

(1996) 01 KAR CK 0033

In the Karnataka High Court

Case No : Regular Second Appeal No. 1 of 1991

Ramajois

APPELLANT

Vs

Chief Secretary

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Karnataka Land Revenue Act, 1964 — Section 49, 63, 94

Citation : (1996) ILR (Kar) 715 : (1996) 1 KarLJ 495

Hon'ble Judges : Eswara Prasad, J

Bench : Single Bench

Advocate : M.S. Gopal, for the Appellant; R.K. Hatti, HCGP, for the Respondent

Judgement

Eswara Prasad, J.—The suit filed by the appellant for declaration that the order passed by the 2nd respondent dated 4.7.1984 is illegal and void and for consequential relief of permanent injunction was dismissed by the learned Munsiff, Thirthahalli in O.S.No. 108/1984 on the ground that the Civil Court has no jurisdiction. The appeal filed by the appellant was dismissed by the Additional Civil Judge, Shimoga in R.A.No. 28/1986.

2. The learned Counsel for the appellant submits that the appellant was not served with any notice prior to the order of eviction passed by the second respondent and hence the Civil Suit was maintainable. He further contends that the questions involved in the suit were mixed questions of law and fact and therefore the issue relating to jurisdiction of the Court ought not have been decided as a preliminary issue.

3. The appellant claims to be in long possession in Survey No. 21 of Kavaledurga village and he applied for grant of the land in his favour. The order dated 4.7.84 was issued and it was alleged that under a mahazar drawn on 5.7.84, the appellant was dispossessed. This was challenged by the appellant before the learned Munsiff. The Suit was dismissed holding that the Civil Court has no jurisdiction inasmuch as the right of appeal against the order dated 4.7.1984 was

available to the appellant and without the appellant exhausting the remedy, the suit cannot be maintained.

4. According to the respondents a show cause notice dated 4.6.1984 u/s 94 of the Karnataka Land Revenue Act 1964 ("the Act" for short), was issued to the appellant and the Revenue Inspector was directed on 4.7.1984 to evict the appellant and that he was accordingly evicted under a mahazar dated 5.7.1984. The contention of the learned Counsel for the appellant is that no such notice was served on the respondent and that he was not in fact evicted from the land in question.

5. u/s 49 of the Act, an appeal shall lie from every original order passed under the Act or the Rules made under the Act.

Under Clause (a), an appeal lies to the Assistant Commissioner if such an order is passed by a Revenue Officer subordinate to him. The order in question having been issued by the Tahsildar who is a Revenue Officer subordinate to the Assistant Commissioner an appeal lies under Clause (a) of Section 49. The jurisdiction of Civil Courts to entertain any suit or other proceeding against the State Government on account of any Act or omission of the State Government or any Revenue Officer is barred u/s 63 of the Act unless the plaintiff first proves that prior to the institution of the suit or other proceeding he has presented all such appeals allowed by the law for the time being in force within the period of limitation. Section 63 is an express bar to the filing of a suit unless the plaintiff has exhausted the remedies provided under the Act by filing an appeal. When there is an express bar in the Act, Section 9 of C.P.C. will not come to the aid of the appellant. The appellant ought to have filed an appeal against the order in question.

6. The learned Counsel for the appellant contends that appellant was under the bonafide impression that a suit can be filed inasmuch as the appellant was not served with any notice of the proposed eviction and therefore the impugned action was opposed to the principles of Natural Justice. The contention of the learned Counsel on this aspect appears to be tenable. The appellant must have been under a bonafide impression that he can pursue his remedy by filing a suit. In the circumstances of this case, it is necessary that the appellant should be permitted to file an appeal against the impugned action of the respondent. Inasmuch as the appellant was under the bonafide impression and was pursuing the remedy by filing a Civil Suit he is permitted to file an appeal within 4 weeks from today. If such an appeal is filed within the aforesaid period of 4 weeks, the same shall be entertained by the Appellate Authority and shall be disposed of in accordance with law, without reference to the question of limitation. The opinions expressed by the Courts below or this Court on the various contentions raised by the appellant will not be taken into consideration by the Appellate Authority in disposing the appeal.

7. Pending disposal of the appeal this Court passed an Interim Order on 7.1.1991

and the said Order shall continue to be in force for a period of eight weeks from today, to enable the appellant to obtain necessary orders from the Appellate Authority. Furnish a copy of this order within 10 days. Appeal is accordingly disposed.