

Abdul Rasheed Vs. State of Kerala

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Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Abdul Rasheed

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 SA.No. 49 of 2002 () ----- AGAINST THE JUDGMENT IN AS.30/1998 of SUB COURT, NEDUMANGAD DATED 29 05-2001 AGAINST THE JUDGMENT IN OS.42/1995 of ADDL.MUNSIFF COURT,NEDUMANGAD DATED 31 03-1997 APPELLANT/APPELLANT/RESPONDENT/PLAINTIFF::

----- ABDUL RASHEED, S/O. AHAMED ALI VAIDHYAN, KADUVAKUZHI BUNGLOW, MANICKAL MURI NELLANAD VILLAGE, WRITTEN AS KADUVAKUZHI BUNGLOW MANICKAL MURI, PULLAMPARA VILLAGE. BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/RESPONDENTS/APPELLANTS/DEFENDANTS::

----- 1.
KERALA STATE REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

2. DISTRICT COLLECTOR, TRIVANDRUM.

3. THE TALUK TAHASILDAR, NEDUMANGAD.

4. THE ASST. EXECUTIVE ENGINEER, P.W.D. ROADS, SUB DIVISION, NEDUMANGAD. BY GOVERNMENT PLEADER SMT. MADHUBEN THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: N.K.BALAKRISHNAN, J.

..... S.A. No. 49 of 2002
..... Dated:

31. 01-2013 JUDGMENT The plaintiff is the appellant. The suit was filed by the plaintiff against the Government and the Revenue Officials for an injunction restraining them from trespassing into the plaint B schedule property which is allegedly part of the plaint A schedule property. The plaintiff contended that the B schedule property has been in the possession of himself and his predecessors for more than 60 years and so he has perfected title by adverse possession and limitation against the Government. It was contended that the defendants had issued Ext.A3 notice in order to evict him from the B schedule property.

2. The defendants resisted the suit contending that the suit is not maintainable in view of the provisions contained in the Kerala Land Conservancy Act. The S.A. No. 49 of 2002 -:2:- contention that the plaintiff has perfected his title by adverse possession and limitation, was also denied.

3. The plaintiff was examined as P.W.1 and Exts. A1 to A3 were marked. The Commissioner's report and plan were marked as Exts. C1 and C1 (a). The learned Munsiff found that the suit is not barred under the provisions of the Kerala Land Conservancy Act. It was also held that the plaintiff has perfected his title by adverse possession and limitation and as such a decree for injunction was passed against Government and their officials.

4. In the appeal filed by the defendants the judgment and decree of the trial court were set aside and the suit was dismissed.

5. The following substantial question of law has been raised:- Is the lower appellate Court justified in holding that a mere suit for injunction restraining the Government from instituting action for eviction under the Kerala Land Conservancy Act is not maintainable 6. Section 20 of the Act provides: S.A. No. 49 of 2002 -:3:- " 20. Saving of suits by persons aggrieved by proceedings under this Act :- No suit against the Government shall be entertained in any Civil Court in respect of any order passed under this Act except upon the ground that the land in respect of which such order has been passed is not a land which is the property of Government whether a poramboke or not ; Provided that Civil Courts shall not take cognizance of any such suit unless it shall be instituted within one year from the date on which the cause of action arose".

7. The learned counsel for the plaintiff has cited the decision in Krishnsa Pillai v. Kunju Pillai - 1990 (1) KLT 13.in support of his contention that even without a prayer for declaration, a suit for injunction is maintainable. The facts dealt with in that case are totally inapposite and inapplicable to the facts of this case. That was a case where in a suit for injunction the defendant resisted the claim for injunction contending that he has got a right of way. In that context it was held by the Court that it was not necessary for the defendant to seek declaration of easement right by filing a counter claim since he has the right to defend the plaintiffs right to get an injunction. That has nothing to do with the case on hand. Here the S.A. No. 49 of 2002 -:4:- plaintiff wants to contend that the Government has no right to initiate action under the provisions for the Kerala Land Conservancy Act since the property is not a government land or Government Puramboke land. Even in the plaint itself it is stated that the plaint B schedule property is a government puramboke land but it was held by the plaintiff. Since the suit is virtually to restrain the Government from proceeding under the Land Conservancy Act for summary eviction of the plaintiff, if actually the plaintiff had prescribed his title by adverse possession and limitation, it was for him to get that right declared and without getting that right declared he filed a simple suit for injunction restraining the defendant from proceeding under the Act and the Rules. It cannot be sustained at all. The argument to the contrary is bereft of any merit.

7. The decision in Philip and Others v. Skaria and Others - 1987 (1) KLT 21.ha also been referred to here. That was actually a suit filed by a private party against another private party for an injunction restraining the S.A. No. 49 of 2002 -:5:- latter from trespassing into the plaintiff's property therein. It was not a suit against the Government. That suit was filed to protect his possession against invasion of his right by other strangers. Therefore, that decision has absolutely no application to the facts of this case. In fact, that decision supports the case advanced by the defendants. It was held therein that the summary eviction of unauthorised occupancy is the right of the Government and that it is so provided under Sec. 11 of the Act. It was held that the effect of the prohibition against suits for eviction is that the right conferred on the Government for eviction and methods provided for that purpose in the Act and Rules should not be superseded by somebody else filing suit before the civil courts. It is within the sole competence of the Government to initiate action under the Act and the Rules for summary eviction of such persons who are in unauthorised occupation of the land belonging to the Government. The said decision was referred to by the Division Bench in Kuruvila Yohannan v. Kumaran S.A. No. 49 of 2002 -:6:- - 1989 (2) KLT 859. In that decision it was held by the Division Bench: " We are aware of the position in law that a trespasser in Government land does not obtain any right as against the Government. He is liable to be evicted in accordance with the provisions of Land Conservancy Act. Any decision in any proceedings, including those in a civil suit between persons claiming possession of such land will not in any manner affect the right of Government to dispossess such person or persons, except in cases where the person in possession has perfected title by adverse possession. It appears to us that this is the proposition which this Court accepted in Philip v. Skaria (supra)". It was held that the plaintiff who was in peaceful possession was entitled to remain in possession and only the State could evict him. Here the suit is actually against the Government and, therefore, the contention that the Government cannot initiate action for eviction cannot be sustained at all. Government initiated action by issuing Ext.A3 notice to proceed under the provisions of the Kerala Land Conservancy Act. The plaintiff did not admittedly file any objection nor did he appear to contest that notice. If any adverse order was passed against him he could have challenged the same before the Appellate

Forum as S.A. No. 49 of 2002 -:7:- provided under that Act. Nothing that sort was done. Even without resorting to that procedure, perhaps he can approach the civil court but that can be done only if he has perfected his title by adverse possession for which a declaration is to be sought. A mere suit for injunction to restrain the Government in proceeding under the Act and the Rules is clearly barred by Sec. 20 of the Act, since it is within the competence of the Government to proceed under the Act and Rules for eviction of the unauthorised occupants of the Government Land.

8. The decision in Shamsudeen v. Travancore Devaswom Board - 2001 (1) KLT 29.also has no application to the facts of this case. That was a suit filed by the Travancore Devaswom Board against a private party for declaration of title to the plaint A schedule property and mandatory injunction for dismantling and removing the Erumadams and sheds etc. from the plaint A schedule property and also for recovery of possession of the same with mesne profits. The prayer for recovery of possession S.A. No. 49 of 2002 -:8:- was disallowed in view of the bar under Section 20 A of the Act. But declaration of title and mandatory injunction granted by the lower appellate court was confirmed by this Court holding that the bar under Section 20 A is only against the Government when it proceeds for eviction and that bar has nothing to do when the claim is for mandatory or prohibitory injunction.

9. In view of what is stated above it is unmistakably clear that the suit as laid by the plaintiff is not maintainable and that the plaintiff is not entitled to get a decree for injunction against the government evicting him by resorting to the provisions contained in the Land Conservancy Act and the Rules framed thereunder. It is held that a suit for mere injunction without seeking a declaration of title against the government is also unsustainable. The Government was proceeding in accordance with law to evict the plaintiff who according to the Government was in unauthorised occupation of the plaint B schedule property. Hence, the lower appellate S.A. No. 49 of 2002 -:9:- court was perfectly justified in dismissing the suit, setting aside the decree and judgment of the trial Court. In these circumstances, the point is answered against the appellant. In the result this appeal is dismissed. No costs. Dated this the 31st day of January, 2013. Sd/- N.K.BALAKRISHNAN, JUDGE ani/ /truecopy/ P.S.toJudge

