

(1995) 10 KL CK 0042
High Court Of Kerala
Case No: C.R.P. 2139 of 1994

Kora Chacko

APPELLANT

Vs

N.J. Mathew

RESPONDENT

Date of Decision: Oct. 26, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10, 151
- Kerala Land Reforms Act, 1963 - 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 within 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.