Where a recorded tenure holder having a prima facie title and in possession, files suit in the Civil Court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue Court, reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by

filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession. See :

(i) **Shri Ram Vs. 1st ADJ, 2001 (19) LCD 740 (SC)**

(ii) **Khamani Ram Vs. District Judge, Budaun, 1983 ALJ 1378 (All)**

11(B-2). Suit for cancellation of voidable document/sale deed maintainable in civil court and not barred by Sec. 331 despite the name of the purchaser/defendant entered in revenue record : Where consequent to the execution of the sale deed, name of the purchaser/defendant was entered in the revenue record, it has been held by the Hon'ble Allahabad High Court that the bar of Sec. 331 of the UP ZA & LR Act, 1951 was not attracted and the suit seeking cancellation of the sale deed which was alleged to be voidable document was maintainable in the civil court as the revenue court has no power to pass decree of cancellation of document irrespective of the fact that the name of the defendants/purchasers was entered in the revenue record consequent to execution of the sale deed. See : **Ganga Prasad Vs. Ram Das, 2014 (4) ALJ 492 (All)**.

11(C). Cancellation of Sale Deed when name of purchaser already recorded in revenue record : Where the name of plaintiff was deleted from revenue records and the names of purchasers were entered into the revenue records, it has been held by Supreme Court that the suit for cancellation of sale deed in respect of agricultural land was barred in Civil Court and the Revenue court only was having jurisdiction to entertain the suit u/s 229-B of the UPZA & LR, Act 1950. See : **Kamla Prasad Vs Krishna Kant Pathak, 2007 (2) AWC 1764 (SC)**

11(D). Civil suit for cancellation of will deed involving agricultural and non-agricultural property to lie before Civil Court :Where a plaintiff had filed civil suit for cancellation of un registered will deed involving agricultural and non-agricultural land/other properties and no relief was sought by the plaintiff with respect to the rights and title of a tenure holder or declaration of title or status, it has been held that it was not necessary for the plaintiff to file suit for declaration of title u/s 229-B and the civil suit before the civil court was maintainable and not barred by Section 331 of the UPZA & LR Act, 1950. See : **Manoj Kumar Vs. District Judge, Jaunpur, 2011 (29) LCD 2480 (All)**.

11(E). Suit for cancellation of void or voidable sale deed to lie in civil court : If a plaintiff comes to the Civil Court for seeking cancellation of deed which may be void or voidable, whether the name of the plaintiff is recorded or not, the jurisdiction of the Civil Court not having been expressly barred to try such suits, the suit will be maintainable in the Civil Court. See :

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- (i) **Shri Narain Mishra Vs IV Addl. District Judge, Varanasi, (2004) 2 SAC 124.**
- (ii) **Jai Singh vs. 2nd ADJ, 2001 ALJ 2621 (All).**
- 11(F). Suit for cancellation of sale deed to lie in civil court irrespective of the name of the plaintiff is recorded or not in revenue records :** If a plaintiff comes to the Civil Court for seeking cancellation of deed which may be void or voidable, whether the name of the plaintiff is recorded or not, the jurisdiction of the Civil Court not having been expressly barred to try such suits, the suit will be maintainable in the Civil Court. See : **Jai Singh vs. 2nd ADJ, 2001 ALJ 2621 (All)**
- 11(G). Civil Suit for declaration of sale deed as null and void and ineffective not barred by Section 331 of the UP ZA & LR Act, 1950 :** Where the defendants had obtained thumb impression of plaintiff on sale-deed by telling her that documents on which she was affixing her thumb impression related to grant of old age pension and she was not given any amount as sale consideration, it has been held that the jurisdiction of civil court was not barred and the suit was maintainable before the Civil Court. See : **Anju & Others Vs. Vikram Kaur, 2013 (119) RD 564 (All).**
- 11(H). Suit for mere cancellation of sale deed without seeking declaration of it as void maintainable in civil court :** A plaintiff's suit for cancellation of sale deed on the ground that it was obtained by impersonation and the plaintiff had not executed it, for determining whether the sale deed was void, the rights of the plaintiff to make the sale deed is not to be determined as both the parties proceed from the position that the plaintiff had the right over the suit property. It is really the manner of execution of the sale deed which is in question without involvement of the rights of the parties on the date of the sale. It is thus a document which awaits a declaration that it was void and was not a document void on the face of it. In terms of the decision of the Supreme Court, it would be a document cancellation of which could be made by the civil court only. See :
- (i) **Smt. Rasheedan vs. Amar Singh, 1998 (16) LCD 177 (All)**
- (ii) **Mahabir Singh vs. District Judge, Fatehpur, 1998 (89) RD 540 (All)**
- (iii) **Smt. Chhanga Vs. 1st ADJ, Jaunpur, 1998 (89) R.D. 647 (All)**
- 11(I). Suit for cancellation of gift deed and sale deed :** Where a civil suit u/s 31 of the Specific Relief Act, 1963 was filed for cancellation of gift deed and sale deed claiming that the plaintiff was born prior to enforcement of UPZA & LR Act, 1950 and being a co-parcener acquired rights in the Sir Land by birth and his share in the land was transferred fraudulently, relying upon the Full Bench decision of Ram Padarath vs. IInd ADJ, Sultanpur, 1989 RD 21 (All—F.B.), it has been held that the suit was cognizable by the civil court. See : **Smt. Kalindi vs. ADJ, Deoria, 2001 (19) LCD 1046 (All)**

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- 11(J). Suit for cancellation of compromise decree passed u/s 229-B :** Where in a declaratory suit filed u/s 229-B of the UPZA & LR Act, 1950, a compromise was entered into on behalf of minor through guardian and compromise decree was passed, it has been held that though the compromise was neither void or voidable under the Contract Act but still the minor on attaining majority can allege that his interest suffered prejudice and may ask for cancellation of the compromise decree and such suit would be maintainable in the civil court. See : **Dilraj Yadav vs. IIIrd ADJ, Azamgarh, 1998 (3) AWC 1699 (All)**
- 12. Demolition of construction erected on agricultural land :** In case of any unauthorised construction by a trespasser by encroaching upon the agricultural land of a Bhumidhar, the civil court is competent to take cognizance of the suit for demolition and the restoration of possession of the Bhumidhar over the portion of land covered under construction. See :
- (i) **Ram Shanker Vs. Sarbjit, 1975 RD 38 (All)**
 - (ii) **Bhola Nath Vs. Babu Damodar Das, 1982 RD 17 (All)**
- 13. Construction on transferred agricultural land & jurisdiction of civil court :** Where the defendant himself had transferred the agricultural land in dispute to the plaintiff for construction of house and suit for simple injunction and possession was filed, it has been held that the defendant was estopped from disputing the title of the plaintiff and claiming that it was an agricultural land. The relief claimed in such suit does not fall within the ambit of Sec. 229, 229-B, 229-C of the UPZA & LR Act, 1950 and the bar of Sec. 331 of the Act is not attracted and the relief can be granted by the civil court. See : **Magan Lal Chaturvedi vs. District Judge, Mathura, 1998 ALJ 2323 (All)**
- 14. Plea of want of jurisdiction of civil court during execution of decree :** In the year 1969 Sec. 331 of the UPZA & LR Act 1950 was amended by adding sub section (1-A) to it with the result that if the plea of want of jurisdiction was not raised before the trial court, the same can not be raised in appeal, revision or in execution proceedings. Even if the plea of want of jurisdiction was taken in the trial court, the same can not be raised before the appellate or revisional court unless there has been a consequent failure of justice. The earlier contrary Supreme Court Decision rendered in the case of Chandrika Misir Vs. Bhaiya Lal, AIR 1973 SC 2391 remains no longer relevant law on the subject in view of the newly added section 331 (1-A). The plea of want of jurisdiction can thus be raised before the appellate or revisional courts only if the two conditions, noted below, are fulfilled : -
- (1) That the objection regarding want of jurisdiction was taken in the court of first instance.
 - (2) There has been a consequent failure of justice. See :
 - (i) **Sec. 331 (1-A), UPZA & LR Act, 1950**
 - (ii) **Parashuram Tewari Vs. Bhanu Pratap Tewari, 1974 R.D. 176 (All)**
 - (iii) **Nasirudeen Vs. Ram Swarup, 1978 ALJ 316 (All--D.B.)**

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- 15(A). Grove land partly in town area & partly outside & jurisdiction of civil court** : Where part of grove land was lying within limits of town area and partly outside, it has been held that civil suit claiming title to it would lie in civil court. See : **Kailash vs. Lala Ram, 1980 RD 223 (All)**
- 15(B). Construction on U.P. Urban Areas Zamindari Abolition & Land Reforms Act, 1957 & jurisdiction of civil court** : Area which is held on a lease duly executed before July 1, 1955, for the purposes of erecting buildings thereon, can be included within the meaning of “agricultural area” as defined in Sec. 2(1), only if the area is being used by the lessee or his sub-lessee for cultivation. It follows from this that, if the area is not being so used for cultivation but has been built upon, it does not come within the mischief of Cl. (d) of Sec. 2(1) of the Act and cannot be demarcated as agricultural area. See : **Durga Prasad vs. Board of Revenue, U.P., Allahabad, AIR 1970 All 159**
- 15(C). U.P. Village Abadi Act, 1948 & jurisdiction of civil court** : Sec. 4(b) of the U.P. Village Abadi Act, 1948 refers to custom or usage and not to the acquisition of an easementary right by the plaintiff. By enacting Sec. 4 in the said Act the U.P. Legislature could not, in any manner, curtail or modify the operation of a central statute such as the Indian Easements Act. Constitutionally, that can be done only after compliance with the formalities laid down in the Constitution of India and moreover the section, as it is worded, does not say that its provision will prevail notwithstanding the law contained in any other statute. In case it is possible to retain a part of the construction which would not come in the way of the plaintiff enjoying his easementary right then the Court should give an appropriate direction and should not direct wholesale removal of the construction in question. Sections 22, 24, 28 embody the rule that while the claimant of the easementary right should have a full protection in the enjoyment of his right, there should be an adjustment with the rights of the servient owner also so that the least inconvenience be caused to the latter. See : **Ram Narain Choubey vs. Gangadhar Choubey, AIR 1975 All 248**
- 16. Recovery of possession from trespasser in respect of agricultural land** : - Where a Bhumidhar has been dispossessed by a trespasser, the suit for recovery of possession can not be filed in civil court as the revenue court alone has exclusive jurisdiction u/s 209 of the UPZA & LR Act 1950 and the jurisdiction of the civil court is barred in respect of such land. See : **Ram Shanker Vs. Sarbjit, 1975 RD 38 (All)**
- 17. Civil Court to restore possession to co-Bhumidhar in the event of dispossession by co-Bhumidhar** : If a Bhumidhar is dispossessed in an injunction suit by co-Bhumidhar, the civil court can grant relief restoring possession to the dispossessed co-Bhumidhar and section 209 read with Section 331 of UPZA & LR Act 1950 does not apply in such cases as section 209 of the

Act applies only to suits against trespassers and not where the suit is for joint possession by one co-Bhumidhar against the other. See :

(i) **Mewa vs. Baldeo, AIR 1967 All 356 (D.B.)**

(ii) **Ram Awalamb vs. Jatashankar, AIR 1969 All 526 (F.B.)**

18. **Events pendentelite not to oust jurisdiction of the Civil Court** : If the suit was initially maintainable in the civil court for the relief sought for, any subsequent event having taken place during the pendency of the suit would not oust the jurisdiction of the civil court. See :

(i) **Smt. Sonawati Vs. Shri Ram, AIR 1966 SC 466**

(ii) **Bhola Nath Vs. Babu Damodar Das, 1982 RD 17 (All)**

(iii) **Hira Lal Patni Vs. Kali Nath, AIR 1962 SC 199**

(iv) **Kiran Singh Vs. Chaman Paswan AIR 1954 SC 340**

19. **Suit for partition & injunction in respect of abadi or house to lie in civil court** : Where the plaintiff had filed a civil suit for partition of the property and also for permanent injunction on the ground that the disputed property was joint Hindu family property, and the land was recorded in the revenue papers as abadi and Makan, it has been held that the partition and injunction suit was maintainable in civil court u/s 9 CPC and the bar of Sec. 331 of the UPZA & LR Act, 1950 was not applicable. See : **Lakshmi Prasad vs. Smt. Krishna Devi, 2000 (91) RD 372 (All)**

20. **Voidable document not to be ignored by revenue and CH courts & can be cancelled by civil court alone** : A voidable document cannot be avoided by the revenue court unless it is cancelled by the competent court. Consolidation court cannot cancel such a document in view of the provisions contained in Sec. 5(2) of the UP Consolidation of Holdings Act, 1953, the civil court shall have no jurisdiction to try the suit if during the pendency of the civil suit a notification u/s 5(2) of the UPCH Act, 1953 is made and the village where the land in question was situated has gone into consolidation operations if the document is a void document the civil court will have no jurisdiction to try the suit for cancellation of the sale deed. See : **Smt. Sumitra Devi vs. Ist ADJ, Basti, 1999 (90) RD 658 (All)**

21. **Suit for correction of revenue records & setting aside of sale deed** : Where tenants had abandoned the tenancy over the tenanted land in favour of third persons and dispute arose whether such third persons were rightly recorded as tenants in revenue records, it has been held that such dispute can be decided by revenue authorities alone under the provisions of UPZA & LR Act, 1950 and the suit for setting aside sale deed by transferees is liable to be dismissed. See : **Azhar Hasan vs. District Judge, Saharanpur, 1998 ALJ 2008 (SC—Three-Judge Bench)**

22. **Correction of entries in revenue records & the jurisdiction of Civil Court :**

In view of the provisions under section 331 of the UPZA & LR Act 1950 the civil court can not direct for correction or expunction of entries in revenue records and same can be done only by the revenue courts. See :

- (i) **Kamla Shankar Vs. IIIrd ADJ Mirzapur, 1998 (89) R.D. 484 (All)**
- (ii) **Magan Lal Chaturvedi Vs. District Judge, Mathura, 1998 ALJ 2323 (All)**
- (iii) **Deokinandan Vs. Surajpal, 1996 ALJ 144 (SC)**
- (iv) **Tej Bhan Singh Vs. II ADJ Jaunpur, 1995 ALJ 109 (All)**
- (v) **Surya Narayan Pandey Vs. Addl Civil Judge, Gyanpur, 1995 R.D. (H) 50 (All)**
- (vi) **Jyoti Ram Vs. District Judge, Saharanpur, 1995 RD 99 (All)**
- (vii) **Tej Bhan Singh Vs. IX ADJ, Jaunpur, 1994 R.D. 476 (All)**
- (viii) **Indra Pal Vs. Jagannath, 1993 ALJ 235 (All)**
- (ix) **Bhagwat Prasad Vs. Jitendra Narain, 1991 ALJ 971 (All)**
- (x) **Chandra Deo Pathak Vs. Swami Nath Pathak, 1987 R.D.51 (All)**
- (xi) **Vijai Singh Vs. 2nd ADJ Bulandshahar, 1982 ALJ 725 (All)**
- (xii) **1980 R.D. 32 (Summary of Cases-43) (All-L.B.)**
- (xiii) **Jai Singh Vs. Hanumant Singh, 1979 ALJ 645 (All)**
- (xiv) **Kishori Lal Vs. Shambhoo Nath, 1978 ALJ 1273 (All)**
- (xv) **Parsottam Vs. Narottam, 1970 ALJ 505 (All--D.B.)**

23. **Suit for setting aside auction sale on ground of fraud to lie in the civil court :**

Where the plaintiff had filed a civil suit for setting aside an auction sale on the ground of fraud, it has been held that the suit was maintainable in the civil court. It has further been held that a bare perusal of Sec. 330 (c) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 read with the proviso to Rule 285K framed under UPZA & LR Rules 1952, is sufficient to indicate that the institution of a suit in the civil court for the purpose of setting aside a sale on the ground of fraud is not prohibited by proviso to Rule 285K. Even otherwise, a suit of this nature does not fall within the ambit of the bar of jurisdiction of civil courts indicated u/s 330 of the UPZA & LR Act. See : **Roshan Prasad vs. Shiv Pal, 1998 (3) AWC 1859 (SC)**

Note: A contrary ruling on the subject has been reported in the case of Shiv Pal vs. ADJ, 1969 (14) LCD 1190 (All).

24. **Party not to be allowed to take inconsistent position on the point of jurisdiction :**

Litigants cannot be permitted to assume inconsistent positions in court. Once the objection of a party is accepted that revenue court had no jurisdiction and earlier suit of the other party (plaintiff) was dismissed, the party raising the initial objection against jurisdiction would be estopped from raising objections that civil court has no jurisdiction. See : **Hari Narain vs. Ram Raj, 1969 RD 33 (All)**

25(A).Recovery of dues as land revenue & jurisdiction of civil courts : In view of Sec. 287-A of the Act if a person wants to deny his liability that he is not liable to pay any amount sought to be recovered from him through the said process or he denies the said liability with regard to the land revenue sought to be recoverable, he may file suit on the conditions, as laid down in Sec. 287-A namely after depositing the amount sought to be recovered under protest and producing receipt of such payment. The suit challenging the said recovery is confined within the ambit as laid down in Sec. 287-A except that exception against recovery of any sum recoverable as land revenue are barred u/s 330 of U.P. Zamindari Abolition and Land Reforms Act, 1950. So far as the question of injunction prohibiting the Mandi Samiti from recovering the said amount as arrears of land revenue cannot be permitted because of the reason that the damage or injury that might be suffered by the plaintiff petitioner, can be quantified in terms of money. The injury being capable of quantified is not subject matter of injunction as is provided u/s 38 of the Specific Relief Act. See:

- (i) **Hindalco Industries Ltd. vs State of UP, AIR 2010 All 94 : *Mines & minerals dues***
- (ii) **Sri Gopal Ji vs. Krishi Utpadan Mandi Samiti, Ghazipur, 1996 (87) RD 206 (All) : *Case of dues of Mandi Samiti***
- (iii) **Sir Shadi Lal Enterprises Ltd. vs. State of U.P., 1995 ALJ 1517 (All— D.B.) : *Case of recovery of electrical dues***

25(B).Sections 330 & 287-A to bar Civil Suit against recovery certificate issued by Collector for recovery of amount recoverable as land revenue : Sections 330 & 287-A bar Civil Suit against recovery certificate issued by Collector for recovery of amount recoverable as land revenue. Jurisdiction of civil court in such matters is expressly barred by Section 330. Deposit of the amount sought to be recovered as land revenue under protest is a condition precedent u/s 287-A for instituting any such suit in the civil court. See : **M/s. R.K. Industries Vs. UP Vitta Nigam, 2011 (113) RD 463 (All)**

26. Mutation Order and entries of revenue records & their relevance in Civil Courts : It is settled law that mutation entries are only for the purpose of enabling the state to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act. Even if the suit property has been mutated in favour of defendant the case of plaintiff which is based on title can not be adversely affected as the mutation is not proof of title. Revenue record is not a document of title. It merely raises a presumption of possession u/s 110 of the Evidence Act. See :

- (i) **Gurunath Manohar Pavaskar Vs Nagesh Siddappa Navalgund, 2008 (70) ALR 176 (SC)**

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- (ii) **State of U.P. Vs Amar Singh, (1997) 1 SCC 734**
- (iii) **Talat Fatima Hussain vs Nawab Syed Murtza Ali Khan 1997 All. LJ. 312 (All)**
27. **Proceedings u/s 145 & 146 Cr.P.C. & jurisdiction of civil court** : It cannot be said that in every case where a civil suit is filed, proceedings u/s 145 Cr.P.C. would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings u/s 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate. See :
- (i) **Amresh Tiwari vs. Lalta Prasad Dubey, AIR 2000 SC 1504 (Three-Judge Bench)**
- (ii) **bliu izfr LVsV vkWQ ;w0 ih0] 2004 iz0fu0iz0 76 ¼fdzfeuy½**
28. **Land not covered under CH Act, 1953 & jurisdiction of civil court** : Where the 'land' was being used for purposes unconnected with agricultural i.e. for making bricks, it has been held that the land was not covered u/s 3(2), (4-C) and (5) of the CH Act, 1953 and consolidation court will have no jurisdiction to decide question of title between the parties thereto. See : **Triloki Nath vs. Ram Gopal, 1974 RD 5 (All—D.B.)**
29. **Sec. 106 of the U.P. Panchayat Raj Act, 1947** : Sec. 106 of the U.P. Panchayat Raj Act, 1947 reads as under :
- “**Sec. 106—Suit against Gram Sabhas, Gram Panchayats, their officers or the officers and servants of Nyaya Panchayat** : (1) No suit or other legal proceeding shall be instituted against a Gram Sabha or Gram Panchayat [or Bhuma Prabandhak Samiti or against a member or officer or servant thereof or of Nyaya Panchayat] or against any person acting under the direction of any of these bodies or persons for anything done or purporting to have been done in official capacity under this Act, until the expiration of 2 months next after notice in writing has been in the case of Gram Sabha or Gram Panchayat, delivered in or left at the office of the Gram Panchayat concerned and in the case of a member, officer or servant of any person acting under his direction or the direction of the Gram Sabha or Gram Panchayat or Nyaya Panchayat delivered to him or left at his office or place of abode, explicitly stating the cause of action, the nature of the reliefs sought, the amount of compensation, if any, claimed and the name and place of abode of the intending plaintiff and the plaint shall contain a statement that such notice has been so delivered or left.
- (2) No action such as is described in sub-section (1) shall be commenced otherwise than within six months next after the accrual of the cause of action.”

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30. **Notice u/s 106 of the UP Panchayat Raj Act when and when not required to be issued to Gaon Sabha** : Sec. 106 of the Panchayat Raj Act is confined to suits instituted against the Gaon Sabha or its members or officers for acts done in their official capacity under the Act itself. It would follow that if any act was done which was neither done under the Act nor was done by the Gaon Sabha or any of its officers, it would not attract the provisions of Sec. 106 of the Act. Where the act complained of was not the act of Gaon Sabha but the resusal of the revenue authorities to make correct entries in the revenue papers and the Gaon Sabha was merely impleaded incidentally as a defendant because of the provisions of the Zamindari Abolition and Land Reforms Act, notice u/s 106 was not required and the court erred in holding that the suits were not maintainable because no such notices had been served on the Gaon Sabha. Even the bar of notice u/s 80 of the CPC did not apply to such a case. See : **Sheo Pujan vs. Gram Sabha, 1964 RD 157 (All)**.
- 31(A). **The Uttar Pradesh Revenue Code, 2006 (UP Act No. 8 of 2012)** : The UPZA & LR Act, 1950 and the UP Land Revenue Act, 1901 and 30 other Acts relating to the lands and land-revenue etc. in the State of Uttar Pradesh have now been repealed by the Uttar Pradesh Revenue Code, 2006. The Uttar Pradesh Revenue Code, 2006 has been assented to by the President of India on 29.11.2012 under Article 201 of the Constitution. "The Uttar Pradesh Revenue Code, 2006" has thus become law vide UP Government's Notification No.-1044/79-V-1-12-1(ka)33/06, Lucknow : dated December 12, 2012.
- 31(B). **The Uttar Pradesh Revenue Code, 2006 yet to come into force** : Section 1(3) of the Uttar Pradesh Revenue Code, 2006 reads thus : "*It shall come into force on such date as the State Government may, by notification, appoint, and different dates may be appointed for different areas or for different provisions of this Code.*"
32. **Publication in the Gazette of Uttar Pradesh Acts/Ordinances must for their coming into force** : In the case of **S.K. Shukla & Others Vs. State of UP, AIR 2006 SC 413**, the Hon'ble Supreme Court, while interpreting **Section 5 of the UP General Clauses Act, 1904**, has ruled that: "*Normally under the State General Clauses Act, an Act comes into force on the date when the assent of the Governor or the President, as the case may be, is first published in the official Gazette of the State. Therefore, publication in the Gazette is essential as it affects the rights of the public.*"
33. **Khasra entries not proof of title and ownership of land** : Khasra entries are not proof of title and ownership of land. See : **Municipal Corporation, Gwalior Vs. Puran Singh, (2015) 5 SCC 725**.

JURISDICTION OF CIVIL COURTS VIS-A-VIS C.H. COURTS

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1. Object behind the C.H. Act, 1953--- The object of the Act is to allot a compact area in lieu of scattered plots to tenure-holders so that large scale cultivation may be possible with all its attendant advantages. Thus by the reduction of boundary-lines saving of land takes place and the number of boundary disputes is reduced. There is saving of time in the management of fields inasmuch as the farmer is saved from traveling from field to field, which may be at considerable distance from each other. Proper barriers such as fences, hedges and ditches can be erected around a compact area to prevent trespassing and thieving. It would further be easier to control irrigation and drainage and disputes over water would be reduced considerably where compact area is allotted to tenure-holders. Lastly, the control of pests, insects and plant-disease is made easier where farmers have compact areas under cultivation. Their advantages resulting from consolidation of holdings are intended to encourage the development of agriculture and larger production of food grains, which is the necessity of the day.

After the enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, there was naturally a pressing demand for the consolidation of holdings in the State. Since the complicated and numerous types of tenures, both proprietary and cultivatory, the greatest stumbling block in the way of successful consolidation of holdings, have been abolished it is an opportune time to start this work. The advantages of having in compact blocks all the land farmed by one family need only be briefly mentioned. Boundary lines should be reduced in number and extent, saving land and diminishing boundary disputes, larger fields would be possible and time saved in making trips to the fields. Further, if land were all in one piece then barriers, such as fences, hedges or ditches could be erected to obtain privacy and prevent trespassing, thieving and gleaning. The control of irrigation and drainage water would be easier and control of pests, insects and disease would also not be difficult. See---

1. **Attar Singh vs. State of U.P., 1959 RD 149 (SC)**
2. **Smt. Asharfunisa Begum vs. DDC, Hardoi, 1970 RD 532 (All-FB)**
3. **Ram Manorath vs. Surya Pal, 2007(102) RD 593 (All)**

2. **“Consolidation” & its meaning**--- Sec. 3(2) of the C.H. Act, 1953 defines word “consolidation” as under---

“Sec. 3(2)--- ‘Consolidation’ means re-arrangement of holding in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact.”

3. **Definition of “land” under C.H. Act, 1953**--- Sec. 3(5) of the C.H. Act, 1953 defines the word land as under---

“**Sec. 3(5)**--- ‘Land’ means land held or occupied for purposes connected with agriculture, horticulture and animal husbandry (including pisciculture and poultry farming) and includes---

- (i) the site, being part of a holding, of a house or other similar structure; and
- (ii) trees, wells and other improvements existing on the plots forming the holding.”

4. **Jurisdiction of consolidation court not to extend to “land” unconnected with agriculture etc.**--- The use of the holding for purposes unconnected with agriculture whether permitted under the Act or whether commenced before the enforcement of this Act, in either case that area which is put to a different use other than agriculture etc. would not be covered by the definition of the word ‘land’ and therefore, the provisions of this Act would not apply. The land not covered by the provisions of the C.H. Act cannot be the subject matter of a dispute before the Consolidation courts and the said courts will have no jurisdiction to decide the question of title between the parties thereto. If the land is used for purposes of making bricks, consolidation courts are not competent to adjudicate. See--- **Triloki Nath vs. Ram Gopal, 1974 RD 5 (All—D.B.)**

5. **Land reserved for public purposes outside purview of consolidation**--- Explaining Sec. 3(2), Explanation and Sec. 19A(2) and proviso, it has been held that ‘holding’ does not include land mentioned in Sec. 132 of the UPZA & LR Act, 1950. Hence, land reserve for public purpose is outside the purview of consolidation operations. Unless declaration is made by ACO in terms of proviso to Sec. 19A (2) in provisional consolidation scheme, land of Gaon Sabha or State cannot be allotted. See-- **Shiv Mangal Singh vs. DDC, Banda, 2009 (3) AWC 3013 (All)**

6. **Notification u/s. 4 to be effective only on publication**--- Notification issued u/s. 4(2) of the C.H. Act, 1953 would be complete on the date when it is published in the unit and not before that. See---

1. **Charan Singh vs. DDC, Muzaffarnagar, 2007(102) RD 29 (All)**
2. **Sheetla Prasad vs. DDC, Varanasi, 2007(102) RD 44 (All)**

7. **Effect of notification u/s. 4 of the C.H. Act, 1953 on the suits pending in civil courts**--- On the notification u/s. 4 of the C.H. Act, 1953 being issued, by operation of law u/s. 5 of the Act, the suit gets abated. Even an appeal pending before the Supreme Court becomes infructuous. See---

1. **Bhola Nath Rai vs. Vishwanatha Rai, 1969 RD 218 (SC—Three-Judge Bench)**
2. **Ram Adhar Singh vs. Ramroop Singh, 1968 RD 254 (SC)**

8. **Abadi land & civil suit relating thereto not to abate on notification u/s. 4 of the C.H. Act**--- Abadi land is excluded u/s. 3(5) of the C.H. Act, 1953 from purview of consolidation authorities and as such suit pending in civil court in relation to Abadi land cannot be abated u/s. 5 of the Act. See---

1. **Kumar Lohar vs. Ram Dhandra Dubey, 1982 ALJ 1129 (All)**
2. **Kali Prasad vs. DDC, Allahabad, 1986 RD 225 (All)**

9. **Banjar land & civil suit relating thereto not to abate on notification u/s. 4 of the C.H. Act**--- Consolidation authorities have no jurisdiction in respect of banjar land. Sec. 49 of the C.H. Act, 1953 is no bar to a civil suit for injunction and such suit in civil court seeking injunction in respect of banjar land is maintainable. See--- **Ramphal vs. Champat Singh, 1982 ALJ 1424 (All)**

10. **Banjar & usher & land converted into grove land covered under C.H. Act**--- Where party had claimed his rights over banjar land as Zamindars and also over trees as allegedly planted by them and the banjar land had got converted into grove land, it has been held that it becomes 'land' and the consolidation authorities have jurisdiction to decide the disputes relating to such property. Usher and banjar is 'land' within the meaning of C.H. Act, 1953 and civil suit filed in civil court in relation to such land and even appeal having arisen therefrom would be liable to abatement u/s. 5(2-A) of the Act on the village coming under consolidation operations u/s. 5(3) of the Act. See---

1. **Bajjnath Rai vs. DDC, Ghazipur, 1986 RD 306 (All—D.B.)**
2. **Ram Lakhan vs. Gaon Sabha, 1983 RD 29 (All)**

11. “Grove” not covered within the meaning of land under C.H. Act--- Grove is not covered within “land” u/s. 3(5) of the C.H. Act, 1953 and groves cannot form subject matter of consolidation proceedings. Inclusion of groves in chak is ultra vires and not binding as the same is beyond the jurisdiction of the consolidation authorities. Such order of the consolidation authorities being void can be ignored. See--- **Prem Pal Singh vs. Board of Revenue, 1998 (2) AWC 2(113) (NOC)**

12. C.H. Act to apply to grove land as well--- The provisions of Secs. 7 to 11 and 11-A of the Act to apply to grovelands. Determination of title over them under Sec. 9 to 11 is final and not liable to be questioned in any court of law and Sec. 49 ousts the jurisdiction of civil and revenue courts to entertain any suit or civil proceedings in respect of them. See--- **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**

13. Suit for injunction, declaration of title or rights or interest in land to abate u/s. 5 of C.H. Act--- It is well settled that every suit and proceeding in respect of ‘declaration of rights, title or interest in any land’ includes a suit for possession. Even such suits would abate whether they are pending in the trial court or in appellate court. In the instant case, the suit which ought to have been filed was one for possession. Even a suit for an injunction implies a declaration of right or title to hold land. Even a suit for an injunction, which involves a declaration of title or right or interest in land, would be struck by Sec. 5 of the UPCH Act. A suit for an injunction which does not involve such a declaration, but is based on an alleged right of easement, may fall outside the provisions of Sec. 5. However, as the instant suit is not based on an alleged easementary right, but involves a declaration of right and title to a portion of plot No. 1200, it must be held to have abated. See--- **Zor Singh vs. Hukum Singh, 1971 RD 331 (All)**

14. Civil suit for permanent prohibitory & mandatory injunction, demolition of construction & damages not to abate on commencement of consolidation operations--- Where in a civil suit the relief of demolition of certain construction as well as injunction against interference into possession and recovery of damages was sought, it has been held that none of these reliefs can be granted by the consolidation courts since no effective relief can be granted by the consolidation courts, the mere fact that the question of title has also to be decided to grant the said relief, it cannot be said that Sec. 5(2)(a) of the C.H. Act, 1953 would apply. If the consolidation authorities are not competent to go into the real controversy involved in the suit, it cannot be abated. In a suit seeking mandatory injunction for demolition of constructions, the only

effective relief would be to direct the removal of the constructions. Such a relief would be beyond the competence of the consolidation authorities. There is no provision in the Act under which such an order can be enforced or given effect to. A suit of such nature cannot be abated and must be decided by the court. See---

1. **Ramphal vs. Sheo Mangal, 1980 ALJ 700 (All)**

2. **Hasrat vs. Haridwar, 1973 RD 204 (All)**

15. Civil suit for possession to abate u/s. 5 on notification u/s. 4 of the C.H. Act-

-- It is well settled that every suit and proceeding in respect of 'declaration of rights, title or interest in any land' includes a suit for possession. Even such suit would abate whether they are pending in the trial court or in appellate court. In the instant case, the suit which ought to have been filed was one for possession. Even a suit for an injunction implies a declaration of right or title to hold land. Even a suit for an injunction, which involves a declaration of title or right or interest in land, would be struck by Sec. 5 of the UPCH Act. A suit for an injunction which does not involve such a declaration, but is based on an alleged right of easement, may fall outside the provisions of Sec. 5. However, as the instant suit is not based on an alleged easementary right, but involves a declaration of right and title to a portion of plot No. 1200, it must be held to have abated. See--- **Zor Singh vs. Hukum Singh, 1971 RD 331 (All)**

16. Suit for cancellation of sale deed involving agricultural land to abate on notification u/s. 4 of the C.H. Act, 1953---

Suits for cancellation of sale deed in respect of agricultural land, which are pending on the date of the notification u/s. 4 of the UP Consolidation of Holdings Act, 1953, should be abated u/s. 5(2) of that Act. Where a civil suit was filed for cancellation of sale deed in respect of agricultural land on the ground of the sale deed being void as executed without authority and appeal was pending, it has been held that on notification being issued u/s. 4 of the C.H. Act bringing the village where suit land was situate, the suit stood abated by virtue of Sec. 5(2) of the C.H. Act. Consolidation authorities are competent to decide right, title and interest in suit land ignoring the sale deed which is admittedly void. Document which is void and liable to be ignored by courts, would not affect the jurisdiction of consolidation authorities and they would be well within their jurisdiction to adjudicate upon that document so as to finally decide the rights of parties. See---

1. **Bekaru vs. Shiv Murat, 2001 (2) AWC 1225 (All)**

2. **U.P. State Sugar Corporation Ltd. vs. DDC, 2000 (2) AWC 933 (SC)**

3. **Jagarnath Shukla vs. Sita Ram, 1969 RD 429 (All—D.B.)**

5. **Gorakh Nath Dube s. hari Narain Singh, AIR 1973 SC 2451**

17. **Civil suit for cancellation of sale deed when not to abate on notification u/s. 4 of the C.H. Act**--- A suit for cancellation of a sale on the ground that it was not for legal necessity or consideration is not a suit for a declaration of rights or interests over land nor for possession of land or for partition. Therefore, even after the initiation of consolidation proceedings, this part of the suit cannot be stayed. The proper procedure would be to decide the suit for a declaration that the sale deed is invalid and remit this decision to the consolidation proceedings for decision of other questions namely, which party is entitled to this land, and so on. See--- **Sri Niwas vs. Sarwan, 1965 RD 310 (All)**

18. **Civil suit for cancellation of will deed to abate on notification u/s. 4**--- Where during the consolidation operations, a civil suit for cancellation of will deed was filed by stating that the will was result of forgery, it has been held that the jurisdiction of the civil court was barred u/s. 5 of the C.H. Act, 1953 as the will deed, allegedly a result of forgery, was a void document and not a voidable document. See---

1. **Amar Nath Singh vs. D.J., Jaunpur, 1988 RD 284 (All)**

2. **Amanatullah vs. Mohd. Faryad, 1978 RD 262 (All)**

19. **Abatement of suit not automatic but requires order**--- Abatement of suit u/s. 5(2) of the C.H. Act is not automatic but it requires passing of order of abatement by the court before which the suit is pending. See--- **Ram Nath vs. Purnmasi, 1975 RD 152 (B.R.)**

20. **Civil suit for cancellation of sale deed to abate u/s. 5 of the C.H. Act**--- Where a civil suit was filed for cancellation of sale deed involving agricultural land by stating that the sale deed was void for being executed by imposter, it has been held that only the consolidation authorities had jurisdiction to decide the dispute. A void sale deed can be ignored by the consolidation authorities. See---

1. **Bhurey Lal vs. District Judge, Budaun, 1997 (88) RD 149 (All)**

2. **Gorakh Nath vs. H.N. Singh, 1973 RD 423 (SC)**

21. **Composite civil suit for partition of house as well as Bhumidhari plots and jurisdiction of civil court**--- In a suit for partition of joint family properties consisting of houses, cattle, movable and **sirdari** and **bhumidhari** plots, the civil court passed a decree allotting certain sirdari plots to the petitioners. During consolidation operations, the Deputy Director of Consolidation held that, since the commencement of the U.P.

Zamindari Abolition and Land Reforms Act the civil court had no jurisdiction to partition sirdari holdings. He held that one of the respondents was entitled to a certain share in the aforesaid sirdari plots. On writ petition, held: A civil court has inherent power to decide the question of its own jurisdiction. It is also settled that a court has jurisdiction to decide rightly as well as wrongly. The decision of the civil court previous suit as to his jurisdiction to entertain the suit, which was a composite suit, hence, will operate as res judicata between the parties in the consolidation proceedings under the doctrine of res judicata. See--- **Gokul vs. DDC, 1968 RD 160 (All)**

22. Notification u/s. 4 of the C.H. Act when not to render the already passed decree as nullity?--- Where notification u/s. 4 of the C.H. Act, 1953 in respect of land in dispute was published during pendency of appeal, it has been held that the decree passed by Addl. Civil Judge holding that Sec.5 of the Act was not applicable after publication of notification u/s. 4 of the Act brought to his notice would not render the decree nullity. See--- **Ram Audh Singh vs. State of U.P., 1969 ALJ 748 (All—F.B.)**

23. Fate of preliminary & final decree after notification u/s. 4 of the C.H. Act--- Where a preliminary decree was already passed in a partition suit before the issue of notification u/s. 4 of the C.H. Act, it has been held that the suit would not abate so far as declaration of rights under the preliminary decree was concerned. Although a case may not terminate unless final decree was passed, yet there may be finality to the various stages of that case and in those proceedings there may be a stage where the parties have already obtained a declaration in respect of their rights or interests in any land which is the subject of consolidation proceedings and if that declaration has become final and is no longer pending for its finality, the declaration of rights so obtained in a preliminary decree cannot be affected by a notification made under the C.H. Act. See---

1. **Sukhkhan vs. DDC, 2003 (21) LCD 1370 (All)**
2. **Moolchand vs. DDC, 1995 RD 490 (SC)**
3. **Sobaran Singh vs. DDC, 1992 RD 359 (All)**
4. **Satish Kumar vs. Lalta Tiwari, 1974 RD 379 (All—L.B.)**

24. Preliminary decree when to be given effect to by the consolidation authorities during the pendency of proceedings for final decree--- There is, thus, distinction between a case in which an appeal is filed against a preliminary decree and a case in which a preliminary decree is not appealed against and its correctness is not

assailed. If, therefore, a Notification u/s. 4 of the Act is issued in a case where an appeal against the preliminary decree was not pending, the latter, viz. the preliminary decree, will remain unaffected and will not abate but if the preliminary decree had been assailed in appeal, and the appeal is pending on the date of Notification, the latter, namely, the notification, will have the effect of abating the entire suit/proceedings including the preliminary decree passed therein. On the contrary, if an appeal is filed against the final decree without there being any appeal against the preliminary decree and the preliminary decree becomes “unassailable” on account of Sec. 97 CPC, the Notification u/s. 4 would abate the proceedings relating to the final decree without in any way touching, impairing or affecting the preliminary decree. The reason, to repeat, is obvious. Once, a preliminary decree is passed, the proceedings so far as declaration of rights or interests in the land are concerned, comes to an end. Those rights are to be worked out by the final decree. In a case, therefore, where a preliminary decree has already been passed and only the proceedings relating to the preparation of final decree are pending in any Court, either at the original stage, it cannot be said that proceedings relating to “declaration or determination of rights in the land” within the meaning of Sec. 5(2) of the Act are pending. See---

1. **Moolchand vs. DDC, 1995 RD 490 (SC)**
2. **Satish Kumar vs. Lalta Tiwari, 1974 RD 379 (All—L.B.)**

25. Question of title not open after determination of disputes under the C.H. Act--- In view of Sec. 49 of the C.H. Act, 1953, questions of title do not remain open after the determination of all disputes under different provisions like Sec. 9, 10, 11, 27 of the C.H. Act, 1953. See---

1. **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**
2. **Kailash Chandra vs. State of U.P., 2007(102) RD 301 (All)**

26. Notification u/s. 4 of the C.H. Act, not to bar proceeding for cancellation of lease u/s. 198(4)--- Notification issued u/s. 4(2) of the C.H. Act, 1953 does not bar the proceedings for cancellation of lease u/s. 198(4) of the UPZA & LR Act, 1950 and such proceeding does not abate u/s. 5(2) of the Act. See---

1. **Smt. Suhagwati vs. State of U.P., 2008(104) RD 510 (All.)**
2. **Similesh Kumar vs. Gaon Sabha Uskar, Ghazipur, 1977 RD 408 (All-FB)**
3. **Bharat vs. Board of Revenue, 2006 (101) RD 613 (All)**

27. Sec. 5 of the C.H. Act not to apply when the decree already executed---

When the suit is finally decided, decree executed and parties are put into possession, rehearing of the suit is not possible. The consolidation authorities are not at all competent to deal with the matter. The appeal and proceedings cannot be abated u/s. 5 of the C.H. Act, 1953. If a matter can be gone into consolidation proceeding, a suit in respect of such matters must stand abated u/s. 5 of the Act. If, however, the matter is such that the consolidation authorities are incompetent to decide, such a matter could not be abated. See--- **Sarju Koeri vs. Mukteshwar Pandey, 1972 RD 150 (All)**

28. Civil suit u/o. 21, rule 63 CPC not to abate u/s. 5(2) of the C.H. Act---

The question, whether any plots are or are not liable to attachment and sale in execution of a decree can be decided not by the consolidation authorities but in a suit filed u/o. 21, rule 58. Since no relief can be obtained by the application from the consolidation authorities in this regard, the suit is not covered by Sec. 5(2) and therefore the appeal against a decree in the suit cannot be abated u/s. 5(2). See--- **Ram Bharose Lal vs. Sukhdevi, AIR 1975 All 90**

29. Review application not to abate u/s. 5(2)(a) of the C.H. Act---

On notification being issued u/s. 4(2) of the C.H. Act, 1953, a review petition already pending would not be abated as Sec. 5(2)(a) of the Act does not contemplate a review petition. See--- **Dwarika vs. Deu, 2009 (108) RD 341 (All—L.B.)**

30. Sec. 5(2) not to apply when notification u/s. 52 already issued---

Sec. 5(2) of the C.H. Act, 1953 as incorporated in 1966 does not apply to cases where a notification u/s. 52 has already been published. See--- **Dahdeo Singh vs. Jagdish Singh, 1971 RD 337 (All)**

31. Civil suit for cancellation of voidable deed not to abate u/s. 5(2) of the C.H. Act---

A civil suit pending in respect of cancellation of void document abates u/s. 5(2) of the C.H. Act but the suit for cancellation of voidable deed does not abate. Both void and voidable instruments do not stand at par with reference to Sec. 5 of C.H. Act. The void documents were invalid and were liable to be disregarded by the consolidation authorities. So far as the other class of documents, viz., the voidable documents was concerned, their legal effect can be taken away only by them being cancelled or set aside and that the documents could be cancelled only by a court having power to cancel them and that the documents remain binding so long as they were not cancelled. The consolidation authorities had no power to cancel such documents. Where there are allegations that fraud was practiced with respect to the contents of document, such

document is voidable and not void and suit to avoid such document cannot abate u/s. 5(2) of the C.H. Act, 1953. See---

1. **Ram Nath vs. Smt. Munna, 1976 RD 220 (All--F.B.)**
2. **Brijendra Singh vs. Ird ADJ, Agra, 2005 (99) RD 16 (All)**
3. **Hawaldar Singh vs. Aditya Singh, AIR 1978 All 266**

32(A). Scope & extent of Sec. 49 of the C.H. Act--- The word “entertain” in Sec. 49 means ‘proceed to consider or adjudicate upon’. Entertainment of a suit or proceeding in Sec. 49 means that the suit or proceeding such as was filed will not be admitted to consideration or adjudicated upon by a Civil or Revenue Court. Obviously entertainment would relate to the point of time when the appeal is being considered, i.e., the first occasion on which the Court takes up the matter for consideration which may be the admission stage after the appeal has been filed in the Court. Sec. 49 thus debars the Court from taking into consideration for the purposes of the admission of the appeal the merits of the case if the appeal is with respect to such rights as are referred to in that section in a land which is situated in a village which has been brought under consolidation operations. See--- **Mst. Nazira Begum vs. Syed Ali Zaheer, AIR 1974 All 104**

32(B). Sec. 49 of the C.H. Act when not to operate as bar : If the cause of action disclosed to have occurred later on after close of consolidation operations and some new desire is expressed or new relief is claimed on subsequent cause of action that did not exist before, it has been held that previous conclusion of consolidation operations would not be a bar and provisions of Section 49 of the C.H. Act would not be attracted. See : **Zamindar Prasad Vs. Hawaldar, 2013 (118) RD 164 (All)**.

33. Sec. 49 of the C.H. Act & Principles of resjudicata & constructive resjudicata--- Bar of Sec. 49 of the C.H. Act, 1953 applies to the civil or revenue courts in the form of resjudicata and constructive resjudicata. The bar u/s. 49 contemplates bar of entertainment of suit by a civil or revenue court in respect of following matters-----

- (a) the declaration and adjudication of rights of tenure holders.
- (b) adjudication of any other rights arising out of consolidation proceedings, and
- (c) adjudication of any right in regard to which a proceeding could or ought to have been taken under UPCH Act, 1953. See---
 - (i) **Raj Nath Dubey Vs. DDC, Allahabad, 2014 (102) ALR 4 (All)**

(ii) **Amar Singh vs. State of U.P., 2008 (26) LCD 1051 (All)**

34. Bar of Sec. 49 need not be decided as preliminary issue in every case--- The question of bar of Sec. 49 of the C.H. Act, 1953 need not be decided as preliminary issue in every case. However, in appropriate cases bar of jurisdiction u/s. 49 of the Act, may be decided as preliminary cases. There is no absolute bar in this regard. See—

1. **Smt. Manjhari vs. 2nd ADJ, Jaunpur, 2007(102) RD 293 (All)**
2. **Kanak Lata vs. DDC, Allahabad, 2003(95) RD 381 (All)**
3. **Smt. Fatima Bibi vs. Board of Revenue, Allahabad, 1981 ALJ 812 (All)**
4. **Pushpan vs. Nirmala, 1991(1) ACJ 573 (All)**

35. Bar of Sec. 49 not to apply in the event of fraud etc.--- When fraud has been played in consolidation proceedings, bar of Sec. 49 of the C.H. Act, 1953 does not apply and a suit u/s. 229-B of the UPZA & LR Act, 1950 for correcting the entries is maintainable. See---

1. **Amar Singh vs. State of U.P., 2008 (26) LCD 1051 (All)**
2. **Smt. Sudama vs. Hansraj, 1981 RD 116 (All)**
3. **Karbalai Begum vs. Mohammad Sayeed, 1980 RD 300 (SC)**

36(A). Sec. 49 not to bar suit before civil court for cancellation of sale deed obtained by fraud : Where civil suit was filed before the civil court obtained by fraud, following the Full Bench decision of the Hon'ble Allahabad High Court in **Rampadarath Vs Second ADJ, Sultanpur, 1989 RD 21 (Full Bench)**, it has been held that the suit was not barred by Section 49 of the C.H. Act, 1953 and the same was maintainable before the Civil Court. See : **Smt. Sajrunnisha alias Sajida Khatoon & Another Vs District Judge & Another, 2013 (119) RD 415 (All)**.

36(B). Sec. 49 when to bar civil suit for cancellation of sale deed obtained by fraud--- Where a civil suit u/s. 9 CPC for cancellation of sale deed was filed on the ground that the sale deed was got executed by fraudulent mis-representation as to its character and not merely as to its contents, it has been held that the transaction was void and not voidable. When thumb impression was obtained from illiterate plaintiff land lady on two documents viz. one for gift of her land to her daughter and another for the sale of land to defendants and got them registered on mis-representation that he was executing only the gift deed, the plaintiff was totally deceived as to character of

the documents and therefore the transaction was void and the civil suit u/s. 9 CPC was barred by Sec. 49 of the C.H. Act, 1953. The transaction i.e. the sale deed being void can be adjudicated upon by the consolidation courts. If the sale deed in question whose cancellation/declaration has been sought in the civil court on plaintiff's own pleading is a void document, consolidation authorities have every jurisdiction to adjudicate with regard to such sale deed. See---

1. **Dularia Devi vs. Janardan Singh, 1990 (Suppl) SCC 216**

2. **Brijendra Singh vs. IIIrd ADJ, Agra, 2005 (99) RD 16 (All)**

37. **Bar of Sec. 49 to be decided after evidence of parties----** In the event of allegations regarding fraud during the consolidation proceedings, the bar of Sec. 49 of the C.H. Act, 1953 should be decided after permitting the parties to lead their evidence. See--- **Amar Singh vs. State of U.P., 2008(104) RD 421 (All)**

38. **Injunction suit by not recorded tenure holder bared u/s. 49---** Claim of unrecorded tenure holder, if not raised during consolidation proceedings, becomes barred u/s. 49 of the C.H. Act, 1953. Relief of injunction can not be granted without declaring title and declaration of title is clearly barred u/s. 49 of the C.H. Act. See---

1. **Narendra Singh vs. Jai Bhagwan, 2006(100) RD 69 (SC)**

2. **Smt. Manjhari vs. 2nd ADJ, Jaunpur, 2007(102) RD 293 (All)**

39. **Jurisdiction of civil court to decide ownership of trees standing on banjar land not barred u/s. 49---** Jurisdiction of civil court to decide ownership of trees standing on banjar land is not barred u/s. 49 of the C.H. Act, 1953. See--- **Jheelam vs. Malti Devi, 1987 RD 242 (All)**

40. **Sec. 49 not to bar suit u/s. 229-B by Co-sharer not recorded in consolidation records---** A co-sharer who claims to be in possession of the property and his name being not recorded in the consolidation proceedings is not debarred from bringing a suit u/s. 229-B of the UPZA & LR Act, 1950. See--- **Amar Singh vs. State of U.P., 2008(104) RD 421 (All).**

41. **Injunction suit based upon rights declared by consolidation authorities not to abate u/s. 49---** Where a suit for injunction was filed in civil court based upon the rights declared by the consolidation authorities, it cannot be said to be barred u/s. 49 of the C.H. Act, 1953. A suit which proceeds to enforce the entries made in consolidation proceedings is not barred. If the plaintiff has not raised the question of title with respect to the piece of land in dispute, suit cannot be barred u/s. 49 of the Act. See--- **Hori Lal vs. Babu Ram, 2005 (99) RD 314 (All)**

42. Bar of Sec. 49 in cases of minors—It would appear from the provisions of Sec. 6(i) of the Limitation Act that a minor is entitled to institute a suit or make an application within the same period after the disability has ceased as would otherwise have been allowed from the time specified thereof in the third column of the Schedule. Where the notification u/s. 52 of the C.H. Act, 1953 was issued during the minority of plaintiff, the consolidation proceedings had closed before the minor became major and she could not move the consolidation courts for the declaration of her rights as a tenure holder after the ceasure of her disability, it has been held that in view of the disability it cannot be said that she could or ought to have taken a proceeding under the C.H. Act during the consolidation proceedings. The bar of Sec. 49 of the Act cannot apply unless the second condition is fulfilled. See—**Smt. Prabhawati vs. Kashi, 1983 RD 196 (All)**

43. Applicability of Sec. 49 & 52 after de-notification of the consolidation proceedings--- Where a suit is filed in a civil or revenue court questioning the allotment of plots during the consolidation operations already under taken under the C.H. Act, 1953, it has been held that the allotments so made during the consolidation operations became final and the suit in civil or revenue court is barred u/s. 49 r/w. Sec. 52 of the C.H. Act, 1953. See--- **Zafar Khan vs. Board of Revenue, U.P., 1984 (Suppl) SCC 505**

44. Party seeking ouster of jurisdiction of civil court to establish it--- It is for the party who seeks to oust jurisdiction of civil court u/s. 9 CPC to establish his contention. See--- **Abdul Waheed Khan vs. Bhawani, AIR 1966 SC 1718**

45. Permission of SOC not required when the sale deed is executed by civil court--- The restriction contained in Sec. 5(c)(ii) of the UPCH Act relates to a voluntary sale by the tenure holder. If the tenure holder refuses to execute sale deed in pursuance of an agreement to sell and the Civil Court is called upon to execute necessary sale deed in favour of the decree holder, it would be too much to expect that the Civil Court should seek permission of the Settlement Officer of Consolidation for executing the necessary sale deed in favour of the decree holder. More reading of Sec. 5(c)(ii) of the Act indicates that the bar contained in the aforesaid section is only upon the tenure holder. If the Civil Court executes a sale deed against the will of the tenure holder it would not at all be necessary for the Civil Court to seek permission of the Settlement Officer of Consolidation under the provisions of Sec. 5(c)(ii) of the Act. See--- **Smt. Bhagwati vs. DDC, 1983 RD 201 (All)**

46. C.H. Courts can rely upon the evidence & findings recorded by the Civil Court--- Although the effect of notification issued u/s. 4(2) r/w. Sec. 5 of the C.H. Act, 1953 would be that the civil suit would stand abated but the evidence recorded in the suit or appeal and the findings recorded by the civil courts do not get wiped out. Unless contrary evidence is established, consolidation authorities can go into the evidence and are entitled to rely upon the findings recorded by the civil courts in support of their conclusions. See--- **Ram Prasad vs. Asstt. Director of Consolidation, 2001 (19) LCD 958 (SC)**

47. Eviction suit u/s. 209 of the UPZA & LR Act not barred after the expiry of consolidation proceedings--- A suit u/s. 209 of the UPZA & LR Act, 1950 for eviction of a trespasser filed after the consolidation proceedings had come to an end is not barred by Sec. 49 of the UPCH Act, 1953. See---

1. **Sher Ali vs. Board of Revenue, 1987 RD 155 (All)**

2. **Ram Raj vs. Board of Revenue, 1978 RD 13 (All—D.B.)**

48. Presumption about entries during consolidation operations rebuttable--- After the amendment of U.P. Consolidation of Holdings Act in the year 1963 the entries made during consolidation operation are only presumed to be true until the contrary is proved. This change in the section would suggest that wrong entries made during consolidation proceedings or wrong entries which remained uncorrected during consolidation proceedings could be proved to be wrong in suit instituted after the conclusion of consolidation proceedings. If an Abadi plot is wrongly recorded as an agricultural plot during consolidation proceeding and because of absence of knowledge of this fact by the real owner the entry in revenue papers remains uncorrected, a suit claiming right in the Abadi plot cannot be held to be barred by Sec. 49 of the Act. In such cases it is Sec. 27 of the Act which has to be looked into. Since the entry has not been corrected during consolidation operation every presumption will be made against a person challenging the entry. But once he proves the inaccuracy of the entry he is entitled to succeed. This is the result of the amended Sec. 27 sub-clause (2) of the Act. See--- **Jagdeo vs. Lauhar, 1970 RD 396 (All)**

49. Correctness of consolidation entries not to be questioned by civil & revenue courts--- Having regard to the various provisions of the C.H. Act, 1953, as also the law as specifically laid down in Sec. 49, the only conclusion one can arrive at is that the jurisdiction of Civil and Revenue Courts to question the correctness or otherwise of the entries which are made in the revenue records as a result of the consolidation

proceedings is completely barred. See--- **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**

50. Orders passed during first phase of consolidation proceedings not to be challenged during second phase of consolidation proceedings--- Where orders of the consolidation authority regarding ownership and share passed during the first phase of consolidation proceedings in the year 1961 were not challenged by the party and the party had allowed those orders to have become final, it has been held that in view of the bar u/s. 49 of the C.H. Act, 1953, it was not open for the party to raise same issues in second round of consolidation proceedings. Such objection or suit is clearly barred by Sec. 49 of the C.H. Act. See---

1. **Ashok Kumar vs. DDC, Allahabad camp Fatehpur, 2009 (4) AWC ` 3545 (All)**
2. **Mewa Lal vs. IInd ADJ, Mirzapur, 2009 (107) RD 458 (All)**
3. **Sri Ram Laut vs. Sri Gomti, 2008 (26) LCD 1223 (All)**

51. Khasra entries not proof of title and ownership of land : Khasra entries are not proof of title and ownership of land. See : **Municipal Corporation, Gwalior Vs. Puran Singh, (2015) 5 SCC 725.**
