**APPLICATION UNDER SECTION 5/9 CODE OF CIVIL PROCEDURE**

IN THE COURT OF THE....................

Suit No..................... of 19....................

C. D.................................................................... Plaintiff

*versus*

C. F................................................................. Defendant

The abovenamed plaintiff most respectfully submits as under: —

1. That the defendant has taken objection as to jurisdiction of this Court at the very inception in para No..................... of the written statement.

2. That in the plaint prayer No...................... a relief as to title by will or inheritance to tenancy land is sought which is barred by the provisions of Section 5/9 Code of Civil Procedure, Section 331 of the U. P. Zamindari Abolition and Land Reforms Act and Section 233 of the U. P. Land Revenue Act.

3. That the learned Court has also framed an issue No..................... as to jurisdiction of this Court which issue is essential to be decided as preliminary issue before taking evidence of the parties and disposing of all issues which will be an unnecessary wastage of time of the Court and expenses of the parties.

4. That the suit is a colourable litigation filed under the make-belief of obtaining permanent injunction to restrain the defendant from interfering into his possession, but by way of this suit for granting an injunction the plaintiff wants to get the issue of title decided by this Court, which only a competent Revenue Court has jurisdiction to decide.

**PRAYER**

It is, therefore, most respectfully prayed that Your Honour may be pleased to decide the issue No..................... as to jurisdiction as the preliminary issue and reject or return the plaint as this Court may deem fit.

Plaintiff

Through Advocate

**VERIFICATION**

I, abovenamed plaintiff, do hereby verify that the contents of paras .................... to.................... of the plaint are true to my personal knowledge and those of paras.................... and.................... thereof are based on legal advice which I believe to be true.

Verified on this................. day of.................... 19.................... at....................

Plaintiff

**CASE LAW**

***Section 5***

**CIVIL COURTS’ JURISDICTION IN REVENUE MATTERS BARRED.**

The Civil Courts have no right to issue an injunction in respect of revenue matters because there is an inherent lack of jurisdiction.1

The Supreme Court has laid down:

No doubt if the suit is one properly entertainable by the Civil Court the period of limitation must be governed by the provisions of the Limitation Act and no other. But if one reads section 209 and 331 of the U. P. Zamindari Abolition and Land Reforms-Act (I of 1951) together one finds that a suit like the instant one has to be filed before a special court created under the Act within a period of limitation specially prescribed under the Rules made under the Act and the jurisdiction of the ordinary Civil Court is absolutely barred.2

**SUB-SECTION (2) — APPLICATION OF THE PROVISION TO DELHI HIGH COURT’S ORIGINAL JURISDICTION.**

Under the Delhi High Court Act, 1966, a suit valuing more than fifty thousand rupees is triable by the High Court in its original side. As such the Delhi High Court having ordinary original civil jurisdiction in respect of Union Territory of Delhi is competent to try such suit, taking it as a suit of civil nature.3

**IMPORTANCE OF THE SECTION — APPLICATION OF THE CODE TO REVENUE COURTS — PROVISIONS OF SECTION 104 DO NOT SEEK, LIMIT OR AFFECT THE PROVISIONS OF LETTERS PATENT.**

The importance of this section is that wherever the provisions of the Code of Civil Procedure are sought to be excluded by any special enactment which may be silent on the point, the State Government can by notification apply the provisions of Revenue Courts. All other civil courts would normally be governed by the provisions of the Code of Civil Procedure in the matter of procedure. Section 4(1) of the Code which is a saving provision clearly provides that in the absence of any specific provision to the contrary the provisions of the Code do not limit or affect any special or local law. Thus the test contained in Section 4 is not applicable in the instant case because even if the Letters Patent of the High Court be deemed to be special law as contemplated by Section 4 the provisions of Section 104 do not seek to limit or affect the provisions of the Letters Patent.4

**APPLICATION OF THE CODE TO REVENUE COURTS — JURISDICTION OF ORDINARY CIVIL COURT WHEN BARRED.**

The Supreme Court had laid down:

No doubt if the suit is one properly entertainable by the Civil Court the period of limitation must be governed by the provisions of the Limitation Act and no other. But if one reads section 209 and 331 of the U. P. Zamindari Abolition and Land Reforms Act (I of 1951) together one finds that a suit like the instant one has to be filed before a special court created under the Act within a period of limitation specially prescribed under the Rules made under the Act and the jurisdiction of the ordinary Civil Court is absolutely barred.5

1. Bhagwati Prasad v. Haji Ramzanali, 1976 R. D. 232 (R.R.).

2. Chandrika Misir v. Bhaiyalal, 1973 R. D. 365 (S.C.).

3. I. L. R. (1979) 1 Delhi 236.

4. Shah Babulal Khimji v. Jayaben D. Kania and another, (1981) 4 S.C.C. 8: A.l.R. 1981 S.C. 1786: (1982) 1 S.C.R. 187.

5. Chandrika Misir v. Bhaiyalal, 1973 R.D. 365 (S.C.).