JURISDICTION OF
CIVIL COURTS VIS-A-VIS REVENUE COURTS

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1(A-1).Notification No. 78/1879/1-1-2015-15(1)/1998-19TC-3, Rajaswa Anubhag-1, Lucknow, Dated: 18.12.2015 : UP Revenue Code, 2006 has come into force w.e.f. 11.02.2016 vide the said notification dated 18.12.2015 issued by the State Government of UP.

1(A-2).UP Revenue Code Rules, 2016 (w.e.f. 11.02.2016) : UP Revenue Code Rules, 2016 has come into force w.e.f. 11.02.2016 vide Notification No.170/I-1-2016-15(1)/1998-19, Rajaswa Anubhag-1, Luckonw, Dated 10.02.2016 issued by the State Government of UP.

1(A-3).The Uttar Pradesh Revenue Code, 2006 repeals 32 Acts: The UPZA & LR Act, 1950, 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 in the State of Uttar Pradesh have now been repealed by the Uttar Pradesh Revenue Code, 2006 (UP Act No. 8 of 2012). 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.*

1(A-4).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."*

1(A-5).<u>Applicability of the Revenue Code, 2006 to the pending cases (Section 231)</u> : (1) Save as otherwise expressly provided in this Code, all cases pending before the State Government or any revenue court immediately before the commencement of this Code, whether in appeal, revision, review or otherwise, shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had this Code not been passed.

(2) All cases pending in any civil court immediately before the commencement of this Code which would under this Code be exclusively triable by a revenue court; shall be disposed of by such civil court according to the law in force prior to the date of such commencement.

1(A-6).<u>Definition of "land" under UPZA & LR Act, 1950</u> : 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). <u>Land u/s 3(14) of the UPZA & LR Act, 1950</u> : 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). <u>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</u> : 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)**

1(D). <u>Tank to be treated as land</u> : 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). **<u>Land submerged under water not to be treated as 'land' u/s 3(14)</u>** : 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). **<u>Pasture land not to be treated as land u/s 3(14)</u>** : 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). **'<u>Bhita' to be treated as land u/s 3(14)</u> :** 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). **<u>Jurisdiction is conferred by law & not by the consent of parties or their counsel</u> :** 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). **<u>Tests for determining jurisdiction of civil or revenue court</u>** : 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). **<u>Test of main & ancillary relief to determine jurisdiction</u>** : 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)(FB)
(iI) Chhedi Vs. Smt. Indrapati, AIR 1972 All 446

2(D). **"<u>Cause of action" & its meaning</u>** : 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). **<u>Maintainability of suit to be decided on the basis of pleadings and the reliefs claimed in the plaint</u> :** 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. **<u>Evidence when can be taken to decide jurisdiction?</u>** : 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)

4. **<u>Civil Court competent to decide its jurisdiction</u> :** 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). **<u>Stage of raising plea of want of jurisdiction</u> :** 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.)

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) Vithalbhai (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-1). Jurisdiction of revenue courts under the UP Revenue Code, 2006 w.e.f. 11.02.2016 vis-a-vis other courts including the civil courts (Sec. 206 of the UP Revenue Code, 2006)(Corresponding Section 331 of the UP ZA & LR Act, 1950) : Section 206 of the UP Revenue Code, 2006 provides for the exclusive jurisdiction of the revenue courts and the revenue officers vis-a-vis other courts including the civil courts. Section 206 of the UP Revenue Code, 2006 is reproduced below :

(1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of this Code, no Civil Court shall entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government,

the Board, any Revenue Court or revenue Officer is, by or under this Code, empowered to determine, decide or dispose of.

(2) Without prejudice to the generality of the provisions of sub-section (1), and save as otherwise expressly provided by or under this Code- (a) no Civil Court shall exercise jurisdiction over and of the matters specified in the Second Schedule; and (b) no Court other than the revenue Court or the revenue officer specified in column 4 of the Third Schedule shall entertain any suit, application or proceedings specified in column 3 thereof.

(3) Notwithstanding anything contained in this Code, an objection that a Court or officer mentioned in sub-section (2)(b) had or had no jurisdiction with respect to any suit, application or proceeding, shall not be entertained by any appellate, revisional or executing Court, unless the objection was taken before the Court or officer of the first instance, at the earliest opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

SECOND SCHEDULE

Sections 206 (2)(a)

Matters excluded from the jurisdiction of the Civil Court

1. Any question regarding the determination of boundaries or fixing of boundary marks.
2. Any claim to question a decision determining abadi made by the Collector.
3. Any claim to have any entry made in any revenue records or to have any such entry omitted, amended or substituted.
4. Any question regarding the assessment, remission or suspension of land revenue or rent.
5. Any claim connected with or arising out of the collection by the State Government or the enforcement by such Government of any process for the recovery of land revenue or any sum recoverable as an arrear of land revenue under this Code or any other law for the time being in force.
6. Any claim against the vesting of any property in the State Government, Gram Sabha or other local authority under this Code.
7. Any question relating to the levy or imposition of the fine, cost, expense, charge, penalty or compensation under this Code.

8. Any question regarding reinstatement of a bhumidhar or asami wrongfully ejected or dispossessed from any land.
9. Any claim to compel the performance of any duty imposed by this Code on any revenue officer appointed under this Code.
10. Any question, relating to division, creation, amalgamation, abolition or re-adjustment of revenue areas and Lekhpal's circles under Chapter II.
11. Any question relating to the allotment of land referred to in Section 65 or Section 130 or cancellation of such allotment.
12. Any claim to question a direction issued by the Collector under Section 72.
13. Any claim to question the delivery of possession over and land and part thereof referred to in Section 129, or the eviction of any person under Section 139 or Section 204.
14. Any claim to question the validity of any order made by the State Government under Chapter XI.
15. Any claim regarding possession over and land.
16. Any claim to establish the rights of a co-tenure holder in respect of any land.

Third Schedule

(See Sections 206, 207 and 208)

CHAPTER XIII

JURISDICTION AND PROCEDURE OF REVENUE COURTS

213 State Government to be necessary party in certain cases.-Subject to the provisions of this Code or the rules made there under, the State Government shall be made a party to any suit instituted by or against the Gram Panchayat or local authority under this Code.

214 Applicability of Code of Civil Procedure, 1908 and Limitation Act, 1963.- Unless otherwise expressly provided by or under this Code, the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under this Code.

215 Orders not to be invalid on account of irregularity in procedure. - No order passed by a revenue officer shall be reversed or altered in appeal or revision on account merely of any error, omission or irregularity in the summons, notice, proclamation, warrant or order or other proceedings before or during any

inquiry or other proceedings under this Code, unless such error, omission or irregularity has in fact occasioned a failure of justice.

216 Service of notice.- Any notice or other document required or authorized to be served under this Code may be served either:-
(a) by delivering it to the person on whom it is to be served; or
(b) by registered post addressed to that person at his usual or last known place of abode; or
(c) in case of an incorporated company or body, by delivering it or sending it by registered post addressed to the secretary or other principal functionary of the company or body at its principal office; or
(d) in any other manner laid down in this Code of Civil Procedure, 1908 for service of summons.

217 Revenue Courts to have no power to adjudicate upon the validity of enactment. - Notwithstanding anything contained in the provisions of this Code, the Board or any other Revenue Court shall have no jurisdiction in respect of amatter which involves a question as to the validity of the provisions of this Code orany other law for the time being in force or any rule or notification made or issuedthere under.

CHAPTER XIV
MISCELLANEOUS

218 Power to exempt from the provisions of the Code.-The State Government may, by notification, exempt any land owned by it or by the Central Government or by any local authority from the application of all or any of the provisions of this Code, and may likewise cancel or modify any such notification.

225-A Determination of questions in summary proceeding.-Notwithstanding anything contained in other provisions of this Code, all the questions arising for determination in any summary proceeding under this Code shall be decided upon affidavits, in the manner prescribed: Provided that if Revenue Court or Revenue Officer is satisfied that the cross examination of any witness, who has filed affidavit, is necessary, it or he may direct to produce the witness for such cross examination.

9(A-2).<u>Suit for injunction, declaration or possession in respect of trees alone standing on agricultural land & jurisdiction of civil court</u> : 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). **<u>Suit for injunction when defendant's name recorded in revenue record</u>** : 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). **<u>Sec 229-B, 229-D, 331 of the UPZA & LR Act, 1950 & The Power of Civil Court to grant Injunction</u>** : 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)**
(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 :

(i) Smt. Shanti Vs. Smt. Phulan Dullaiya, AIR 2016 All 137
(ii) 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 ejectment 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).<u>Effect of non-declaration u/s 143 & the jurisdiction of civil court</u> : 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) <u>Jurisdiction of civil court when agricultural land with construction not declared Abadi u/s 143</u> : 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).<u>Change of user of land must for declaration u/s 143</u> : 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).<u>Change of user of land and effect of non declaration u/s 143</u> : 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). <u>Suit for cancellation of sale deed when plaintiff recorded as tenure holder</u> : 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).<u>Suit for cancellation of sale deed when plaintiff not recorded as tenure holder</u> : 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).<u>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</u> : 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). <u>Cancellation of Sale Deed when name of purchaser already recorded in revenue record</u> : 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-1). <u>Civil suit for cancellation of will deed involving agricultural and non-agricultural property to lie before Civil Court</u> : 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(D-2). **Unregistered will deed in respect of agricultural land not admissible in evidence due to bar of Section 169(3) of UP ZA & LR Act :** All matters relating to right in or over agricultural land including transfer, alienation and devolution were exclusively within domain of State Legislature . Under UP Zamindari Abolition and Land Reforms Act, restriction has been imposed by State Legislature by way of amendment in S. 169(3) regarding devolution of agricultural land except by way of written and registered deed. Restriction so imposed by State Legislature upon right of bhumidhar under Special Act is in conformity with objects and purpose of Act which has been framed to reform law relating to land tenure so as to to check any unscrupulous person from claiming land of bhumidhar to exclusion of his heirs and legal representatives, There is no conflict in provincial legislation namely UP Zamindari Abolition and Land Reforms Act and Central legislations that is Succession Act and Registration Act with regard to devolution of interest in land of tenure-holder u/s 17 of Registration Act, registration has been made compulsory for all non-testamentary instruments. Registration of Will has not been made compulsory under Succession Act, whereas UP Z.A. & L.R. Act provides restriction in this field. Restriction imposed by State Govt. cannot be said to be in conflict with laws made by Central Legislature. There is no repugnancy as such and it cannot be said that State Legislature was not competent to legislate. It is settled law that when question arises with regard to legislative competence of legislature in regard to particular enactment with reference to entries in various lists, it is necessary to examine the pith and substance of Act and find out if matter comes substantially within item in list. Scheme of Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of legislature are to be focused at. It is fundamental principle of Constitutional law that everything necessary to exercise of power is included for grant of power itself. Non-observance clause is sometimes added to Section in beginning, with view to give enacting part of Section, in case of conflict, overriding effect over provisions of Act mentioned in that Clause. In other words, in spite of provisions of Act mentioned in that clause, enactment following it, will have its full operation or that provisions enacted in non-obstante Clause will not be impediment in operation of enactment. It is well known rule of interpretation that on construction, entire Act must be looked into as whole. Court cannot add words to Statute or read words into it which are not there. When purpose and object or reason and spirit pervading through Statute is clear, Court

must adopt purposive approach in interpreting such Statute. Restriction imposed by Section 169(3) of UP ZA & LR Act upon bhumidhar for devolution of his bhumidhari land would be operative w.e.f. 23.08.2004 i.e. date of commencement of Amendment Act by which registration of Will has been made compulsory. Restriction so imposed by aforesaid provision is on right of bhumidhar to bequeath his property except by way of registered instrument. Restriction is not upon person who is claiming his right on basis of Will rther it is on testator of Will. Thus, no, bhumidhari land could be bequeathed after 23-8-2004 except by way of registered will, whole idea is that land of village remains with tiller of land. See : **Jahan Singh Vs. State of UP, AIR 2017 All 247(paras 13, 14, 21, 22, 24, 26 & 27).**

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 :

(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)**

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.)

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).<u>Recovery of dues as land revenue & jurisdiction of civil courts</u> : 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).<u>Sections 330 & 287-A to bar Civil Suit against recovery certificate issued by Collector for recovery of amount recoverable as land revenue</u> : 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(A). **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.**

26(B). 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)

(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) इप्पन प्रति स्टेट ऑफ यू0 पी0, 2004 प्र0नि0प्र0 76 (क्रिमिनल)

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."

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).**

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