

**(1959) 09 KL CK 0031**

**High Court Of Kerala**

**Case No:** C.R.P. No. 14 of 1959

Madhavi Amma

APPELLANT

Vs

Paramu

RESPONDENT

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**Date of Decision:** Sept. 11, 1959

**Acts Referred:**

- Kerala Stay of Eviction Proceedings Act, 1957 - Section 4

**Citation:** (1959) KLJ 1047

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

**Bench:** Single Bench

**Advocate:** C.S. Venkiteswara Iyer and C.J. Balakrishnan, for the Appellant; T. Chandrasekhara Menon and T. Unnikrishna Menon, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

P.T. Raman Nayar, J.

As the plaint stands, the suit is a composite suit and is made up of two suits, one for the recovery of money due on a mortgage which happens to be a possessory mortgage, and the other for eviction of the mortgagor-defendant from the mortgaged land which he now holds as a lessee under the mortgagee-plaintiff, and for arrears of rent. So far as the former suit is concerned, there can be no stay under Act I of 1957, and the court below was therefore wrong in staying the suit in entirety and u/s 4 of that Act. So far as the latter suit is concerned, the suit is obviously one for eviction of the defendant from his "holding" as that term is defined in section 2(1) of the Act, and the suit has to be stayed. So also, so much of it as relates to rent accrued due before 11-4-1957. This is not a case of a mortgage and lease back as part of a transaction where money is lent to business people in the course of money-lending, and that takes it out of the mischief of the decision in 1959 KLT 269=1959 K.L.J. 207. With regard to the argument advanced on behalf of the petitioner-plaintiff, that section 11(6) of Act 31 of 1958, has converted his mortgage

into a simple mortgage and, by that process, the rent accrued on the lease back into interest, it will be time enough to consider this argument when he amends his plaint in accordance therewith and deletes his prayer for possession.

In modification of the order of the court below, the stay will operate only in respect of the suit in so far as it relates to the eviction of the defendant and to the recovery of arrears of rent accrued due before 11-4-1957. The rest of the suit can proceed.

2. There will be no order as to costs in this petition.