(1960) 12 KL CK 0019

High Court Of Kerala

Case No: C.R.P. No''s. 133 and 168 of 1957

Mani alias Raman		APPELLANT
	Vs	
Damodara Worrier and Another		RESPONDENT

Date of Decision: Dec. 22, 1960

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (1961) KLJ 344

Hon'ble Judges: T.K. Joseph, J; M.S. Menon, J

Bench: Division Bench

Advocate: C.K. Viswanatha Iyer, T.L. Viswanatha Iyer and K.P.S. Menon in C.R.P. 133 of 1957, for the Appellant; T.R. Achutha Warrier in C.R.P. 133 of 1957, V.P. Gopalan Nambiar in C.R.P. 168 of 1957, N. Sundara Iyer and K. Narayanan in C.R.P. 168 of 1957, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.K. Joseph, J.

These civil revision petitions which have been filed under Article 227 of the Constitution should have been numbered as original petitions. The two revision petitions arise from proceedings for fixing the fair rent of the properties involved in two cases, under the Malabar Tenancy Act. Section 4 of the Malabar Tenancy Act was amended by Act XXII of 1956 (Madras) by which an explanation was added to the section. The explanation reads as follows:-

in ascertaining the normal produce, the yield of the second crop shall be deemed to be half of that of the principal crop which shall be deemed to be the 6rst crop.

The learned Subordinate Judge of Palghat from whose decision C. R. P. No. 133 was filed did not apply the principle of this explanation in fixing the fair rent while the Subordinate Judge of Ottapalam fixed the fair rent taking into consideration this

explanation also.

2. Section 4 was amended while appeals were pending before the lower courts. Section 7(2) of Act XXII of 1956 (Madras) states that the principal Act as amended by this Act shall also apply to petitions, appeals and other proceedings pending at the commencement of this Act. It is therefore clear that fair rent should have been fixed by the lower courts on the basis of the amended section.

3. C.R.P. No. 133 of 1957 may now be considered. The explanation to section 4 requires that in ascertaining the normal produce the yield of the second crop should be deemed to be half of that of the principal crop. This was not followed on the ground that the tenant had admitted that the yield of the second crop would be three-fourth of the first crop. The figures stated by the tenant were not accepted by the court below so that there was no admission as such winch could be made the basis of the decision. Even apart from this the yield from the second crop has to be ascertained as provided by explanation to section 4. The word "deemed" in section 103 of the Madras Hindu Religious and Charitable Endowments Act, 1951, came up for construction in Krishna Moosad & another v Hindu Religious Endowments Board & others (1959 K.L.J. 560). The dictum of Lord Asquith in (1951) 2 All E. R. 587 and the decisions of the Supreme Court reported in [The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others,](#) : 1958 S.C. 875 : 1959 S.C. 352 were followed in that case and the following passage from the last of the cases referred to above was extracted:

It is a rule of interpretation well-settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

This applies to this case also, and there is no scope for taking evidence regarding the yield of the second crop or for deciding the case on the basis of evidence if any adduced. The court has only to follow the provision in the Explanation to section 4.

4. It follows that C.R.P. No. 133 of 1957 has to be allowed and the order of the court below set aside. We do so and remand C.M.A. Nos. 24 and 36 of 1956 of the Subordinate Judge''s Court, Palghat, to that court for fresh decision according to law and in the light of the observations made above. C.R.P. No. 168 of 1957 is dismissed.

In the circumstances of the case we direct both sides to bear their costs in this Court.