Kunhappa Nair and anr. Vs. Suresh Kumar and anr.

LegalCrystal Citation : legalcrystal.com/717937

Court : Kerala

Decided On : Feb-10-1984

Reported in : AIR1984Ker99

Judge : K.K. Narendran, J.

Acts : Kerala Land Reforms Act, 1964 - Sections 75(2) and 77; Code of Civil Procedure (CPC) , 1908 - Sections 11

Appeal No. : C.R.P. No. 34 of 1981-A

Appellant : Kunhappa Nair and anr.

Respondent : Suresh Kumar and anr.

Advocate for Def. : C.R. Natarajan, Adv. and;Govt. Pleader

Advocate for Pet/Ap. : V.K. Raveendran, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K.K. Narendran, J.

1. The respondents-kudikidappukars in an application for shifting of kudikidappu under Section 77 (1) of the Kerala Land Reforms Act 1 of 1960, for short the Act, are the petitioners inthe civil revision. The respondents applied for purchase of kudikidappu under Section 80-B of the Act. Then the landowner, the first respondent herein, applied for shifting the kudikidappu. The alternate site was not owned by the landowner at the time when the requisition under Section 75 (2) of the Act was made or when the application for shifting was made. Thereafter, the first respondent obtained a gift of the alternate site from his father, issued a fresh notice under Section 75 (2) and filed a second application for shifting for the same purpose of put-ting up of a residential house for himself. The Land Tribunal then dismissed the first application for shifting on the ground that the landowner was not having any right over the alternate site proposed. On the same day, by a separate order, the Land Tribunal dismissed the second application for shifting holding that more than one application under the same section by the same person cannot be entertained. The application for purchase of kudikidappu was then allowed by the Land Tribunal.

2. The first respondent challenged the orders dismissing the second application for

shifting and allowing the application for purchase of kudikidappu in separate appeals before the Appellate Authority (Land Reforms). The appeals were heard and allowed by a common judgment remanding both the applications for purchase and the second application for shifting, to the Land Tribunal. The Land Tribunal then allowed the application for shifting. The order of the Land Tribunal was challenged by the petitioners before the Appellate Authority but without success. It was under the above circumstances that the petitioners approached this Court with this civil revision challenging the judgment of the Appellate Authority confirming the order of the Land Tribunal allowing the application for shifting.

3. It is now settled law that general principles of res judicata are applicable to proceedings of quasi-judicial tribunals like the Land Tribunal. In this case, the earlier application for shifting was dismissed by the Land Tribunal on the ground that the applicant landowner had not any right in the alternate site offered either at the time of the requisition for shifting given or when the application for shifting was filed. This is nothing but a decision on the merits. In that case,a second application for shifting to the same alternate site for the same ground of bona fide requirement for putting up a house for the applicant will be barred as the principles of res judicata are applicable to proceedings before Land Tribunals. The fact that the applicant got a gift of the alternate site and gave a fresh requisition for shifting before filing the second application does not improve matters. Though the Land Tribunal first dismissed the second application for shifting, when it came up before it again on remand by the Appellate Authority it was allowed. This could not have been done since no second application will He. The landowner missed the bus when his earlier application was dismissed by the Land Tribunal, which order he did not challenge in appeal. As the second application for shifting is barred by res judicata, the Land Tribunal could not have allowed the same. So, it goes without saying that the Appellate Authority was in the wrong in confirming the order of the Land Tribunal.

4. In Koran v. Kamala Shetty (AIR 1978 Ker 172) (FB) it has been held;

'There is thus sufficient authority to hold that the principle of finality or collusiveness of a prior decision or the general principles of res judicata is applicable even to quasi judicial bodies like the Land Tribunals functioning under the Kerala Land Reforms Act. On principle it appears to us that this should be so, as these Tribunals are invested with the task of deciding important rights and have to do so on principles of natural justice and fair play. In these circumstances, the rules of res judicata are applicable to them.' (para 5)

In Thomas v. Punnoose (1.975 Ker LT 406) a Division Bench of this Court repelled the contention that a subsequent application for shifting of kudikidappu ordered by the Land Tribunal was barred by res judicata as a prior application for shifting on the ground of bona fide requirement was dismissed on the ground of unsuitability of the alternate site. Gopalan Nambiar J. (as he then was) speaking for the Division Bench, held :

'We do not think that a case for res judicata can be made out on this ground. A bona fide requirement which did not exist on a previous occasion may well crop up on a subsequent one; and a site unsuitable on a prior occasion may well become or be rendered, suitable on asubsequent one. In that sense, we do not think that a plea of res judicata in the broad and unqualified form in which it has been raised by the appellant could be sustained.''

In the case on hand, the alternate site did not belong to the applicant at the time the first application for shifting was filed. Not only that, the ground for shifting in the first application dismissed and that in the second application for shifting was the same. So, the decision in Thomas case (1975 Ker LT 406} is distinguishable on facts. Not only that, in view of the later Full Bench decision in Koran's case (AIR 1978 Ker 172) what has been held in Thomas' case has ceased to be good law. In Koran's case, an earlier application for purchase of kudikidappu was dismissed as the applicant kudikidappukaran had an assignment in his favour of some Government lands. The subsequent application for purchase was filed after the cancellation of that assignment and for this reason it was contended that the subsequent application was not barred by res judicata. Gopalan Nambiar C. J. who spoke for the Full Bench, referred to the earlier judgment of the Division Bench in Thomas' case (1975 Ker LT 406) in the following words (at p. 173):

'He cited the decision of a learned Judge of this Court in Thomas v. Pun-noose, (1973 Ker LT 1000) holding that neither the Land Reforms Act nor the Rules prohibited the filing of a second application and that the principles of res judicata embodied in Section 11 of the C.P.C. and other similar provisions do not apply to proceedings under the Act. An appeal was taken against the judgment of the learned Judge and a Division Bench, of which one of us (myself) was a member, sustained the judgment of the learned Judge on different grounds altogether and held that no question of res judicata would arise on the facts (vide the decision in Thomas v. Punnoose, 1975 Ker LT 406). The question of the applicability of the principle of res judicata should therefore be examined dehors the above decision.' (para 3)

Reference has also to be made to Sheo-dan Singh v. Daryao Kunwar (AIR 1966 SC 1332) relied on by the learned counsel for the first respondent. In the above decision it has been held:

'In order that a matter may be said to have been heard and finally decided, the decision in the former suit must havebeen on the merits. Where, for example, the former suit was dismissed by the trial Court for want of jurisdiction, or for default of plaintiff's appearance or on the ground of non-joinder of parties or misjoinder of parties or multifariousness, or on the ground of a technical mistake, or for failure on the pan of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court-fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any) the decision not being on the merits would not be res judicata in a subsequent suit.' (Head note)

It is crystal clear from the above dictum itself that the above decision is not applicable to the facts of this case.

5. In the result, the Civil Revision is allowed and the judgment of the Appellate Authority confirming the order of the Land Tribunal allowing shifting, impugned in this civil revision is set aside. The application for shifting will stand dismissed. No costs.