Aley Antony Vs. Ouseph Chacko

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Court : Kerala

Decided On : Nov-01-2002

Reported in : 2004(2)KLT867

Judge : Pius C. Kuriakose, J.

Acts : Kerala Land Reforms Act - Sections 2(25), 80B, 103 and 108A

Appeal No. : C.R.P. No. 1377 of 1999

Appellant : Aley Antony

Respondent : Ouseph Chacko

Advocate for Def. : V.V. Asokan and; Jijimol J. Vadakken, Advs. and; K. Thav

Advocate for Pet/Ap. : M.K. Chandramohan Das, Adv.

Disposition : Revision dismissed

Judgement :

Pius C. Kuriakose, J.

1. This proceeding under Section 103 of the Kerala Land Reforms Act (for short 'the Act') impugns the order of the Appellate Authority (Land Reforms) Thrissur setting aside an order passed by the Land Tribunal, Pala allowing an application under Section 80B of the Act filed by one Ouseph Antony. Revision petitioners are

the legal heirs of Ouseph Antony. I may summarise the facts as follows:

2. The alleged kudikidappukaran filed the O.A before the Land Tribunal, Pala arraying Sri. Ouseph Chacko, the 1st respondent herein, as the land owner. The respondent resisted the application on various grounds. The Land Tribunal enquired into the application in detail and ultimately by order dated 17.10.1987 dismissed the O.A. holding that it is barred by res judicata in view of the decision in an earlier O.A. --O.A.10 of 1978 on the files of the Changanassery Land Tribunal. Aggrieved by this order, the applicant preferred an appeal, L.R.A.S. No. 160 of 1987 before the Appellate Authority (Land Reforms). That Authority by its order dated 17.2.1992 remanded the case back to the Tribunal for a fresh decision after adducal of fresh evidence. After remand, neither of the parties adduced fresh evidence. After hearing parties, the Land Tribunal found that the building which is the subject-matter of the application is a hut for the purpose of Section 2(25) of the Act and further that the original applicant was a kudikidappukaran. Accordingly the Land Tribunal allowed the application and directed allotment of 10 cents around the homestead towards the kudikidappu rights. As against the plea of res judicata in the context of the order in O.A.No. 10 of 1978 of Changanassery Land Tribunal, the Land Tribunal observed that 'he has not pressed this point'.

3. The land owner-respondent in the O.A. readily preferred appeal, A.A.No. 81 of 1993 against the above order. In the appeal memorandum the most prominent ground taken was 'res judicata'. When the appeal came up for consideration neither the respondent nor his counsel was present before the Appellate Authority. That Authority even thought that the respondent in the appeal was deliberately absenting himself in view of the demerits of his case. The Appellate Authority, after hearing the appellant-land owner, accepted the plea of res judicata and accordingly set aside the order passed by the Land Tribunal holding that the decision in O.A.No. 10 of 1978 operates as res judicata for the present O.A. The original applicant died subsequent to the passage of the above order. That is why his legal representatives have now come up in revision.

4. Heard Sri. M.K. Chandramohan Das for the revision petitioners and Sri. V.V. Asokan for the 1st respondent-land owner and also the Government Pleader for

the 2nd respondent. The case records are available and I have perused them.

5. Mr. Das, learned counsel for the revision petitioners would argue that this was a case where there was irrefutable evidence to hold that the predecessor-in-interest of his clients, the original applicant was a kudikidappukaran. According to him, the building in question is a hut, the cost of construction being less than Rs. 200/- and it could fetch practically no rent. The applicant was residing therein for about 60 years and he did not have any other building or land suitable for erecting a homestead. According to him, the Appellate Authority had not disturbed these factual findings at all. As regards the point of res judicata, the only ground upon which the Appellate Authority set aside the order of the Land Tribunal was not sustainable in the present case, since according to Mr. Das, in L.R. A.S. 160 of 1987, the Appellate Authority (Land Reforms) had set aside the finding regarding res judicata entered by the Land Tribunal in its previous order and remanded the case back to the Land Tribunal for a disposal on merits. He would argue that the order of remand has become final and therefore the land owner is not entitled to raise the plea of res judicata over again. In short, his argument is that the very plea of res judicata is barred by the principles of res judicata or principles of estoppel. He also argued that when the case came up before the Land Tribunal after remand, the landowner did not press the point of resjudicata raised earlier and this is explicit from the order passed by the Land Tribunal after remand. Coming to the merits of the plea of resjudicata, Mr. Chandramohan Das submitted that O.A.No. 10 of 1978 was filed before the Changanassery Land Tribunal which did not have jurisdiction and that the dismissal of the said O.A. was on a finding that the Tribunal did not have jurisdiction. According to him, an order passed by a court or tribunal which did not have jurisdiction over the subject-matter was a nullity and was liable to be ignored. He cited the decision of S. Padmanabhan J. in Bharathi Amma v. Kumaran Peethambaran (AIR 1990 Kerala 88). In the said decision the learned Judge would observe interalia as follows:-

' An error of law or fact committed by a judicial or quasi judicial body cannot be impeached otherwise than in appeal, etc. unless it relates to a matter of jurisdiction. When the decision is a nullity for want of inherent jurisdiction, no question of resjudicata will arise'.

Summing up his arguments Mr. Das made a fervent appeal not to throw out a meritorious cause on what he describes as a technical plea.

6. Mr. V.V. Asokan, learned counsel for the 1st respondent would meet all the arguments of Mr. Das very ably. As regards the argument that the remand order passed by the Appellate Authority was not challenged by his client and hence had become final, he would submit that the law then obtaining was that a revision under Section 103 would lie only against final orders and not against remand orders. He submitted that the law as laid down by this Court in Joseph v. Velayudhan Pillai (1976 KLT 870) and also in Bhaskara Menon v. Gangadharan (1983 KLT 435) stood the field till 2000 when the Supreme Court gave its decision in Mammu v. Hari Mohan (2000 (1) KLT 835 (SC)). He also submitted that it is not correct to say that the Land Reforms Appellate Authority had vacated the finding regarding resjudicata. According to him, the remand made by the said Authority in L.R.A.S. 160 of 1987 was an open one.

7. I have perused the remand order passed in LRAS. 160 of 1987. I find that the order of remand is an open one, giving opportunity to both sides to adduce further evidence on all points. Of course I find an observation in the Appellate Authority's order that PW.1 was not questioned in the context of the plea of res judicata. But a reading of PW. 1's testimony will show that this observation is not correct. PW.1 has been cross-examined with reference to the earlier O.A., even though the Tribunal in which the O.A. was instituted was wrongly referred to by the cross-examiner as the Kanjirappally Land Tribunal instead of Changanassery Land Tribunal. In fact, the initial stand of the original applicant in the context of the earlier O.A. was that he had nothing to do with the same. But a perusal of the records has convinced me that the applicant in the earlier O.A. on the files of the Changanassery Land Tribunal was none other than the original applicant in the present O.A. also. Before me, Mr. Das fairly conceded that the dispute regarding the identity of the applicant in the earlier O.A. was not well founded. His argument is that the Changanassery Land Tribunal did not have territorial jurisdiction over the earlier O.A. and that was why the same was dismissed. But a reading of the order in the said O.A. shows that the dismissal was on merits. It is quite possible that at that time it was that Land Tribunal which was having territorial jurisdiction.

The Government Pleader is unable to enlighten me on this aspect for want of relevant records. Mr. Asokan's argument is that even if the Changanassery Land Tribunal lacked in territorial jurisdiction, then also the order passed by that Tribunal will be valid in the context of his plea of resjudicata. The argument is that the judgments of courts having limited jurisdiction will operate as resjudicata for a later suit or proceeding in a court of unlimited jurisdiction on the same issue.

8. In the light of Section 108A of the Act, the applicability of the principles at resjudicata to proceedings before Land Tribunals is beyond controversy. Therefore, the point to be considered is whether the judgment by a tribunal without territorial jurisdiction (even assuming that the Changanassery Land Tribunal did not have territorial jurisdiction) will operate as resjudicata in a subsequent proceeding before a tribunal with jurisdiction. Mr. Asokan would first cite the decision of the Supreme Court in Sulochana Amma v. Narayanan Nair, (1994) 2 SCC 14, wherein it is held that the judgment of a court of limited jurisdiction will operate as resjudicata in a later suit in a court of unlimited jurisdiction. He would then cite another decision of the Supreme Court in Church of South India Trust Association v. Telugu Church Council, (1996) 2 SCC 520. This decision, according to me, answers most of the arguments raised by Mr. Das in the context of resjudicata. After observing that the rule of resjudicata is founded on considerations of public policy and that it is in the interest of the public at large, Agrawal J. would refer to the three facets of the concept of jurisdiction of a court, viz., pecuniary jurisdiction, territorial jurisdiction and juridiction of the subject-matter and would ultimately hold as follows for the Bench:-

'We are, therefore, of the opinion that Section 11 of the present code (excluding Explanation VIII) envisages that the judgment in a former suit would operate as resjudicata if the court which decided the said suit was competent to try the same by virtue of its pecuniary jurisdiction and the subject-matter to try the subsequent suit and that it is not necessary that the said court should have had territorial jurisdiction to decide the subsequent suit.'

(Underlining supplied)

9. It follows that even if it is assumed that the Changanassery Land Tribunal did not have territorial jurisdiction over O.A.No. 10 of 1978, that Tribunal's order will certainly operate as res judicata for the present proceedings.

10. Mr. Das would now refer to the observation in the Land Tribunal's order after remand to the effect that the question of resjudicata 'was not pressed 'and therefore, according to him, it is not open to the 1st respondent to revive the same once again so as to foreclose his clients' meritorious cause. Mr. Asokan readily replied that according to his client and his counterpart before the Land Tribunal, no such concession had been given by anybody. Even if any concession had been given by the counsel, the same being on a pure question of law, the opposite party cannot seek benefit on the basis of such concession, He would cite three Authorities in support of this proposition: Central Council for Research in Ayurveda & Siddha v. Dr. K. Santhakumari, (2001) 5 SCC 60, Uptron India Ltd. v. Shammi Bhan (1998) 6 SCC 538 and a Division Bench decision of this Court in Anuradha Varma v. State of Kerala (1993 (2) KLT 777). It is uniformly held in all these decisions that concession by counsel on a question of law is not binding on the parties and they are entitled to challenge the same in appeal In Central Council for Research in Ayurveda & Siddha (supra), delivering the judgment of the Court K.G. Balakrishnan, J. held in para. 12 as follows :-

'In the High Court, the appellants herein failed to point out that the promotion is in respect of a 'selection post' and the principle to be applied is 'merit-cum-seniority'. Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party.'

11. Mr. Das made a feeble attempt to distinguish the aforesaid decisions by submitting that res judicata is not a pure question of law. I cannot agree. According to me, res judicata is a question pr principle of law, the applicability of which will certainly depend on the factual situation obtaining in a given case. At best, res judicata can be stated to be a question of law which should have foundation on

facts. In the context of this argument I have thoroughly examined the records of the case. I do not find anything in writing either by the party or by the counsel to show that either of them has given up their case based on the plea of res judicata. I may point out in this connection that whenever courts or tribunals proceed to take decisions on the basis of concessions by parties or counsel on questions of fact as well as on mixed questions of law and fact, it is desirable to have the concessions noted down in writing under the signatures of the party or at least the counsel lest controversies like the present one should recur.

12. The last submission of Mr. Das was that the impugned order was passed without hearing the predecessor-in-interest of his clients who, for genuine health reasons, was not in a position to undertake the long journey form his Village to Thrissur, the seat of the Appellate Authority. The submission is certainly appealing. I notice that the old man breathed his last within a few weeks of disposal of the case by the Appellate Authority. But the question is whether I should accede to his plea for a further remand. Obviously the entire evidence is on record. The case was decided by the Appellate Authority on a question of law. Before me, the learned counsel on both sides would advance all possible arguments on the above question of law.

13. Having regard to the arguments, especially in the context of the binding precedents cited on behalf of the 1st respondent, I have no hesitation to conclude that the order passed by the Appellate Authority (Land Reforms) is not liable to be interfered with under the revisional powers of this Court under Section 103 of the Kerala Land Reforms Act. The result of the above discussion is that this revision fails and the same is dismissed. However, I direct the parties to suffer their cost.