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Ouseph Eapan and ors. Vs. Joseph Abraham and ors.

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Court : Kerala

Decided On : Sep-17-1957

Reported in : AIR1958Ker250

Judge : Sankaran and; P.T. Raman Nayar, JJ.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 40, Rule 1; Kerala Stay of Eviction Proccedings Act, 1957 - Sections 4

Appeal No. : C.M.A. No. 182 of 1957

Appellant : Ouseph Eapan and ors.

Respondent : Joseph Abraham and ors.

Advocate for Def. : K.K. Mathew and; George vadakkel, Advs. for Respondent1 ,;

Advocate for Pet/Ap. : T.S. Venkiteswara Iyer and; V. V. Ananthapadmanabha Iyer, Advs.

Disposition : Appeal dismissed

Judgement :

P.T. Raman Nayar J.

1. In our opinion, the court below was quite right in appointing a receiver in this case for the purpose of realising 4800 paras of paddy as 'pattern' admittedly due

to the plaintiff and defendants 13 to 15 who are the owners of the land in question from the crops standing on the land, and it follows that this appeal by defendants 6 and 7 must be dismissed. The suit, instituted in 1953, is for partition and separate possession of the plaintiff's one-fourth share in the land and defendants 1 to 9 who were holding under alease of 1121 M. E. (1945-46) for a period of six years on an annual rental of 4800 paras of paddy were impleaded on the footing that they were in wrongful possession after the expiry of their lease.

Arrears of 'pattom' and mesne profits, past & future, were also claimed from these defendants. That there were large arrears at the time of the institution of the suit and that since 1954 the practice has been to appoint a receiver to collect the 'pattern' (strictly speaking mesne profits) due for the year from the crops on the land is not disputed, and the court below has given sufficient reasons to Justify its observation that unless the 'pattern' is realised from the crops, the owners of the land have little chance of realising it, at any rate, go far as the appellants (who by an arrangement between the lessees are in possession of half the land) ore concerned.

It was on this basis and on the basis also that the 6th defendant had been alienating his properties with a view to defeat the plaintiff, that a receiver was appointed in the previous years by the trial court and the appointment confirmed by this Court on appeal taken by the present appellants. The 6th defendant's conduct, in harvesting the crop in disobedience of an order of the lower court has only aggravated the situation and emphasised the need for the appointment of a receiver to safeguard the interests of the owners of the land. If at all, there is more reason this year than in previous years for the appointment of a receiver.

2. It is argued, as it was before the lower court, that under the terms of lease the 'pattom is due only on the 30th of Medom next' and that the order of the lower court will effect a premature realisation of the pattom. The answer to this is two fold. In the first place, the suit is for recovery of future mesne profits and not of pattom, and mesne profits accrue from day to day as and when the profits are realised from the land. In the second place, the powers of a court in the matter of appointment of a receiver are large enough to protect the interests of the parties in

respect of a future claim so long as that claim is within the scope of the suit.

3. It is next argued that since the suit in so far as it relates to the eviction of the tenants has to be stayed under Section 4 of the Kerala Stay of Eviction Proceedings Act 1957 (Act 1 of 1957) no receiver could have been appointed. But, as pointed out by the lower court, the stay under Section 4 is only in respect of a suit or proceedings for eviction, or for arrears of rent or mesne Profits accrued before the commencement of the Kerala Stay of Eviction Proceedings Ordinance, 1957. The section does not say that no proceedings of any kind can be taken in a suit in which reliefs of the kind stayed are sought. On the contrary it clearly indicates that an action for realisation of mesne profits accrued after the commencement of the Kerala Stay of Eviction Proceedings Ordinance will lie and can be proceeded with.

The appointment now made is for the collection of mesne profits accrued subsequent to that Ordinance, and there is nothing in Section 4 to bar the appointment. It cannot be disputed that the plaintiff could have brought a separate suit for future mesne profits, and the fact that he chose to combine such a suit with a suit for eviction cannot affect the position.

4. It is next argued that the appointment of a receiver amounts to an eviction of the tenants inactual possession. There is no substance in this argument, for, apart from the question whether the appointment of a receiver can amount to eviction, the appointment in his case is only in respect of the crops and in no way affects the possession of the land. No one, we take it, has yet been heard to say that the attachment of the crops raised by a tenant amounts to his eviction from the holding, and the appointment of a receiver for the crops stands on no worse footing.

5. The appeal fails and is dismissed withcosts of the plaintiff.

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