

Kuruvilla Cheriyan Vs. Kuruvilla Chandy

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SooperKanoon Citation : sooperkanoon.com/720795

Court : Kerala

Decided On : Dec-13-1957

Reported in : AIR1958Ker229

Judge : Koshi, C.J. and; Vaidialingam, J.

Acts : [General Clauses Act, 1897](#) - Sections 6; Transfer of Property Act, 1950; Debt Law; Travancore-Cochin Holdings Stay of Execution Act, 1950

Appeal No. : A.S. No. 291 of 1957

Appellant : Kuruvilla Cheriyan

Respondent : Kuruvilla Chandy

Advocate for Def. : T. Muhammed Ismail, Adv.

Advocate for Pet/Ap. : M.T. Paikaday, Adv.

Judgement :

Koshi, C.J.

1. This appeal arises from an order directing the re-delivery of properties taken possession of by the decree-holder pursuant to a decree for ejection. The decree was one passed by the Travancore-Cochin High Court on 16-2-1954 in A. S. no. 158 of .1953 confirming the decision of the District Court of Kottayam in O. S. No. 114 of 1122. Soon after the appellate decree the decree-holder obtained

delivery through court on 9-3-1954. The judgment-debtor applied for re-delivery on 3-4-1954, but that application was dismissed on 15-10-1954. In appeal the order was reversed and the proceedings were remitted to the lower court for fresh disposal in the light of the remand order. The revised order was passed by the Subordinate Judge, Meenachil to whose court the case was transferred from the file of the Kottayam, District Court. The date of the revised order is 8-7-1957.

2. The application for re-delivery was based on the provisions of Act VIII of 1950 which was but a temporary enactment kept alive from time to time by appropriate legislative measures. Ordinance 1 of 1957 replaced it and in its turn the latter was replaced by Act 1 of 1957. The Ordinance was promulgated on 11-4-1957 and Act 1 of 1957 became law on 31-5-57. The order under appeal was therefore made after Act 1 of 1957 became law.

3. Regard being had to the fact that Act VIII of 1960 was only a temporary Act, the provisions of Section 6, General Clauses Act, cannot apply to it and the proceeding initiated under Act VIII of 1950 must therefore terminate when the Act ceased to be law whether it be by efflux of time or by express repeal. The lower court's order allowing re-delivery cannot therefore be sustained. The appeal is therefore allowed, but in the circumstances without costs.

4. The question whether Ordinance 1 of 1957 or Act 1 of 1957 would entitle the respondent to obtain re-delivery is, however, left open. If so advised the respondent can move the lower court for relief under one or the other or both of those laws. Except for a passing reference in the order that Act 1 of 1957 has been passed widening the scope of the provisions in Act VIII of 1950, the question whether the new laws would sustain the continuance of the petition before it or would entitle the defendant to file a similar application under the new laws has not been considered by the lower court at all. Without expressing any opinion on the latter question we allow the appeal as stated earlier.

5. Order accordingly.