

Kora Chacko Vs N.J. Mathew

Court: High Court Of Kerala

Date of Decision: Oct. 26, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 10, 151
Kerala Land Reforms Act, 1963 â€” Section 72B

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: M.P. Abraham, for the Appellant; C.T. Joseph, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Sreedharan, J.

When C.M.P. No. 3646/94 came up for orders, learned counsel appearing on either side wanted the revision petition

itself to be heard and disposed of. Accordingly, I heard them at length and as disposing of the revision petition.

Petitioners are the defendants in

O.S. No. 826/80 on the file of the Munsiff Court, Ernakulam. Suit was one for recovery of possession of the plaint schedule property from

petitioners with mesne profits. Petitioners raised contention that they are the cultivating tenants of the plaint schedule property and that they are

entitled to have the right, title and interest of landlords purchased. They also stated that they have filed O.A. No. 558/73 before the Land Tribunal,

Mulanthuruthy, under S.72B of the Kerala Land Reforms Act for purchase of the rights of the landlord. On the basis of the contentions raised by

the defendants, petitioners herein, issue relating to tenancy was referred to Land Tribunal. Reference was numbered as R.C. No. 24/85. O.A. No.

558/73 on the file of the Land Tribunal, Mulanthuruthy was transferred to the Land Tribunal, Ernakulam, where it was renumbered as O.A. No.

652/75. Land Tribunal dismissed that application whereupon, petitioners took up the matter in appeal, LRAS No. 417/78. Appellate Authority

remanded the case to the Land Tribunal for fresh trial by judgment dated 29-3-1985. On remand, the Original Application was renumbered by the

Tribunal as O.A. No. 86/86.

2. O.A. No. 86/86 and R.C. No. 24/85 were clubbed together and the Land Tribunal disposed of the same holding against the petitioners

contention of tenancy. Reference was accordingly answered and civil court is to proceed with the suit, O.S. No. 826/80. Aggrieved by the

dismissal of O.A. No. 86/86, petitioners filed appeal as A.A. No. 213/94 before the Land Reforms Appellate Authority, Trichur. Appeal is

pending. Petitioners thereupon, moved I.A. No. 4793/94 before the Munsiff Court, Ernakulam for staying the suit, O.S. No. 826/80 till the final

disposal of A.A. No. 231/94, under S.10 and 151 of the Code of Civil Procedure. Court below, by order dated 11-10-1994, rejected the prayer

for staying the suit. Hence this revision petition.

3. Petitioners filed O.A. No. 558/73 for purchasing the right, title and interest of the land owner in respect of the property, which is scheduled to

the plaint in O.S. No. 826/80. According to learned counsel, the proceedings now renumbered as O.A. no. 86/86 is an earlier proceedings

compared to the suit, O.S. No. 826/80 and so, the trial of the suit, O.S. No. 826/80 has to be stayed.

4. Section 10 of the CPC reads:

10. Stay of suit. No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously

instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such suit

is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India

established or continued by the Central Government and having like jurisdiction, or before the Supreme court.

A reading of this Section 10 shows that for invoking the provisions of that Section, certain essential ingredients are to be satisfied. They are, that

the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit; that the parties in the two suits are the same

and that the court in which the first suit is instituted, is a court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit.

Earlier proceedings initiated before the Land Tribunal is one for the purchase of the right, title and interest of the land owner. O.S. No. 826/80 is

one filed for recovery of possession of the plaint schedule property from the defendants with future mesne profits. Those proceedings are between

the same parties. Property involved in the proceedings is the same. Tribunal is concerned with the question as to whether the petitioners before it

are entitled to purchase the right, title and interest of the land owner as cultivating tenants. Issue before the Civil Court is whether the plaintiffs are

entitled to recover possession of the property from defendants. That issue, which is pending before the Civil Court, is not one to be tried by the

Land Tribunal. In other words Land Tribunal is not having jurisdiction to grant the reliefs prayed for by the plaintiffs in the suit. So, in this view of

the matter the earlier proceedings, which is pending before the Land Tribunal, cannot be considered to be a situation contemplated by S.10 of the

CPC for staying the suit, which was instituted subsequently, since the Land Tribunal has no authority or jurisdiction to grant the relief claimed in the

suit. Result, therefore, is that the pendency of appeal before the Land Reforms Appellate Authority is no is no ground for staying the trial of the suit

between the parties.

5. As stated earlier, Original Application, which was instituted in 1973 and renumbered as O.A. No. 86/86, was clubbed with the reference made

by the Civil Court under S.125(3) of the Land Reforms Act, which was numbered as R.C. No. 24/85. Both were tried together. Land Tribunal

decided the issue regarding tenancy against petitioners. That decision in R.C. No. 24/85 was forwarded to the Civil Court. As per 125(5) of the

Land Reforms act, on receipt of the decision rendered by the Land Tribunal, the Civil Court should proceed to decide the suit accepting the

decision of the Land Tribunal on the question referred to it. That provision mandates that the Civil Court should proceed with the suit on the basis

of the decision rendered by the Land Tribunal. Such a direction, given by the Legislature, should not be ignored or defeated. If the prayer made by

the petitioners to stay the suit till the disposal of the appeal filed by them against the decision rendered by the Tribunal in O.A. No. 86/86, it will

certainly defeat the mandate contained in S. 125(5) of the Land Reforms Act. Petitioners have invoked provisions contained in S.151 of the CPC

as well to get the proceedings in the suit stayed. Regarding stay of subsequently instituted suit, there is specific provision made in the Code as seen

in S.10 of the Code. When there is a special provision in the Code of Civil Procedure, for dealing with the contingencies of two suits instituted,

under S.10, recourse to the inherent powers of S.151 is not justified. Therefore, petitioners were not justified in seeking recourse, under S.151 of

the Code of Civil Procedure. Since the proceedings before the civil court and that pending before the appellate authority are not coming with the

purview of S.10 of the Code of Civil Procedure, learned Munsiff was perfectly within the jurisdiction in refusing the prayer made in I.A. No. 4793

of 1994 for staying the trial of the suit, O.S. No. 826/80.

I do not find any illegality or error of jurisdiction in the order impugned in this revision petition. Revision petition fails and it is accordingly dismissed.