

Krishnan Vs. Mammu and anr.

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Court : Kerala

Decided On : Nov-25-1957

Reported in : AIR1959Ker24

Judge : K.T. Koshi, C.J. and; M.S. Menon, J.

Acts : Tenancy Law; Malabar Tenancy Act, 1930 - Sections 5, 9, 15, 15(2) and 16; Malabar Tenancy (Amendment) Act, 1954

Appeal No. : Civil Revn. Petn. No. 1085 of 1956 (M)

Appellant : Krishnan

Respondent : Mammu and anr.

Advocate for Def. : M.C. Sreedharan, Adv.

Advocate for Pet/Ap. : C.S. Swaminathan and; V.B. Eradi, Adv.

Disposition : Application dismissed

Judgement :

K.T. Koshi, C.J.

1. This is an application invoicing the jurisdiction of the High Court under Section 115, Civil Procedure Code and Article 227 of the Constitution, to quash the order the learned Subordinate Judge of Tellicherry passed on 21-6-1956 In C. M. A. No.

695 of 1955 on his file. By the said order the learned Subordinate Judge set aside the decision of the Rent Court, Badagara, dismissing F. R, P. No. 133 of 1954-55 and remitted the tenant's application for fixation of fair rent of a holding hack to that court for fresh enquiry and disposal. The holding consists of 20 cents of garden land and it would appear that it first went into the possession of the tenant over 50 years prior to the date of the application. The tenure of the holding is kanom.

The Rent Court found that there was no sufficient or satisfactory evidence to decide which among the trees standing on the property now, belong to the landlord and which to the tenant. The learned Subordinate Judge held that that was a very flimsy ground to dismiss an application for fixation of fair rent and that it was the duty of the Rent Court to fix a fair rent on the materials placed before it by the parties. Accordingly the order of the Rent Court was set aside and the application was remitted back to ascertain the trees owned respectively by the landlord and the tenant and to fix the fair rent accordingly. The present application by the landlord seeks to have the said order annulled and the Rent Court's order dismissing the application restored.

2. Mr. V. Balakrishnan Eradi, learned counsel For the petitioner, stated that he was pressing only one point before us, namely, the jurisdiction of the Rent Court to decide the question of the title to the trees claimed respectively by the landlord and the tenant. Two other points are also mentioned in the application and they are (i) that the provisions of the Malabar Tenancy Art for fixation of fair rent did not apply to kanams and (ii) that since twelve years had not elapsed after the last demise in 1944, the application before the Rent Court was-not maintainable. No mention was made in the argument about the latter point, but with respect to the former it was stated that in view of the amendment to Section 16 of the Malabar Tenancy Act, 1929 (Act XIV of 1930) by Act XXII of 1956 the point had become unavailable to the applicant. The-amending Act inter alia made the provisions to fix fair rent expressly applicable to kanom tenures as well.

3. Learned counsel for the petitioner depended upon Section 15(2) of the Malabar Tenancy Act, 1929(Madras Act XIV of 1930) as amended by Act VII of 1954 to contend that the Rent Court had no jurisdiction to decide a question of title. The

Subsection reads:

'In hearing an application under this Act, the Rent Court shall so far as may be, have the same powers as are vested in, and follow the same procedure as is followed by a Court of Small Causes hearing a suit or other proceeding under the Provincial Small Cause Courts Act, 1887 subject to the modification that the Rent Court shall have the power to depute any officer of the Revenue Department to make local enquiry and inspection and to collect data and the records submitted by such officer may be read as evidence in the case'.

Mr. Eradi's contention was that as a court of a Small Causes had no right to decide questions of title and that as the 'powers' of a Rent Court are under the Sub-Section approximated to that of a Court of Small Causes, when a dispute as to title to trees standing on the holding arise before a Rent Court, that court should return the application directing the parties to have resort to the ordinary civil court for adjudication as to title. We are afraid we cannot accept the contention. The point for decision would be what meaning the expression have the same powers as are vested in should bear. The Rent Court gets its jurisdiction to determine the fair rent of a holding under Section 16 of the said Act, which is in these terms:

'If any dispute arises as to the amount of fair rent payable in respect of any land under the foregoing provisions of this Chapter, either the tenant, or, after the expiry of the three years from the commencement of the Malabar Tenancy (Amendment) Act, 1954, the landlord may apply to the Rent Court for the determination of the fair rent; and on such application being made, the fair rent shall be determined by the Rent Court';

There is a proviso added to the Section, but that is irrelevant for our present purpose. The jurisdiction conferred on the Rent Court by Section 16 is untrammelled by any limitation and a perusal of the preceding provisions of the Chapter (Chapter II) referred to in the Sections (Sections 5 to 14), particularly Sections 5 and 9, would show that it would be impossible for a Rent Court to discharge its functions unless it had jurisdiction to decide the quantum of improvements effected by a tenant on the holding. To elucidate our point Sections 5 and 9 may be quoted here:

'5. Fair rent in the case of dry lands converted into wet by the tenant's labour shall be

(a) One fifth of the net paddy produce of the land; or

(b) the aggregate of (i) twice the assessment which would have been imposed on the land if it had been dry; and (ii) the annual assessment payable in respect of the land after its registration as wet in the registers of the Government; whichever is higher.'

'9. (1) In the case of garden lands, fair rent, subject to Sub-sections (5), (6) and (7), shall be a share, ascertained under Sub-sections (2), (3) and (4) of this, section, of one-third of the gross produce for the three years immediately previous to the date on which fair rent is to be ascertained.

(2) As regards coconut trees in respect of which the landlord is bound to pay compensation under the Improvements Act in case of eviction, the share shall be one-eighth of the said one-third, of only the nuts included in such produce and, as regards trees in respect of which he is not bound to pay such compensation, the share shall be one-third of the said one-third:

Provided

(3) As regards areca trees and pepper vines in respect of which the landlord is bound to pay compensation under the Improvements Act in case of eviction, the share shall be one-eighth of the said one-third of only the nuts and pepper included in such produce, and as regards areca trees and pepper vines in respect of which he is not bound to pay such compensation, the share shall be one-fourth of the said one-third.

(4)

(5)

(6)

(7)

4. Unless the Rent Court has jurisdiction to determine the improvements effected by the tenant it would be well-nigh impossible for it to function. It cannot be that when disputes arose before a Rent Court as to the quantum of improvements effected by the tenant, the legislature intended the dispute to be taken before the ordinary civil court for adjudication and that the Rent Court should afterwards fix fair rent on the basis of the civil court's a dedication. Under the Malabar Tenancy Act, 1929. (Act XIV of 1930) the jurisdiction to determine fair rent was vested in the ordinary civil court vide Section 11 of the unamended Act. This jurisdiction was under the amending Act of 1951 (Act XXXIII of 1951) conferred on Rent Settlement Officers -- vide Section 9 (c) of the Amending Act. Under Act VII of 1954 (Section 9(c)(i), Section 15 of the amended Act) Government was authorised to constitute Rent Courts for fixation, of fair rent.

This legislative history shows that it is the jurisdiction originally conferred on the ordinary civil court that has now devolved on the Rent Courts, Obviously the purpose of the changes referred to was to expedite the proceedings for fixation of fair rent and to accept the argument of the petitioner's learned counsel that only an attenuated jurisdiction devolved on Rent Settlement Officers or Rent Courts would mean that by seeking to expedite matters the legislature really brought about the opposite effect by making the parties to have resort to the ordinary civil court for adjudication as to title to improvements and then go back to the Rent Court for determination of fair rent. Whether there is dispute or not would normally be known only when an application for fixation of fair rent is filed before the Rent Court.

If the argument is to prevail parties will have to go to the Rent Court first, then to the Civil Court and afterwards back to the Rent Court. To our minds the legislature could never have intended that. What it wanted was to confer full jurisdiction on a Rent Court to decide all questions incidental to the fixation of fair rent and that expeditiously. The Presiding Officers of the Rent Courts are no doubt not experienced in civil law or judicial procedure, but the right of appeal against the fixation of fair rent conferred by the unamended Act is still retained so that the parties may have the satisfaction that the final decision of the matter is given by an experienced civil Judge vide Section 17 of the Act as amended in 1954.

5. A reading of Ss. 5 to 17 of the Act as amended in 1954 would, to our minds, make it abundantly clear that the contention raised on behalf of the petitioner cannot for a moment be sustained. It, however still remains what the legislature meant by the expression 'have the same powers as are vested in', followed by the words 'and follow the same procedure as is followed by a Court of Small Causes hearing a suit.' It is difficult to comprehend what the expression 'so far as may be' in the Sub-section occurring just before the words quoted above truly means.

It might be 'so far as possible' or 'so far as necessary'. To give an intelligent meaning to the words 'have the same powers' etc., consistently with the other provisions of the Chapter (Chapter II), we can only say that what the legislature meant is that the procedure applicable to a Court of Small Causes shall apply to a Rent Court and to enforce that procedure it shall have the necessary powers which a Small Cause Court enjoins. Over and above such powers the Section expressly confers a right in the Rent Court to depute a Revenue Officer to make local enquiry and inspection and to collect data and authorises the Rent Court to use the report and the records submitted by such officer as part of the evidence in the case. In other words, the provisions in Sub-section (2) of Section 15 related only to procedure and not to the jurisdiction of the court, for which we must look elsewhere in the Act.

6. The point urged by the petitioner's counsel is therefore devoid of merit and accordingly, we dismiss the application with costs.