

K. Sankaran Vs. Seshambal and ors.

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SooperKanoon Citation : sooperkanoon.com/732664

Court : Kerala

Decided On : May-29-1974

Reported in : AIR1974Ker205

Judge : M.U. Isaac and; V. Khalid, JJ.

Acts : Kerala Land Reforms Act, 1964 - Sections 125(1) and 125(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : C.R.P. No. 1217 of 1973

Appellant : K. Sankaran

Respondent : Seshambal and ors.

Advocate for Def. : T.S. Venkiteswara Iyer, Adv.

Advocate for Pet/Ap. : T. Karunakaran Nambiar and; A. Gangadharan Nair, Adv.

Disposition : Revision allowed

Judgement :

Isaac, J.

1. This case has been placed before a Division Bench on account of the difference of opinion among some of the learned Judges of this Court regarding the scope

and applicability of Sub-section (3) of Section 125 of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the Act).

2. The petitioner is the fifth defendant in a suit, O. S. No. 117 of 1970. which the fifth respondent filed in the Subordinate Judge's Court, Palghat for recovery of possession of a few items of immovable property on the basis of title. Defendants 2 to 5 pleaded that they were tenants of Items 2 to 5 and 13, and that they were not, therefore, liable for ejectment. They produced a few documents in support of their plea. The fifth defendant filed an application in the trial Court under Section 125 (3) of the Act praying that the suit may be stayed and the question regarding the rights of the tenants may be referred together with the relevant records to the Land Tribunal having jurisdiction over the area in which the property is situate for the decision of that question. The trial Court held that a case can be referred to the Land Tribunal under the above provision, only if the applicant established a prima facie case that he was a tenant; and it dismissed the fifth defendant's application after finding that the tenants failed to establish such a case. This petition has been filed to revise the said order.

3. The main contention of the petitioner before us is that whenever a question whether a person is a tenant or kudikidappukaran arises in any suit or other proceeding before a Civil Court, it is bound under Section 125 (3) of the Act to stay the suit or proceeding and refer that question for decision to the Land Tribunal having jurisdiction over the area in which the land is situate, and that there is no question for the Civil Court to examine whether the person claiming the tenancy or kudikidappu right has a prima facie case, in order to take action under the above provision. On the other hand, it is contended on behalf of the fifth respondent that a court is not an automatic machine to start working without knowing what it is doing, and that it should not stay a suit or other proceeding validly instituted before it on the mere allegation of an opposite party that he is a tenant or a kudikidappukaran or send the records to a Land Tribunal for adjudication of that question, without being satisfied that the allegation is prima facie true. This controversy must be resolved on a true construction of the relevant statutory provision. It is proper that the whole of Section 125 of the Act is read; and it is as follows :--

'125. Bar of jurisdiction of Civil Courts.-

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the appellate authority or the Land Board or the Government or an officer of the Government:

Provided that nothing contained in this sub-section shall apply to proceedings pending in any Court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969. (2) No order of the Land Tribunal or the appellate authority or the Land Board or the Government or an officer of the Government made under this Act shall be questioned in any Civil Court, except as provided in this Act.

(3) If in any suit or other proceeding any question regarding rights of a tenant or of a kudikidappukaran (including a question as to whether a person is a tenant or a kudikidappukaran) arises, the Civil Court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

(4) The Land Tribunal shall decide the question referred to it under Sub-section (3) and return the records together with its decision to the Civil Court.

(5) The Civil Court shall then proceed to decide the suit or other proceedings accepting the decision of the Land Tribunal on the question referred to it.

(6) The decision of the Land Tribunal on the question referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Civil Court.

(7) No Civil Court shall have power to grant injunction in any suit or other proceeding referred to in Sub-section (3) restraining any person from entering into or occupying or cultivating any land or kudikidappu or to appoint a receiver for any property in respect of which a question referred to in that sub-section has arisen till such question is decided by the Land Tribunal, and any such injunction granted or appointment made before the commencement of the Kerala Land Reforms

(Amendment) Act, 1969, or before such question has arisen, shall stand cancelled'.

The jurisdiction of courts of civil judicature to try suits of a civil nature is the creature of Section 9 of the Code of Civil Procedure. That section reads,--

'9. Courts to try all civil suits unless barred. -- The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation. -- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.'

It is clear from the above section that the jurisdiction of Civil Courts is not absolute, but on the other hand it is subject to any statutory exception made in that respect. Section 125 of the Act contains such a provision. Sub-section

(1) of that section bars the jurisdiction of Civil Courts to decide or deal with any question or determine any matters which is by the Act required to be decided or dealt with by the Land Tribunal, or the other authorities mentioned therein. Sub-section

(3) provides that when any question arises before a civil court whether a person is a tenant or kudikidap-pukaran, the court shall stay the suit or proceeding in which that question arises and refer the same to the Land Tribunal concerned along with the records for decision. Sub-section

(4) requires the Land Tribunal to decide the question referred to it and return the records together with its decision to the Civil Court. Sub-section

(5) makes the Tribunal's decision binding on the Civil Court; and directs the civil court to dispose of the suit Or proceeding on the basis of the decision. Sub-section

(6) makes the above position further clear. When a person sues another person for recovery of possession of land on the basis of title, and the defendant contends that he is a tenant who is not liable for eviction, the only question that arises in

such a case for decision is whether the defendant's claim as tenant is true or not. This, is all that is required for invoking Section 125

(3) of the Act. To say that this is not enough, but the defendant must further establish before the civil court that his plea is prima facie true is to read into the above provision something which it does not contain or which the Legislature has not enacted. It would also amount to exercise of a jurisdiction by the civil court, which it has been expressly debarred by Section 125 of the Act from exercising.

4. We shall now refer to the conflicting views taken by learned Judges of this Court on the above question. The first decision in point of time is that of Subramanian Poti. J. in *Velu v. Chitta* (C. R. P. No. 791 of 1972, judgment D/- 21-12-1972 (Ker)). The learned Judge held that the Division Bench decision of this Court in *Choyi v. Kunhiraman*, 1971 Ker LT 563, which dealt with the question of construction of Section 3 (1) of the Kerala Cultivators and Tenants (Temporary Protection) Act, 1970, applied by analogy to the construction of Section 125 (3) of the Kerala Land Reforms Act, and that, therefore, a person who claimed to be a tenant or kudikidappukaran had to establish a prima facie case for invoking Section 125 (3) of the Act. There is no discussion or independent consideration of the question. However, out of respect to our learned brother, we shall examine whether the decision in 1971 Ker LT 563 can be applied to the construction of Section 125 (3) of the Act. For this purpose we shall first quote Section 3 of the Kerala Cultivators and Tenants (Temporary) Protection Act. 1970. It reads:--

'3. Stay of suits and other proceedings for determination of rights in respect of land -occupied by certain classes of persons. -- (1) Notwithstanding anything to the contrary contained in any other law, or in any judgment, decree or order of any court, where in any suit or proceedings in respect of any application or appeal or revision or review or proceedings in execution of any decree or order (including proceedings incidental or ancillary thereto) or other proceedings, in respect of any land, pending before any court or Land Tribunal or appellate authority or other authority or officer at the commencement of this Act, or instituted or filed or initiated after such commencement, any party thereto has filed or files a statement in writing that, he was in occupation of such land at the commencement of the

Kerala Land Reforms (Amendment) Act, 1969, and-

(a) that such land is situate in Malabar and that he or his predecessor-in-interest was continuously in occupation of such land honestly believing himself to be a tenant for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1967; or

(b) that such occupation was on the basis of a registered deed purporting to be a lease deed and that he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957, on the basis of that deed, the court or Land Tribunal or appellate authority or other authority or officer, as the case may be shall not proceed with that suit, appeal, revision, review or other proceedings, as the case may be.

(2) Nothing contained in Sub-section (1) shall apply in any case where the party who has filed or files the statement referred to in that sub-section is admitted to be a tenant of the land to which that statement relates.'

The above case arose out of a suit for injunction to restrain the defendant from trespassing on a land which was alleged to be in the plaintiff's possession as owner thereof. The defendant filed a statement in the suit stating that he was in occupation of the land at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, and that he also satisfied the other conditions of the above section: and he wanted the Court, not, to proceed with the suit by virtue of the said provision. The question arose for decision whether the court was bound to stay the suit, if the defendant merely filed such a statement, or only if the defendant further established a prima facie case that what he stated was true. After examining the object of the legislation, the court held that it was enacted only to give atemporary protection to persons who satisfied the conditions mentioned in the above section, and a person who did not prima facie establish that he satisfied them was not entitled to the said protection. The purport and scope of Section 125 of the Kerala Land Reforms Act are entirely different from that of Section 3 of the Kerala Cultivators and Tenants (Temporary Protection) Act. As indicated above. Section 125 of the Kerala Land Reforms Act takes away the jurisdiction of Civil Courts to entertain and decide certain questions, which are committed for

adjudication entirely to the jurisdiction of the Land Tribunal and other authorities mentioned therein: and if such a question arises, civil courts have no jurisdiction to deal with it. Therefore the above decision has no assistance to the interpretation of Section 125 of the Kerala Land Reforms Act.

5. The second decision of this Court is that of Krishnamoorthi Iyer, J in Kunhayammu v. Shanmughan. C. R. P. No. 298 of 1973, Judgment dated 6-4-1973 (Ker). That case arose out of a suit for recovery of possession of a land on the basis of title, in which the defendant contended that he was a tenant, and that, the action should, therefore, be stayed and the question whether he was a 'tenant or not should be referred to the Land Tribunal concerned by virtue of Section 125 (3) of the Act. The question was whether, in such a case, the defendant should establish a prima facie case in order to invoke the above section. Holding that it was necessary, the learned Judge stated-

'The deprivation of jurisdiction of the Civil Court is only in respect of those matters specifically dealt with under Section 125 (1) of Act I of 1964 and this is more significant when one will scrutinise the proviso to Section 125 (1) of the Act. The proviso has saved the jurisdiction of the Civil Court to deal with proceedings in respect of matters covered by the Act pending in any court at the commencement of Act I of 1964. Section 125 (3), according to me, will have to be interpreted in the light of Section 125 (1) and if so interpreted, the Civil Court's jurisdiction is taken away only in respect of any question arising in any suit or other proceedings regarding the rights of a tenant or of a kudikidappukaran including a question as to whether a person is a tenant or a Kudikidappukaran. The enquiry regarding the status of a person as a kudikidappukaran or as a tenant is only for the purpose of deciding the rights of a tenant or a kudikidappukaran. If incidentally the relationship between the parties has to be resolved for giving relief to the plaintiff in respect of matters not covered by Act I of 1964, I do not think that by the wording of Section 125 (3) of Act I of 1964 there is an ouster of jurisdiction. For example, if in a suit for injunction whereby the plaintiff wants to restrain the defendant from interfering with the plaintiff's possession of the property the defendant raises a plea that he is in possession of the property as a tenant a very literal interpretation of Section 125 (1), (2) and (3) will compel the court to refer the

issue to the Land Tribunal. If the reference is made and the Civil Court is obliged to decide the suit on the basis of the finding of the Land Tribunal there is an abdication of the function of the Civil Court. The question in such cases is only who is in possession of the property on the date of suit. The defendant's claim of possession based on the tenancy is immaterial for the reason that if it is found that the defendant is in possession of the property, whether it be as a lessee or otherwise, no relief of injunction can be granted to the plaintiff. In such cases, counsel appearing in the case, agreed that no reference under Section 125 (3) is called for. If that is so, I do not appreciate how in a suit for ejectment when the defendant raises a plea of tenancy a reference under Section 125 (3) of Act I of 1964 is rendered obligatory. In order to grant relief to the plaintiff on the basis of his claim of trespass it may be necessary for the Civil Court incidentally to examine the character of the defendant's possession. In such a suit, no rights between the landlord and tenants are involved. The plaintiff does not want any relief in his capacity as landlord against the defendant as a tenant. There is thus no scope for the application of Section 125 (3) of Act I of 1964.'

With great respect we are unable to agree fully with the learned Judges reasoning and much less with his conclusion. There is no warranty to construe Section 125 (3) in the light of Section 125 (1). Both the provisions deal with different matters. Even if Section 125 (3) is interpreted in the light of Section 125 (1), it makes no difference on the scope and applicability of Section 125 (3). This provision, as we have already stated, requires a Civil Court to stay the suit or proceeding pending before it if any question arises therein regarding the rights of a tenant or a kudikidappukaran, including the question whether he is a tenant or kudikidappukaran, and to send the records thereof to the Land Tribunal concerned for its decision, which is binding on the court. It may be that in the illustration dealt with by the learned Judge, namely in a suit for injunction against threatened trespass wherein the defendant claims that he is in possession of the land as a tenant, no question regarding the rights of tenant may arise within the meaning of Section 125 (3) of the Act, since the controversy in such a suit is only who is in possession of the land, and the title that the plaintiff or the defendant has put forward in support of their respective claim for possession may arise for decision only incidentally. We refrain from expressing any opinion on this question. We

would only say that the illustration does not render any assistance to the proposition that a party to an action in a Civil Court is not entitled to invoke Section 125 (3) of the Act, unless he prima facie establishes that he is a tenant or kudikidappukaran, for the simple reason that the section does not require that to be done. All that is necessary is that a question regarding the rights of a tenant or a kudikidappukaran arises for decision in the suit or proceeding pending in the Civil Court. Then the Court shall send that question for decision of the Land Tribunal, and accept its decision. It would be an usurpation of jurisdiction on the part of the Civil Court to proceed to consider whether the claim set up by the defendant is prima facie true or not, before the question is referred for the decision of the Tribunal. If the Civil Court wrongly decides that there is no prima facie case, the Land Tribunal is deprived of its jurisdiction to decide that question. On the other hand if the court wrongly decides that there is a prima facie case, it is still open for the Tribunal to hold that the claim set up by the defendant is untrue and that decision is binding on the Civil Court. The Legislature did not clearly create such a situation. It did not want the jurisdiction of the Land Tribunal to depend on a right or wrong decision of the Civil Court on any question regarding the rights of a tenant or kudikidappukaran. Section 125 (3) has, in purview, barred in clear terms the jurisdiction of Civil Courts in considering such a question, and committed it to the Land Tribunal concerned for decision.

6. The third decision of this Court is also that of Krishnamoorthy Iyer, J. in *Krishnaswamy v. Kanthaswami Udayar* (C. R. P. No. 1278 of 1972, D/-6-4-1973 (Ker.)). In this case the learned Judge has only followed his previous decision; and it does not therefore, deserve any additional consideration.

7. The next decision of this Court is that of Bhaskaran, J., in *Appunni v. Nani*, 1973 Ker LT 438 = (AIR 1973 Ker 281) in which the learned Judge took an entirely opposite view. He has not referred to the above-mentioned decisions of Subramonian Poti, J., or Krishnamoorthy Iyer, J., but he relied on a passage appearing in the majority judgment of Raman Nayar, C. J., in the Full Bench decision of this court in *Narayanan Nair v. State of Kerala*, 1970 Ker LT 659 = (AIR 1971 Ker 98 (FB)) in support of his view. Dealing with the constitutional validity of Section 125 of the Act the learned Chief Justice stated,--

'The Act sets up a special tribunal, namely, the Land Tribunal to decide certain matters. These matters are specified by the Act itself and are not left to the will and pleasure of any executive authority. That, being so the vesting of exclusive jurisdiction in the Land Tribunal to decide these questions and the ousting of the jurisdiction of the Civil Courts under Section 125 (1) seem to us unexceptionable. So also the provisions in Sub-section (3) by which questions regarding the rights of tenants and kudikidappukars including the question whether a person is a tenant or a kudikidapukaran are to be referred by a Civil Court to this special expert tribunal if such a question arises in any proceeding before it and the court is to decide that question in accordance with the decision of this tribunal although the provision seems to us rather cumbrous and to make for protraction. It is also to be noticed that, under Sub-section (6), the decision of the Land Tribunal on the question referred to it can be canvassed in appeal from the decree the Court might pass.'

We respectfully agree with the above statement, which obviously renders support to the conclusion of Bhaskaran, J. We must, however, add that it was unfortunate that the three Single Bench decisions of this Court, which took an opposite view were not brought to the notice of the learned Judge,

8. There are two more decisions of this Court dealing with Section 125 (3) of the Act. Both of them are Division Bench decisions of Gopalan Nambiyar and George Vadakkal, JJ. The first one is *Narayana Menon v. Kallandi*, 1973 Ker LT 983. That case arose out of a suit for injunction to restrain the defendant from trespassing on a land alleged to be in the possession of the plaintiff. The defendant contended that he was a tenant of the land, and he was in possession on that basis. The court held that Section 125 (3) of the Act has no application, since in such a case the only question was whether the plaintiff or the defendant was in possession of the land, and there was no question regarding the rights of a tenant or kudikidappukaran. The second decision is *Alvi v. Mohammedkutty Haji*, 1973 Ker LT 937 = (AIR 1974 Ker 100)'. The question that arose in this case was the same; and the learned Judges followed their earlier decision. We have referred to this aspect of the matter in dealing with the decision of Krishnamoorthi Iyer J., in *C. R. P. No. 298 of 1973 (Ker)* ; and we have nothing more to add to what we have

already observed in that context. We shall only state that these decisions do not support the fifth respondent's contention.

9. Before we conclude this judgment, we may also refer to another decision of a Division Bench of this Court in Kochukutty v. Abraham Tharakan, 1968 Ker LT 23. This was relied on by the fifth respondent's counsel in support of his contention that the petitioner must establish a prima facie case of his tenancy in order to invoke Section 125 (3) of the Act. The above decision related to the construction of an apparently similar provision contained in Section 8 of the Kerala Prevention of Eviction Act, 1966. That section reads-

'8. Stay of suits or other proceedings for eviction:-- Where, in any suit or other proceeding for the eviction of a cultivating tenant, a holder of a kudiyruppu or a kudikidappukaran, from his holding, kudiyruppu or kudikidappu, as the case may be, whether pending at the commencement of this Act or instituted after such commencement, the cultivating tenant or the holder of a kudiyruppu or the kudikidappukaran, makes a representation to 'the court in which such suit or other proceeding is pending or instituted that no record of rights in respect of the holding or register of kudikidappukars in respect of the village in which the kudikidappu is situate, as the case may be, has been prepared, the Court shall not proceed with the suit or proceeding until the record of rights in respect of the holding or the register of kudikidappukars, as the case may be, is prepared and made available to it and the Court shall also by order direct the Revenue Divisional Officer having jurisdiction over the area in which the holding or the kudikidappu is situate to prepare a record of rights in respect of the holding, or as the case may be, a register of kudikidappukars and to file the same in Court and the Revenue Divisional Officer shall cause the same to be prepared in the manner prescribed under the Kerala Land Reforms Act, 1963 (Kerala Act I of 1964)'. There were three plausible views regarding the construction of the above section. One was that it applied only to a suit or proceeding wherein the plaintiff or the petitioner admitted that the opposite party was a tenant or a kudikidappukaran. The second was that the section applied to a case wherein the opposite party pleaded that he was a tenant or kudikidappukaran, even if the plaintiff or the petitioner denied that claim and the action was based purely upon title. The third view was that it was not

enough if the opposite party made such a plea; he must also establish his case prima facie in order to attract Section 8 of the above Act. Madhavan Nair, J. apparently took the second view in *Cheriyar v. Harihara Iyer*, 1967 Ker LT 508. Dealing with the aforesaid three plausible views, the Division Bench held that on a true construction of the section the third view was the correct one. It is contended that Section 8 of the Kerala Prevention of Eviction Act is analogous to Section 125 (3) of the Kerala Land Reforms Act and that the latter section should also receive the same construction. We are unable to accept this contention. We have already dealt with the purport and scope of Section 125 of the Kerala Land Reforms Act, particularly Sub-section (3) thereof. Under this section, certain matters, which were originally to be decided by a Civil Court are taken out of its cognizance, and committed to the jurisdiction of the Land Tribunal and the other authorities mentioned therein for adjudication. That is not the scheme of Section 8 of the Kerala Prevention of Eviction Act.

10. In the result, we hold that the decisions of Subramonian Poti, J. and Krishnamoorthy Iyer, J., in the cases referred to above do not lay down the correct law; and we agree with the view taken by Bhaskaran, J., in 1973 Ker LT 438 = (AIR 1973 Ker 281). Accordingly, this revision petition is allowed; and the trial court is directed to stay the suit in respect of Items 2 to 5 and 13 in the plaint schedule, and refer the question regarding the rights claimed by defendants 2 to 5 as tenants of the said items to the Land Tribunal concerned together with the relevant records for his decision under Section 125 (3) of the Act. In the circumstances of the case the parties will bear their own costs.