
(1967) 11 KL CK 0021

High Court Of Kerala

Case No: C.R.P. No. 332 of 1967

Job Alias Kochukutty

APPELLANT

Vs

Kunjavira Abraham

RESPONDENT

Date of Decision: Nov. 14, 1967

Acts Referred:

- Kerala Land Reforms Act, 1963 - Section 8, 9

Citation: (1968) KLJ 106

Hon'ble Judges: M.S. Menon, C.J; P. Govindan Nair, J

Bench: Division Bench

Advocate: P.N. Sankaranarayana Pillai, for the Appellant; S. Easwara Iyer, L.G. Potti C.S. Rajan and E. Subramonian, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.S. Menon, C.J., and P. Govindan Nair, J.

M.S. Menon, C.J. The controversy in this petition centres round Section 8 of the Kerala Prevention of Eviction Act, 1966. The long title of the Act shows that the enactment is intended "to provide for the prevention of eviction of cultivating tenants, holders of kudiyruppus and kudikidappukars from their holdings, kudiyruppus or kudikidappus, as the case may be, in the State of Kerala and for the restoration in certain cases of the possession thereof and for matters connected therewith".

Section 8 of the Act deals with the stay of suits or other proceedings for eviction. It reads as follows:

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 kudiyiruppu 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 1 of 1964).

2. The order from which this petition arises referred to section 8 and said:

From a reading of the section it is clear that in order that the provisions of the section are to be applicable there should be the case of an admitted tenancy, kudikidappu or kudiyiruppu. In this case the plaintiff does not admit that the defendant is either a cultivating tenant, kudiyiruppukaran or kudikidappukaran. Therefore so long as the fact whether the defendant petitioner is a kudikidappukaran, kudiyiruppukaran or a cultivating tenant is not determined, the suit cannot be stayed u/s 8 of Act 12 of 1966. The petition is therefore dismissed.

3. A similar contention was urged in *Cheriyar v Harihara Iyer*, 1967 KLT 508. That was a case where the plaintiff asserted that the defendant was a caretaker and the defendant claimed that he was not a caretaker but a cultivating tenant. Madhavan Nair J. dealt with the contention as follows:

Counsel for the plaintiff contends that S. 8 of the Act is attracted only to a "suit or other proceeding for the eviction of a cultivating tenant... from his holding", and that, therefore, unless the suit is laid as for eviction of a cultivating tenant from his holding the section would have no application. In other words, unless the plaintiff makes an admission that the defendant who is sought to be evicted, is a cultivating tenant, S. 8 of the Act has no relevance. I am afraid, if that interpretation be accepted S. 8 of the Act will be devoid of any purpose and the production of the Record of Rights will be of no use to the Court. As cautioned by the Supreme Court the purpose of the enactment has to be borne in mind in construing the provisions of an Act ([Gurbax Singh Vs. State of Punjab and Others](#),) and the words of an Act must be construed so as to give a sensible meaning to them ([Avtar Singh Vs. State of Punjab](#),). It would not then be reasonable to hold that merely because the plaintiff in a suit for eviction of a tenant is framed as for eviction of a trespasser or a caretaker or a licensee, the Section must be excluded. The nature of the suit, in the contest of S. 8 of the Act XII of 1966 depends not on the averments in the plaintiff, but on the controversy arising out of pleadings as to the status of the defendant

concerned."

4. We are in agreement with what has been stated in the passage extracted above. We are also in agreement with the further statement of the learned Judge that the dismissal of the prayer for a stay u/s 8 of the Act "on the sole ground that the status of the defendant as a cultivating tenant is not admitted by the plaintiff is unwarranted and incorrect".

5. After stating that the dismissal of the prayer for a stay u/s 8 of the Act "on the sole ground that the status of the defendant as a cultivating tenant is not admitted by the plaintiff is unwarranted and incorrect" the learned Judge went on to say:

The order impugns is therefore set aside, and the Subordinate Judge is directed to stay the suit and issue the necessary direction to the Revenue Divisional Officer concerned to prepare within a specified time the Record of Rights in regard to the suit properties if he finds them to be a holding and to file the same if prepared in Court as enjoined in S. 8 of the Act XII of 1966.

This passage has been interpreted to mean that the moment the defendant states that he is a cultivating tenant, the holder of a kudiyruppu or a kudikidappukaran and that no record of rights in respect of the holding or register or kudikidappukars in respect of the village in which the kudikidappu is situate, as the case may be, has been prepared, the court has no option but to grant a stay u/s 8 of the Act and issue the direction to the Revenue Divisional Officer having jurisdiction over the area in which the holding or the kudikidappu is situate. The interpretation is justified by the peremptory character of the order to stay the suit and issue the direction to the Revenue Divisional Officer.

6. We have already indicated that we are not satisfied that a stay u/s 8 of the Act and the direction to the Revenue Divisional Officer should be denied simply because the plaintiff has not admitted that the defendant is a cultivating tenant, the holder of a kudiyruppu or a kudikidappukaran. We are equally certain that a court is not bound to grant a stay u/s 9 of the Act and issue the direction to the Revenue Divisional Officer simply because the defendant has claimed that he is a cultivating tenant, the holder of a kudiyruppu or a kudikidappukaran. The only case, as we see it, in which the court will grant a stay and issue the direction to the Revenue Divisional Officer as a matter of course is when the status of the defendant as a cultivating tenant, the holder of a kudiyruppu or a kudikidappukaran is not in controversy at all before it. Even in such a case the court should be satisfied that the representation of the defendant that no record of rights or register of kudikidappukars, as the case may be, has been prepared is a representation that is true.

7. A court is not an automation but a judicial functionary whenever controversies are present. There can be no doubt that in all cases where there is a controversy as regards the status of the defendant, the court should at least be prima facie satisfied that the defendant has the status that he claims before it grants a stay u/s

8 of the Act and issues the direction to the Revenue Divisional Officer.

8. In the order of reference in one of the petitions heard along with this petition-C.R.P. No. 1019 of 1967-Raman Nayar J. has stated as follows:-

And since I consider that 1967 KLT 508 requires reconsideration post before a division bench. Section 8 of Act 12 of 1966 does not say that a suit for eviction has to be stayed if the defendant claims to be a cultivating tenant any more than it says that it need not be stayed if the plaintiff avers that the defendant is not a cultivating tenant. It has first to be found that the defendant is a cultivating tenant before a stay is ordered, and I do not read Section 29(6) of Act 1 of 1964 as making a record of rights prepared under that section evidence on the question whether a person is a tenant, at all..

We must say, with respect, that we are not in agreement with the view that a court should finally and definitely decide that the defendant is a cultivating tenant, the holder of a kudiyiruppu or a kudikidappukaran before a stay is ordered u/s 8 of the Act and the direction issued to the Revenue Divisional Officer. All that is required is a prima facie satisfaction on the part of the court that such is the case.

9. It is true that all that sub-section (6) of section 29 of Act 1 of 1964 says is that the record of rights prepared under that sub-section shall be admissible in evidence before any court or tribunal. But form No. 5-the form in which the record of rights should be prepared-will indicate that the record of rights, when prepared, will also show whether a person is a cultivating tenant or not. Column No. 4 of form No. 5 is headed. "Name of the cultivating tenant and the nature of the tenancy." It will certainly not be possible for the Revenue Divisional Officer to fill up this column without investigating the question as to whether the defendant is a cultivating tenant as claimed by him (See also section 29 (4) of the Act).

10. Such being the case a definite and final conclusion by the court as to whether the defendant is a cultivating tenant or not before ordering a stay u/s 8 of the Act and issuing the direction to the Revenue Divisional Officer could not possibly have been contemplated by the legislature and has necessarily to be avoided. As usual in courts of law the court must at least be prima facie satisfied that there is a case to be tried before it grants a stay or issues a mandate.

11. It follows that this Civil Revision Petition has to be allowed and the case remanded to the Lower court for a determination as to whether it is prima facie satisfied that the defendant's contention regarding his status is justified or not. If it comes to the conclusion that the said contention is prima facie justified, it must grant a stay u/s 8 of the Act and issue the direction to the Revenue Divisional Officer. If, on the other hand, it is not so satisfied, it should not grant a stay, u/s 8 of the Act and issue the direction to the Revenue Divisional Officer but proceed with the suit and decide it according to law. The C.R.P. is allowed as above. No costs.