



106 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.2149 of 1994
Date of Decision : 04.03.2025**

M.C. Rewari and another

.....Appellants

Versus

EMM-Tax Synthetics Pvt. Ltd., Rewari

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashish Yadav, Advocate and
 Mr. Rohit Rattewal, Advocate
 for the appellant.

 Mr. Rana Harjasdeep Singh, advocate
 for the respondent.

PANKAJ JAIN, J.(Oral)

Defendants are in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. appellants as defendants and respondent as plaintiff.

3. Plaintiff instituted suit seeking decree of permanent injunction restraining defendants from charging house tax on the property owned by the plaintiff. As per the case of the plaintiff, he is owner in possession of property, which is situated out of the municipal limits. He was issued notice dated 01.02.1988 proposing to assess house tax thereon. Vide order dated 28.03.1988 passed without giving any opportunity to the plaintiff, the



property was assessed to house tax. Plaintiff filed appeal which was dismissed by the Collector, Narnaul vide order dated 14.09.1988. Plaintiff filed instant suit impugning notice dated 01.02.1988 and orders dated 28.03.1988 and 14.09.1988.

4. Suit was contested by the defendants claiming that the property in question falls within the municipal limits of Rewari. Plaintiff was served with the notice dated 01.02.1988. Pursuant thereto, annual rental value of the premises was assessed at Rs.1,20,000/- vide order dated 28.03.1988. Plaintiff-Company preferred appeal which was dismissed by Collector, Narnaul vide order dated 14.09.1988. Defendants also raised issue regarding jurisdiction of the civil court to try the suit.

5. Court of the First Instance, framed the following issues:

- “1. Whether the plaintiff is entitled for the relief of injunction as prayed for? OPP
2. Whether the civil court has got no jurisdiction to entertain and try the present suit? OPD.
3. Whether the suit is bad for want of notice u/s 52 of the Haryana Municipal Act? OPD.
4. Relief.”

6. Court of the First Instance decided issues No.1 and 2 against the plaintiff. While deciding issue No.3, Court of the First Instance found that prior to institution of the suit, the plaintiff had already paid house tax vide exhibits PW1/5 and PW1/6 dated 05.04.1988 and 13.07.1989. The suit filed by plaintiff was ordered to be dismissed.



7. Unsuccessful, plaintiff approached Lower Appellate Court.
8. Lower Appellate Court while deciding issue No.1 came to the conclusion that plaintiff successfully proved that the defendants failed to follow the procedure laid down under Section 76 to Section 80 of the Haryana Municipal Act, 1973. No criteria was spelled out in the notice dated 01.02.1988 for assessing the annual rental value of the premises in question. No assessment list was prepared under Section 76 of the Act. No public notice was given under Section 77 of the Act. List was never settled under Section 79 and thus the house tax imposed, cannot be sustained. Lower Appellate Court further found that it being a case of the violation of the procedure laid down in the Act, the jurisdiction of the Civil Court is not barred. While allowing the suit filed by the plaintiff, Lower Appellate Court granted Municipal Committee opportunity to impose house tax after following due procedure laid down under the law and allowed the appeal preferred by the plaintiff.
9. In the considered opinion of this Court, the primary issue involved in the instant appeal relates to the jurisdiction of the Civil Court in the facts and circumstances of the present case.
10. Admittedly, plaintiff prior to filing of the civil suit, preferred appeal against the imposition of house tax and the order of assessment. The appeal was dismissed by the Collector. The said order is also subject matter of challenge in the present suit.



11. Section 99, Section 100, Section 100-A and Section 101 of the Haryana Municipal Act, 1973 read as under:

99. Appeals against taxation. - (1) An appeal against the assessment or levy of any tax or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the State Government in this behalf:

Provided that, when the Deputy Commissioner or such other officer as aforesaid is, or was when the tax was imposed, a member of the committee, the appeal shall lie to the State Government.

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on an application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in this case shall be, as nearly as may be, in conformity with the provisions relating to references to the High Court contained in section 113 and Order XLVI of the Code of Civil Procedure, 1908.

(4) In every appeal the costs shall be in the discretion of the officer deciding the appeal.

(5) The costs awarded under this section to the committee shall be recoverable by the committee as if they were arrears of a tax due from the appellant.

(6) If the committee fails to pay the cost awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having



the custody of the balance of the municipal fund to pay the amount.

100. Limitation of appeal. - (1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by section 79 or section 80 or section 81, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period.

(2) No appeal shall be entertained unless the appellant has paid all other municipal taxes due from him to the committee up to the date of such appeal.

100-A. Revision. - Any person aggrieved by an order passed in appeal under section 99 may within thirty days of the communication to him of such order make an application in writing to the State Government for revision against the said order and the State Government may confirm, alter or rescind the said order.

Provided that the State Government shall not pass an order under this section prejudicial to any person without giving such person a reasonable opportunity of being heard.]²

101. Taxation not to be questioned except under this Act. - (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.



(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules.”

12. Perusal of the aforesaid provisions reveal that the statute provides for a remedy to a person aggrieved by an assessment of tax under this Act. The same includes grievance relating to the quantum as well as assessment. After appeal under Section 99, the statute further provides for a remedy under Section 100-A in form of a revision. Section 101 further provides that no objection shall be taken to any valuation or assessment except in the manner provided under the Act. The Act thus is a complete Code in itself. The statute provides for a particular forum and a specific mode of remedy. It clearly forbids any other remedy before any other forum.

13. Counsel for the plaintiff however submits that the jurisdiction of Civil Court would not be barred wherein the assessment is in the teeth of procedure prescribed under the Act. In order to hammer-forth his contention, he relies upon law laid down in the case of **Munshi Ram vs. Municipal Committee, Chheharta, (1979)3 SCC 83, Municipal Committee Amritsar vs. Bala Mal Ishar Dass, 1982 CLJ (Civil) 51, Municipal Committee, Ladwa vs. Daryat Lal, 1986 RRR 358, Municipal Committee, Bhatinda vs. Krishan Lal, 1986(2) MCC 87 and Kirti**



Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] , to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden.



In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal



Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating



their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance



upon this authority, therefore, does not lead his argument any further.

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16. In view of afore-settled proposition of law, finding that the Lower Appellate Court erred in law in holding that the suit was maintainable, the judgment & decree passed by the Lower Appellate Court is hereby set aside and that passed by the Trial Court is ordered to be restored. Resultantly, the present appeal is allowed.

March 04, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes

Whether Reportable : Yes