Kesavaru Padmavathi Antharjanam Vs. Muhammed Kunju ShamsuddIn Kunju

LegalCrystal Citation : legalcrystal.com/717983

Court : Kerala

Decided On : Jun-30-1975

Reported in : AIR1976Ker66

Judge : V.P. Gopalan Nambiyar and; George Vadakkel, JJ.

Acts : Kerala Land Reforms Act, 1964 - Sections 32

Appeal No. : O.P. No. 1111 of 1973, A.S. No. 290 of 1971 and Cross Objections

Appellant : Kesavaru Padmavathi Antharjanam

Respondent : Muhammed Kunju ShamsuddIn Kunju

Advocate for Def. : K.N. Narayanan Nair, Adv.

Advocate for Pet/Ap. : K. Sreedharan, Adv.

Disposition : Petition and appeal dismissed

Judgement :

Gopalan Nambiyar, J.

1. A S. 290 of 1971 is against the judgment of the appellate authority (Sub-Court, Pathana-mthitta) in Land Tribunal Appeal No. 5 of 1965 against the decision in O. A. 513 of 1964 of the Quilon Land Tribunal. The O. A. was filed by the appellant for fixation of fair rent. It has had a chequered career. The appellate authority, differing from the Land Tribunal, found that the respondent to this appeal was a cultivating tenant and remanded the application for fixing fair rent, the correct extent of the property and the other relevant particulars. It is against this order of the appellate authority that the writ petition, O. P. 1111 of 1973, has been preferred.

2. In this writ petition the only argument raised by the petitioner is that the finding of the appellate authority was based an no evidence at all. It is impossible to agree. The appellate authority has made a detailed consideration of the evidence of P. Ws. 1 to 5 and of the D. Ws. examined in the case, and also the documentary evidence produced on either side. The matter was discussed in paragraphs 8 to 10 of the appellate authority's judgment, through which we have been carefully taken. It cannot be said that the finding was rested on no evidence at all, We find no reason to interfere with the finding recorded or with the order of the appellate authority. We dismiss this O. P., but without costs.

A. S. No. 290 of 1971 : The appeal is directed against the judgment and decree of the

Munsiff of Adoor in O. S. No. 65 of 1967. The appeal has been brought up to this Court by transfer from the Sub-Court, Pathanamthitta, before, which it was filed. It has been heard along with the above writ petition. The suit was for a declaration, and recovery of possession of the property, which was the subject-matte of the application for fixation of fair rent The Munsiff found that the suit was barred under the provisions of Section 32 of Act 1 of 1964, which at that time, read as follows :

'32. Bar of suits for eviction, etc., pending application for determination of fair rent.--During the pendency of an application for determination of fair rent before a Land Tribunal, no Court shall entertain any suit for eviction of the applicant from the holding to which the application relates, or pass any order of injunction prohibiting him from entering the holding or pass any order staying the proceedings before the Land Tribunal.'

In that form the Section came up for consideration before this Court in Kurian v. Chacko, (1965 Ker LT 468) and in Ratna-valli Amma v. Kundhikutty Amma, (1967 Ker LT 335), In the earlier of these decisions, it was observed :

'.....I see nothing in Section 32 which vests exclusive jurisdiction in the matter in the Land Tribunal or which otherwise bars the jurisdiction of the Civil Court either expressly or im-pliedly. It is said that the word 'holding' in the section must be read as 'alleged holding' so that the moment a person, even a rank trespasser, claims to be a tenant and makes an application to a Land Tribunal for determining the fair rent of his alleged holding, a suit for his eviction would be barred. I see no warrant for so altering the section and if that is what the legislature meant nothing would have been simpler for it than to say 'land' instead of 'holding'. It is also said that unless the section is read as barring the jurisdiction of the Civil Court to decide the question whether the land constitutes a holding or not, the section would serve little purpose. I do not know whether that is so, but even if it were, that, by itself, would be insufficient to imply an ouster of the jurisdiction of the Civil Court.'

Practically, the same principle was laid down by the later decision in 1967 Ker LT 335. Counsel for the appellant concentrated upon the distinction thus drawn by the learned Judge, who decided the earlier of these cases, in regard to the scope of the expression 'land' and 'holding'. But the legislature itself has now accepted the suggestion thrown out by the learned Judge, and Section 32 has been amended so as to substitute 'land' in the place of 'holding'. Whatever may be the tenability or otherwise of the view taken by the Court below in regard to Section 32 as it stood prior to the amendment, it is clear to us that after the amendment, the appellant is no longer justified in contending that the suit can be proceeded with. The bar created by the Section is against the very entertainment of the suit itself, and after the amendment there seems to be little justification to draw a distinction between suits for eviction of tenants and of those claiming to be entitled for protection as tenants.

3. Counsel drew our attention to the Full Bench decision in Narayanan Nair's case 1970 Ker LT 659 = (AIR 1971 Ker 98) (FB), and in particular to paragraphs 65 and 66 thereof. We are unable to read, as Counsel for the appellant would have us read, the reference to Section 101 (3) of the Act in paragraph 65, and the further observation that ultimately the dispute might be one for the Civil Court to decide, as of assistance to the appellant. We do not understand the observations, as in any way suggesting that there is still room for the Civil Court to adjudicate where the very entertainment of the proceeding itself has been barred. Paragraph 66 makes it clear that Section 32

and the bar created by it have to be read down in the manner suggested by the Full Bench; otherwise the Section would violate Article 14 of the Constitution. The Section was actually struck down bv the Full Bench on that around also.

4. Our attention was called to the decision of our learned brother Sada-sivan, J in Mani Chacko v. Subramonian Moothatthu, (1970 Ker LT 1022). There, the learned Judge having rightly noticed that the entertainment of a suit was barred by Section 32 of the Land Reforms Act, further directed that the suit having been filed, will stand adjourned sine die. We cannot, with respect, agree to the course. If the entertainment or institution of a suit is prohibited, the same cannot be received and adjourned, whether sine die or otherwise.

5. The judgment of the learned Munsiff was correct. We dismiss this appeal, but without costs.

6. There is a Memorandum of cross-objections. The same was not pressed. It is dismissed with no order as to costs.