

**(1987) 08 KAR CK 0019**  
**In the Karnataka High Court**  
**Case No : R.F.A. No. 501/1987**

Mohammed Moinuddin

APPELLANT

Vs

Sadat Ali and Others

RESPONDENT

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**Date of Decision :** 17-08-1987

**Acts Referred:**

**Citation :** (1987) 2 KarLJ 295

**Hon'ble Judges :** K. B. Navadgi, J;M. P. Chandrakantharaj Urs, J

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## **Judgement**

Chandrakantharaj Urs, J.-This appeal is directed against the judgment and decree of the Court of the Civil Judge at Bidar dated 4th July, 1987 passed in O.S. 386/86 on its file.

2. Brief facts that are necessary to be stated for disposal of this appeal are as follows:

The suit schedule lands were inam lands within the meaning of that express-on as defined by the Hyderabad Abolition of Inams Act, 1954. One Akkamma Bai and others claimed occupancy rights in respect of suit schedule lands. Among others who claimed occupancy rights, were the defendants in the suit or their predecessor-in-title. The claim of the defendants before the Collector who was the authority to go into the question of conferment of occupancy rights, was rejected and Akkamma Bai was registered as an occupant in the year 1962 by an order dated 29th February, 1962. It would be useful to state at this stage that by the time all these came to be done, the district of Bidar had stood transferred to the new State of Karnataka on 1-11-1956. Therefore, in place of Collector, the Special Deputy Commissioner was the competent authority to register the occupants or to grant or refuse occupancy rights in respect of inam lands. Similarly, under the Hyderabad Inam Abolition Act of 1954, the Karnataka Revenue Tribunal became the appellate Authority.

Akkamma Bai left the properties of which she had been registered as an occupant in favour of her daughter-in-law Rajamathi Bai who sold part of the

lands to the plaintiff for a consideration of Rs. 11,000/- and executed a sale deed in his favour. However, in 1967, the Karnataka Revenue Tribunal by its order dated 29-7-1967, set aside the order of the Special Deputy Commissioner passed in 1962 conferring occupancy rights on Akkamma Bai and remanded the matter to the Special Deputy Commissioner for disposal in accordance with the observations made in the course of that order. On remand, the Special Deputy Commissioner conferred the occupancy rights on the defendants, who, pursuant to that order, sought possession necessitating the plaintiff to approach the civil Court for several prayers including one for declaration of title and permanent injunction restraining the defendants from interfering with his possession.

The defendants resisted the prayer in the Original suit inter alia contending that once the occupancy rights were granted in their favour under Hyderabad Inams Abolition Act of 1954 by virtue of the provisions contained in the said Act, the Civil Courts jurisdiction to go into the question of title was barred and any remedy the plaintiff had, was only in accordance with the provisions i.e., to approach the appellate Tribunal or its successor.

In the light of that particular plea in defence, issue No. 8 was framed and that is as follows:

"Whether the Civil Court has no jurisdiction to entertain the suit?"

On that issue, following the decision of this Court in (I.L.R. 1985 Karnataka 3872), the Court-below came to the conclusion that jurisdiction of the civil court was barred by specific provision contained in Hyderabad Abolition Act viz., Section 29 which is as follows and is clear and unambiguous;

"Save as otherwise provided in this Act, no order passed by the Collector or by the Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid, or be questioned in any court of law."

Therefore, the only thing that was left for the plaintiff was to call-upon his vendor to perfect his title and no more.

In fact, we are informed from the Bar by Sri H.B. Datar, learned senior counsel appearing for respondents who have entered caveat that indeed the successor-in-interest to Akkamma Bai as well as the appellant have filed the appeal before the Appellate Tribunal challenging the correctness of the order passed by the Special Deputy Commissioner conferring occupancy rights on the defendants. The said appeals are pending before Karnataka Appellate Tribunal as on this date.

Mr. Kashinatha Rao Patil, however, contended that the order passed by the Revenue Appellate Tribunal in 1967 was obtained by fraud and was ab initio void for want of jurisdiction and for passing the order against a dead-person etc. We do not think that we should countenance those arguments when a statute provides a particular remedy to rectify what is alleged to be an illegal or improper order only that remedy must be pursued. More so, when the jurisdiction of the Civil court was barred by specific provision made by a special

enactment i.e., Hyderabad Inam Abolition Act. If he pursues that remedy against the order, on remand, of the Special Deputy Commissioner, it is not open to him to challenge the same either in the Civil Court or as an off-shoot of it in this Court in a Regular First Appeal.

However, Mr. Kashinatharao Patil very strenuously contended that there can be no total ouster of civil court's jurisdiction as laid down by several decisions. He has particularly relied upon two recent decisions of the Andhra Pradesh High Court and that of the Madhya Pradesh High Court. In the case of Lukraj and others v. Kishanlal and others, Andhra Pradesh High Court had occasion to consider whether a suit for partition in respect of inam lands could be tried by civil Courts under Sections 4 and 5 of the Andhra Pradesh (Telangana Area) Abolition of Inam lands Act 1967 (AIR 1987 AP 22). They have held that right to seek partition being a right of civil nature, civil court has jurisdiction to entertain a partition suit. We cannot possibly have any quarrel with that proposition. Because there civil court was asked to determine the rights of persons who were entitled to seek partition of the lands of which they had been declared as occupants and no more. Similarly reliance placed on the decision of the Madhya Pradesh High Court in the case of Ramasaran v. Mahapath Rao (AIR 1987 MP 29) is of no assistance to the petitioner as what fell for consideration there was Section 28 of the Administration of Evacuee Property Act, 1950. It had nothing to do with a situation like the one we have on hand here. When this Court has already ruled in the case of Inam Abolitions, it is not for us to deviate from that ruling, without sufficient cause.

We therefore find that the trial court took the correct view and dismiss the appeal as devoid of merit. This of course is without prejudice to the appeal pending before the Revenue Appellate Tribunal.

After we pronounced the judgment, learned Counsel sought certificate of fitness to appeal to Supreme Court by an oral application as the case involves substantial question of law which is required to be decided by the Supreme Court. We do not agree with the submission.

Therefore leave prayed for is refused.

Appeal is dismissed

1987 (2) kar.l.j. 298

LIMITATION ACT, 1963 - Art. 55, 22 & 24 - Right to claim refund of Deposit dependent on the general decision of High Court on question of land tenure - Express agreement to pay on happening of a specific event excludes scope for any implication as to when it is payable - Non-payment amounts to breach of premise - Suit to be filed within three years of the decision of the High Court on question of land tenure-Article applicable is Art. 55 and not Arts. 22 or 24.

FACTS: The appeal arose out of a suit filed by the Plaintiffs against the State of Karnataka seeking refund of a sum of Rs. 3,57,777-81 P. admittedly, tendered to

and held by the State as a deposit to be refunded on the happening of an event referred to fully in the Government Order Ex. P-9. The trial Court had held that the suit claim was within time and the Article that was applicable was Art. 22. On suit being decreed the State preferred first appeal. A question arose as to whether on the facts and in the circumstances of the case, the deposit made by the plaintiffs, as evidenced by the G.O. Ex. P-9 is governed by Art. 22 or Art. 24 of the Limitation Act, and the same was referred to the Full Bench of the High Court.

HELD: It must be remembered that what determines the period of limitation is the case of the plaintiff as put-forward in the plaint....According to the terms of the Government Order Exhibit P-9, the moment a general decision on the question of land tenure was pronounced by the High Court, depending on the actual result thereof, the Government either had to refund the amount in deposit to the Plaintiff or annex the same to itself. The general decision was admittedly in favour of the plaintiff and, therefore, the Government had to refund the deposit. However, it remained unmoved despite two communications from the Plaintiff which was a clear indication of its strong disinclination to perform its obligation vis-a-vis Exhibit P-9. Therefore, it was undoubtedly a case of breach of promise by the Government and consequently gave rise to a cause of action to the Plaintiff to sue the Government for compensation being the return of the deposit with such other preparations as may be claimed by the plaintiffs.....The cause of action for the plaintiff had arisen on the happening of a contingent event which in turn gave rise to certain expectations in the mind of the Plaintiff regards the duty of the defendant to fulfil obligations undertaken earlier. On a default having been committed by the defendant in that behalf, the Plaintiff was bound to sue on the basis of the breach committed by the defendant and to seek compensation in that behalf.....Thus the fact that a demand was made upon the committing of a default in payment of money that was already due, does not permit the marking of time afresh from the date of demand. Therefore, the suit not having been filed within three years of the decision of the High Court (as per terms of Ex. P-9); what followed then is the inexorable result i.e., the suit becoming barred by limitation and cannot thereafter be resuscitated by applying Art. 22 of the Act, which as mentioned earlier is inapplicable. The suit comes squarely within Art. 55 of the Act.