CASE NO.:
Appeal (civil) 5060 of 2007

PETITIONER:
Mahant Dooj Das (Dead) through LR

RESPONDENT:
Udasin Panchayati Bara Akhara & Anr

DATE OF JUDGMENT: 01/05/2008

BENCH:
P.P. Naolekar & Aftab Alam

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 5060 OF 2007

P.P. NAOLEKAR, J.:

1. The facts necessary for adjudicating the question involved are that the plaintiff-appellant (for convenience hereinafter referred to as "the plaintiff") filed a suit claiming decree for possession over the properties/lands [21 Bighas, 8 Biswa Kachhi Bhumi (land) No. Khasra 27M and 28M and Bhumi (land) 1 Bigha, 3 Biswa, 10 Biswanshi Kacchi No. Khasra 27M and 28M and Bhumi (land) 19 Bigha, 3 Biswa, 15 Biswansi Khasra No. 4M and Bhumi (land) 30 Bigha Kacchi No. Khasra 4M total Bhumi (land) 71 Bighas, 15 Biswa, 5 Biswansi Kacchi situated at Bhupatwala Kalan, Pargana Jwalapur, Distt. Saharanpur and houses and 4 boundary walls pakka and well with wheels and brick-kiln, garden and tube-well with oil engine and tin shed etc. which have been situated on the above mentioned land presently Khasra No. 4/5 (4/27) 48/6/2(28/26 and 48/28); Description of Boundary No. 1: East \026 Way, West \026 Road Haridwar-Rishikesh, North \026 Land of Sohanlal Mistri, South \026 Nala and after that boundaries of Mahant Sadhu Singh; Description of Boundary No. 2: East \026 Road Haridwar-Rishikesh, South \026 Land of Shankaranand, North \026 Land of Brahamchari and after that Nala, West \026 Forest Land) mentioned in the plaint after adjudging the sale deed dated 5.5.1962 registered on 19.6.1962 invalid executed by Budh Dass in favour of Udasin Panchayati Bara Akhara, defendant No.1-respondent No.1 (for convenience hereinafter referred to as "defendant No.1") to be void and cancelling the same. The suit was filed on the allegations that Mahant Tahal Dass was Udasin of Panth of Revered Shrichand. In the said Panth there is a custom that Mahant cannot marry and he is entitled to initiate a 'Chela'. After the death of Mahant, his eldest chela Dooj Das succeeded to all rights and interests in the properties of his Guru. It is also a custom in the Panth that on the tenth day of the death of Guru there is a ceremony called Dassehra. Akhand Path of Guru Granth Saheb is performed and Bhog is offered and eldest chela of the deceased Guru is acknowledged as the heir of the deceased, whereafter he is known as 'Mahant'. Mahant Tahal Dass initiated the plaintiff-Dooj Das as his chela on 23.7.1937 at the Dera of Bhetiwala, Tehsil Muktasar, District Ferozpur in accordance with the custom, in the presence of respectable persons and from that day the plaintiff became the chela of Mahant Tahal Dass. Mahant Tahal Dass died on 5.12.1957 and the plaintiff being the eldest chela was recognized and acknowledged as successor of the deceased Mahant and thereafter was known as Mahant Dooj Dass. The plaintiff succeeded to all rights, properties and assets of Mahant Tahal Dass. Meanwhile, before the death of Mahant Tahal Dass, defendants Prag Dass, Ishwar Dass and Hari Dass were also initiated

as chelas by him. The plaintiff being the eldest chela, succeeded to all the properties left by his Guru, according to the custom. Mahant Tahal Dass acquired the suit properties by permanent leases measuring 71 Bighas, 15 Biswa and 15 Biswansi Kachi situated at Bhupatwala Kalan, Pargana Jwalapur, Tehsil Roorkee, Distt. Saharanpur within the limits of Municipal Board, Hardwar. Mahant Tahal Dass was the permanent lessee of these lands and he was in occupation thereof. He was cultivating the same through his men and sewaks. He was paying lagan also. After the death of Tahal Dass, the plaintiff became the permanent lessee of all the lands. He also had right therein as being the eldest chela, heir and successor of Mahant Tahal Dass. On the occasion of Ardh Kumbhi, the plantiff went to Hardwar for the first time on 11.4.1968 after the death of his Guru to have a dip in the holy Ganges on the sacred day along with his sewaks and there he learnt that one Budh Dass (since deceased) claimed himself to be the chela of Mahant Tahal Dass and transferred the rights under the leases to defendant No.1 through defendant No.2/respondent No.2 (for convenience hereinafter referred to as "defendant No.2") and, therefore, he obtained a certified copy of the sale deed on 19.4.1968. Budh Dass was never initiated as chela by Mahant Tahal Dass and, therefore, he had no right, title and interest over the suit lands. Defendants Nos. 1 and 2 did not derive any right or title in the suit properties by the sale deed. The sale deed was in collusion with defendants Nos. 1 and 2.

2. Defendants Nos. 1 and 2 filed their written statement denying the custom alleged in the plaint. As per the defendants, the plaintiff was never initiated as the chela of Mahant Tahal Dass. The last rites of Mahant Tahal Dass were denied to have been performed by the plaintiff. However, the defendants admitted that Mahant Tahal Dass had properties at Bhittiwala, Sheikha, Govindgarh, Karamwala, Rampura and Bhupatwala (Hardwar). It is also admitted that Mahant Tahal Dass died in the year 1957 and the suit property belonged to Tahal Dass on permanent leasehold rights. It is alleged that U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 is applicable to the suit lands and under the Act, proceedings in respect of the lands cannot be initiated in civil court and as such civil court has no jurisdiction to try the suit. It is further pleaded that the defendants had purchased the suit properties bonafide for a consideration of Rs.32,000/- from Budh Dass, who died three years before the institution of the suit. In the written statement, it was alleged that Budh Dass, the transferor who was the chela of Tahal Dass, succeeded to the properties situated at Bhupatwala, Hardwar after the death of his Guru Mahant Tahal Dass.

3. Defendant No.6 Hari Dass also contested the suit by filing a separate written statement claiming therein the right, title and interest in the suit property but lost in the trial court, in the first appeal and Second Appeal No. 2713 of 1977 filed by him was withdrawn. Thus, in the present proceedings he is not the contesting party.

4. The trial court decreed the suit of the plaintiff holding that the plaintiff was initiated as the eldest chela of Mahant Tahal Dass according to the custom and the plaintiff became the heir and successor in respect of the properties of Mahant Tahal Dass. Budh Dass, the transferor of property to defendants Nos. 1 and 2 did not succeed to the property at Bhupatwala at Hardwar owned by Mahant Tahal Dass. As per the trial court’s finding, there never existed any person by the name Budh Dass nor had he ever succeeded to the rights and interests of Mahant Tahal Dass, whatsoever to the suit properties; hence, Budh Dass was incompetent to execute the sale deed dated 5.5.1962 in favour of defendants Nos. 1 and 2. It also appeared to the trial court that the disputed sale deed dated 5.5.1962 was completely a forged and fictitious document. Consequently, the trial court set aside and cancelled the sale deed dated 5.5.1962 executed by Budh Dass in favour of defendants Nos. 1 and 2 and decreed the suit. As regards

jurisdiction of the civil court to try the suit and the valuation put by the plaintiff, it was held, while trying them as preliminary issue on 13.10.1969, that the civil court had jurisdiction to try the suit.

5. Aggrieved by the judgment and decree of the trial court, defendants Nos. 1, 2 and 6 filed appeals numbered as C.A.No.117 of 1976 titled Hari Dass vs. Mahant Dwaj Dass & Ors. and C.A. No.118 of 1976 titled Udaseen Panchayati Bara Akhara & Anr. vs. Mahant Dwaj Dass and Others. The first appellate court held that plaintiff was the eldest chela of Mahant Tahal Dass and was duly installed as successor of the Mahant and he succeeded to the properties of his Guru. Evidence on record did not establish the identity of any Budh Dass to be the chela of Mahant Tahal Dass and, therefore, he did not succeed to the suit properties. As regards the question of jurisdiction of civil court, the first appellate court held that the suit property is situated within the municipal limits of Hardwar recorded as Bhumidari land but the land in question was acquired for the purposes of erecting buildings. The lessee in fact created a dera on the spot by erecting buildings, installing tube-wells etc. Section 143 of the U.P. Land Reforms Act, 1950, was, therefore, attracted. The court further held that the cause of action for the purposes of jurisdiction depends on the facts and circumstances of each case. The real controversy in the suit is right to the office of Mahantship. Cancellation of the sale deed is also directly involved. Determination of the question of relinquishing the office of Mahantship is also involved. All these matters in controversy can only be decided by a competent civil court and, therefore, lower court has rightly upheld the jurisdiction of the civil court to try the suit. Consequently, C.A. Nos. 117/1976 and 118/1976 were dismissed and judgment and decree of the trial court was confirmed.

6. Defendants Nos. 1 and 2 preferred a second appeal before the High Court under Section 100 of the Code of Civil Procedure challenging the judgment and decree of the first appellate court. On 12.11.2002, the High Court admitted the appeal and the following three substantial questions of law were framed:

"(1) Whether after enforcement of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956, the land in suit, stood vested with the State of U.P. by operation of law free from all encumbrances and stood settled with the Appellants (Defendant No.1 and 2) exclusively? If so, whether the suit was barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950?

(2) Whether the suit was barred by law of limitation and whether the plea of limitation can be raised at the stage of second appeal in a situation when neither it was pressed before the Trial Court nor before the First Appellate Court?

(3) Whether the State of U.P. and the Gaon Sabha/Gaon Panchayat, were the necessary parties? If so, was the suit liable to be dismissed for non-joinder of necessary parties?

On an application being filed by defendants Nos. 1 and 2, the following order was passed by the High Court on 25.7.2005 :

"Heard learned counsel for the parties.

Learned counsel for the appellant/defendant, drew the attention of this Court to the application No.2741 of 2005, suggesting few more questions of law.

Already this Court has formulated the substantial question of law on 12.11.2002, with the observations that the appellant does not press other applications and rejected the same. However, now few more questions have been suggested. Since this is an old appeal, which was instituted in the year 1977, it is not just and proper to keep on framing the substantial

questions of law, each day, after hearing. In view of the sub-section (5) of Section 100 of the Code of Civil Procedure, 1908, if any substantial question of law is found left out, this Court has ample power to hear the parties on such questions and to answer them. Therefore, this Court feels that instead of framing new questions of law, it is better to proceed with the hearing of this old appeal and if any of the question of law is found left, the same would be answered by the Court, after hearing the parties. Learned counsel for the parties agreed that this appeal may be listed on 29th August, 2005 for final hearing, as both of them are coming from Allahabad.

List this appeal for final hearing on 29th August, 2005."

The High Court by its impugned order dated 23.2.2006 answering the first substantial question of law has held that by virtue of the expression "which have been so demarcated under Section 5 of the aforesaid Act" (i.e. U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956) (hereinafter referred to as "the 1956 Act"), contained in the notification, indicates that the demarcation was made before the notification under Section 8 of the 1956 Act was issued; that the land in question stood vested in the State of U.P. w.e.f. 1.7.1963; that the suit being basically for declaration of the title and the cancellation of the sale deed in respect of the agricultural area under the 1956 Act is an ancillary relief and the real question between the parties is of title in respect of agricultural area covered under the 1956 Act; and that in view of the provisions of Section 82 of the 1956 Act read with Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the 1950 Act"), the suit before the civil court between the parties is barred by law. Thus, the High Court has held that the suit as it is filed by the plaintiff was not maintainable before the civil court. As regards question No.2, the High Court has held that the suit filed in the civil court is within limitation but the suit before the revenue court would be barred by limitation. Question No. 3 was decided in favour of the plaintiff holding that the question of non-joinder of the parties stands waived by the defendants. The High Court neither framed the question of law regarding right, title or interest in the suit property nor has disturbed the findings of courts below on that issue. The High Court on the basis of the decision of the first question of law has allowed the appeal and set aside the judgment and decree passed by the courts below. The plaintiff is, therefore, before us in this appeal.

7. It is submitted by Shri Nagendra Rai, learned senior counsel appearing for the plaintiff (appellant herein) that the High Court has committed an error in holding that the land in question stood vested under the 1956 Act in the State and as such provisions of the 1956 Act are attracted and consequently the suit is required to be filed in the revenue court under Section 331 of the 1950 Act and not in civil court, which does not have jurisdiction to try the suit.

8. It is further contended by Shri Rai that the relief claimed by the plaintiff was a decree for possession over the suit lands after adjudging the sale deed dated 05.05.1962 registered on 19.06.1962 executed by Budh Dass in favour of Udasin Panchayati Bara Akhara illegal and canceling the same. The overall reading of the plaint indicates that the main relief claimed is of cancellation of the sale deed and ancillary relief is delivery of possession of the suit properties. As the effect of the sale deed had had to be got rid of by an appropriate adjudication, as a transaction could not be said to be void in law which is not required to be set aside, the suit, as it was filed, was cognizable by the civil court and not by the revenue court. The counsel urged that under Section 331(1-A) of the 1950 Act, which was incorporated in the 1956 Act, the objection to the jurisdiction of civil courts with respect to the suit shall be entertained by the court, only, if the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where the

issues are settled at or before such settlement. It is further required to be alleged and proved that entertainment of the suit results in consequential failure of justice. Thus merely because the objection has been taken to the jurisdiction of the civil court at the first instance unless a case of failure of justice is made out and findings recorded by the court to that effect, civil court's jurisdiction could not be ousted in regard to the cause of action triable by the revenue court. The High Court has not arrived at any finding in regard to the consequential failure of justice and thus could not have dismissed the suit of the plaintiff on the ground that the civil court had no jurisdiction.

9. To counter, Shri Sakha Ram Singh, learned senior counsel for the respondents submits that the land in question was a tenancy land and, therefore, shall be deemed to have been acquired under the 1956 Act by the State, and the provisions of the 1956 Act would be attracted. Therefore, there is no illegality or infirmity in the judgment of the High Court holding that the jurisdiction of the civil court is barred.

10. It is further submitted that by virtue of Section 82 of the 1956 Act, the provision of Section 331(un-amended) has been inserted in the 1956 Act whereas Section 331(1-A) has been amended in the 1950 Act by insertion by U.P. Act No.4 of 1969 on 1.9.1969. The suit was filed on 03.07.1968. It is a settled principle of law that when certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it. Section 331 of the 1950 Act has been inserted in the 1956 Act by adoption, the provision as it stood at the time of insertion by adoption would be a provision applicable in the 1956 Act and not the amended provision of the original Act, namely, Section 331(1-A), which was inserted in the original Act of 1950 on a later date and, therefore, there was no necessity to prove on the part of the defendants that there was a consequential failure of justice caused by not filing a suit in the appropriate forum. That apart, the suit would be barred by limitation in the revenue court but would be maintainable in the civil court, would itself is a proof of failure of justice. If the suit is permitted to be continued in the civil court which would be within limitation, the defendants' right to raise defence of suit before revenue court is beyond limitation would be lost. It is also submitted by the learned counsel that if the 1956 Act has no application to the suit lands, the cause of action in respect of the land would be governed under the U.P. Tenancy Act, 1939 and on its application the suit would have been maintainable before the revenue court and not before the civil court. It is urged by the learned counsel that in any case the case requires to be remanded to the High Court for adjudicating other questions which arise from the judgment of first appellate court. The High Court having expressed that in view of sub-section (5) of Section 100 of the Code of Civil Procedure, 1908, if any substantial question of law is found left out, the court has ample power to hear the parties on such questions and answer them.

11. The first and the material issue which is required to be considered by this Court is whether the land in suit would be covered and governed under the 1956 Act so as to apply the provisions of Section 331 of the 1950 Act to oust the jurisdiction of the civil court. The decision of this issue would decide whether this Court is required to go into the other questions raised by the parties in this appeal.

12. The Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 received the assent of the President on 7.3.1957 and was published in the U.P. Gazette Extraordinary dated 12.3.1957. The Act was brought into force to provide for the abolition of Zamindari system in agricultural areas situated in urban areas of U.P. and for acquisition of the rights, title and interest of the intermediaries between the tiller of the soil and the State in such areas and for introduction of the land reforms therein. Section 2(1) defines 'agricultural area' which reads as under :-

"agricultural area" as respects any urban area means an

area which, with reference to such date as the State Government may notify in that behalf, is \026

(a) in the possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove;

(b) held as a grove by or in the personal cultivation of a permanent lessee in Avadh; or

(c) included in the holding of \026

(i) a fixed-rate tenant,
(ii) an ex-proprietary tenant,
(iii) an occupancy tenant,
(iv) a tenant holding on special terms in Avadh,
(v) a rent-free grantee,
(vi) a grantee at a favourable rate of rent,
(vii) a hereditary tenant,
(viii) a grove-holder,
(ix) a sub-tenant referred to in sub-section (4) of Section 47 of the U.P. Tenancy Act, 1938; or
(x) a non-occupancy tenant of land other than land referred to in sub-section (3) of Section 30 of the U.P. Tenancy Act, 1939,

and is used by the holder thereof for purposes of agriculture or horticulture;

Provided always that land which on the date aforesaid is occupied by buildings not being "improvements" as defined in Section 3 of the U.P. Tenancy Act, 1939, and land appurtenant to such buildings shall not be deemed to be agricultural area.

(d) held on lease duly executed before the first day of July, 1955 for the purposes of erecting buildings thereon; or

(e) held or occupied by an occupier.

"Explanation \026 An area, being part of the holding of a tenant shall not be deemed to have ceased to be agricultural area by reason merely that it has not been used, during the seven years preceding the commencement of this Act, for raising crops or other agricultural produce."

Chapter II provides for demarcation of agricultural areas. The relevant provisions of Chapter II read as under :-

"3. Power to order demarcation of agricultural areas \026
(1) The State Government may, with a view to acquisition under the provisions of this Act of the rights, title and interest of intermediaries in urban areas, direct by notification in the official Gazette, that the agricultural area situated in any such area be demarcated.

(2) As soon as may after the publication of the notification under sub-section (1), the Demarcation Officer shall make enquiries in the prescribed manner, and shall determine and demarcate agricultural areas within the urban areas.

4. Publication of preliminary proposals and objections thereon \026 (1) The Demarcation Officer shall, within three months or such extended period as the State Government may in any case fix; of the date of the notification under sub-section (1) of Section 3, submit his proposals with reasons therefor to

the Commissioner who may make such modifications therein as he may consider necessary.

(2) After the Commissioner has considered the said proposals he shall publish a notice in the prescribed form in the Gazette and in such other manner as may be prescribed to the effect that the proposals as regards the demarcation of agricultural areas have been formulated and are open to inspection at the places to be specified in the said notice.

(3) Any person or local authority interested may within three months of the date of publication of the notice under sub-section (2), file an objection on the proposals before such officer or authority and in such manner as may be prescribed.

5. Final demarcation \026 (1) After the expiry of the period of three months mentioned in sub-section (3) of Section 4, the Commissioner shall proceed to decide the objections in the manner prescribed and then finally demarcate the agricultural area.

(2) After the Commissioner has finally demarcated the agricultural area under sub-section (1), he shall publish a notice in the Gazette and in such other manner as may be prescribed to the effect that the agricultural areas have been finally demarcated and their details are open to inspection at places to be specified in that notice.

(3) An appeal shall lie to the Board against the orders passed by the Commissioner under sub-section (1)."

13. Chapter III provides for acquisition of the interests of intermediaries and its consequences. Section 8 under this Chapter reads as under:
"8. Vesting of agricultural area in the State.- After the agricultural area has been demarcated under Section 5, the State Government may, at any time, by notification in the official Gazette, declare that as from a date to be specified all such areas situate in the urban area shall vest in the State and, as from the beginning of the date so specified all such agricultural areas shall stand transferred to and vest except as hereinafter provided, in the State free from all encumbrances."

By a notification issued under Section 8 by Rajaswa Vibhag dated 20.06.1963, the agricultural area in Haridwar demarcated under Section 5 has been vested with the State Government. The relevant portion of the notification issued reads as under :-

Rajaswa Vibhag Notification No.2653/1-A-168-60, dated June 20, 1963, published in U.P. Gazette, Part 1, dated June 29, 1963, p.1217.

In exercise of the powers under Section 8 of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act, 1956 (U.P. Act No. IX of 1957), the Governor of Uttar Pradesh is pleased to declare that as from the first day of July, 1963, all agricultural areas in the following urban areas of the State, which have been so demarcated under Section 5 of the aforesaid Act, shall vest in the State of Uttar Pradesh, and as from the beginning of that date, all such agricultural areas shall stand transferred to, and vest, except as provided in the said Act, in the State free from all encumbrances :

Serial No.	Name of Urban Area	District

Meerut Division

1.	Rishikesh	.. Municipality	..	Dehra Dun.	
2.	Hardwar Union	.. Do	..	Saharanpur	
3.	Deoband	.. Do	..	Do	
\005		\005		\005.	

14. By virtue of Section 8 after the agricultural area has been demarcated under Section 5, the State government would issue a notification in the official gazette declaring that from specified date all demarcated area situated in the urban area shall vest with the State Government and from the date so specified all such agricultural area shall be transferred to and vest except otherwise provided, in the State free from all encumbrances. The purport of Section 8 is very clear that the agricultural land falling in the urban area has to be demarcated under Section 5 and thereafter the notification shall be issued by the State Government in regard to the demarcated area in the urban area to have been vested in the State. Sections 3 to 5 lay down the procedure for demarcation of the area for the purposes of acquisition of right, title and interest of intermediaries in urban areas of the agricultural area. Under Section 3, the State Government shall issue a notification in the official gazette for the purposes of acquisition of right, title and interest of intermediaries in urban areas and declare such area as demarcated area. After the publication of the notification under sub-section (1) the Demarcation Officer shall make inquiries in the prescribed manner and thereafter shall determine and demarcate the agricultural area within the urban area. After this, under Section 4, the Demarcation Officer would within three months or such extended period as may be extended by the State Government, from the date of notification issued under sub-section (1) of Section 3, submit his proposal with a reason thereof to the Commissioner, the Commissioner may make such modifications in the demarcated area as he may consider necessary. After the proposal is finalized by the Commissioner he shall publish a notice in the prescribed form in the gazette and in such other manner as may be prescribed, to the effect that the proposals as regards demarcation of the agricultural areas have been formulated and are open to inspection at the place which would be specified in the published notice. Thereafter, any person interested in such demarcation may within three months of the publication of the notice under section sub-section (4) of Section 2 could file an objection on the proposal before such officer or authority in a manner provided therein. Section 5 lays down that after the expiry of the period of three months of publication of notice the Commissioner shall decide the objections received and thereafter shall finally demarcate the agricultural area. Sub-section (2) of Section 5 lays down that after determination of the objections finally, demarcated agricultural area shall be published by notice in the gazette or in such other manner as may be prescribed to the effect that final demarcation of the agricultural area in the urban area is made and the details thereof are open to inspection at places specified in the notice. On such notice being issued, sub-section (3) of Section 5 provides for an appeal to the Board of Revenue against the order passed by the Commissioner prescribing finally demarcated agricultural area. Section 8 lays down that after the agricultural area in the urban area has been demarcated under Section 5 the State Government shall notify it in the Official Gazette that such area is vested in the State from the date specified therein and all such agricultural areas shall stand transferred and vested in the State government free from encumbrances. From the aforesaid provision, it is amply clear that elaborate procedure has been laid down before the agricultural area in the urban area is declared to be a demarcated area for the purpose of vesting in the State free from encumbrances. Section 3 provides for a notice to the general public that a particular agricultural area in the urban area is being picked up for declaring that area to be demarcated area for the purposes of all right, title and interest of intermediary to be vested with the State Government free

from all encumbrances. After such notification the Demarcation Officer has to apply his mind, make inquiries whether a particular area is to be declared as a demarcated area and thereafter submit his proposal for the purposes of declaration of demarcated area before the Commissioner. The Commissioner is authorized to make a modification in the proposal and thereafter is called upon to publish a notice in the gazette or in any other manner as prescribed, that the proposal as regards demarcation of the agricultural area is formulated and are open to inspection. This apparently is a tentative proposal which is subject to the objection by any person or local authority. If any objection has been received within three months the Commissioner is called upon to decide those objections and thereafter pass a final order in regard to proposed demarcated area. Once the objections are decided and the Commissioner has arrived at the finding that a particular agricultural area in the urban area is to be declared as a demarcated area he shall publish a notice in the gazette showing the demarcated area which has been finally decided to be a demarcated area for the place. Sub-section (3) of Section 5 thereafter provides for an appeal from the order of the Commissioner. The agricultural area was only to be declared to be vested in the State Government free from all encumbrances under Section 8 only after such an agricultural area has been finally declared to be demarcated area.

15. In the present case, there is no evidence led by the defendants that the suit land had been declared as a demarcated area and the suit area being declared to be such has vested with the State government under Section 8 of the 1956 Act. The notification issued under Section 8 says that in exercise of powers of Section 8 of the 1956 Act, the Governor of U.P. declares that from 01.07.1963 all agricultural areas in the following urban areas (which admittedly falls within the Hardwar Union, District Saharanpur) of the then State of U.P. which has been demarcated under Section 5 of the Act shall stand vested with the State of U.P. and as from that day onwards all such agricultural areas shall stand transferred to, and vested, except as provided in the 1956 Act, in the State free from all encumbrances. It is clear from this notification under Section 8 that the land which has been demarcated under Section 5 in the Hardwar Union shall be vested in the State free from all encumbrances. Unless and until it is shown that the land in suit has been declared as a demarcated area or falls within the demarcated area, exercising the powers under Section 5, it cannot be said that it has been vested in the State by virtue of notification issued under Section 8 on 20.6.1963. By 20.6.1963 notification, it is only the demarcated area under Section 5 which has been vested in the State. That does not necessarily means that the suit lands have been vested in the State In the absence of proof, it cannot be said that the suit area is a demarcated area and thus vested in the State by issuance of the notification under Section 8 of the Act.

16. In Abdul Waheed Khan v. Bhawani and Others, AIR 1966 SC 1718, it was held that it is settled principle that it is for the party who seeks to oust the jurisdiction of a civil court to establish his contention and it is also equally well settled that a statute ousting the jurisdiction of a civil court must be strictly constructed.

In Sri Vedagiri Lakshmi Narasimha Swami Temple v. Induru Pattabhirami Reddi, AIR 1967 SC 781, this Court held that under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of civil nature excepting suits of which there is a bar expressly or impliedly provided. It is well settled principle that a party seeking to oust jurisdiction of an ordinary civil court shall establish the right to do so.

In Smt. Bismillah v. Janeshwar Prasad and Others, (1990) 1 SCC 207, this Court has reiterated the principle laid down and said that it is settled law that exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of law which seek to oust the jurisdiction of civil court need to be strictly construed.

In Sahebgouda (Dead) by LRs. and Others v. Ogeppa and Others, (2003) 6 SCC 151, this Court has held that it is well settled that a provision of law ousting the jurisdiction of a civil court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish his right to do so.

In Dwarka Prasad Agarwal (D) by LRs. v. Ramesh Chander Agarwal and Others, (2003) 6 SCC 220, a 3-Judge Bench has held that Section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted.

17. Thus, from the aforesaid decisions, it is now well established principle of law that the ouster of jurisdiction of a civil court is not readily accepted and heavy burden of proof lies on the party who asserts that the civil court's jurisdiction is ousted and some other court, tribunal or authority has been vested with jurisdiction.

18. For application of the provisions of Section 331 of the 1950 Act which has been incorporated in the 1956 Act, it was necessary for the defendants to prove that the suit lands had been demarcated by the State Government by taking necessary steps as contemplated under Sections 3, 4 and 5 of the 1956 Act. Sections 3, 4 and 5, as already held by us, provide a complete code for demarcation of the agricultural area after giving appropriate hearing to the party affected by following the procedure laid down therein, it also provides for an appeal to the Board of Revenue. It is only after the area is declared as demarcated area, Section 8 will be attracted and the notification to that effect would be issued in regard to and in respect of such declared demarcated area to be vested in the State Government. Unless the land is vested in the State Government, the provisions of Section 331 of the 1956 Act would have no application to oust the jurisdiction of the civil court.

19. In the present case, no evidence has been led by the defendants on whom heavy burden lies to prove the fact that the suit lands were declared demarcated. Notification under Section 8 which itself says that the demarcated area has been vested in the State Government, would not be given a meaning as if the suit lands had also been demarcated and thus stood vested in the State Government by virtue of the notification issued under Section 8 of the 1956 Act.

20. The defendants have claimed ouster of the civil court's jurisdiction only on the basis of Section 331 of the 1950 Act incorporated in the 1956 Act. The defendants having failed to prove the applicability of that provision to the area in the suit, civil court's jurisdiction cannot be said to have been ousted and vested in the revenue court.

21. The learned senior counsel for the respondents for the first time before this Court tried to raise the question that the suit as it was filed, if not barred under the 1956 Act, is competent to be heard by the revenue court by virtue of the U.P. Tenancy Act, 1939 which was in force prior to the enforcement of the 1950 Act, the civil court would not have any jurisdiction to try the suit of the plaintiff. We cannot permit this new plea, which does not appear to be a pure question of law to be raised for the first time at the time of hearing of the appeal in this Court. The question of applicability of some other law was neither raised in the written statement nor before the courts below.

22. The High Court has framed only three substantial questions of law. Neither any other question of law has been framed by the High Court nor any other question decided by the courts below has been put to challenge by framing substantial question of law in regard thereto at the time of or before arguments before the High Court. Thus, the

finding arrived at, that the plaintiff was initiated as the eldest chela of Mahant Tahal Dass according to the custom and being the eldest chela was heir and successor in respect of the suit property of Mahant Tahal Dass and that Budh Dass did not succeed to the property of Bhupatwala (Hardwar) has attained finality.

23. It is contended by the learned senior counsel for the respondents herein that since the High Court has left open the consideration of substantial questions of law in exercise of the powers under sub-section (5) of Section 100 of the Code of Civil Procedure (CPC) and, therefore, the matter requires remand, cannot be countenanced with. There is nothing on record that the High Court has exercised the powers under proviso to sub-section (5) of Section 100, CPC. The power of the High Court to hear an appeal on the question of law not formulated is conferred by virtue of proviso to sub-section (5) of Section 100, CPC, but to apply the provision of proviso it is a necessary condition to be satisfied that the High Court feels satisfied that the case involves such question on which the hearing has to given to the parties although such substantial question of law has not been framed and secondly the High Court records its reasons for its satisfaction. [See Santosh Hazari v. Purushottam Tiwari (Dead) by LRs., AIR 2001 SC 965]. Under the proviso to Section 100(5), CPC, it is a necessary condition that the court is satisfied that the case involves a substantial question of law and not merely a question of law, and the Court must record the reason permitting the substantial question of law to be raised.

In Kshitish Chandra Purkait v. Santosh Kumar Purkait and Others, AIR 1997 SC 2517, this Court held in para 7 as under:

"\005We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100, C.P.C. in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100, C.P.C. should always be borne in mind. \005"

In Gian Dass v. Gram Panchayat, Village Sunner Kalan and Others, (2006) 6 SCC 271, this Court in para 13 has held as under:

"\005 The proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law. The expression "on any other substantial question of law" clearly shows that there must be some substantial question of law already formulated and then only another substantial question of law which was not formulated earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question."

24. From the aforesaid decisions of this Court, it is apparent that the High Court cannot deal with the issues unless a substantial question of law is framed by it. It appears that no other question than the questions of law already framed by the High Court has been raised before the High Court nor the High Court has recorded its satisfaction that apart from the questions of law already framed any other substantial question of law has arisen nor the plaintiff was put to notice that such other substantial question of law has arisen in the case

to be heard.

25. From the aforesaid, it cannot be said that any other substantial question of law than already framed by the High Court has either been framed or has been left open by the High Court to be adjudicated at a later stage. No case is made out for remanding the matter to the High Court to hear the same on non-existing substantial question of law. As we have already held that the defendants on whom the burden lies to prove the ouster of the civil court has failed to discharge its burden and applicability of the 1956 Act to the suit lands has not been proved, no other questions argued by the parties are required to be decided by us.

26. For the aforesaid reasons, we hold that the civil court has rightly exercised its jurisdiction in deciding the matter and the High Court after holding all the issues in favour of the plaintiff has erroneously dismissed the suit of the plaintiff holding that it was beyond competence of the civil court. The judgment of the High Court so far as it holds that the civil court has no jurisdiction and reversal of the decree passed by the appellate court, is therefore required to be set aside. Accordingly, the High Court's judgment is set aside and the decree passed by the first appellate court is confirmed. The appeal is allowed with costs quantified at Rs.10,000/-.