# Noor Mohd. Khan Ghouse Khan Soudagar And ... vs Fakirappa Bharmappa Machenahalli And ... on 28 April, 1978

## Equivalent citations: 1978 AIR 1217, 1978 SCR (3) 789, AIR 1978 SUPREME COURT 1217, 1978 3 SCC 188

## Author: N.L. Untwalia

## Bench: N.L. Untwalia, Ranjit Singh Sarkaria, P.S. Kailasam

PETITIONER:
NOOR MOHD. KHAN GHOUSE KHAN SOUDAGAR AND ANR.

Vs.

RESPONDENT:
FAKIRAPPA BHARMAPPA MACHENAHALLI AND ORS.

DATE OF JUDGMENT28/04/1978

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
SARKARIA, RANJIT SINGH
KAILASAM, P.S.

CITATION:
1978 AIR 1217 1978 SCR (3) 789
1978 SCC (3) 188
CITATOR INFO :
R 1979 SC 653 (17A)
R 1989 SC2204 (12)

ACT:
Karnataka Land Reforms Act, 1961. (Mysore Act 10 of 1962), Sections 132, 133 and 142 (IA)-Eviction of a "tenant" from the land, whether the decision of this Court in Kulkarni's case [1966] 1 SCR 145, interpreting Section 85A of the Bombay Tenancy and Agricultural Lands Act, 1948 also governs the interpretation of the provisions of the Karnataka Act, 1961.
Karnataka Land Reforms Act, 1961 (Mysore Act 10 of 1962)-Whether the provisions of Act render the doctrine of lis pendens contained in Section 52 of the Transfer of Property Act (Central Act 4), 1882 inapplicable.
Jurisdiction-Determination whether the jurisdiction was expressly or by necessary implications excluded depends on

the provisions of the relevant enactments-Karnataka Land Reforms Act, 1961 (Mysore Act 10 of 1962), Sections 132 and 133 are applicable to pending proceedings.-Interpretation of-Karnataka Land Reforms Act, 1961 Sections 132, and 133 r/w Mysore Tenants (Temporary Protection from eviction) Act, 1961 Section 4(1) and Bombay Tenancy and Agricultural Lands Act, 1948 S. 85A.

HEADNOTE:

A suit for partition and possession was filed by the original respondent No. 2 herein against respondent No. 4 (Defendant No. I in the Suit), defendants 2 to 7 being co-sharers and defendants 8 to 14 being tenans in possession. The Trial Court passed a preliminary decree on 13-12-1954 by which each branch got 1/7th share. The said preliminary decree was confirmed by the High Court on 16-1-1963. In accordance with the law prevalent in the Karnataka State, an execution case under Section 54 r/w Order XX rule 18/Order XXI rule 35 C.P.C. being LD 117/56 was filed by the plaintiff-decree holder and the appellants' predecessor-in-interest i.e. (defendants 5 and 6 ) in the Court which had passed the preliminary decree for final partition and possession of the same had to be made and given by the Collector. In this execution case respondent No. I herein was impleaded as judgment debtor No. 20 because, during the pendency of the Suit in or about the year 1948, he had been inducted as a lessee of a portion of the suit properties in R.S. No. 61/1 and R.S. No. 61/2 situated in village Yattinahalli in Ranebennur Taluk of Dharwar district. The effect of impleading respondent No. 1 as a judgment debtor was as if he was impleaded as a party to the suit before final partition. On May 29, 1961, the Executing Court directed the Collector to partition the suit property and to give possession of their respective allotted lands to the various co-sharers including the appellants. Respondent No. 1 did not object to the claim. Neither did he carry any appeal against the said orders. The Collector made the final allotment of the various lands to the different co-sharers. The disputed land over which respondent No. 1 had been inducted by respondent No. 4 was allotted to the share of the predecessors-in-interest of the appellants some time after 29-5-1961 and before 29-5-1965.

On 29-5-1965, in pursuance of the direction of the Execution Court and the Collector, the Tahsildar went to effect the delivery of possession but proposed to deliver only symbolical possession of the disputed land and declined to deliver actual possession, as he found respondent No. I to be in actual cultivating possession of it. The Execution Court was moved in the matter and. by its order dated 8-6-1965, it directed the Tahsildar to deliver actual possession. On an appeal by respondent No. 1 in C.A. 104

165 the said execution orders of the Tahsildar was confirmed resulting in Execution Second Appeal by Respondent No. 1 in E.S.A. 86/65 before the High Court. The High Court made
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certain conditional orders of ad-interim stay. The conditions were not complied with by respondent No. I. Thereupon the appellants made an application again to the Execution Court for directing actual delivery. The first respondent contested the application on the ground that he being the tenant of the land had made an, application under the Mysore Land Reforms Act, 1961 which had come into force on October 2, 1965 seeking a declaration that be was a tenant within the meaning of that Act and obtained a stay. The Execution Court by its order dated 8-8-1967 rejected the plea and again directed the Tahsildar to deliver actual possession and this order was confirmed by the First Appellate Court in C.A. 34/67. Execution Second Appeal No. 78/67 was filed by respondent No. I in the High Court on 21-9-1967. The High Court disposed of both the E.S.A. 86/65 and E.S.A. 78/67 by a common judgment and allowed the appeals. The High Court held that respondent No. 1, in view of the provisions of the Karnataka Act, cannot be evicted and no actual delivery of possession can be given against him unless the requirements of the said Act was followed :

Dismissing the appeals by special leave, the Court

Per Untwalia, J. (On behalf of R. S. Sarkaria J. as well)

HELD :1. Civil Court's jurisdiction is barred under section 132 of the Karnataka Land Reforms Act, which is in pari materia with Section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948. Section 133 corresponds to Section 85A of the Act. The saving sub-section IA, inserted by Act 14 of 1965 in Section 142 extended the protection of the eviction of the Mysore Act against eviction and provided that an agriculturist shall not be liable to be evicted from land in respect of which he could be deemed to be a tenant except in accordance with the provisions of the Karnataka Act. [797 F-G, 798 D]

Dhondi Tukaram Mali and Anr. v. Hart Dadu Mang and Ors., I.L.R. 53 Bombay, 969 referred to

Custodian of Evacuee Property, Punjab & Ors. v. Jafran Begum, [1967] 3 S.C.R. 736; Corporation of the City of Bangalore v. B. T. Kampanna, [1977] 1 S.C.R. 269, Secretary of Store v. Mask Co., 67 I.A. 222, explained.

Mussamiya Imam Haider Bux Razvi v. Rabari Govindbhai Ratnabhai and Ors., [1969] 1 SCR 785; explained and distinguished.

2. The facts of the present case do attract the provisions of the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 and subsequently the Karnataka Land Reforms Act. The first respondent was a tenant under the fourth respondent within the meaning of Section 2(18) of the Bombay Act. He had therefore, the protection of the Bombay Act. Later he got the protection under Section 2(e) of the Mysore

Act and subsequently, the protection continued even under the Karnataka Act. The question which falls for decision in these appeals is not one as to the applicability of any of the three Acts to the land in dispute but squarely (1) it is a question as to whether the claim of the first respondent that he became a tenant under the appellants also is tenable under the various Act. Thus on the facts of the case the decision of this Court in Kulkarni's case applies on all fours. [802 A-C]

Bhimji Shankar Kulkarni v. Dundappa Vithappa Adapudi and Anr. [1966] 1 SCR 145; followed.

3. The argument that though the respondent No. 1 might have been inducted as a tenant by respondent No. 4, but as soon as, the land was allotted to the share of the appellants he ceased to be in lawful possession of the land and in view of the well settled position of law with reference to Section 52 of the Transfer of Property Act he could not be a 'tenant' or 'deemed tenant' under the appellants within the meaning of the Bombay Act or Karnataka Act is not correct. A question arose during the pendency of the suit and the execution proceeding whether on the final allotment of the land to the appellants, respondent No. 1 had ceased to be a tenant and had become a trespasser in view of

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section 52 of the Transfer of Property Act. The appellants may have a good case on merits. But there does not seem to be any escape from the position that the adjudication of the question aforesaid fell squarely and exclusively within the jurisdiction of the Revenue Authorities and the Civil Court had no jurisdiction to decide it. It was not a case where there was no dispute of the fact that respondent No. 1 was a tenant or vice versa. Nor was it a case where dispute had cropped up inter se between two persons both claiming to be the landlord of the land or between two persons both claiming to be the tenant of the land. The dispute was whether respondent No. 1 had become the tenant of the appellants or not. [802 D-H, 803 A]

Bhimappa Venkappa Kerisa v. Basavalingayya, I.L.R. 1958 Mysore, 197; Ramdas Popat Patil v. Fakira Pandu Patil and Ors. A.L.R. 1959 Bombay, 19 and Chandbeg Muradbeg and Ors. v. Raje Madhao Devidasrao Jahagirdar and Ors., AIR 1961 By 146, explained and distinguished.

Kedar Nath Lal and Anr. v. Ganesh Ram and Ors. [1970] 2 S.C.R. 204, referred to.

Per Kailasvam J.

1. The exclusion of the jurisdiction of the Civil Court is not to be lightly inferred. Such exclusion must be explicitly expressed or clearly implied. In order to determine whether the jurisdiction of the Civil Court was expressly or by necessary implication excluded the provisions of the relevant enactments will, have to be considered. [806 A-D]

Secretary of State v. Mask Co., 67 I.A. 622, Dhulabhai v. State of M.P. [1968] 3 SCR 662; State of West Bengal v. The Indian Iron and Steel Co. Ltd [1971] 1 S.C.R 275, Union of India v. Tara Chand Gupta and Bros., [1971] S.C.R. 557; reiterated.

2. The Karnataka Land Reforms Act as well as the earlier enactments were made for the purposes of introducing agrarian reforms, conferment of ownership on tenants, ceiling on land holdings and for certain other matters referred to in the Act. Any dispute arising under the provisions of the Act and relating to disputes between landlord and tenant will be within the jurisdiction of the Tribunal constituted under the Act. [808 A-B]

By Section 132 of the Karnataka Land Reforms Act, 1961, the jurisdiction of the Civil Court to settle, decide, to deal with any question which is under the Act required to be decided by the authorities set up by the Act is taken away. Under Section 112 B which enumerates the duties of the Tribunal it is clearly the duty of the Tribunal to determine whether a person who claims to be a tenant is an agriculturist, whether he cultivates personally the lands, whether he holds, the lands from a landlord, whether he is a deemed tenant under section 4, whether he is entitled to protection from eviction from any land under the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961, whether he is a permanent tenant and whether he is a protected tenant. In this connection it is necessary to note the definition of landlord in section 2(21) which means a person who has leased the land to a tenant and includes person entitled to receive the rent from a tenant. It is also the duty of the Tribunal to determine whether the tenant is holding the land on lease from a landlord. [807 B, F-H]

Asa Ram and Anr. v. Mst. Ram Kali & Anr., [1958] S.C.R. 986 referred to.

3. Sub-section 2(a) of Section 133 of the Karnataka Act is applicable to suits only and does not indicate that the provisions are applicable to execution proceedings or in appeals before Civil Courts. The jurisdiction of the Civil Court is taken away only in respect of the decisions of the issues in suits that are required to be referred to the Tribunal under Section 133 and the Civil Court shall stay the suit. On receipt of a communication from the Tribunal, the Civil Court has to proceed with the trial of the suit and dispose it of according to law. In the absence of express provision, when an issue has been

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referred by the Civil Court to the Tribunal and is received,back and a decree passed in the suit, the provision of the Civil Procedure Code regarding appeals and revisions will be applicable. In such circumstances the appellate Court will have to consider the correctness or otherwise of the issue that has been decided by the Tribunal. Section

4(1) of the Mysore Act which is similar to section 133(2) of the Karnataka Act provided for stay of execution in suits, proceedings and execution of decrees or orders and other proceedings for the eviction of tenant. In applying section 133, therefore, the questions that have to be considered are, whether the sub-section is applicable to execution proceedings and in appeals before Civil Courts. [808 F-H, 809 A-B]

In the instant case, as the respondent took the plea that he is protected under the Mysore Land Reforms Act, 1961, the question as to what extent the jurisdiction of the Civil Court is barred ought to have been gone into by the High Court. It is unfortunate that the High Court considered it unnecessary to consider the various questions in the Second Appeals in view of the decision of this court in Bhimaji Shanker Kulkarni v. Dundappa Vithappa Udapudi and Anr., [1966] 1 S.C.R. 145. The only other ground on which the appeals were dismissed was that under section 14(1-A) of the Mysore Act corresponding to section 22 of the Karnataka Act, the 1st respondent was entitled to protection. The protection is available only when the land is held by a person as a tenant. [810 B-D]

Bhimaii Shankar Kulkarni v. Dundappa Vithappa Udapudi and Anr. [1966] 1 S.C.R. 145; Dhondi Tukkaram v. Hari Dadu I.L.R. (1953) Bom. 969; explained.

4. If in law the sharer in possession could not enter into any transaction obviously affecting the rights of the parties the defendant cannot claim any right and therefore, will not be a tenant. The question to be considered in such circumstances is whether an issue that the defendant is a tenant arises at all. [811 G-H, 812 A]

5. The Civil Court has inherent power to decide the question of its own jurisdiction although as a result of an inquiry it may turn out that it has no jurisdiction. Even though the defendant may plead that he is a tenant, the Court must be satisfied that an issue whether the defendant is a tenant or not arises before it could be referred for determination by the Tribunal and the question of jurisdiction will not be decided mainly on the plea of the defendants. [812 A, 813A]

Bhatia Cooperative Housing Society v. D. C. Patel, [1953] S.C.R. 185; followed.

Bhimaji Shankar Kulkarni v. Dundappa Vithappa Udapudi and Anr., [1966] 1 S.C.R. 145, Raizada Topandas and Anr. v. M/s. Gorakhram Gokhalchand, [1964] 2 S.C.R. 214; Vasudeva Gopalkrishna Tanwaker v. The Board of Liquidators, Happy Home Cooperative Housing Society [1964] 3 S.C.R. 964; Musamiya Imam Haider Beg Razvi v. Raberi Govindha Ratnabhai and Ors. [1969] 1 S.C.R. 785, Secretary of State v. Mask & Co., 67 I,A, 222, Corporation of City of Bangalore v. B. T. Kampanna, [1977] 1 S.C.R. 269, explained.

6. In the instant case

(a) It was incumbent On the High Court to decide the

several questions that arise for consideration. The plea of the appellants that the decisions of the Civil Courts directing the 1st respondent to deliver the possession to the appellant have become Anal and was no more available to him to be raised under the Karnataka Land Reforms Act also falls for decision. Equally, the plea that the questions that arise in the appeals are not within the competence of the Tribunal, also ought to have been gone into. Before referring the issue to the Tribunal the High Court ought to have come to a conclusion that on the facts of the case the issue as to whether the 1st respondent is a tenant has arisen and has to be decided by the Tribunal. [816 D-E]

(b) The High Court ought to have also considered whether any restriction on the jurisdiction of the Civil Courts placed under the Act is applicable to the

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High Court also. The jurisdiction of the Civil Courts is not entirely barred as the Act only provides for reference of certain issues for decision before the Revenue Tribunal and after receipt of the finding of such issues to record a judgment on such finding. The appeal to the Civil Courts according to the Civil Procedure Code and the jurisdiction of the High Court in hearing appeals and revisions under certain circumstances have not been excluded. [816 F-G]

[In view of the statement at the bar that during the pendency of these appeals in this Court that the Land Tribunal dismissed R. C. 37/66 filed by the respondent seeking declaration that he is a tenant in holding and that he is not a tenant, the court ordered (a) that actual delivery of possessions would be delivered to the appellants, if the question has already been finally decided in favour of the appellants (b) If not the revenue authorities should decide as quickly as possible and if the decision goes in favour of the appellants no time should be lost in giving actual delivery of possession to them and if per chance, the decision goes against them only symbolical possession be given.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2372- 2373/68.

Appeals by Special Leave from the Judgment and Order dated 9th February 1968 of the Mysore High Court in Execution Second Appeal Nos., 86 of 1965 and 78 of 1967. S. S. Javali and M. Veerappa for the Appellants. Naunit Lal and K. Yasudev for Respondent No. I in both the appeals.

K. Ramkumar and K. Jayaram for Respondent No. 4 (In C.A. 2372/68).

The Judgment of the Court was delivered by UNTWALIA, J. These two appeals by special leave are from the common judgment of the Karnataka High Court. In the year 1945, a suit for partition and possession was filed by the original respondent No. 2 (since deceased and his heirs substituted). In the said suit all the co-sharers were impleaded as defendants 1 to 7. The 4th respondent in these appeals was defendant No. I and the predecessors in interest of the appellants were defendants 5 and 6. Each branch had 1/7th share. A preliminary decree was passed by the Trial Court on December 13. 1954, which was eventually confirmed by the High Court in a second appeal decided on January 16, 1963. After the passing of the preliminary decree in the year 1954, in accordance with the law prevalent in the State of Karnataka "(then known as My-sore State), an execution case being L.D. 117 of 1956 was filed by the plaintiff- decree holder and the appellants in the Court which had passed the preliminary decree for final partition and possession; the same had to be made and given by the Collector. In the execution case was impleaded respondent No. 1 in these appeals as judgment debtor No. 20 because he had been inducted as a lessee of a portion of the suit properties during its pendency in or about the year 1948 by respondent no. 4. The effect of impleading respondent no. 1 as a judgment debtor was as if he was impleaded as a party to the suit before the final partition. On May 29, 1961, the executing court 16-315SCI/78 directed the Collector to partition the suit property and to give possession of their respective allotted lands to the various co-sharers including the appellants. The Collector made the final allotment of the various lands to the different co-sharers. The disputed land over which respondent no. I had been inducted by respondent no. 4 was allotted to the share of the appellants sometime after May 29, 1961 and before May 29, 1965. On 29-5-1965, in pursuance of the direction of the Execution Court and the Collector, the Tahsildar went to effect the delivery of possession but proposed to deliver only symbolical posses- sion of the disputed land and declined to deliver actual possession, as, he found respondent no. 1 to be in actual cultivating possession of it. The Execution Court was moved in the matter and by its order dated June 8, 1965, it directed the Tahsildar to deliver actual possession. The said order was confirmed in appeal on July 31, 1965 by the First Appellate Court. Respondent no. 1 filed Execution Second Appeal No. 86 of 1965, presumably because the order dated 8-6-1965 of the Execution Court was one under section 47 of the Code of Civil Procedure' In this appeal, the High Court made certain conditional orders of ad-interim stay. The conditions were not complied with by respondent no. 1. Thereupon, the appellants made an application again to the Execution Court for directing actual delivery of possession. The first respondent contested the application filed by the appellants on the ground that he being a tenant of the land had made an application under the Mysore Land Reforms Act, 1961 which had come into force on October 2, 1965, hereinafter to be called the Karnataka Act, seeking a declaration that he was a tenant within the meaning of that Act. The Execution Court, by its order dated August 8, 1967, again directed the Tahsildar to deliver actual possession and its order was confirmed by the First Appellate Court on August 31, 1967. Execution Second Appeal No. 78 of 1967 was filed by respondent no. 1 in the High Court on September 21, 1967.

The High Court has allowed both the appeals by its common judgment dated February 9, 1968 and held that respondent no. 1, in view of the provisions of the Karnataka Act, cannot be evicted and no actual delivery of possession can be given against him unless the requirements of the said Act are followed. In so doing 'he High Court has followed the decision of this Court in Bhimaii Shanker Kulkarni v. Dundappa Vuthappa Udapudi and anr(2) given in relation to the corresponding provisions of The Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter called the Bombay

Act. Hence these appeals.

Mr. S. S. Javali argued for the appellants and strenuously assailed the judgment of the High Court. Mr. Naunit Lal, appearing for the first respondent. combated his argument. Although respondent no. 4 was also represented before us by an Advocate, no argument was advanced on 'his behalf, as the dispute in these appeals is mainly between the appellants and the first respondent.

Before we proceed to notice and discuss the, contentions raised by the appellants, we may note a few more undisputed facts which were (1) [1966] 1 S.C.R 145-A.I.R. 1966 S.C. 166.

given to us by learned counsel for the parties. The disputed land in this case is comprised in R.S. No. 61/1 and R.S. No. 61/2 situated in village Yattinahalli in Ranebennur Taluk of Dharwar District, which once formed part of the erstwhile State of Bombay. On the reorganization of the States in the year 1956, village Yattinahalli came to form part of the erstwhile State of Mysore now known as the State of Karnataka. Our attention was, therefore, rightly drawn to the relevant provisions of the Bombay Act which were applicable to the disputed land and remained so applicable even after the reorganization of the State until The Mysore Tenants (Temporary Protection from Eviction) Act. 1961, hereinafter called the Mysore Act, and the Karnataka Act were passed and enforced.

At the outset of the discussion of the points urged for the appellants, we may briefly notice, the relevant provisions of the three Acts--viz. the Bombay Act, the Mysore Act and the Karnataka Act. Subsections (1 8), (14) and (10A) of the definition section 2 of the Bombay Act respectively defines 'tenant', 'protected tenant' and 'permanent tenant'. Sub- section (18) says :

> " " tenant" means a person who holds land on lease and includes-
>
> (a) a person who is deemed to be a tenant under section 4;
>
> (b) a person who is a protected tenant; and
>
> (c) a person who is a permanent tenant;

and the word "landlord" shall be construed accordingly." Persons to be 'deemed tenants' are mentioned in section 4. The procedure for taking possession by or from a tenant under the Bombay Act is provided in section 29. If a person was a tenant under the said Act indisputably he could be evicted only on the grounds and in accordance with the Bombay Act. Section 70 enumerates the duties of the Mamlatdar and says :

> "For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar
>
> (a) to decide whether a person is an agriculturist;

> (b) to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant :..... is The words in clause (b) "or was at any time in the past"

were added with retrospective effect by Maharashtra Act 49 of 1969. It seems to have been so done in view of the decision of this Court in Mussamiya Imam Haider Bax Razvi V. Rabari Govindbhai Ratnabhai & Ors.(1) Under section 85 the jurisdiction of the Civil Court concerning any (1) [1969] 1 S.C.R. 785.

matter which has to be decided or dealt with by the Revenue Authorities, including the question whether a person is or was at any time in the past a tenant or not, is barred. Section 85A has been extracted in Kulkarni's case (supra). It provides that if in any suit instituted in any Civil Court an issue arises which has to be decided by the Revenue Authority, then the Civil Court shall refer such an issue for the decision of the Revenue Authority and stay the hearing of the suit until then. The Civil Court shall, thereafter, pronounce its decision-in accordance with the decision of the Revenue Authority on that issue. Dealing with the provisions of the Bombay Act and approving the principle decided by the Bombay High Court in "he case of Dhondi Tukaram Mali, and another v. Hari Dadu Mang, and others(1) a decision which was given before the introduction of Section 35A in the Bombay Act, it was held in Kulkarni's case as follows at page 149 "The Mamlatdar has exclusive jurisdiction to entertain an application by a landlord for possession of agricultural lands against a tenant, and the Civil Court has no jurisdic- tion to entertain and try a suit by a landlord against a tenant for possession of agricultural lands. The Mamlatdar has no jurisdiction to try a suit by a landowner for recovery of possession of agricultural lands from a trespasser or from a mortgagee on redemption of a mortgage, and the Civil Court has jurisdiction to entertain such a suit; but if the defendant to the suit pleads that he, is a tenant or a protected tenant or a permanent tenant and an issue arises whether be is such a tenant, the Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the 'light of the decision of the Mamlatdar."

We now advert to the relevant and corresponding provisions of the Mysore and the Karnataka Acts. Section 2(e) of the Mysore Act says :--

> " " tenant" means an agriculturist who holds land on lease from a landlord and includes an agriculturist, who is or is deemed to be a tenant under any law for the time being in force.."

Sub-section (1) of section 4 reads as follows "Stay of certain suits or proceedings.-(1) All suits proceedings in. execution of decrees or orders and other proceedings for the eviction of tenants from the lands held by them as tenants or in which a claim for such eviction is involved pending in any civil or revenue court or before any Tribunal on the date of commencement of this Act, or which may be instituted on or after the date of such commencement, shall stand stayed during the period this Act remains in force."

(1) I.L.R. 53 Bombay, 969.

It would thus be seen that if respondent No. I in these appeals was a "deemed tenant" under the Bombay Act, he had the protection of the Mysore Act. The Karnataka Act has been amended several times, such as, by Karnataka Act 14 of 1965; Act 38 of 1966; Act 6 of 1970 and Act 1 of 1974. We are referring to the relevant provisions of the Karnataka Act from one of the two petitions of special leave, as we were given to understand that the relevant provisions at the relevant time read as mentioned in the said petition of special leave, The expressions 'permanent tenant' and' 'protected tenant' are defined in subsections (23) and (27) respectively of section 2. Sub-section (34) says :-

> " "tenant" means an agriculturist who holds land on lease from a landlord and includes :-
>
> (i) a person who is deemed to be a tenant under section 4;

a person who was protected from eviction from any land by the Mysore Tenants (Temporary Protection from Eviction) Act, 1961, ;

iii) A person who is a permanent tenant; and

(iv) A person who is a protected tenant."

Persons to be 'deemed tenants' are mentioned in section 4 more or less on the lines of section 4 of the Bombay Act. The grounds on which a tenant can be evicted are, mentioned in section 22. Section III provides for constitution of Tribunal and the duties of Tribunal are enumerated in section 112, the relevant portion of which reads is follows For the purpose of this Act, the following shall be the duties and functions to be performed by the Tribunal namely :--

> (b) to decide whether a person is a tenant or not under Section 4."

Civil Court's jurisdiction is barred under section 132 which is in pari materia with section 85 of the. Bombay Act. Section 133 corresponding to section 85A of the Bombay Act may be quoted here :-

> "Suits involving issues required to be decided under this Act :-(1) If any suit instituted in any civil court involves any issues which are required to be settled. decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the " competent authority"), the Civil Court shall stay the suit and refer such issues to such competent authority for determination.
>
> (2) On receipt of such reference from the, Civil, Court the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the civil court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto."

Section 142 of the Karnataka Act provides for repeal and savings of certain earliar Acts. Sub-section (1A) was inserted by Act 14 of 1965 in section 142. It reads as follows "Notwithstanding anything contained in sub- section (1) or in any law in force in any area of the State of Mysore at any time before the commencement of this Act, the first proviso to the said sub-section or any other provision of law shall not, be applicable in so far as the said proviso or provision of law will enable any person to evict from any agricultural land any agriculturist protected from eviction from any land in his possession by the Mysore Tenants (Temporary Protection from Eviction) Act, 1961, and no such agriculturist shall be liable to be evicted from such land except in accordance with the provisions of this Act."

It would thus be seen that if respondent no. I was a tenant within the meaning of the Bombay Act, then he had the protection of the Mysore Act against his eviction and sub- section (1A) of section 142 of the Karnataka Act extended the protection and provided that he shall not be liable to be evicted from land in respect of which he could be deemed to be a tenant except in accordance with the provisions of the Karnataka Act.

In the execution proceeding in question a dispute has arisen as to whether respondent no. 1 is a tenant or not within the meaning of the Bombay Act and/or the Karnataka Act. The said respondent was inducted upon the disputed land by respondent no. 4 during the pendency of the partition suit. In all probability, therefore, as was argued by Mr. Javali for the appellants, his lease would be affected on the doctrine of lis pendens engrafted in section 52 of The Transfer of Property Act, 1882. Counsel submitted that respondent no.

1. could not be a tenant or a deemed tenant under the appellants after the land was finally allotted in their share by the Collector in pursuance of the preliminary decree passed by the Civil Court. He was inducted upon the land when by a private arrangement or otherwise the land was in possession of respondent no. 4 and during the pendency of the partition suit. It seems, because of that reason, this respondent was impleaded in the execution case filed by the appellants and others as judgment, debtor no. 20. In view of the special procedure of law prevalent in the State of Karnataka (then Mysore) the effect of impleading respondent no. 1 as judgment debtor no. 20 was to make him a party to the suit and the execution proceeding enabling him to take his objections to the execution under section 47 of the Code of Civil Procedure. Rightly or wrongly he took the objection that he was a tenant and, therefore, could not be evicted by the Collector in pursuance of the final partition decree or order by giving actual delivery of possession to the appellants. An issue, therefore, arose for decision of the Civil Court in the suit or the execution proceeding which was a continuation of the partition suit as to whether respondent no. 1 was a tenant within the meaning of the relevant Acts. The stand taken on behalf of the appellants with reference to section 52 of The transfer of Property Act may be good and may have force. Nonetheless, the jurisdiction of the Civil Court to decide this contentious issue was barred. The matter had to be decided by the Revenue Authorities. If the Revenue Authorities finally came to the conclusion that respondent no. 1 was a tenant within the meaning of the relevant provisions of the law, it is plain that no actual delivery of possession could be effected in favour of the appellants in respect of the disputed land. If, however, the decision of the Revenue Authorities finally went against respondent no. 1 in regard to his claim of being a tenant, it is equally plain that actual delivery of possession over the disputed land can be and has got

to be effected in favour of the appellants by dispossessing respondent no. I in the very execution case which has given rise to these appeals. Mr. Naunit Lal's contention that, in that event, respondent no. I will have other points to urge before the Civil Court or the High Court has no substance. No other point requiring any further consideration arises in this case. An identical view was expressed by this Court in regard to the bar of the jurisdiction of the Civil Court with reference to an evacuee property in the case of Custodian of Evacuee Property Punjab & Ors. v. Jafran Begum,(1) interpreting section 46 of the Administration of Evacuee Property Act, 1950. The High Court had taken the view that whether a certain person had or had not become an evacuee was determinable only by the authorities under the Act; but the determination of a complicated question of law relating to title to the property by such authorities was not final and could be reopened in the Civil Court. This Court did not countenance ;-he view of the High Court and held that section 46 is a complete bar to the jurisdiction of the Civil Court to adjudicate upon the question whether the property in dispute or right to or interest therein is or is not evacuee property. Mr. Javali, on the basis of the decisions of this Court in Mussamiya Imam Haider v. Rabari Govindbhai Ratnabhai & Ors (supra) and Corporation of the City of Bangalore v. B. T. Kampanna (2) submitted that the question whether respondent no. I in the past was a tenant of the appellants could not be referred to the Revenue Authorities; nor was the jurisdiction of the Civil Court ousted to decide the applicability of the Act concerning the claim of respondent no. 1.

It would be noticed from the facts of Razvi's case that the Collector's order granting lease in favour of the defendants was made on 28-7-1956 but the Kabuliyat was executed on August 24, 1956. It was, therefore, held by the High Court as also by this Court that the lease was granted only on 24-8-1956. One of the question for consideration was whether the defendants had become statutory owners of the suit lands under Section 32 of the Bombay Act on account of their (1) [1967] 3 S.C.R. 736.

(2) [1977] S.C.R. 269.

claim that they were tenants of the land on the tillers' day i.e. 1-4-57. The lease which became operative from 24-8- 1956 was for a period of one year. Since the provisions of Section 1 to 87A of the Bombay Act were not applicable to the plaintiffs estate from 1-8-1956 to 11-5-1958, and the tenancy expired on 31-5-1957, it was held that there was no subsisting lease on 11-5-1958 and the High Court was right in taking the view that the defendants had failed to establish that they had become statutory owners of the land by virtue of the first proviso to Section 88 read with Section 32 and 32F as amended under the Amending Act No. 13 of 1956 (vide pages 795-796).

It may be pointed out that neither by Section 70 nor by Section 85, as it stood at the relevant time, a jurisdiction was conferred on the Mamlatdar nor was the jurisdiction of the Civil Court ousted in clear terms as required by Mask's case(1) apropos the questions whether a person was or was not a tenant in the past or whether he had become a statutory owner under the relevant amended provisions of the Bombay Act. In that situation it was held by this Court that the decision on the question of ownership of the tenant on the tillers' day was not outside the jurisdiction of the Civil Court. The decision of this issue was dependent on the decision of another issue, namely, whether the defendants were or were not ',he tenants of the suit lands on the material date namely 28-7-1956

or on 11-5-1958. In view of the provisions of law, as it then stood, it was held at pages 796-797 "Section 70(b) of the Act imposes a duty on the Mamlatdar to decide whether a person is a tenant, but the subsection does not cast a duty upon him to decide whether a person was or was not a tenant in the past whether recent or remote.....

in other words, the plea of tenancy oil the two past dates was a subsidiary plea.and the main plea was of statutory ownership and the jurisdiction of the Civil Court cannot therefore be held to be barred in this case by virtue of the provisions of s. 70 of the Act read with the provisions of s. 85 of the Act." The suit in Razvi's case was filed on 11-7-1958 and this Court opined that the decision of the question whether the defendants were the tenants on any of the relevant dates before the date of the suit was not outside the jurisdiction of the Civil, Court as it was a question relating to their claim of being a tenant in the past.

It may be useful to point Out that sections 70 and 85 of the Bombay Act were thereafter amended with retrospective effect by Maharashtra Act 49 of 1969. in clause (b) of section 70 the words after the amendment are "person is,. or was at any time in the past, a tenant". Clause (kk) was also inserted in section 70 by the said Act giving jurisdiction to the Mamlatdar to hold an enquiry and restore possession of land under sub-section (1B) of section 32. It is also (1) 67 Indian Appeals, 222.

to be noticed that in section 85(1) of the Act by the said Amending Act the words, "including a question whether a person is or was at any time in the. past a tenant and whether any such tenant is or should be deemed to have, purchased from his landlord the land held by him" were added retrospectively, thus clearly ousting the jurisdiction of the Civil Court. Since the law was retrospectively amended the ratio or Razvi's case can no longer be applied. Moreover the case is clearly distinguishable also. In these appeals the relevant date with reference to which the claim of respondent no. 1 to be a tenant under the appellants had to be decided was not a date in the past, but fell squarely during the pendency of the suit and the execution proceeding.

The facts of the Bangalore Corporation's case are these : A lease for five years was granted by the Bangalore Corporation in 1953 in respect of the land situated in the city of Bangalore. The Bombay Act was obviously not applicable to this land. Immediately after tile expiry of the lease in the year 1958, a notice was given to Kampanna to hand over possession of the land. Kampanna filed a suit against the corporation for the grant of a permanent injunction restraining the latter from interfering with his possession. The suit was dismissed on the ground that the lease had terminated by efflux of time. The appeal was dismissed on 21st August, 1964. The Corporation then. instituted the suit giving rise to this appeal in the Supreme Court claiming possession from Kampanna on the ground that he was a trespasser. Kampanna contended that he was still a tenant. He claimed protection under the Mysore Act. The suit was decreed. Kampanna preferred an appeal. The High Court remanded the matter to the Trial Court for assessment of damages. After remand, by an amendment of the written statement Kampanna claimed protection under the Karnataka Act. The Mysore Act ceased to be in force in March, 1966. The application for amendment of the written statement was made on the 2nd February, 1973. Kampanna contended, relying upon section 133 of the Karnataka Act, that the suit should be stayed by the Civil Court and the matter should be referred to the Tribunal for decision. Section II 2 (B) (b) of the Karnataka Act confers power on the

Tribunal to decide, inter alia, whether a person is a tenant or not. Kampanna claimed that be was a deemed tenant under the said Act and hence a tenant. The High Court, in revision, directed the Trial Court to refer the issue to the Tribunal. This Court allowed the appeal and held that section 133 did not apply. The reasons for so holding are these : Section 107(1) (iii) made the Karnataka Act, except section 8. inapplicable to the land in question. The lease was determined by efflux of time in the year 1958. The question whether Kampanna wasa tenant or "deemed tenant"

> did not arise because the tenancy hadcome to an end. Section 4 (it seems section against F at page 271is a mistake for Section 4) of the Karnataka Act was held to be notapplicable. It was further held in the last paragraph at page 271 that the Mysore Act could not be pressed into service by Kampanna for protection against eviction. The land was outside the applicability of the Mysore Act which also ceased to be in operation in 1966. In that view of the matter, this Court observed at page 271 : "The trial Court in the present case rightly said that it could not be said that there was any dispute as to tenancy."

The facts of the present case are quite different. As discussed above, they do attract the provisions of the Mysore Act and consequently of the Karnataka Act. The first respondent was a tenant under the fourth respondent within the meaning of the Bombay Act. He had, therefore, the protection of the Bombay Act. Later he got the protection under the Mysore Act and subsequently the protection continued even under the Karnataka Act. The question which falls for decision in these appeals is not one as to the applicability of any of the three Acts to the land in dispute but squarely it is a question as to whether the claim of the first respondent that he became a tenant under the appellants also is tenable under the various Acts. Thus on the facts of this case the decision of this Court in Kulkarni's case applies on all fours.

Mr. Javali then submitted that the respondent no. 1 might have been inducted as a tenant by respondent no. 4 but, as soon as the land was allotted to the share of the appellants, he ceased to be in lawful possession of the land and in View of the well-settled position of law with reference to section 52 of the Transfer of Property Act he could not be a 'tenant' or 'deemed tenant' under the appellants; his possession was not lawful within the meaning of section 4 of the Bombay Act or the Karnataka Act on the allotment of the land to the appellants. The decision of such a question with reference to the right of a person other than the landlord was not outside the jurisdiction of the Civil Court. Mr. Javali sought to lend support to his argument from some decisions of the Mysore and Bombay high Courts viz.Bhimappa Venkappa Kerisa v. Basavalingayya;(1) Ramdas Popat Patil v. Fakira Pandu Patil and others(2) and Chandbeg Muradbeg and others v. Raje Madhaorao Devidasrao Jahagirdar and others. (3) In regard to the merits of the point with reference to section 52 of The Transfer of Property Act, he made reference to the decision of this court in Kedar Nath Lal & Anr. v. Ganesh Ram & OrS.(4) In our opinion, the argument of the appellants is not well- founded and must be rejected. A question arose during the pendency of the suit and the execution proceeding whether on the final allotment of the land to, the appellants, respondent no. 1 had ceased to be a tenant and had become a trespasser in view of section 52 of The Transfer of Property Act. The appellants may have a good case on merits. But there does riot seem to be any escape from the position that the adjudication of the question aforesaid fell squarely and exclusively within the

jurisdiction of the Revenue Authorities and the Civil Court had no jurisdiction to decide it. It was not a case where there was no dispute of the fact that respondent no. 1 was a tenant or vice (1) I.L.R. 1958 Mysore, 197.

(3) A.I.R. 1961 Bombay, 146.

(2) A.I. R. 1959 Bombay, 19.

(4) (1970) 2 S.C.R. 204.

versa. Nor was it a case where dispute had cropped up inter se between two persons both claiming to be the landlord of the land or between two persons both claiming to be the tenant of the land.The dispute was whether respondent no. 1 had become the tenet of the appellants or not. In Bhimappa's case (supra) the defendant had set up title to the suit land in the third party. While admitting that he was a tenant, the defendant asserted that the plaintiff was not his landlord but he was a tenant under a third party. In such a situation it was held by the Mysore High Court that it was not the jurisdiction of the Mamlatdar to decide as to who was the true owner of the land as between the plaintiff and the third party. Strictly speaking the correctness of the decision is open to doubt in view of what as said by this Court in Kulkarni's case (supra). But, as at present advised, we rest content by merely distinguishing this case. In the case of Ramdas Popat Patil (supra) the question for decision of the Bombay High Court with reference to section 52 of The Transfer of Property Act came up for consideration after the decisions of the Revenue Authorities. This case is, therefore, of no help to the appellants. In Chandbeg's case (supra) the question before the Full Bench of the Bombay High Court was whether the person claiming to be the tenant could be deemed to be a tenant under section 6 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and consequently a protected lessee within the meaning of Section 3, Berar Regulation of Agricultural Leases Act. On the facts of the case, the High Court held that such a question was not necessary to be referred to the Tahsildar for decision. Firstly it has to be pointed out that it was not open to the High Court to say whether the question was "necessary" to be referred to the Tahsildar or not. If it was his exclusive jurisdiction to decide it, it had to be referred. There was no discretion left in the Civil Court. Secondly, the correctness of the decision has become doubtful after Kulkarni's case.

For the reasons stated above we do not think that we should upset the decision of the High Court. It merely requires some clarification in the operative portion on the lines indicated by us above. We accordingly dismiss the appeals but direct that actual de-livery of possession would be delivered to the appellants if the question has already been finaly decided in favour of the appellants by the Revenue Authorities. If not, they will be required to decide the question as quickly as possible. If their decision goes in favour of the appellants, no time should be lost in giving actual delivery of possession to them. If, per-chance, the decision of the Revenue Authorities goes against them, then they will be entitled to get symbolical delivery of possession only. In the circumstances, we make no order as to costs.

KAILASAM, J.-I had the benefit of reading the judgment pre- pared by my learned Brother Untwalia. I agree with the conclusion that if the question of tenancy had already been decided by the

Revenue Tribunal, delivery of possession should be effected immediately without any further delay as no other question thereafter remains to be tried by the Civil Court or the High Court. But considering the importance of the question involved, namely the scope of the jurisdiction of the Civil Courts and as my approach is not identical with of Justice Untwalia I am writing a separate judgment.

These two appeals are by Special Leave from a common judgment of the Karnataka High Court setting aside the orders of the courts below directing the Tahsildar to handover actual possession of the suit properties to the appellants herein, as being without jurisdiction. The facts of the case may be briefly set out. The property in dispute in this Court is lands bearing Survey No. R. S. 61/2 in the village of Yattanahalli. A suit for partition and possession on 1/7th share of the properties which were in possession of one Nawaz Khan (Respondent 4 herein) was filed by Khadar Ali Khan (Respondent 2 herein). Respondent 2 has since died and his legal representatives have been brought on record. In this suit the other sharers were impleadedas defendants 5 and 6 being the predecessor--in-interest of the appellants and the tenants on the properties being defendants 8 to 14. The 4th respondent who was the 18th defendant who was in possession of the suit properties resisted the suit and was supported by some other brothers. The suit for-partition and posses- sion was decreed by the Trial Court on 13th December, 1954. The preliminary decree declared that plaintiff and defendants 1 to 3 and 5 to 7 were entitled to 1/7th share of the suit property and that they may obtain possession of their 1/7th share from the 1st defendant after effecting partition by metes and bounds. The decree was confirmed in appeal by the Mysore High Court on 16th January, 1963 in Second Appeal No. 165 of 1959.

The appellants in this Court are the heirs of defendants 5 and 6 in this suit for partition. A final decree for partition was passed and lands in dispute were allotted to the shares of defendants 5 and 6. The appellants instituted proceedings for execution of the decree and for obtaining possession of the lands by filing L.D. No. 117 of 1956 in the court of District Munsiff. After the institution of the suit in the year 1945, the- 4th respondent inducted into possession of the suit lands the first respondent. In the execution petition filed by the appellants in L.D. No. 117 of 1956 the first respondent was added as a party., The first respondent entered appearance as judgment debtor No.

20. He did not dispute the claim of the appellants and a decree for possession in respect of the suit lands was passed in favour of the appellants by an order dated 29th May, 1961. The trial court directed the Collector to partition the suit property and give possession to the decree-holders of their shares and on 28th March, 1963 the Deputy Commissioner was directed to partition the properties and allot shares to the decree-holders according to be decree. In accordance with the order directing delivery of the possession, the Deputy Commissioner directed the Tahsildar to comply with the directions of the Court. The Tahsildar gave notice to the parties including the first respondent. The Tahsildar declined to give actual possession to the appellants but proposed only the delivery of symbolic possession. The decree-holders then applied to the Executing Court for direction to the Tahsildar for delivery of actual possession After hearing the parties the Executing Court on 8th June, 1962 directed the Tahsildar to deliver actual possession of the lands to the various sharers. Against the order of the Executing Court directing delivery of possession, the 1st respondent preferred an appeal, being Civil Appeal No. 104 of 1965 which was dismissed on 31st

July, 1965. In dismissing the appeal, court observed that the first respondent who was a party to the proceedings in execution had not preferred any appeal against the order dated 29th May, 1961 directing delivery of actual possession. The 1st respondent took up the matter on Second Appeal to the High Court which was numbered as Second Appeal No. 86 of 1965. A conditional order of stay was passed directing the 1st respondent to deposit a sum of Rs. 3,000/- by first December, 1965 and ordered that in the event of the first respondent failing to make the deposit the stay will stand vacated automatically. The respondent did not deposit the amount as directed by the High Court, but the High Court by its order dated 6th January, 1966 extended the time up to January, 31, 1966 for depositing the amount and again ordered that the order of stay will stand vacated on the 'failure to deposit as directed.

The 1st respondent again failed to deposit the amount even by the extended date. As the first respondent did not comply with the direction of the High Court, the trial court on 2nd March, 1966 directed the Tahsildar to hand over actual possession of the suit property to the appellants. Against this order of the trial court, the 1st respondent did not prefer any appeal.

On 13th July, 1965 the appellants prayed for an order for delivery of actual possession of the suit properties. The 1st respondent contested the application on the ground that he had made an application under the Mysore Land Reforms Act, 1961 before the Land Tribunal and had obtained an order of stay. On 8th August, 1967 the Executing Court rejected the objection of the 1st respondent and directed the Tahsildar to deliver actual possession to the appellants. The respondent preferred an appeal being Misc. Appeal 'No. 34 of 1967 in the court of Civil Judge, Hubli, which was dismissed on 31st August, 1967 as being not maintainable under the provisions of section 47 of Civil Procedure Code as the order merely implemented an earlier order dated 2nd March, 1966. The 1st respondent thereafter preferred Second Appeal No. 78 of 1966 before the High Court of Mysore. The two Second Appeals Nos. 86 of 1965 and 78 of 1967 were disposed of by a common judgment of 9th February, 1968. The High Court allowed both the appeals and set aside the orders of the courts below. On 21st November, 1968 the appellants were granted Special Leave to Appeal and thus the two appeals have come before us. During the pendency of the two appeals before this Court it is stated that the Land Tribunal dismissed R.C. 37/66 filed by the 1st respondent seeking declaration that he is a tenant-in-holding and that he is not a tenant. The 1st respondent does not dispute the fact but claims that even if it is so, the appeal will have to be remanded to the High Court.

The question that arises for consideration in these appeal is whether the Civil Court has jurisdiction to direct the Tahsildar to hand over actual possession of the suit lands to the appellants. It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be lightly inferred. Such exclusion must either be explicitly expressed or clearly implied. The law was laid down by the Privy Council in 67 Indian Appeals (page 222) and has been since affirmed by this Court in several decisions. In Dhulabhai vs. State of M.P.,(1) this Court held that exclusion of jurisdiction of the Civil court is not to be readily inferred. This view was followed in the State of West Bengal vs. The Indian Iron & Steel Co. Ltd. (2 ) and affirmed in the Union of India vs. Tara Chand Gupta & Bros., (3) The Privy Council in 67 I.A. 222 approving of the principles laid down in the well-known judgment of Willes J. in Wolverhampton New Water Works Co. vs. Hawkesford which was approved of in the House of Lords in Neville vs. London "Express" Newspaper stated the law thus:

> "Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it with respect to that class it has always been held that the party must adopt the form of remedy given by the statute."

In order to determine whether the jurisdiction of the Civil Court was expressly or by necessary implication excluded, the provisions of the relevant enactments will have to be considered. The respondent claims protection under three tenancy Acts which may be referred to as the Bombay Act, the Mysore Act and the Karnataka Act. If the first respondent is a tenant within the meaning of the Bombay Act, he would have the protection under the Mysore Act and subsequently under the Karnataka Act against being evicted except in accordance with the provisions of the Karnataka Act. If the 1st respondent is "a tenant" he will be entitled to protection under the Karnataka Act by which the parties are governed. It is, therefore, sufficient if we examine the provisions of the Karnataka Land' Reforms Act, 1961 which will hereinafter referred to as the Karnataka Act.

Section 132 of the Act bars the jurisdiction of the civil Courts (1) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government in exercise of their powers of control.

(1)[1968] 3 S.C.R. 662.

(2)[1971] 1 S.C.R. 275.

(3) [1971] 3 S.C.R. 557.

(2) No order of the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal, or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

By this section the jurisdiction of the civil court to settle, decide, to deal with any question which is under the Act required to be decided by the authorities set up by the Act is taken away. Chapter 9 deals with procedures and jurisdiction of courts and appeals. Section 112 enumerates the duties and functions of the Tahsildar and the Tribunal. Section 112A enumerates the duties of the Tahsildar while sec. 112B enumerates the duties of Tribunal. Among the duties of Tribunal with which we are concerned, is its duty to decide whether a person is a tenant or not. A tenant is defined under sec. 2(34) as meaning an agriculturist who cultivates personally the land he holds on lease from a landlord. The word also includes :

(i) a person who is deemed to be a tenant under section-

4.

(ii)a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961.

(iii)a person who is a permanent tenant, and

(iv)a person who is a protected tenant.

Section 4 states that a person lawfully cultivating any land belonging to any person shall be deemed to be a tenant if such land is not cultivated personally by the owner. A permanent tenant, is defined under section 2 clause (23) as meaning a tenant who cultivates lands personally. A protected tenant is defined as meaning a tenant of any land if he has held it continuously and cultivated it personally for a period of not less than 12 years by the appointed date. It includes also others specified in the definition. It is, therefore, clearly the duty of the Tribunal to determine whether a person who claims to ]be a tenant is an agriculturist whether he cultivates personally the lands, whether he holds the lands from a landlord, whether he is a deemed tenant under section 4, whether he is entitled to protection from eviction from any land under the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961, whether he is a permanent tenant and whether he is a protected tenant. In this connection it is necessary to note the definition of landlord in section 2(21) which means a person who has leased the land to a tenant and includes person entitled to receive the rent from a tenant. It is also the duty of the Tribunal to determine whether the tenant is holding the land on lease from a landlord which has been explained in Asa Ram, and Anr. vs. Mst. Ram Kali & Anr.,(1) by Venkatarama Aiyar J. as the person who is entitled to possession. These questions are undoubtedly within the jurisdiction of the tribunal and as such. excluded. from the jurisdiction of the (1)[1958] S.C.R. 986.

civil court. The Karnataka Land Reforms Act as well as the earlier enactements were made for the purpose of introducing agrarian reforms, conferment of ownership on tenants, ceiling on land holding and for certain other matters referred to in the Act. Any dispute arising under the provisions of the Act and relating to disputes between landlord and tenant will be within the jurisdiction of the Tribunal constituted under this Act Section 133 requires that suits involving issues to be decided under the Act if instituted in any civil court should be stayed by the civil court and the issue referred to the Tribunal for decision. Section 133 runs as follows :-

> 2(a). If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Tribunal, or any suit is instituted in any such court for possession of or injunction in respect of an agricultural land on the allegation that the defendant has trespassed or is trying to trespass on such land and the defendant denies the said allegation and claims that he is in possession on the strength of a tenancy existing from prior to 1st March, 1974, then the Civil Court shall stay the suit and refer inch issues or the claim, as the case may be, to the Tribunal for decision.
>
> (b)On receipt of such reference, (the Tribunal) shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to

the civil court which has made the reference."

Section 133 has been subsequently amended by Act 27 of 1976. Under section 133 the civil court shall stay the suit and refer such issues to the Tribunal for decision. Issues that are required to be settled, decided, or dealt with by the Tribunal and other claims which are enumerated in sub-section 2 should be stayed and the matter referred to the Tribunal for decision. It may be noted that this sub- section is applicable to suits only. The sub-section does not indicate that the provisions are applicable to execution proceedings or in appeals before civil courts. The jurisdiction of the civil court is taken away only in respect of the decisions of the issues in suits that are required to be referred to the Tribunal. On receipt of a communication from the Tribunal, the civil court has to proceed with the trial of the suit and dispose it of according to law. Section 1 1 8 of the Act provides for appeals. By an amending Act 1 of 1974 against the decision under section 133 or order passed by the Court an appeal was provided to the District Court which has been subsequently omitted by Act 23 of 1977. Sub-section 3 to section 118 provided for a reference to the High Court under certain circumstances. In the absence of express provision, when an issue has been referred by the Civil Court to the Tribunal and is received back and a decree passed in the suit, the provisions of the Civil Procedure regarding appeals and revisions will be applicable. In such circumstance the Appellate Court will have to consider the correctness or otherwise of the issue that has been decided by the Tribunal. Section 4(1) of the Mysore Act which is similar to section 133(2) of the Karnataka Act provided for stay of execution in suits, proceedings and execution of decrees or orders and other proceedings for the eviction of tenant. In applying section 133, therefore, the questions that have to be considered are, whether the sub-section is applicable to execution proceedings and in appeals before civil courts. In the present case the suit was filed in the, year 1945 for partition and separate possession of a share of properties in possession of the 4th respondent' The tenants who were on the land were impleaded as defendants. The first respondent was inducted into, possession by the 4th respondent after the suit was filed, A preliminary decree followed by final decree was passed allotting the suit land to the present appellants. In execution proceedings the first respondent was impleaded as judgment debtor No. 20 and a decree for possession in respect of the suit lands was granted in favour of the appellants against the 1st respondent. By an order dated 29th May, 1961, the Civil Court directed the Collector to partition the suit property and to give possession to the decree-holders of their shares and by an order dated 28th March, 1963, the Deputy Commissioner was directed to partition the properties and to allot shares to the decree-holders including the appellants. The 1st respondent did not challenge the order directing the delivery of possession that was passed against him on 29th May, 1961. The 1st respondent subsequently preferred an appeal, Civil Appeal No. 104 of 1965 against the subsequent order of the Executing Court dated 8th June, 1965 directing deliver of actual possession. The Appellate Court dismissed the appeal on the ground that the respondent did not challenge the order passed against him by the Munsiff on 25th September, 1961. Admittedly, the respondent was a party to the execution proceeding. It might have been open to him at the execution state to ask for a reference to the Tribunal of the issue whether he is a tenant or not. Second Appeal No. 86 of 1965 was against the order of the Civil Judge referred to above dismissing the appeal of the 1st respondent. In the Second Appeal the question squarely arose as to whether the orders directing possession against the 1st respondent particularly the one dated 29th May, 1961, bad become final.

Subsequently when Second Appeal No. 86 of 1965 was pending, the 1st respondent did not comply with the conditional stay order of the High Court directing that on the failure of the first respondent to, comply with the directions, the stay would stand vacated. The appellants approached the Trial Court and an order for delivery of actual possession was passed on 2nd March, 1966, and the fact intimated to the High Court. Against this order of 2nd March, 1966, of the Munsiff, no appeal was preferred by the 1st respondent. But when subsequently in July, 1966, the Executing Court directed ',he delivery of actual possession, the 1st respondent contested the application on the around that he was protected under the Mysore Land Reforms Act, 1961. The Executing Court rejecting this plea by its order dated 8th August, 1967 and delivery of possession was ordered against the 1st respondent. An appeal preferred by the 1st respondent against this order was also dismissed by the Civil Judge on 31st August, 1967 on the ground that it merely implemented the order already passed on 2nd March, 1967, by the Trial Court.Second Appeal No. 78 of 1967 was by the 1st respondent against the Appellate order of the Civil Judge. In this Second Appeal again the question arose whether the previous orders passed against the 1st respon- dent particularly the order of the District Judge dated March 1966 directing delivery of possession, was final. As the respondent took the plea that he is protected under the Mysore Land Reforms Act, 1961, the question as to what extent the jurisdiction of the Civil Court is 'barred ought to have been gone into by the High Court.

It is unfortunate that the High Court considered it unnecessary to consider the various questions in the two Second Appeals in view of the decision of this Court in Bhimaji Shanker Kulkarni vs. Dundappa Vithappa Udapudi and Anr.,(1) The only other ground on which the appeals were dismissed was that under section 142 (1-A) of the Mysore, Act corresponding to section 22 of the Karnataka Act, the 1st respondent was entitled to protection. The protection is available only when the land is held by a person as a tenant. In the case relied on 'Kulkarni's case, plaintiff instituted a suit in the Civil Court for possession of the suit properties on redemption of a mortgage and the taking of accounts on the allegation that defendant No. 1 was the usufructuary mortgagee under a mortgage deed. The defendants pleaded that the transaction in question was an advance lease and not a mortgage and that they were "protected" tenants within the meaning of the Bombay Tenancy and Agricultural Lands Act, 1948. It was contended on behalf of the plaintiff that the jurisdiction of them Civil Court depended on the allegations made in the plaint and the plea in the written statement that the defendants were protected tenants did not oust the jurisdiction of the Civil Court. This Court held that the Mamlatdar has exclusive jurisdiction under the Act to entertain an application by a landlord for possession of agricultural land against a tenant and the Civil Court had no jurisdiction to entertain and try a suit by a landlord against the tenant for possession of agricultural land. The two relevant provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, on which the decision in the case turned are sections 70(b) and 85(1) of the Act. Section 70(b) provided that one of the functions to be performed by the Mamlatdar is to decide whether a person is a tenant or a protected tenant or a permanent tenant. Section 85(1) provided that no Civil court shall have jurisdiction to settle, decide or deal with any question which is by the Act required to be settled, decided or dealt with by the Mamlatdar. The plea taken on behalf of the plaintiff was that the jurisdiction of the Civil Court depended upon allegation made in the plaint and that the Civil-Court has full jurisdiction to try a suit for recovery of possession of agricultural land on redemption of a mortgage, and the plea in the written statement that defendants were (1)[1966] 1 S.C.R. 145.

protected tenants did not oust the jurisdiction of the Civil Court. It was pleaded that the Civil Court should have tried and decided the issue whether the defendants were mortgagees or protected tenants instead of referring the issue to Mamlatdar. This Court affirmed the decision of the Bombay High Court in Dhondi Tukaram vs. Hari Dadu(1) that the effect of sections 70(b) and 85 of the Act was that if a suit is' filed against the, defendant on the footing that he is a trespasser and he raises the plea that he is a tenant or a protected tenant, the Civil Court has no jurisdiction to deal with the plea. On the facts of the case the court came to the conclusion that the issue was one that was within the jurisdiction of the Mamlatdar to try and, therefore, Civil Court had no jurisdiction. In coming to the conclusion the Court observed :

> "The Mamlatdar has exclusive jurisdiction to entertain an application by a landlord for possession of agricultural lands against a tenant, and the Civil Court has no jurisdiction to entertain and try a suit by a landlord against a tenant for possession of agricultural lands. The Mamlatdar has no jurisdiction to try a suit by a landowner for recovery of possession of agricultural lands from a trespasser or from a mortgagee on redemption of a mortgage, and the Civil Court has jurisdiction to entertain such a suit; but if the defendant to the suit pleads that he is a tenant or a protected tenant or a permanent tenant and an issue arises whether he is such a tenant, the Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the light of the decision of the Mamlatdar."

The Court while observing that the Mamlatdar has no jurisdiction to try the suit by landlord for recovery of possession of agricultural lands from a trespasser or from a mortgagee on redemption of a mortgage the Civil Court has jurisdiction to entertain such a suit, this Court added that if the defendant to the suit pleaded that he is a tenant or protected tenant or a permanent tenant and an issue arises whether he is such a tenant, (emphasis supplied) the Civil Court must refer the issue to, the Mamlatdar for determination. The decision is not to be understood as laying down that whenever the defendant raised the plea that he is a tenant the matter should be referred to the Tribunal. It is necessary that an issue as to whether he is such a tenant or not should arise. If the case of the plaintiff is as in the present case that he is the owner of the land and that he is entitled to a partition and separate possession of a particular share and that on the admitted facts the defendant was let to possession by the sharer in possession after the filing of the suit, the plea of the plaintiff that no issue as to whether the defendant is a tenant at all arises has to be considered. If in law the sharer in possession could not enter into any transaction obviously affecting the rights of the parties, the defendant cannot claim any right and, therefore, will not be a tenant. The question that falls to be con-

(1) I. L. R. (1953) Bom. 969.

sidered in such circumstances is whether an issue that the defendant is a tenant arises at all. In Bhatia Co-operative Housing Society V. D. C. Patel,(1) it was held by this Court that a Civil Court has inherent power to decide the question of its own jurisdiction although as a result of an inquiry it may turn out that it has no jurisdiction over the suit. The observation of this Court in Bhimaji

Shanker Kulkarni v. Dundappa Vithappa Udapudi and Anr. (supra) that when the defendant to the suit pleads that he is tenant and an issue arises whether he is such a tenant the court must refer the issue to be Mamlatdar for determination should be read in the light of the other decisions of this Court. In Raizada Topandas and Anr. v. M/s. Gorakhram Gokalchand(2) in dealing with the scope of section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which gave exclusive jurisdiction to the Court of Small Causes to entertain and try a suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, the Court repelled the contention that a plea of the defendant will determine or change the forum. The Court proceeded to observe at page 224 :

> "It does not invest those courts with exclusive power to try questions of title such as questions as between the rightful owner and a trespasser or a licensee, for such questions do not arise under the Act. If, therefore, the plaintiff in his plaint does not admit a relation which would attract any of the provisions on which the exclusive jurisdiction given under s. 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he cannot go. The interpretation canvassed for by the appellants will give rise to anomalous results; for example, the defendant may in every case force the plaintiff to go to the Court of Small Causes and secondly, if the Court of Small Causes finds against the defendant's plea, the plaint may have to be returned for presentation to the proper court for a second time."

The same view was affirmed by this Court in Vasudev Gopalkrishna Tamwaker v. The Board of Liquidators, Happy Home Co-operative Housing Society.(3) The Court held at page 978:

> "The exclusive jurisdiction of the Court of Small Causes arises only if the person invoking the jurisdiction of the Court alleged that the other party is a tenant or a landlord and the question is one which is referred to in section 28. Where the person so invoking does not set up the claim that the other party is a tenant or a landlord the defendant is not entitled to displace the jurisdiction of the ordinary court by an allegation that he stands in that relation qua the other and on that ground the Court has no jurisdiction to try the suit or proceeding or an application."

(1)[1953] S.C.R. 185.

(2)(1964] 2 S.C.R. 214.

(3)(1964](3) S.C.R. 964.

The position, therefore, is even though the defendant may plead that he is a tenant, the Court must be satisfied that an issue whether the defendant is a tenant or not arises before it could be referred for determination by the Tribunal and the question of jurisdiction will not be decided mainly on the plea of the defendants. The question relating to exclusion of the jurisdiction of the Civil Court and Bombay Tenancy and Karnataka Land Reforms Act can, to be considered in later decisions of this

Court. In Mussamiya Imam Haider Baz Razvi v. Rabari Govindhai Ratnabhai & Ors. (1) a question arose whether a Civil Court has jurisdiction to decide whether the tenant became a statutory owner on the "tillers' day" and whether the tenancy subsisted on the relevant dates. The appellant succeeded to the estate consisting of the suit lands when he was a minor. The State Government assumed management of the estate tinder the Bombay Court of Wards Act, 1905 and appointed the Collector as the manager of the estate. The Collector passed an order granting the request of respondent that the suit lands were required for the purpose for carry- ing on agriculture, by a Co-operative Society and executed a kabuliyat and lease was thereby created on 24th August, 1956. The prior lease expired on 31st May, 1957 and the Court of Wards withdrew its superintendence on 11th May, 1958. Under section 32 of the Act every tenant shall be deemed to have become a statutory owner of the lands on 1st April, 1957 known as the "tillers' day". By an amendment of the Act which came into force on 1st August, 1956, lands taken under management of Court of Wards were excluded from the implication of the Act and, therefore, the Act was not applicable to the suit lands between 1st August, 1956 and 11th May, 1958, when the Court of Wards withdrew its superintendence.

The appellants filed a suit on July 11, 1958 for recovery of possession of the suit lands and mesne profits on the ground that the lease was fraudulently obtained by the respondents. The respondents contended that they became statutory owners under the Act and the Civil Court had no jurisdiction to try the suit. This Court held that on the evidence adduced the High Court was right in its view that the lease in favour of the respondents was not vitiated by fraud. As the Act was not applicable during the period 1st August, 1956 to 11th May, 1958 the respondents could not have become statutory owners on the "tillers' day", that as the tenancy expired on 31st May, 1957 and as there was no subsisting lease on May 11, 1958 on which the Court of Wards withdrew its superintendence, the respondents were not tenants. On a construction of section 70(b), this Court expressed its view that the duty of the Mamlatdar was to decide whether a person is a tenant and not to decide whether a person was or was not a tenant in the past. Referring to the written statement, this Court observed that only plea set up on behalf of the respondents was the plea of tenancy on 28th July, 1956, which was the basis of the statutory ownership. There was no plea of any intervening act or transaction between 11th May, 1958 and 11th July-, 1958, the date of the suit under which a fresh tenancy was created and which was subsisting on the date of the suit and thus there was no issue which survived for the decision of the Mamlatdar (1) [1969]1 S.C.R. 785.

under section 85 (a) of the Act and, therefore, the suit ought to have been decreed by the Civil Court and not referred to the Mamlatdar.

it may be noted that this Court affirmed the view of the High Court that the lease in favour of the defendant was not vitiated by fraud thereby holding that the Civil Court had jurisdiction to decide whether a lease was vitiated by fraud. This Court again confirmed the view of the High Court that the defendant had failed to establish that they had become statutory owners of the land. Having found that the Civil Courts have jurisdiction to decide whether the issue is vitiated by fraud or not and whether the defendant had failed to establish that they had become statutory owners, this Court proceeded to consider the extent of the jurisdiction of the Civil Court. It was contended on behalf of the defendants that the determination of the question whether the lease subsisted after 1st August,

1956 and it- subsisted also on May 11, 1958, was not within the scope of the jurisdiction of the High Court. This Court in rejecting the contention observed that section 70(b) of the Act imposes duty on the Mamlatdar to decide whether a person is a tenant but not whether a person was or was not a tenant in the past. To the extent this Court held that the section does not empower the Mamlatdar to decide the question whether a person was not a tenant in the past, is no longer applicable as the section had been amended so as to include within the duties of the Mamlatdar to decide whether a person is or was in any time in the past, a tenant, or a protected tenant or a permanent tenant. But the ratio of the decision in the case is that the main plea in the suit was of statutory ownership and the plea relating to the tenancy of the two past dates was only subsidiary and the jurisdiction of the Civil Court cannot be held to have been barred by virtue of provisions of section 70 of the Act read with section 85 of the Act. Thus it may be seen when the question for determination was whether the defendant was statutory tenant or not, the issue is not within the scope of the duties of the Mamlatdar, the subsidiary issue as to whether-the defendant was a tenant on particular dates, could also be decided by the Civil Court. The law on this question was stated by this Court after referring to the decision in Secretary of State v. Mask & Co.,(1) as follows:

> "In the written statement, the only plea set up on behalf of the respondents was the plea of tenancy on July 28, 1956 which was the basis of statutory ownership. The High Court found that the tenancy was created on August 24, 1956 and that the tenancy did not subsist on May 11, 1958 when there was a cessation of the management by the Court of There was no plea of any intervening act or transaction be- tween May 11, 1958 and July 11, 1958, the date of suit, under which a fresh tenancy was created and which was subsisting on the date of the suit. There was thus no issue which survived for the decision of the Mamlatdar under section 85A of the Act. Therefore, the High Court should have decreed the suit and was in error in referring the issue whether the respondents were tenants of the land on the date of suit to the Mamlatdar.
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> (1)67 I.A. 222.
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> "In our opinion there is nothing in the language or context of sec. 70 or sec. 85 of the Act to suggest that jurisdiction of the Civil Court is expressly or by necessary implication barred with regard to question whether the defend-ants had become statutory owners of the land and in that connection whether the defendants have been in the past tenants in relation to the land on particular past dates.
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> The Court further proceeded to observe that the jurisdiction of the Court is not barred in considering the question whether the provisions of the Act are applicable or not applicable to the disputed land during the particular period.
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> The question of the exclusion of the jurisdiction of the Civil Court under the Karnataka Land Reforms Act, 1961 came to be considered by this Court in Corporation of City of Bangalore v. I. T. Kampanna. (1) The respondent took the disputed land on lease for 5 years from the Corporation and continued to hold it

unauthorisedly after the lease period. He filed a suit for permanent injunction against interference with his possession. The suit was dismissed and an appeal was also rejected. Then the Corporation instituted the suit for possession, the suit was decreed and respondent was directed to deliver possession. On appeal the High Court remanded the case and on revision the respon- dent applied for an amendment of his written statement claiming protection of the Karnataka Land Reforms Act, 1961, and for stay of the suit by the Civil Court and for a reference to the Tribunal for deciding the question whether he was a tenant or not. The application was dismissed, but on revision the High Court reversed the decision. On the question whether section 107 of the Karnataka Land Reforms Act was applicable to the disputed land, this Court held that the section made it clear that the only provision which applies to lands belonging to the Corporation is section 8 and there is no dispute that the suit was determined by efflux of time and the question whether tenant or deemed to be a tenant does not arise because the tenancy came to an end and therefore section 8 is not applicable and no question remained to be referred for determination by the Tribunal under section 133. In this case the Corporation instituted a suit claiming possession from the respondent contending that the respondent was a trespasser and claiming damage for unauthorised properties. The defence of the respondent was that he was a tenant and entitled to protection under the Mysore Tenancy Act. After remand by the High Court when the matter was being heard by the trial court, the respondent applied for amendment of written statement claiming protection under the Karnataka Land Reforms Act, 1961, and prayed that the suit should be stayed by the Civil Court 'and the matter referred to the Tribunal for decision as the Tribunal was empowered to decide whether a person is a tenant or not. On behalf of the respondent, it was contended that the respondent is a tenant within the meaning of the word "tenant" is defined in section 2(34) of the Karnataka Land Reforms Act, 1961. This Court held that as section 107 of the Act exempted the application of the provisions of the Act except section 8 to corporation, the question whether the respondent is a tenant or deemed to be a tenant (1) [1977]1 S.C.R. 269.

does not at all arise because the tenancy has come to an end. Though the plea of the defendant was that he was a tenant, this Court went into the provisions of the Act and found that in the case of Corporation only section 8 is applicable and other provisions were not applicable and as the lease belonged to the local authority the respondent cannot claim any protection. Repelling the contention on behalf of the respondent that section 133 of the Karnataka Land Reforms Act excluded the jurisdiction of the Civil Court in suits for possession where the defendant claimed to be a tenant as utterly unsound this Court held that section 133 cannot apply to lands which were held by a person on lease from the local authority or where the lease had expired and the local authority sues for possession, a mere statement of the defendant that he is a tenant would not take' away the jurisdiction of the Civil Court. The plea that the Act is not applicable by the plaintiff has to be decided by the Civil Court. In doing so the Civil Court can take into account the fact that the lease had "expired or that the provisions of the Act are not applicable to the landlord concerned. Equally as in the case reported in 1969 (1) S.C.R. 785 (supra), the Civil Court can go into the question where the defendant had established that he is a statutory owner and in doing so, can determine whether

the defendant was a tenant on the relevant dates. On a consideration of the cases referred to above, it is clear that it was incumbent on the High Court to decide the several questions that arise for consideration. The plea of the appellants that the decisions of the Civil Courts directing the 1st respondent to deliver the possession to the appellant have, become final and was no more available to him to be raised under the Karnataka Land Reforms Act also fans for decision. Equally, the plea that the questions that arise in the appeals are not within the competence of the, Tribunal, also ought to have been gone into. Before referring the issue to the Tribunal the High Court ought to have come to a conclusion that on the facts of the case the issue as to whether the 1st respondent is a tenant has arisen and has to be decided by the Tribunal. The High Court ought to have also considered whether any restriction on the jurisdiction of the Civil Courts placed under the Act is applicable to the High Court also. The jurisdiction of the Civil Courts is not entirely barred as the Act only provides for reference of certain issues for decision before the Revenue Tribunal and after receipt of the finding on such issues to record a judgment on such finding. The appeal to the Civil Courts according to the Civil Procedure Code and the jurisdiction of the High Court in hearing appeals and revisions under certain circumstances have not been excluded.

Having expressed my view on the jurisdiction of the Civil Courts in general as the question has been Pending before the Revenue tribunal when the matter was decided by the High Court and as it is represented on behalf of the appellants that the Revenue Tribunal has found that the 1st respondent is not a tenant, I agree with the order made by my learned Brother Untwalia J.

S.R. Appeals dismissed.
315 SCI/78-GIPF.