
(1969) 06 KL CK 0001

In the High Court Of Kerala

Case No : CMA No's. 96 of 1968 and 97 of 1968

Kunjan Kumaran

APPELLANT

Vs

Krishna Iyer Ramachandra Iyer

RESPONDENT

Date of Decision : 20-06-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1969) KLJ 770

Hon'ble Judges : P.T. Raman Nayar, C.J

Bench : Single Bench

Advocate : K.V. Kuriakose, for the Appellant; T.S. Venkiteswara Iyer and P.K. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

P.T. Raman Nayar, C.J.—Whether a person is a tenant in lawful possession, or a trespasser, is essentially a question for a civil court to decide, not, in the last resort, for a tribunal of limited jurisdiction like a Land Tribunal constituted under (Kerala) Act 4 of 1961 unless there is an express or implied bar to cognizance within the meaning of section 9 of the Civil Procedure Code. Reliance is placed, I have little doubt mistakenly placed on the provisions of Act I of 1964 as constituting such a bar by reason of the Land Tribunal having decided, in the presence of the owners of the lands, that the appellant in these cases was their tenant and having determined the fair rent accordingly obviously the decision can not operate as res judicata and it is not claimed that it does. (I am assuming that the provisions of Act I of 1964 govern these cases although the orders of the Land Tribunal determining fair rent were made under Act 4 of 1961 in fact, I do not think that that is the effect of section 132(4) (ii)(d).) The provisions relied upon are sections 101(3), 125 and 127 of Act I of 1964--section 32 which seems to have been pressed into service in the courts below has obviously no application since there was admittedly no application for the determination of fair rent pending when the present suits were brought. Section 101 (3) only makes it

clear that the Land Tribunal is competent to decide the jurisdictional fact whether a person is or is not a tenant and in no way seeks to affect the jurisdiction of the civil court to decide that question. Section 125 only precludes the order determining the fair rent being called in question in a civil court. But that is not what the owners who are the plaintiffs in these suits are doing. They are suing for possession on the strength of their title on the basis that the appellant is a trespasser, and, even if that implies that the decision of the Land Tribunal that the appellant is their tenant is wrong, they are not calling into question any order--and I might say that the word, "order" in section 125 would not include a decision on the collateral jurisdictional fact--made under the Act. And it is difficult to see how the overriding effect conferred on the Act by section 127 thereof can affect section 9 of the CPC which is in no way inconsistent with any of the provisions of the Act. The first court was, I think, wrong in dismissing the suits out of which these appeals arise on the preliminary finding that their cognizance was barred. The lower appellate court was quite right in setting aside the dismissal and in remanding the suits for trial in accordance with law.

2. I dismiss these appeals with costs.