Kunnathvelli Viswanathan, Minor by Next Friend and Brother Kunhikrishnan Nair Alias Krishnadas Vs. Kunnambarapoyil Kanaran and ors.

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Court : Chennai

Decided On : Nov-22-1955

Reported in : AIR1956Mad604; (1956)2MLJ87

Appellant : Kunnathvelli Viswanathan, Minor by Next Friend and Brother Kunhikrishnan Nair Alias Krishnadas

Respondent : Kunnambarapoyil Kanaran and ors.

Judgement :

Govinda Menon, J.

1. The District Munsif of Payyoli has referred under Section 113 and Order 46, Rule 4-A of the Code of Civil Procedure, the auestion raised before him, as to whether Section 52 of the Malabar Tenancy Amendment Act (Madras Act XXXIII of 1951) is invalid being repugnant to the provisions of Article 19(1)(f) of the Constitution read with Article 19(5). In the opinion of the learned District Munsif Section 52 of Act XXXIII of 1951 is repugnant to the above provisions of the Constitution and hence requests the High Court for an authoritative pronouncement on the topic. Learned Counsel appearing on behalf of the parties have, in view of the pronouncements of this Court in R.C. Nos. 86 to 88 of 1954 in which Rajagopalan, J., agreeing with one of us, Govinda Menon, J., had held that no provisions of the various Malabar Tenancy Acts, namely, Madras Acts XIV of 1930, XXIV of 1946, XXXIII of 1951 and VII of 1954 are invalid as infringing any of the Articles of the Constitution and also in view of the decision of Rajagopalan and Rajagopala Ayyangar, JJ., in W.P. No. 556 of 1955, etc., not seriously contested the validity of the section especially since by the amendment of Article 31(A) of the Constitution 'jenm' has been included within the meaning of the term 'estate'. In the judgment delivered by one of us, Govinda Menon, J., in R.C. Nos. 86 to 88 of 1954 it has been pointed Out that the Legislature constituted under the provisions of the Constitution has the power to set right by means of rectifying the statutes, any mistaken view of the law. That being the case, no attempt was made to impugn Section 52 as being repugnant to any of the provisions of the Constitution.

2. The learned Advocate-General and the various counsel appearing for the parties have concentrated their attention on the real meaning and import of the section and on what was intended to be laid down by that provision. In order to fully comprehend the idea underlying the enactment, we shall endeavour to lay down the correct proposition of the law regarding the rights and liabilities of the parties as contemplated by Section 52 of the Madras Act XXXIII of 1951.

3. R.C. No. 63 of 1954 arises out of I.A. No. 113 of 1954 in I.A. No. 425 of 1952 in O.S. No. 1314 of 1943 on the file of the District Munsif's Court, Payyoli and the facts and circumstances which have given rise to the reference are as follows : O.S. No. 1314 of 1943 was a suit for eviction and the plaintiff obtained a decree for recovery of possession of the property. Four out of the 7 defendants in that suit, after the enactment of Section 52 of the Madras Act XXXIII of 1951, applied to the Court for re-delivery of possession of the suit lands

in accordance with its provisions and while that was pending, the decree-holder requested the Court to refer the question regarding the validity of Section 52 of the Act to the High Court and hence the reference has come before us.

4. Though the reference does not give the exact date on which in execution of the decree in O.S. No. 1314 of 1943 the decree-holder took possession of the lands, it is admitted that execution of the decree and recovery of possession took place sometime anterior to 5th December, 1945. As the suit was one of 1943 it must have been filed after 1st July, 1942, in which case the provisions of Section 52 are straightaway attracted. It is, therefore, necessary to examine in some detail the history of the legislation and the various provisions of the Malabar Tenancy Acts commencing with the provisions of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930) and culminating in the Madras Act VII of 1954. Sub-sections (5) and (6) of Section 14 of the Madras Act XIV of 1930 and Sub-sections (5) and (6) of Section 20 of the same Act relate to the grounds for eviction of a cultivating verumpattamdar, and a customary verumpattamdar, kuzhikanamdar or kanamdar and they are in identical terms. The relevant portions of the two sections are as follows:

Section 14. - No suit for eviction of a cultivating verumpattamdar from his holding shall lie at the instance of his landlord except on the following grounds:

* * * *(5). - That at the end of the agricultural year, the landlord requires the holding bona fide for huown cultivation or for that of any member of his family, or tarwad or tavazhi who has a proprietary and beneficial interest therein;

(6). - That at the end of the agricultural year the landlord requires the holding or part thereof bona fide for building purposes for himself or any member of his family, or tarwad or tavazhi who has a proprietary and beneficial interest therein.

Section 20.' - No suit for eviction of a customary verumpattamdar, kuzhikanamdar or kanamdar shall lie at the instance of his landlord except on the following grounds:

* * * *(5). - That the period of verumpattam, kanam or kuzhikanam, as the case may be, has expired and there has been no renewal and the landlord requires the holding bona fide for his own cultivation or for that of any member of his family or tarwad or tavazhi who has a pro-prietary and beneficial interest therein.

(6). - That the period of verumpattam, kanam or kuzhikanam as the case may be has expired and there has been no renewal and the landlord requires the holding or part thereof bona fide for building purposes for himself or any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein.

The words 'requires the holding bona fide' in Clause (5) of these sections were interpreted in Narikkal Chathan v. Kesavan Namboodri : AIR1942 Mad242 , by a bench of this Court as meaning that the jenmi may when the period of vet umpattam, or kanam or kuzhikanam has expired and there has been no renewal, resume occupation of the land if he genuinely intends to cultivate it and it is not necessary that he should show a real need to do so. The fact that he has sufficient lands under cultivation elsewhere to provide for the needs of himself and his family does not matter. The learned Chief Justice, who delivered the Judgment of the Court disagreed with the view taken by Venkataramana Rao, J., in S.A. No. 42 of 1938, Raman Kayar v. Kesavm Embrandari, wherein the learned Judge had interpreted the expression 'requires the holding bona fide' in the same way in which a similar expression was interpreted in Section 11 of the Calcutta Rent Act in Doogah v. J.R.D'Cruz. 26 C.W.N. 499 The contrary view taken by King, J., in S.A. No. 538 of 1939 had the approbation of the bench. The Madras Legislature, being of the opinion that the interpretation put upon the aforesaid expression by the High Court did not conform to the intention of the Legislature at the time of the enactment of the statute, Act XIV of 1930, amended those sections therein by the Madras Act XXIV of 1945 by which instead of the words 'requires the holding' the words 'needs the holding' wete substituted thereby making it explicit that the decision of Venkataramana Rao, J., was correct. The Madras Act XXIV of 1945 received the

assent of the Governor on the 5th of December, 1945, and was first published in the Fort St. George Gazette on the nth of December, 1945, and hence came into effect from the date when it received the assent of the Governor. Sections of that Act deals with the amendment of Sub-sections (5) and (6) of Section 14 of the Madras Act XIV of 1930 and Section 3 deals with amendments of Section 20, Sub-sections (5) and (6).

5. Section 4 of the Madras Act XXIV of 1945 is as follows:

Every suit for eviction under Clause (5) or Clause (6) of Section 14 or under Clause (5) or Clause (6) of section 20 of Madras Act XIV of 1930 instituted before the commencement of this Act and every appeal or other proceeding in respect of such suit, shall be disposed of as if the said clauses as amended by this Act had been in force at the time of the institution of the suit in the Court of First Instance; but nothing contained in this section shall be deemed to invalidate any decision or order of a Court which became final before the commencement of this Act.

After further amendment of the Malabar Tenancy Act by the Madras Act XXXIII of 1951, Sections 2 and 3 of Act XXIV of 1945 were repealed by the Repealing Act XI of 1952 with the result that Sections 2 and 3 of Act XXIV of 1945 are no longer on the statute-book since those provisions have been incorporated into the body of the main Act by the Amendments cf 1951. But the thing that has to be remembered is that Section 4 of Act XXIV of 1945 is still in force and stands unrepealed.

6. There were further amendments to Sections 14 and 20 of Act XIV of 1930 by the Act XXXIII of 1951, Sections 17 and 20. There was no change in the phrase 'needs the holding' bona fide', but the categories of persons for whose benefit a suit for eviction can be brought have been extended by substituting for the words, 'his family, or tarwad or tavazhi' the words 'his tarwad, tavazhi, illom, kutumba, kavaru or family'. It was enacted that where the landlord is a trustee of a temple, mosque, church or other place of public religious worship and holding the land in trust for the purpose thereof the Collector should certify that the holding is needed for the extension of the temple, mosque, church or other place before a suit is filed. There was a proviso added that no tenant shall be evicted on the ground specified in Clause (5) or Clause (6) by any sthani or by the trustee of any temple, mosque, church or other place of public religious worship or of any other public religious or charitable institution or endowment, except in the manner aforesaid. It was further provided that such evictions would not apply to the holding or that portion of the holding which consists of a 'kudiyiruppu an ulkudi or a kudikidappu'. The amendments made in Sections 14 and 20 of Act XIV of 1930 were similar in character. As a result of the power given to the Secretary to Government in the Law Department, for renumbering the sections and divisions of sections of the Malabar Tenancy Act, 1929, as amended by Act VII of 1954 and making the necessary consequential corrections in the reference to sections and divisions of sections occurring in the Act by Section 26 of Act VII of 1954 the original Section 14 of Act XIV of 1930 has now got transformed into Section 23 of the existing Act and the original Section 20 of the 1930 Act has got transformed into Section 25 of the existing Act. By the Amending Act XXXIII of 1951, Sections 1, 45, 46, 47, 48, 49, 50, 51 and 52 to 55 both inclusive were to come into force at once.

7. There was a further amendment by Act VII of 1954 by which an explanation has been added to Clause (5) of Sections 14 and 20 of the 1930 Act 'that in considering requirements for maintenance, regard shall be had only to primary needs'. It is not necessary to refer to the other amendments effected by Act VII of 1954.

8. But one thing has to be remembered and that is, that Section 52 of Act XXXIII of 1951 has not been incorporated into the main Act, XIV of 1930 as amended by Act XXXIII of 1951 and Act VII of 1954. The result is that the law regarding tenancy rights in Malabar are now contained in four Acts, namely Act XIV of 1930 with all its subsequent amendments, the remaining portion, viz., Section 4 of Act XXIV of 1945, the remaining portions of Act XXXIII of 1951 and the remaining portions of Act VII of 1954 not incorporated in the main Act.

9. Now we shall refer to Section 52 of Act XXXIII of 1951 which enables the tenants to be restored to their rights in certain cases and this section reads as follows:

Where before the commencement of this Act a landlord in the district of Malabar has obtained possession of a holding in execution of a decree passed by a Court on or after the 1st July, 1942, under Clause (5) or Clause (6) of Section 14 or under Clause (5) or Clause (6) of Section 20 of the said Act and such decree would not have been passed if this Act had been in force at that time, the tenant shall be entitled to be restored to the possession of the holding with all the rights and subject to all the liabilities of a tenant, if he makes an application in that behalf in the Court which passed the decree within twelve months from the commencement of this Act....

10. Section 25 of Act VII of 1954 deals with repeal of Madras Act XXIV of 1949 in its application to the Malabar district and of Sections 54 and 55 of Madras Act XXXIII of 1951 and lays down in Sub-section (2) that

all suits, appeals and other proceedings (other than proceedings in execution of a decree or order) which are pending at the commencement of this Act and in respect of the subject-matter of which the provisions of the Malabar Tenancy Act, 1929, are in force, shall from and after such commencement, be disposed of in accordance with the provisions of the Malabar Tenancy Act, 1929, as amended by Madras Act XXXIII of 1951 and this Act.

11. Since Section 52 of Act XXXIII of 1951 is not part of the main Act and the tenants' rights for restoration in certain cases has to be regulated by that section the question is with regard to the correct meaning of that section.

12. We are concerned here with Clause (1) of that section which says that:

If before the commencement of Act XXXIII of 1951, which received the assent of the President on the 18th October, 1951 and was first published in the Fort St. George Gazette on the 23rd of October, 1951, a landlord has obtained possession of a holding in execution ofa decree passed by a Court on or after the 1st of July, 1942, under Clause (5) or Clause (6) of Section 14 or under Clause (5) or Clause (6) of Section 20 of the said Act and such decree Would not have been passed if this Act (Act XXXIII of 1951) had been in force at that time the tenant shall be entitled to be restored to the possession of the holding with all the rights and subject to all the liabilities ofa tenant, if he makes an application in that behalf to the Court which passed the decree within 12 months from the commencement of the Act.

13. It has to be made clear that the changes made by the Madras Act VII of 1954 such as the Explanation regarding the 'primary needs' of the landlord will have no bearing in the interpretation of Section 52 of Act XXXIII of 1951. Therefore Sub-sections (5) and (6) of Sections 14 and 20 of the 1930 Act which have reference to Section 52 of Act XXXIII of 1951 should be understood in the manner in which those sub-sections stood by the amendments of Acts XXIV of 1945 and XXXIII of 1951 and not with the Explanation added by Act VII of 1954.

14. What is meant by the words 'this Act' in Sub-clause (1) of Section 52 of Act XXXIII of 1951? There is no dispute that the expression refers only to Act XXXIII of 1951 so that any decree or order passed on or after the 1st of July, 1942, and before the commencement of Act XXXIII of 1951 if at the time of passing of Act XXXIII of 1951 were in force, would be affected by the section. The words 'this Act' cannot under any construction refer to the main Tenancy Act XIV of 1930 as amended by Act XXXIII of 1951 and Act VII of 1954, because Section 52 of Act XXXIII of 1951 has not been incorporated into the main Act or given a number therein. As stated already, Sections 1, and 45 to 55 of Act XXXIII of 1951 remain isolated and continue to hang on as tail end of Act XXXIII of 1951 though the flesh and kernel of that Act has got into the body of the main Act. Act VII of 1954 has only repealed Sections 54 and 55 of Act XXXIII of 1951 and not Section 52 which remains untouched by Act VII of 1954.

15. What then is the effect of non-repealing and keeping intact of Section 4 of Act XXIV of 1945. It is suggested that this section should be considered as the last section of Act XXXIII of 1951. If that is so, then we have to read these two provisions (Section 4 of Act XXIV of 1945 and Section 52 of Act XXXIII of 1951) and reconcile

them. Section 4 of Act XXIV of 1945 would not apply to cases where the decision or order of a Court under Clause (5) or (6) of Sections 14 and 20 of Act XIV of 1930 has become final before the 5th of December, 1945. When the Governor gave assent to the Act, it should be deemed to be commencement of that Act in accordance with the provisions of the Madras General Clauses Act. That is, if before the 5th of December, 1945, any landlord has obtained a decree for eviction based upon the interpretation of the phrase 'requires the holding' as laid down in the decision, Narikkal Chathan v. Kesavan Namboodri : AIR1942 Mad242 such decision or order of the Court would not be affected by the provisions of Madras Act XXIV of 1945 and the change made by using the word 'needs'. To put it in another way, if after the decision in Narikkal Chathan v. Kesavan Namboodri : AIR1942 Mad242 which was pronounced on 31st July, 1941 and 5th December, 1945 and suit is disposed of in accordance with the meaning given therein, then such a decree is left untouched.

16. Why should then the Legislature in Section 52 of Act XXXIII of 1951 refer to 1st of July, 1942, as the earlier date? According to Section 3(a) of the Malabar Tenancy Act, 1930, 'agricultural year' means the year commencing with the 15th March in any calendar year and ending with the 14th March of the following calendar year, or the year between such other dates as the Collector may specify in that behalf by notification in the district gazette for the whole of any part of the district of Malabar. One would naturally, therefore, expect any legislation to take effect only with the beginning of the agricultural year but it is seen that 1st July, 1942, is mentioned as the relevant date. One can only conjecture that since the decision in Narikkal Chathan v. Kesavan Namiboodri : AIR1942 Mad242 was published in the various law reports in the early part of 1942 and it would have taken some time before the subordinate Courts base their decisions on that judgment the Legislature had fixed 1st July, 1942, as the rough date after which Courts would be deciding cases in accordance with that pronouncement.

17. It has been brought to our notice that there could have been no evictions under Sub-sections (5) and (6) of Sections 14 and 20 of Act XIV of 1930 after October, 1946 and, before the date of the commencement of Act XXXIII of 1951 of which Section 52 came into force on 15th February, 1952, as a result of a notification, as provided by Sub-section (3) of Section 1 of Act XXXIII of 1951 which stated that Sections 48, 49, 51 and 55 shall come into force at once, that is on the date when the Act received the assent of the President and the rest of the Act shall come into force on such date as the State Government may by notification in the Fort St. George Gazette appoint and such a notification was on 15th February, 1952. The sub-section also says that all references to the commencement of Act XXXIII of 1951 which are contained in the Act, the Malabar Tenancy Act, 1929, or any other enactment amended by this Act shall be deemed to be reference to the day appointed as aforesaid namely, 15th February, 1952.

18. The learned Advocate-General brought to our notice the history and course of the legislative enactments dealing with the beneficient provisions prohibiting eviction of tenants by Section 4 of Madras Act XVII of 1946 called the Madras Tenants and Ryots Protection Act, 1946, which applied also to the tenants in Malabar district who are governed by the Malabar Tenancy Act. It was provided that:

All suits proceedings in execution of decrees or orders or other proceedings (a) for the eviction of tenants from their holdings or land as the case may be, or in which a claim for such eviction is involved whether in addition to a claim,for rent or not or...and which are pending at the commencement of this Act or may be instituted thereafter in any civil or revenue Court shall be stayed subject to the provisions of the following sub-section...

19. It is stated that in certain cases suits will be stayed on the deposit of arrears of rent, etc. That Act remained in force in the first instance for a period of two years and the Provincial Government extended its life for a further period of two years. Then came the Act XXIV of 1949 and it remained in force till the 7th of October, 1953 and its life was extended by a further notification till 6th October, 1954, when the Act XXXI of 1954 extended its operation till 7th October, 1955. Therefore, from the date on which Act XVII of 1946 came into force, namely, from 8th October, 1946, there would be very few evictions. The result of these enactments is that from 8th October, 1946, onwards there would have been very few evictions and if according to Section

4 of Act XXIV of 1945 all decrees passed up to 5th December, 1945, are exempted, then the scope for the application of Section 52 of Act XXXIII of 1951 would be very limited and attenuated. It is urged that, that could never have been the intention of the Legislature. Even if Section 4 of Act XXIV of 1945 is tacked on to the Act XXXIII of 1951 as the last section, then; when the earlier section provides for a general state of things and the Legislature takes away the effect of it for a particular period then all that remains would be, what has not been taken away. Even then it is difficult to ignore the existence of Section 4 of Act XXIV of 1945.

20. The learned Advocate-General has placed before the Court two alternatives with regard to the effect of the construction of Section 52 of Act XXXIII of 1951. Firstly one has to envisage a situation as to whether a decree for eviction would have been passed but for the amendment of Act of 1951 and secondly would such decrees have been passed under the Act as amended in 1945 and 1951. If the second view is correct, then according to him there would be a pro tanto reversal and repeal of Section 4 of Act XXIV of 1945 by Act XXXIII of 1951. We have already referred to the meaning of the expression 'this Act' in Act XXXIII of 1951 as referring to that particular piece of legislation and not to the earlier Act XIV of 1930 as amended by the subsequent enactments. Sub-section (3) of Section 1 of Act XXXIII of 1951 itself makes a distinction between that Act and the Malabar Tenancy Act and in other places, also such distinctions are made. Section 53 makes a distinction between this Act and the Malabar Tenancy Act as amended. So also in Section 54. So there can be no doubt whatever that reference to 'this Act' in Section 52 of Act XXXIII of 1951 cannot mean anything but the Act as it stands without any amendment. We find one kind of phraseology introduced in Section 52 and another kind in Section 53 and hence the two will have to be taken separately.

21. The learned Advocate-General invited our attention to two decisions of the English Courts regarding the principle to be applied when statutes which are divergent in nature have to be construed. The principle is that where an earlier statute is clear and unambiguous its provisions cannot be interpreted with reference to a later statute but where an earlier statute is not so but the later one is clear then the converse process can be had. In other words, a later statute may not be referred to for the purpose of interpreting the clear terms of an earlier statute which the later statute does not amend even though both Acts are by the express provisions of the later statute to be construed as one, unless the later statute expressly places a particular interpretation on the terms of the earlier statute; but if the earlier enactment was ambiguous a later statute may throw light on the true interpretation of that enactment, as where a particular construction of the earlier enactment will render the later incorporated statute effectual. In Kirkness (Inspector of Taxes) v. John Hudson & Co., Ltd. (1955) 2 All E.R. the question arose whether a later Act affects construction of an earlier Act before the House of Lords and in the speech of Viscount Simonds at page 350 we find the following:

At an early stage in this opinion, I indicated that I would have to refer to an argument founded on the provisions of later Acts. Two questions arise (i) whether it is legitimate to seek guidance from the later Acts in construing the earlier one, and (ii) if it is, what light the later Acts throw on the earlier one?

22. I must preface my consideration of these questions by a reference to Ormond Investment Co. v. Betts L.R. (1927) 2 K.B. 326 for, at more than one point, it is a direct authority on the questions we have to decide. In the first place, I will quote a passage from Lord Buckmaster's speech in Ormond Investment Co. v. Betts L.R. (1928) A.C. 143. He cites the following words from the judgment of Lord Stendale, M.R., in Cape Brandy Syndicate v. Inland Revenue L.R. (1921) K.B.414.

I think it is clearly established in A.G. v. Clarkson L.R. (1900) 1 Q.B. 156, that subsequent legislation on the same subject may be looked to in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceeds upon an errojieous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier.

23. Lord Buckmaster said:

This is, in my opinion, an accurate expression of the law, if by any ambiguity is meant a pfarasi fairly and equally open to diverse meanings, but in this case the difficulty is not due to ambiguity but to the application of rules suitable for one purpose to another for which they are wholly unfit.

24. Other noble and learned Lords expressed the same opinion. Here, then, is the first proposition, that it is only where there is on ambiguity in the earlier, Act recourse may be had to a later Act for its construction, what then, is can ambiguity for this purpose? The Ormond case L.R. (1928) A.C. 143 here, too, giyes valuable help not rinrpin the exposition given by Lord Buckmastet but also by its own example.

25. In the speech of Lord Buckmaster in Ormand Investment Co. v. Betts L.R. (1928) A.C. 143 we find similar observations.

26. Applying those principles to the present case we are inclined to think that there is no obscurity or ambiguity in Section 4 of Act XXIV of 1945 so that its interpretation cannot be governed by any of the provisions of Act XXXIII of 1915. We are unable to hold that Section 4 of Act XXIV of 1945 has in any way been superseded by Section 52 of Act XXXIII of 1951. A clear earlier provision cannot be interpreted by a later ambiguous enactment.

27. It may be, that at the time Sections 2 and 3 of Act XXIV of 1945 were repealed as a result of subsequent amendments by Act XXXIII of 1951, by mistake Section 4 was allowed to remain intact. One can only attribute it as a casus omissus but Courts have to give effect to existing provisions of the statute which are clear and unambiguous. Another way of reconciling Section 52 of Act XXXIII of 1951 referring to an earlier date, namely, 1st July, 1942, is by attributing to the Legislature the intention to restrict it to cases where temples, mosques, etc., had obtained decrees under Sub-clauses (5) and (6) of Sections 14 and 20 of the 1930 Act, which would not have been passed if the 1951 Amendment had been in force. But even then one would meet with the answer that if the decrees had become final by December, 1945, then there can be no question of restitution. In our view, the Legislature by not repealing Section 4 of Act XXIV of 1945 did not intend to create confusion by unsettling decrees and orders which have become final by December, 1945 and what was intended was, that from and after 5th December, 1945, Courts should be guided by the sub-section as amended, and the same should have no retrospective effect whatever. That being the case we cannot say that Section 4 of Act XXIV of 1945 has in any way been abrogated by Section 52 of the Madras Act XXXIII of 1951, and it remains in force and intact. The result, therefore, is that Section 52, even though it refers to 1st of July, 1942, as the date fron which its provisions must be deemed to be applicable could be applied only from 5th December, 1945.

28. Our answer, therefore, to the reference is that Section 52 of Act XXXIII of 1951 is not ultra vires or repugnant to any of the provisions of the Constitution and as the decree in O.S. No. 1314 of 1943 was passed before 5th December, 1945, the provisions of that section would not apply to such a decree.