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Court : Kerala

Decided On : Jan-23-1979

Reported in : AIR1979Ker194

Judge : V. Khalid, J.

Acts : Kerala Land Reforms Act, 1963 - Sections 72F(2), 72F(3), 125(1) and 125(2); Constitution of India - Article 141; Evidence Act, 1872 - Sections 40, 41, 42 and 44; Code of Civil Procedure (CPC) , 1908 - Sections 11

Appeal No. : C.M.A. No. 128 of 1977

Appellant : Vellappan

Respondent : Peter Thomas

Advocate for Def. : K. Chandrasekharan,; P.N. Krishnankutty Achan and; K. Vi

Advocate for Pet/Ap. : T.R. Govinda Warrier and; K. Ramakumar, Advs.

Judgement :

V. Khalid, J.

1. This appeal raises an important question as to the bar of jurisdiction of the civil courts under the Kerala Land Reforms Act, from questioning the orders of the Land Tribunal. The facts of the case, in brief, are as follows:

2. This appeal arises from a suit, O.S. No. 59 of 1972 on the file of the Sub. Court, Palghat. The suit was filed for setting aside the order of the Land Tribunal in D.A. No. 140 of 1970 and for eviction of the defendant from the properties with mesne profits and damages. The defendant raised a plea that he was a tenant entitled to fixity of tenure. On this, the trial court referred the matter to the Land Tribunal for a finding regarding the tenancy put forward. The Land Tribunal sent back the records with the following remarks:

'On perusing the documents filed in the above original suit, it is seen that defendant in Suit No. 59/72 is the actual cultivating tenant under the K.L.R. Act and a K-Form Certificate was already issued in favour of the defendant. There is, therefore, no necessity to re-examine the question of tenancy in this case, by this Land Tribunal.' When the matter was taken up for hearing after receipt of the above finding, the defendant raised a preliminary objection that the trial Court had no jurisdiction to entertain the suit in viewof the bar contained in Section 125 (2) of the Kerala Land Reforms Act (for short, the Act). The learned Subordinate Judge considered this as a preliminary issue and upheld the objection. In appeal, the learned District Judge set aside the finding of the trial Court and remanded the suit for fresh disposal in accordance with law. Hence this C.M.A.

3. The plaintiff is a Tamil Christian. Jt is averred that under the custom prevalent in his community he is governed by 'Mitakshara Law'. According to him, his grandfather and grandfather's brother had dedicated the plaint 'A' schedule property for conducting the affairs of the Church and to run a 'Thanneerpandal' shown in the plaint 'B' schedule. Under the terms of the deed of dedication (Ext. A1) the eldest male member is to manage the properties and meet the expenses of Church and 'Thanneerpandal'. The plaintiff's father Abraham was the Manager till he died on 13-11-1971. The plaintiff succeeded him as the Trustee after his father's death. The defendant was working as Abraham's kariasthan. They colluded together and as a result of such collusion the defendant secured an order in O.A. No. 140 of 1970, upholding his claim that he was a tenant of the property and that he was entitled to purchase the jenm right. Ext. A2 is the copy of the order of the Land Tribunal. According to the plaintiff, defendant is not a tenant and even if there was a transaction of lease, it is not valid on account of the prohibition

contained in Ext. Al. It is further contended that Ext. A2 was brought about by collusion and hence is a nullity. It is on these allegations that the suit was filed with a prayer to set aside the order of the Land Tribunal and for consequential reliefs.

4. It is admitted that the plaintiff was not a party in O.A. No. 140 of 1970. The parties were the defendant and Abraham alone. Even so, the defendant's case is that Section 125 (2) of the Act is a complete bar for the maintainability of the suit to set aside the order in question. Additionally, it was urged that even a stranger to a proceeding before the Land Tribunal can file an appeal and revision under the relevant provisions of the Act, which means that a remedy is provided for an aggrieved party to question the order of the Land Tribunal. A suit is not only not a re-medy, it is clearly barred by the provisions of the Act.

5. The point that calls for consideration in this appeal is, whether a civil court is powerless in going into the question of the validity of the order of a Land Tribunal even when it is proved that the order was secured by fraud or collusion. Is the ouster of jurisdiction of the civil Court so complete that everyone is at the mercy of the Land Tribunal? To put it differently, is the order passed by the Land Tribunal a judgment in rem? Is an order passed by the Land Tribunal without impleading the necessary parties, without giving notice to them and without conforming to the principles of natural justice, operative against everyone? Does the bar contained in Section 125 (2) have an overriding effect on all the existing laws? These are some of the important questions that came up for debate during the lengthy arguments addressed by counsel on both sides with reference to decided authorities.

6. It is true that the provision contained in Section 125 has been enacted for a particular purpose. According to me,the purpose behind this section is to insulate tenants from harassment at the hands of the landlords by taking recourse to civil action when a matter is concluded by the order of a competent Land Tribunal. This postulates that the orders passed by the Land Tribunal will be orders passed in accordance with law. Orders of Tribunals as decrees of civil Courts can be bad for various vitiating circumstances. A party may secure an order by the exercise of fraud. Parties may collude and bring into existence an order affecting rights of those who are not parties thereto. In extreme cases, the Tribunals themselves

may be parties to the fraud. The question is whether the bar under Section 125 (2) is so all pervasive as to render the jurisdiction of the civil Court ineffective even to go into such vitiating circumstances as fraud and collusion. According to me, to answer this question in the affirmative will be to destroy the very foundation of the legal system and the procedure established by law.

7. Finality of proceedings is an accepted principle in our jurisprudence; a very salutary principle accepted byour legal system to avoid multiplicity of proceedings, a sound principle of public policy to give a quietus to litigation. That the decision of a Land Tribunal operates as res judicata in a subsequent proceeding before the Land Tribunal or before a civil Court is now settled by the pronouncement of the Full Bench of this Court reported in Govindan Gopalan v. Raman Gopalan (1978 Ker LT 315 (FB)). Therefore, normally, the finding in O.A. No. 140 of 1970 and the issuance of K-Form certificate should operate as res judicata and the suit should have been dismissed. But does the Full Bench case extend to a case where the earlier order is obtained by fraud or collusion? It is this question that falls for consideration at my hands.

8. In 1978 Ker LT 315 (FB), a Full Bench of this Court had to consider the general principles of res judicata and how it operates on orders of Land Tribunals also.Paragraph 12 reads:

'It is now settled law that 'provisions of Section 11 of the Civil P. C. are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata any previous decision on a matter in controversy decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial. (See Gulabchand v. State of Gujarat (AIR 1965 SC 1153).

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It is now settled law that a decision of a Court of special jurisdiction will be res judicata in a Court of general jurisdiction provided the decision was within the competence of the former Court.' Para 13 reads as follows:

'Competent jurisdiction is an essential condition of every valid res judicata, which means that, in order that ajudicial decision relied upon, whether as a bar, or as the foundation of an action, may conclusively bind the parties, or (in the case of in rem decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter, and over the parties, sufficient to warrant it in so doing.' The last para of the judgment reads as follows: 'Left to itself the provision means only that the Land Tribunal is competent to decide whether a person is a tenant or not for the purpose of the proceedings before him. It does not take away the jurisdiction of the Civil Court to decide the point. But under Section 126(1), no civil court is to have jurisdiction to settle, decide or deal with any question or to determine any matter which is under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. Section 125(2) contains a prohibition against a decision of the Land Tribunal being questioned in a Civil Court except as provided in the Act. Section 125 (3) directs that the question as to the existence or otherwise of a tenancy should at the first instance be decided by the Land Tribunal. The above provisions clearly indicate that while dealing with the question of tenancy under the Act, the Land Tribunal is no longer deciding a jurisdictional fact but an issue which is exclusively within the competence of the Tribunal. The fact that an appeal lies against the decision of the Civil Court which has merely to accept the decision of the Land Tribunal on the question referred to it does not affect the exclusive jurisdiction of the Land Tribunal to decide the question of tenancy or reduce it to a Tribunal of limited jurisdiction. The result is that the decision of the Land Tribunal as to the existence of a tenancy will be res judicata in a subsequent civil suit or proceedings and will be a bar for a further decision on the same point by the Land Tribunal or a Court in a subsequent suit or proceedings. If the question of tenancy has been decided by a Land Tribunal after the coming into force of the Land Reforms Amendment Act, 35 of 1969, as provided in the Act, there need not be a reference to the Land Tribunal under Section 125 (3) of the Act if the identical issue is raised in subsequent proceedings. A.S. No. 222 of1975 (1975 Ker LT (SN) 74) and S.A. No. 30 of 1974

(Ker) in so far as they contain observations contrary to the principles mentioned above will stand overruled.'

9. Thus, the question whether the order of a competent Land Tribunal regarding the existence of a tenancy operates as res judicata or not, in my view, is not now open to doubt. But it has to be borne in mind that the Full Bench has not placed the orders of Land Tribunals above decrees of civil Courts or the law of res judicata in relation to such orders above the bar contained in Section 11 C.P.C. In other words, if Section 11 C.P.C. has limitations imposed on it by general law, those limitations should apply to orders of Land Tribunals also.

10. The principle of res judicata is outside the region of fraud or collusion. Section 44 of the Evidence Act lays down that when a judgment is put in evidence under Section 40, Section 41, or Section 42, of the Evidence Act, it is open to the party against whom it is offered, to avoid its effect on any of the three grounds specified in the section without having it set aside, namely, (a) the in-competency or want of jurisdiction of the Court by which the decree was passed; (b) that it was obtained by fraud and (c) that it was obtained by collusion. Thus, Section 44 of the Evidence Act is an exception to Section 11 C.P.C.

11. The ambit of the vice of fraud or collusion can best be stated with reference to the following extracts:

'1. Principle. A judgment delivered by a Court not competent to deliver it, as by a Court which had no jurisdiction over the parties or the subject-matter of the suit, is a mere nullity. And though the maxim is stringent that no man shall be permitted to aver against a record, yet when fraud can be shown, this maxim does not apply, nor in the case of collusion, when a decree is passed between parties who were really not in conflict with each other. Faraus et jus nunguam cohabitant. Fraud avoids all judicial acts, ecclesiastical or temporal. It is an extrinsic collateral act, which vitiates the most solemn proceedings of Courts of Justice, which, upon being satisfied of such fraud, have a power to vacate and should vacate their own judgments. In the application of this rule, it makes no difference whether the judgmentimpugned has been pronounced by an inferior or by the highest tribunal; but in all cases alike, it is competent for every Court, whether superior or inferior,

to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud.' (See page 1205 of the Law of Evidence Woodraffe & Ameer Ali, 13th Edition, Volume 2).

'Fraud: General considerations: 'acts of the highest judicial authority', though 'not to be impeached from within,' yet 'are impeachable from without', for although it is not permitted to show that the Court was mistaken, it may be shown that they are misled. Fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of Courts of Justice. Lord Coke says, it avoids all judicial acts, ecclesiastical or temporal'. The avoidance of a judicial act on the ground of fraud or collusion is effected not only by active proceedings for rescission (which class of case does not concern the present discussion, because an action or motion to set aside a judicial decision obviously presupposes that the decision is conclusive until set aside), but also by setting up the fraud as a defence to an action on the decision, or as an answer to any case which, whether by way of estoppel or otherwise, depends for its success on the decision being treated as incontrovertible. In the language of Lord Brousham, 'you may at all times ..... either as actor or defender, objectto the validity' of the decision, 'provided that it was pronounced through fraud, contrivance, or covin of any description, or not in a real suit', and such decision shall avail nothing for, or against the parties affected by it, to the prosecution of a claim or the defence of a right', or as Lord Larcoale expressed it, 'if a sentence, decree or judgment of any court can be shown to have been obtained by fraud or collusion, it is not to be used in any court as evidence against the right of the party whose right he precluded by a sentence properly obtained.'

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Fraud in relation to English judicial decisions other than awards: It has always been held, in the case of all English judicial decisions other than those of arbitral Tribunals, that, where it is definitely, and with sufficient precisionand particularity, alleged, and substantially proved, that the decision was obtained by fraud or collusion, a good affirmative answer is thereby established to any prima facie case of estoppel founded on such decision as a res judi-cata, or to any action thereon,

or to any other proceeding dependent for its success upon the decision being held unimpeachable and conclusive, such as a petition in bankruptcy founded upon a judgment debt.'

It is the settled practice of the Court that the proper method of impeaching a completed judgment on the ground of fraud is by action, in which the particulars of the fraud must be exactly given, and the allegations must be established by strict proof'. (The Doctrine of Res Judicata -- Spencer Bower & Turner -- 2nd Edn. pages 322-24).

12. Thus, if a person can successfully prove that an order against him was obtained by fraud or collusion such an order can ordinarily be challenged in a civil court. Has this jurisdiction been taken away from the Civil Court by Section 125 (2) is the question which has to be decided in this case.

13. If the principle of finality of proceedings is a salutary principle of jurisprudence, recognised and accepted by Courts in public interest, equally so is the principle that an order obtained by fraud or collusion cannot be impressed with such finality when fraud or collusion is proved. In Beli Ram v. Mu-hammed Afzal (AIR 1948 PC 168), where it was established that the previous suit was not brought by the guardian of the minors bona fide, but was brought about in collusion with the defendant and the suit is a fictitious one, a decree obtained therein was held to be obtained by fraud or collusion within the meaning of Section 44 of the Evidence Act and it was held that it did not operate as res Judicata.

14. Before I consider the submissions made at the bar under Section 125 (2), I shall refer to the following two Mysore cases cited before me. In Lawrence Mascernhas v. Ignatius Pereira, ((1973) 2 Mys LJ 105), the question related to the right of a tenant who was evicted to re-occupy it. Sections 26, 27 and 28 of the Mysore Rent Control Act (Act 22 of 1961) are silent as to the form in which the tenant who is evict-ed is entitled to re-occupy the new building on completion. A learned Judge of the Mysore High Court observed:

'It is well settled that where the right claimed is not purely a creature of a statute but is a common law right and the statute entrusting the special Tribunal with

certain dispute relating to the right does not expressly oust the jurisdiction of the Civil Court wholly and the language of the statute does not in unmistakable terms make out that the right must only be exercised or enforced in a manner provided by the statute, the jurisdiction of the Civil Court is not barred. It is also a general principle of law that where there is right there must be remedy 'ubi jus ubi remedium'. In cases where the question of the exclusion of the Civil Court's jurisdiction is pleaded, the matter has to be considered in the light of the words used in the statutory provision on which the exclusion is rested. No attempt can be made to abridge the operation of a statute limiting the Civil Court's jurisdiction. Neither the provisions of Section 27 nor the provisions of Section 28 of the Act expressly oust the jurisdiction of the Civil Court wholly. Further those provisions do not in unmistakable terms lay down that the right must be exercised or enforced in any manner provided by the Act.'

15. In Narayanappa v. Narasimhaiah ((1974) 2 Kant Lj 380), another learned Judge of the Karnataka High Court noted with approval the observations quoted above made in (1973) 2 Mys LJ 105. There, the plaintiff filed a suit challenging the sale certificate issued by the Tahsildar under Section 22 of the Mysore Tenancy Act 1952. The suit was resisted on the ground inter alia that the Civil Court had no jurisdiction to entertain the suit in view of the provisions contained in Section 46 of the Act. The scheme of the Act is that a person in whose favour the Tahsildar issues a sale certificate after following the prescribed procedure, becomes the owner of the land. The issuance of the certificate shall not be called in question in any civil or criminal court. In that case, the sale in favour of the petitioners was attacked on the grounds of fraud and collusion. It was contended that while the Tahsildar has power under S, 22 to grant a certificate declaring a person to be purchaser of the land, he has no power to cancel or set it aside on theground of fraud or collusion. In other words, the power of the Tahsildar to grant a certificate is absolute. The learned Judge held thus:

'It is well settled that fraud vitiates the most solemn proceedings and statutory recognition is given to this principle, and where the authority functioning under the Act is not expressly or impliedly conferred with power to deal with and decide the question whether a sale is vitiated on account of fraud and collusion and it can be

set aside, it is the civil court that is competent to deal with and decide that question as such power is undoubtedly conferred on it by Section 9, C.P.C. As pointed out by this Court in Lawrence Mascern-has v. Ignatious Pereira, ((1973) 2 Mys LJ 105), where the right claimed is not purely a creature of a statute but is a common law right and the statute entrusting the Special Tribunal with certain dispute relating to the right does not expressly oust the jurisdiction of the Civil Court wholly and the language of the Statute does not in unmistakable terms make out that the right must only be exercised or enforced in a manner provided by the statute, the jurisdiction of the Civil Court is not barred. As mentioned earlier, the provisions of Sub-section (2) Section 46 of the Act cannot be read or understood as excluding the jurisdiction of the Civil Court to entertain a suit of this kind. In the view I take, it must be said that the Civil Court has jurisdiction to entertain the suit.'

16. The point highlighted in the above two decisions, in particular the second one, is that when a right sought to be enforced is one available at common law and not the creature of a statute, such right falls within Section 9, C.P.C. and the Civil Courts have jurisdiction to entertain such suits. Since fraud and collusion are not matters that can be settled, dealt with and decided by the Land Tribunal, the Civil Court has jurisdiction to try them. It is this general principle which, in my view, takes the case on hand, out of the mischief of Section 125 (2).

17. In Kumaran v. Ramachandralyer, (1969 Ker LT 822), Raman Nayar C. J., had occasion to consider the jurisdiction of the Civil Court to decide whether a person is a tenant in lawful possession or a trespasser. The learnedJudge held that in spite of SB. 125 and 127 of the Land Reforms Act, Section 9, C.P.C. reigned supreme and the jurisdiction of the Civil Court was not barred. From the short judgment, I shall read the following:

'S. 101 (3) only makes it clear that the Land Tribunal is competent to decide the jurisdictional fact whether a person is or is not a tenant and in no way seeks to affect the jurisdiction of the Civil Court to decide that question. Section 125 only precludes the order determining the fair rent being called in question in a civil Court. But that is not what the owners who are the plaintiffs in these suits are doing. They are suing for possession on the strength of their title on the basis that

the appellant is a trespasser, and, even if that implies that the decision of the Land Tribunal that the appellant is their ' tenant is wrong, they are not calling into question any order -- and I might say that the word, 'order' in Section 125 would not include a decision on the collateral jurisdictional fact -- made under the Act.'

It is necessary to bear in mind that while the judgment in the above case was rendered, Act 35 of 1969 had not amended Act 1 of 1964 and the scope of Section 125 was much restricted. Therefore, the principle of that decision cannot prevail now. Moreover, a Land Tribunal while disposing a matter referred to it, is not deciding a jurisdictional fact but deciding an issue within its exclusive competence.

18. For a proper understanding about the question of ouster of jurisdiction of the Civil Court, it is useful to read the relevant section in the Act. Section 125 of the Act, as it originally stood, read as follows:

'No order of the Land Tribunal or the Land Board under this Act shall be called in question in any Court except as provided in this Act.' This section underwent great structural alterations and drastic change and the new section as amended by Act 35 of 1969 reads as follows:

'125. Bar of jurisdiction of civil courts.-

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the LandTribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government:

Provided that nothing contained in this sub-section shall apply to proceedings pending in any Court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969. (2) No order of the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government made under this Act shall be questioned in any Civil Court, except as provided in this Act.

(3) If in any suit or other proceeding any question regarding right of a tenant or of a kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappukaran) arises, the Civil Court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

(4) The Land Tribunal shall decide the question referred to it under Sub-section (3) and return the records together with its decision to the Civil Court.

(5) The Civil Court shall then proceed to decide the suit or other proceedings accepting the decision of the Land Tribunal on the question referred to it.

(6) The decision of the Land Tribunal on the question referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Civil Court.

(7) No Civil Court shall have power to grant injunction in any suit or other proceeding referred to in Sub-section (3) restraining any person from entering into or occupying or cultivating any land or kudikidappu or to appoint a receiver for any property in respect of which a question referred to in that sub-section has arisen, till such question is decided by the Land Tribunal, and any such injunction granted or appointment made before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, or before such question has arisen, shall stand cancelled.' On a reading of Section 125 (1), it is clear that there is a specific ouster of jurisdiction of a Civil Court to decide any question which has to be decided bythe Land Tribunal or the Appellate Authority. Sub-section (2) confers finality to orders passed by the authorities constituted under the Act. Sub-sec. (3) provides for reference by the Civil Court to the Land Tribunal having jurisdiction when question of tenancy is raised before it. Sub-sections (4) and (5) are consequential procedural provisions enacted to effectuate the procedure prescribed by Sub-section (3). Sub-sections (6), (7) and (8) are not of much consequence for us.

19. Sub-sections (1) & (2) are the provisions which take away the jurisdiction of the Civil Court. The ouster of jurisdiction is limited to matters which are by or under the Act required to be settled, decided or dealt with by the Land Tribunal or the

Appellate Authority. This means that a dispute which cannot be decided by the statutory authorities constituted by the Act can be decided by the Civil Court under S 9 of the C.P.C.

20. It is against this background that one has to consider the effect of the dispute raised in this case. I shall do so with reference to the cases cited at the bar. In Hatti v. Sunder Singh (AIR 1971 SC 2320) the Supreme Court was considering the bar of Civil Court's jurisdiction to entertain a suit under Section 185(1) of the Delhi Land Reforms Act (Act 8 of 1954) in which the rights were settled by the revenue authorities-In that case, 'H' was declared Bhumi-dar of some land belonging to the respondent '5', under Section 13 of the Delhi Land Reforms Act. The respondent brought a suit in the civil court claiming three reliefs. The first relief was for a declaration that the declaration granted in favour of H was wrong, illegal and without jurisdiction. The second relief was that 'B' was entitled to Bhumidar right and the third was for possession of the land. The trial Court held that the jurisdiction of the Civil Court was not barred, in spite of Section 185 of the Delhi Land Reforms Act. This decree was upheld by the District Judge and in second appeal by the High Court. A Letters Patent Appeal before the Division Bench was also dismissed. It was after that the matter reached the Supreme Court. After considering the scheme of the Act, the Supreme Court held as follows:

'It is true that declarations made by the revenue authorities without goingthrough the judicial procedure are subject to due adjudication of rights: but such adjudication must be by an application under item (4) of schedule 1 and not by approach to the Civil Court. The jurisdiction of the Civil Court is clearly barred by Section 185 of the Act read with the various items of the First Schedule mentioned above. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Assistant by an application under item 4, while, if a Gaon Sabha wants a clarification in respect of any person claiming to be entitled to any right in any land, it can institute a suit for a declaration under item 28, and the Revenue Assistant can make a declaration of the right of such person. So far as suits for possession are concerned, we have already held earlier that Section 84 read with item 19 of the First Schedule gives the jurisdiction to the Revenue Assistant, to grant decree for possession, and that the suit for possession in respect of agricultural land, after

the commencement of the Act, can only be instituted either by a Bhumidar or an Asami or the Gaon Sabha. There can be no suit by any person claiming to be a proprietor, because the Act does not envisage a Proprietor as such continuing to have rights after the commencement of the Act. The First Schedule and Section 84 of the Act provide full remedy for suit for possession to persons who can hold rights in agricultural land under the Act.'

It was further observed as follows to para 7:

'The High Court, in this connection, referred to Section 186 of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent Civil Court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section 188 envisages that questions of title will arise before the Revenue Courts in suits Or proceedings under the First Sche-dule and only if such a question arisesin a competent proceeding pending in a Revenue Court, an issue will be framed and referred to the Civil Court. Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court.' The principle laid down by the Supreme Court in this judgment is that a Civil Court has no jurisdiction to entertain the suit on a question of title unless it is referred to it by the Revenue Court and unless such a question arises in a competent proceeding in a Revenue Court. Great reliance was placed upon this judgment by the appellants' counsel. It is true that in all cases where a question of tenancy has to be settled, decided or dealt with by the Land Tribunal, the Land Tribunal alone is invested with the power to do so. It is not enough if a person raises the question, but a question must arise in the proceeding. The Supreme Court also lays down that for a reference to the Civil Court, the question of title should arise in a proceeding before the Revenue Court. (In accord with this decision is the ratio of the Full Bench of this Court reported in George v. Vareed (1978 Ker LT 691)). But

this authority is of no avail for our case, since the jurisdiction of the Civil Court here is invoked not on any aspect of the question covered by the Act but on grounds of fraud and collusion. In Other words, what arises in this case is not the existence of a tenancy but whether the order of the Land Tribunal is vitiated by fraud or collusion.

21. After the case was posted for judgment another case of the Supreme Court appeared in the December part of the AIR reported in State of Rajas-than v. Sardar Singh (AIR 1978 SC 1642), where the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act were considered. The relevant section is Section 46 of the Act, which reads as follows:

'46. Bar of jurisdiction.-

(1) Save as otherwise provided in this Act, no Civil or Revenue Court shall have jurisdiction in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under this Act.

(2) No order made by any such offi-cer or authority under this Act shallbe called in question in any court.' The Supreme Court held with reference to the wide phraseology used by the section that the jurisdiction of the Civil Court is clearly ousted. The discussion is as follows:

'So where it is shown that any 'matter' which is required to be settled, decided or dealt with by any officer or any authority under the Act, e.g., the Jagir Commissioner or the Board of Revenue, has been so settled, decided or dealt with, it shall not be permissible for any civil or Revenue Court to settle, decide, or dealt with it, except where there is a contrary provision in that behalf in the Act itself. It is also the mandate of Sub-section (2) that no order of any such officer or authority shall be open to challenge in any Court.' It will be useful to read the following observation from the judgment:

'The appellant's learned counsel made 8 reference to several cases including Ullal Venkatraya Kini v. Louis Souza, AIR 1960 Mys 209; G. Venketachalam Odayar v. Ramachandra Odayar, AIR 1961 Mad 423, Kulandaiswami Madurai v. Murugayya

Madurar, AIR 1969 Mad 14; Rameshwar Prasad v. Satya Narain, AIR 1954 All 115, Gurbasappa Maha-devappa v. Neelkanthappa Shivappa AIR 1951 Bom 136; A. B. Sarin v. B. C. Patil, AIR 1951 Bom 423 and Shiva-shanker Prasad Shah v. Baikunth Nath Singh, (1969) 3 SCR 908: (AIR 1969 SC 971), for the purpose of showing that every adjudication of a dispute cannot oust the jurisdiction of a Civil Court. But they were different cases where the jurisdiction of Civil Courts could not be said to have been ousted.' The above observations help the respondent in the case in the submission made that in spite of statutory ouster of jurisdiction of the Civil Court, there can still be matters open for the Civil Court to decide if it is shown that such Jurisdiction has not been taken away.

22. The next case that has to be considered is the decision of the Supreme Court in Noor Mohd. Khan v. Fakirappa (AIR 1978 SC 1217). The main judgment was rendered by Unt-walia, J., for himself and Sarkaria, J. Kailasam J., wrote a separate judgment concurring with the majority judgment but adopted different reasons. TheSupreme Court was considering the scope of Sections 132 and 133 of the Karna-taka Land Reforms Act, Act X of 1962, and the Civil Court's jurisdiction to decide questions covered by these two sections. Section 132 (1) of the said Act is in pari materia with Section 125 (1) of our Act and Section 132 (3) with Section 125 (2). The Supreme Court had to consider the question of ouster of jurisdiction of Civil Courts in this case. In that case, the provisions of three Acts fell for consideration at the hands of the Supreme Court, namely, the Bombay Act, the Mysore Act and the Karnataka Act. The facts in brief are as here-under: In a suit for partition and possession, a preliminary decree was passed. In accordance with the law prevalent in the State of Karnataka (then known as Mysore State), an execution case was filed by the plaintiff-decree-holders for final partition and possession. Possession had to be given by the Collector. In the execution case the first respondent before the Supreme Court was impleaded as one of the judgment-debtors because he had been inducted as a lessee of a portion of the suit properties during the pendency of the suit. When actual delivery was attempted to be taken, he resisted. He claimed to be a tenant. He pleaded that he had made an application under the Mysore Land Reforms Act, 1961, for a declaration that he was a tenant within the meaning of that Act. For our purpose, it is sufficient to note that the High Court allowed the appeals filed by the first

respondent, and held that he cannot be evicted and no order of delivery of possession can be made against him unless the requirement of the Mysore Act (now the Karnataka Act) are complied with.

23. Sections 85 and 85A of the Bombay Act, which originally governed the case (before the reorganisation of the States) made it obligatory on the part of a Civil Court to refer questions relating to tenancy to the competent authority. The present Karnataka Act contains similar provisions which are .Sections 132 and 133. It is useful to read those two sections:

'132. (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, theTribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government in exercise of their powers of control. (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 the Act shall be questioned in any civil or criminal Court.'

Section 133. (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.'

The majority judgment in the above case held that on the wording and phraseology of the section, the jurisdiction of the Civil Court was barred for all purposes coming within the ambit of Sections 132 and 133 of the Act. In paragraph 8 of the judgment the learned Judge referred to the decision reported in Custodian Evacuee Property, Punjab v. Jafran Begum (AIR 1968 SC 169) which

related to the interpretation of Section 46 of the Administration of Evacuee Propertry Act, 1950. The Supreme Court had to consider the correctness of the decision of the High Court that though the question whether a person had or had not become an evacuee was determinable only by the authorities under the Act, the determination of a complicated question of law relating to title to the property can be reopened in the Civil Court. This view did not find favour with the Supreme Court. Their Lordships held that Section 46 was a complete bar to the jurisdiction of the Civil Court to adjudicate upon the question whether the property in dispute was an evacuee property or not.

24. A contention was raised before the Supreme Court depending uponRazvi's case reported in Musamia Inam Haidar Bax Razvi v. Rabari Govind-bhai (AIR 1969 SC 439) that the jurisdiction of the Civil Court was not barred. There the question was whether the defendants had become statutory owners of the suit lands under Section 32 of the Bombay Act on account of their claim that they were tenants of the land on the tillers' day, i.e., on 1-4-1957. Their Lordships distinguished that case on the ground that neither Section 70 nor Section 85, as it stood at the relevant time, ousted the jurisdiction of the Civil Court in clear terms. Therefore, it was held that the principle in Razvi's case does not apply to the case on hand. The conclusion of the learned Judge is contained in para 16 of the judgment which reads:

'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 T. P. 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.'

The Supreme Court held with reference to the various provisions contained in the Bombay Act, Mysore Act and the Karnataka Act, that the jurisdiction of the Civil Court is clearly barred in deciding the question of tenancy raised in that case.

25. I will refer to the judgment rendered by Kailasam J., only for the specific purpose that it contains a discussion in brief about the plea based on fraud or collusion. Para 25 reads as follows:

'The question that arises for consideration in these appeals 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 Ind App 222 : (AIR 1940 PC 105) and has been since affirmed by this Court in several decisions. In Dhulabhai v. State of M. P., (1968) 3 SCR 662 : (AIR 1969 SC 78), 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 v. Indian Iron & Steel Co. Ltd., (1971) 1 SCR 275 : (AIR 1970 SC 1298) and affirmed in the Union of India v. Tara Chand Gupta & Brothers, (1971) 3 SCR 557 : (AIR 1971 SC 1958). The Privy Council in 67 Ind App 222: (AIR 1940 PC 105) approving of the principles laid down in the well-known judgment of Willes J., in Wolverhampton New Water Works Co. v. Hawkesford, (1859-6 CB (NS) 336) which was approved of in the House of Lords in Navelle v. London 'Express' Newspaper (1919 AC 368) 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 para 35 the following observation occurs:

'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.' In para 38 the following observation is expressly useful:

'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 juris-diction to decide whether a lease was vitiated by fraud or not. 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.' Paragraph 40 of the judgment reads : '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 P. C. and the jurisdiction of the High Court in hearing appeals and revisions under certain circumstances have not been excluded.' The separate judgment of Kailasam J., lends support to the view that civil Courts have, notwithstanding statutory ouster of jurisdiction in special statutes, jurisdiction to decide cases based on fraud or collusion.

26, The learned counsel for the appellant, then took me through the scheme of Section 72 of the Kerala Land Reforms Act. What he attempted by doing so was to impress upon me the absolute binding nature of orders passed by the Land Tribunal and the finality of purchase certificates issued by it. According to him, the effect of Section 72 is all pervasive, and in whatsoever manner a certificate is issued, it binds the property. In my view, this question is linked with the initial question whether the order of the Land Tribunal is vitiated by fraud or not. If it is, subsequent orders also get tainted with this vice. Section 72-F (2) and (3) creates

all the difficulty to Courts. I shall read Section 72-F (1), (2) and (3) and Section 72-K (1) and (2).

'72-F. Land Tribunal to issue notices and determine the compensation and purchase price. (1) As soon as may be after the right, title and interest of thelandowner and the intermediaries, if any, in respect of a holding or part of a holding have vested in the Government under Section 72, or, where an application under Section 72-B or Section 72-BB has been received by the Land Tribunal, as soon as may be after the receipt of such application, the Land Tribunal shall publish or cause to be published a public notice in the prescribed form in such manner as may be prescribed, calling upon-

(a) the landowner, the intermediaries, if any, and the cultivating tenant;

(b) all other persons interested in the land, the right, title and interest in respect of which have vested in the Government, to prefer claims and objections, if any, within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections.

(2) The Land Tribunal shall also issue a notice individually to the landowner, each of the intermediaries and the cultivating tenant and also, as far as practicable, to the other persons referred to in Clause (b) of Sub-section (1) calling upon them to prefer claims and objections if any within such time as may be specified in the notice and to appear before it on the date specified in the notice with all relevant records to prove their respective claims or in support of their objections.

(3) Notwithstanding anything contained in Sub-section (2), the publication of a notice in the manner referred to in Sub-section (1) shall be deemed to be sufficient notice to the landowner, the intermediaries, if any, the cultivating tenant and all other persons interested in the land.'

'72-K. Issue of certificate of purchase. (1) As soon as may be after the determination of the purchase price under Section 72-F or the passing of an order under Sub-section (3) of Section 72-MM the Land Tribunal shall issue a certificate

of purchase to the cultivating tenant, and thereupon the right, title, and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

Explanation. For the removal of doubts, it is hereby declared that on the issue of the certificate of purchase, the landowner or any intermediary shall have no right in the land comprised in the holding, and all his rights including rights, if any, in respect of trees reserved for his enjoyment shall stand extinguished.'

(2) The certificate of purchase issued under Sub-section (1) shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates.'On the basis of these provisions it is contended that the issuance of a purchase certificate puts an end to all further controversy about the tenancy as it concludes the rights in favour of the person to whom it is granted.

27. I feel constrained to make the following observations about Section 72-F. If Section 72-F (2) had stood by itself without its ambit being curtailed by Section 72-F (3), most of the difficulties that Courts experience in dealing with purchase certificates could have been avoided. It is the existence of Section 72-F (3) that contributes not only to the confusion but for various kinds of unhealthy, unwholesome and undesirable practices. Section 72-F (2) makes it mandatory on the Land Tribunal to issue notice individually and to all persons interested in the land. The effect of this has been taken away by Section 72-F (3) by the introduction of a non obstante clause which provides that notwithstanding anything contained in Section 72-F (2), the notice referred to in Sub-section (1) shall be deemed to be sufficient notice to the landowner etc. In fact the effect of Section 72-F (2) is destroyed by Section 72-F (3). If Section 72-F (3) was properly and happily worded, giving power on the Land Tribunals to resort to this sub-section after being satisfied that notice as provided under Section 72-F (2), in a given case, was attempted to be served and that service was impracticable, then no complaint can be made against a purchase certificate. That is not how Section 72 is used or misused. Land Tribunals now resort to Section 72-F (3) remedy,

throwing to the winds all salutary principles of procedure and issue purchase certificates in quick sue-cession, heedless. of the consequences and the havoc they cause. Cases are not rare when Land Tribunals have issued purchase certificates for the very same property to two rival claimants within an interval of short period. Therefore it is necessary to put a harmonious construction to Section 72-F(2) and (3).

28. According to me, it is necessary for Courts, with this Sub-section 72-F(3) on the statute Book, which cannot be struck down as being violative of natural justice, to read it down and to hold that it will come into operation only when individual notices contemplated in Section 72-F (2) becomes impracticable in the manner provided under the general law. Otherwise, the wide manner in which Section 72-F (3) is worded would give room for unscrupulous persons in charge of litigations and even Tribunals invested with the power to decide dishonestly under circumstances which can better be imagined than stated.

29. I had to refer to this aspect of the case because the learned counsel for the appellant brought to my notice Section 102 of the Land Reforms Act. Section 102 reads as follows :

'102. Appeal to Appellate Authority. (1) The Government or any person aggrieved by any order of the Land Tribunal under Sub-section (2) of Section 12, Sub-section (3) of Section 13-A, Section 22, Section 23, Sub-section (2) of Section 26 (where the amount of arrears of rent claimed exceeds five hundred rupees), Section 31, Section 47, Sub-section (3) or Sub-section (4) of Section 48, Sub-section (3) of Section 49, Sub-section (6) of Section 52, Section 57, Sub-section (5) of Section 66, Section 72-F, Section 73, Section 80-B, Sub-section (4) of Section 90, Section 106 or Section 106-A may appeal against such order within such time as may be prescribed to the Appellate Authority.

(2) The Appellate Authority may admit art appeal presented after the expiration of the period prescribed under Sub-section (1) if it is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) In deciding appeals under Sub-section (1), the appellate authority shall exercise all the powers which a Court has and follow the same procedurewhich a Court follows in deciding appeals against the decree of an original Court under the Civil P. C. 1908.

(4) xxxxx' These are provisions under which any person aggrieved has a right to file an appeal against any order of the Land Tribunal passed under various sections including Section 72-F. Under Section 102 (3), the Appellate Authority is given powers which a Court has under the Civil P. C. 1908. The contention put forward by the appellant's counsel is that even a person who is not a party before the Land Tribunal has a right to file an appeal and the proper remedy for the respondent in this case is also to file an appeal against the order of the Land Tribunal, when he comes to know of the order, with an application to condone delay if the appeal is filed out of tune. Two questions arise: One, whether the Appellate Authority has in an appeal so filed the jurisdiction to go into the question of fraud or collusion. Is its jurisdiction only conterminous with the jurisdiction of the Land Tribunal. The Appellate Authority constituted under the Act cannot be deemed to have the power to decide cases in which the orders are attacked on the ground of fraud or collusion. This needs necessary pleading and proof. The Appellate Authority can only hear and consider the correctness of the order of the Land Tribunal with reference to the provisions of the Act. It cannot travel beyond. The second question is that a party really aggrieved may come to know of the passing of the order without notice to him, after a long delay. In such cases, his right of appeal is subjected to an order condoning delay by the appellate authority. It cannot be said that such a person has a right to appeal in such cases.

30. An extreme case of fraud, to which the Land Tribunal itself was a party, came up for decision in C. M. A. No. 69 of 1976, (Ker) by Namoodiripad J. In that case the first defendant was holding certain items of land as a lessee from the plaintiff's tarwad. He filed O. A. No. 133 of 1972 under Section 72 of the Act for assignment of the landlord's right. The plaintiff and other members of the tarwad were party-respondents. 'J' Form was filed before the Land Tribunal under Section 72-MM. There was another application filed by the same perron as O. A.No. 134 of 1972, in relation to the properties not covered by O. A. No. 133 of 1972. Both the

petitions were heard together. An order was passed on the basis of the 'J' Form filed in O. A. No. 133 of 1972. What ultimately happened was that in the 'J' Form, properties comprised in O. A. No. 133 of 1972 were also included without proper notice to the plaintiff. According to the plaintiff, this was a fraud perpetrated by the defendant to which the Tribunal was also a party. The suit from which the appeal in question arose was filed to set aside the order of the Land Tribunal as being vitiated by fraud. The normal contention that the civil Court has no jurisdiction to question the Land Tribunal's order was raised.

31. The learned Judge addressedhimself to the question whether a dispute involving fraud was a matter which could be exclusively settled, decided or dealt with by the statutory authorities, to use the expression contained in Section 125 (2) of the Act. The learned Judge observed in that case that the appellant's counsel was not in a position to place before him the particular provision in Act I of 1964 which enabled the authorities constituted under the Act to adjudicate a dispute of the nature urged before him. The discussion was wound up with the observation that 'since the suit raises question which cannot be adjudicated by the statutory authorities, the ouster of jurisdiction provided in Sub-section (1) would not apply to the instant suit.' In the above case, the learned Judge considered the ouster of jurisdiction of the civil Court with reference to Section 125 (1) and (2) and observed as follows :

'It may not be examined as to the content and scope of Sub-sections (1) and (2) of Section 125. In one sense both Sub-sections (1) and (2) affect the jurisdiction of the civil Court to the extent indicated in the respective provisions. In Sub-section (1) there is a clear ouster whereas in Sub-section (2) the ouster is, which I may choose to designate as (implied). Sub-section (1) is made as a negative provision thereby indicating its mandatory nature, but despite that from the wording of the provision it could be seen that the ouster of jurisdiction is limited to only 'any matter which is by or under theAct required to be settled, decided or dealt with or to be determined by the Land Tribunal or the Appellate Authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government.' Consequently, if a dispute is one which cannot be decided by the concerned statutory authorities, the ouster of jurisdiction contemplated in Sub-

section (1) cannot apply, and the civil Court undoubtedly has the jurisdiction to decide the matter in view of Section 9 of the Civil P. C.'

Regarding the alternative remedy available to an aggrieved party which was canvassed in that case before the learned Judge, with reference to Sections 102, 125 (7) and 72 (MM) (7) the learned Judge observed as follows:

'The Act contains provisions constituting the Appellate Authority and also granting the aggrieved party a right of revision to the High Court by virtue of Sections 102 and 103 of the Act. According to the appellant the order of the Tribunal could have been challenged under Sub-section (7) of Section 72 (MM) or by way of an appeal to the appellate authority under Section 102 of the Act. If either of these remedies is available to the plaintiff, then certainly the appellant's argument may merit better consideration. Section 72 (MM) provides for the assignment of landlord's right to the tenant by mutual agreement. The subsection confers a sort of right of review to the Tribunal. But according to that provision the only ground on which the Tribunal can set aside its prior order is the absence of notice to the aggrieved party. Again, the application had to be made within 90 days of the date of the order, though in this suit the plaintiff has got a case that he was not served with notice, his main grievance is that consequential order which the Tribunal passed was fraudulent and hence invalid. Fraud is not a ground for exercising the powers conferred by Sub-section (7). It cannot, therefore, be said that the plaintiff had an adequate remedy under Sub-section (7) of Section 72 (MM).' With great respect, I am in complete agreement with the principle enunciated above.

32. Now to wind up my discussion, the conclusion that I arrive at is thathe ouster of jurisdiction of civil Courts contained in Section 125 (1) and (2) of the Act, does not extend to questions relating to fraud and collusion. To reiterate what has been said before, most solemn proceedings can be vitiated if fraud and collusion are present. Both statutory and judicial recognition are available to this principle. To say that a Tribunal or statutory authority can hear a case involv-ng fraud, to which fraud authority itself s a party, is shocking to judicial conscience. To say that an order based on fraud or collusion cannot be chal-enged in civil Court is to shake the foundation of our legal system. The Kerala Land Reforms Act cannot he

deemed to lay down any such wide jurisdiction on the Land Tribunals, If ;he contention of the appellant's counsel is to be accepted one will have to hold that orders of Land Tribunals upholding tenancy even vitiated by fraud and collusion and orders by which purchase certificates are issued, be it in the most unwholesome manner, are even above Article 141 of the Constitution of India. My considered opinion is that Section 44 of the Evidence Act contains in-built safeguards to salvage orders obtained by fraud and collusion. According to me, the validity of the order in O. A. No. 140 of 1978 can be questioned on the ground of collusion. The Appellate Judge was right in directing the trial Court to re-hear the matter.In the result, I dismiss this C. M. A.but in the circumstances of the case,I direct the parties to bear their costs.

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