

Selma Beevi and Others Vs K.R. Karunakaran Pillai

Court: High Court Of Kerala

Date of Decision: Sept. 15, 1999

Acts Referred: Kerala Co-operative Societies Rules, 1969 " Rule 83(5), 84
Limitation Act, 1963 " Article 134, 136

Citation: (1999) 2 KLJ 714

Hon'ble Judges: P.K. Balasubramanyan, J; K.A. Mohamed Shafi, J

Bench: Division Bench

Advocate: V. Giri, for the Appellant; N. Sukumaran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The revision Petitioners are obstructors when a sale certificate issued in favour of the Respondent in enforcement of an award passed under the

Kerala Co-operative Societies Act was sought to be enforced. The award was passed on 28th December 1978. The property in question was

sold. The sale was confirmed on 5th November 1980 and a sale certificate was issued. When property was attempted to be delivered obstruction

was offered on 7th February 1986. The purchaser approached the Civil Court for delivery with an application on 20th February 1990 within 12

years of the confirmation of sale but beyond one year thereof. The obstructor raised a contention that the execution was barred by limitation in

view of Article 134 of the Limitation Act. The purchaser contended that it was Article 136 of the Limitation Act that applied and since the

application for delivery was within 12 years of the confirmation of sale, he was entitled to delivery of the property. The executing Court relying on

the decision of this Court in Varghese v. Muthukulam Service Co-operative Society 1980 KLT 400 held that it was Article 136 of the limitation

Act that applied and hence the delivery having been sought within 12 years of the confirmation of sale the execution petition was within time and

delivery could be ordered. This is what is challenged in this Civil Revision Petition.

2. When the matter came up before a learned Single Judge, the learned Single Judge stating that an important question arose for decision, referred

the matter to a Division Bench. That is how this Revision has come up before us.

3. It is by virtue of Rule 84 of the Kerala Co-operative Societies Rules that the purchaser of immovable property in enforcement of a valid award

under the Co-operative Societies Act is enabled to approach the Civil Court for delivery of the property when obstruction is offered. Rule 84

reads as follows:

Where any lawful purchaser of immovable property is resisted and prevented by any person other than a person, (not being the defaulter) claiming

in good faith to be in possession of the property on his own account, from obtaining possession of the immovable property purchased, any Court

of competent jurisdiction, on application and production of the certificate of sale referred to in Sub-rule (5) of Rule 83 above, shall cause the

proper process to be issued for the purposes of putting such purchaser in possession in the same manner as if the immovable property purchased

had been decreed to the purchaser by a decision of the Court.

Rule 84 thus deems the purchaser of the property in enforcement of the award as the holder of a decree for recovery of immovable property. This

at once indicates that Article 136 of the Limitation Act would be attracted. The rule does not deem the purchaser merely as a purchaser in

execution of a decree which alone would attract Article 134 of the Limitation Act. This Court in Vargheese v. Muthukulam Service Co-operative

Society 1980 KLT 400 dealt with this aspect clearly and this Court has held that it is Article 136 of the Limitation Act that would apply. We are in

respectful agreement with the view expressed by the learned Single Judge in Varghese v. Muthukulam Service Co-operative Society 1980 KLT

400. When the rule says that the purchaser must be deemed to be the holder of a decree for possession, the fiction so predicated or engrafted,

must be given its full play and if it is so done, it is clear that the purchaser in enforcement of an award under the Co-operative Societies Act and the

Co-operative Societies Rules, is in the position of the holder of a decree for recovery of possession, If so, when he seeks delivery of property, it

will be Article 136 of the Limitation Act that would apply and not Article 134 of the Limitation Act which applies only when a purchaser at a Court

sale in execution of a decree seeks possession of the property purchased by him. We see no reason not to accept the ratio of the decision in

Varghese v. Muthukulam Service Co-operative Society 1980 KLT 400. We approve the ratio of the said decision.

4. Once we find that it is Article 136 of the Limitation Act that has application, there is no substance in the contention that the application for

delivery is barred by limitation. Since, the executing Court was right in following the decision in Varghese v. Muthukulam Service Co-operative

Society 1980 KLT 400 and in overruling the objections of the obstructors and in ordering delivery, we confirm its order and dismiss this Revision.