

PETITIONER:
M.P. ELECTRICITY BOARD, JABALPUR.

Vs.

RESPONDENT:
M/S. VIJAYA TIMBER CO.

DATE OF JUDGMENT: 05/12/1996

BENCH:
M.M. PUNCHHI, K. VENKATASWAMI.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.VENKATASWAMI J.

The appellant/defendant in Civil Suit. No.9-A/67 on the file of the Court of Civil Judge. Class-I, Rajandgaon, has suffered a decree at the hands of the trial Judge, directing the removal of the electric line with poles situated in the land bearing Kh. No. 908/2 area 1.32 acres at village Nandai. In addition to that, the appellant was also directed to pay a sum of Rs.1770/- towards past damages and to pay future damages @ 5/- per day to the plaintiff (respondent-herein) from the date of institution of suit till the removal of electric line.

Aggrieved by decree, an appeal was preferred to the first Additional District judge, Durg, at Rajnadgaon, The appellate court dismissed the appeal by judgment and decree dated 5.2.1984. Still aggrieved, he preferred a second appeal in the High Court of Madhya Pradesh, Jabalpur. The High Court modified the decree by removing the mandatory injunction directing the defendant to remove the electric line with poles but sustained the decree for damages, past and future. The above appeal is directed against the judgment and decree of the High Court.

Shri Pallav Sishoia, learned counsel appearing for the appellant attempted to argue the appeal by raising a point which was neither raised in the pleadings nor argued in the courts below, namely, that the suit was barred by limitation. As this question to limitation on the facts of this, case was not one of pure question of law- but a mixed question of fact and law, we did not permit the learned counsel to raise this point for the first time before us.

The learned counsel for the appellant. therefore, has to confine his argument as to the bar of the suit as raised before the High Court. BY referring to Sections 12. 1",, and 52 of Indian Electricity Act, learned counsel submitted that the suit, as filed in the present case was barred. In other words, according to the learned counsel, the civil Court could not adjudicate the dispute raised in the suit for which remedies and forum are provided under the Act itself and the plaintiff/respondent ought to have pursued those remedies before the forum mentioned in the Act. The

contention of the learned counsel for the appellant was that in view of the forum provided in the Act for resolving the dispute, the suit must be taken to have been barred impliedly under Section 9 of the Code of Civil Procedure.

For appreciating the above contention, minimal facts may now be noted.

The grievance of the plaintiff/respondent was that in the land belonging to him which has been set apart for industrial use, the appellant Board had taken 33 KV high tension transmission lines over the construction already started in the said land without its consent and as such the erection was unauthorised and liable to be removed. The defence was that there was no erection when the high tension transmission lines were taken through the land and the plaintiff/respondent never objected for taking those lines. However, the findings of all the three courts are to the effect that the transmission lines were laid without the plaintiff's consent after the plaintiff has already constructed portion of its saw mill, that the overhead transmission lines are likely to endanger the property of the plaintiff, that there was no sanctioned scheme for the transmission lines and that the plaintiff suffered damages @ 5/- day.

In the light of above concurrent findings of all the three courts. we do not think that there is any case for the appellant to sustain the defence it has taken in the written statement.

The High Court has given a finding after referring to Section 12 of the Electricity Act, 1910 as well as the provisions of the Electricity (Supply) Act, 1948, that the provisions of latter Act have no application to the facts of the case as admittedly, the transmission lines were not laid under any approved scheme. The High Court further held that the appellant Board having laid the transmission lines without taking the consent of the plaintiff, cannot be treated as having acted in accordance with the provisions of the Indian Electricity Act to take shelter under those provisions. Therefore according to the High Court. the remedy of the plaintiff was not to take recourse under the provisions of the Act but to file a civil suit for compensation/damages under the common law. In support of this conclusion, the High Court has relied on a judgment of the Madras High Court in S.M.E.S. Corpn. vs. Jagannatha (AIR 1960 Madras 374) and also Another judgment of this Court in Amalgamated Electricity Co. vs. N.S. Bathena (AIR 1964 sc 1598).

It is well-settled that the exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. A Constitution Bench of this Court in Dhulabhai vs. State of M.P. (1968 3 SCR 663) had laid down several propositions in this regard. The first proposition is apposite for the facts of this case. It reads as under:

"(1) Where the Statute gives finality to the orders of the special tribunals, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy do in what the civil court would normally do in a suit. Such a Provision, however, does not exclude those cases where, the provision of the particular Act

have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

In the light of the findings of the courts below which we have extracted above, we do not think that the High Court has committed any error in holding that the suit was maintainable and also granting the modified relief.

Before parting with the case, we may observe that we gave an opportunity to the appellant to settle the matter outside the court but the learned counsel appearing for the appellant after getting instructions reported that the settlement was not possible. It is unfortunate. In the result the appeal is dismissed. However, there will be no order as to costs.

JUDIS