

(1968) 09 KL CK 0001
In the High Court Of Kerala
Case No : S A 1026 of 1965

Ali Koya and others Appellants

APPELLANT

Vs

Narayanan Nair and others

RESPONDENT

Date of Decision : 23-09-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 146
Kerala Land Reforms Act, 1963 — Section 3(1)(iv)

Citation : (1968) KLJ 832

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, M.C. Sen, for the Appellant; K.T. Harindranath, N.V. Prabhakaran, P. Ramaranjan, for the Respondent

Final Decision : Dismissed

Judgement

M. Madhavan Nair J.

1. This is by defendants 1 to 8 in O. S. 1612 of 1957 on the file of the Munsiff Kozhikode-1. After the preliminary decree in O. S. No. 32 of 1941 on the file of the Subordinate Judge, Calicut, the suit property has been taken under a receiving order and leased out by the receiver on 24-10-1945 to one Ahammad Koya, whose legal representatives are the appellants herein. By the final decree in that suit the property has been allotted, in partition, to the plaintiffs-respondents, In this suit, the plaintiffs seek to recover the property from the defendants, and the latter claim fixity of tenure. The trial court overruled the defense and decreed the suit. The defendants' appeal before the Additional Subordinate Judge, Kozhikode, has been dismissed with costs, citing the following observations in Jacob v Subramonia Iyer 1959 K. L. J. 1430:

A court or Receiver taking possession of the property in a suit does not thereby derive any title to it, much less any interest in it, not even a right of possession except for administering or managing or preserving it for the benefit of the party rightfully entitled to it; if so, there is no interest to transfer or to convey. In

administering the property, a court cannot act directly but has perforce to function through the agency of others in this respect, unlike the court, a receiver can, if he so intends or if the circumstances warrant, act by himself, but in the generality of cases he may find it necessary or expedient not to do so, but only through others. To us, it seems inconceivable, that the legislature had intended, by enacting a provision like Section 4 of the Act, to interfere with and thereby paralyze the administration of the properties committed to the court, unless there are very strong grounds to believe that this was intended. The reasons which might conceivably have induced the legislature to curtail or suspend a landlord's right of eviction, do not appear to us to have any application, to that of a court or its officer, who is in no sense a landlord, but who merely preserves the property for the benefit of the party who may be found entitled to it.

Hence this second appeal.

2. It is conceded that the immunity claimed by the appellants has now to be adjudged in the light of the provisions of the Kerala Stay of Eviction Proceedings Act, IX of 1967. Counsel for the appellants contends that the Act IX of 1967 commands stay of all proceedings to evict tenants, inclusive of lessees under receivers of lands. It is pointed out that while Section 3 (1) (iv) of the Land Reforms Act, I of 1964, exempts

tenancies.....created by the Administrator-General or the Official Trustee or an Official Receiver or officer appointed by a court under the provisions of any law, or by the court of wards, or by any person holding under, or deriving title from any of the officers or the court aforesaid:

the exemption u/s 3 of the Act IX of 1967 is only to any lease of land.... granted by the Administrator-General, Official Trustee or Official Receiver

and that the deliberate omission in the latter Act of leases created by officers appointed by Court indicates an intent to cover leases created by receivers within the Act. The identical contention was raised in *Jacob v Subramonia Iyer* 1959 K. L. J. 1430 in connection with the Kerala Stay of Eviction Proceedings Ordinance, 1957, which exempted

rights created by the Administrator General, Official Trustee or Official Receiver, or by any officer appointed by a court under the provisions of any law, or by any person holding under or deriving title from any such officer"

and the Kerala Stay of Eviction Proceedings Act, 1957, which exempted only.

"rights created by the Administrator-General, Official trustee or Official Receiver

It was overruled by Velu Pillai J., with concurrence of Sankaran C. J. with the observation quoted above. Incidentally it was observed therein that the term "Official Receiver" occurring in the Ordinance and the Act has a wider connotation than ascribed to it in the Insolvency Act and included "a receiver appointed by court for the cultivation and realization of the properties involved in

a suit.

In *Vajravelu Mudaliar v The Special Deputy Collector A. I. R. 1965 S.C. 1017 C.B.* the Supreme Court has cited with approval the following principle of construction stated in *Craies on Statute Law*;

There is a well-known principle of construction that where the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears.

This Principle must apply with greater force when the expression judicially interpreted is used in a later enactment that replaced the statute in regard to which the interpretation was given. The Kerala Stay of Eviction Proceedings Act, IX, of 1967, came in the wake of the Kerala Stay of Eviction Proceedings Act, 1957. In spite of the clear pronouncement in 1959 in *Jacob v Subramonia Iyer* that the exemption of Official Receiver's leases would cover the court receiver's leases as well, the legislature has not expressed to the contrary in the later Act of 1967. The construction made in *Jacob v Subramonia Iyer 1959 K.L.J. 1430* must therefore apply to the expression in the Act IX of 1967 as well.

3. The fact that in one or two pieces of such legislation receiver's lessees were expressly excluded from the purview of the statute but no mention was made of them in other statutes is immaterial. Deletion of a provision appearing to be redundant cannot be said to make a change in the law or attribute a different meaning to the Act.

4. Counsel for appellants contends that Official Receivers appointed under the Insolvency Act have the properties vested in them while receivers appointed by Courts under Order XL Rule 1 C. P. C. or Section 146 CrP. C. have no interest in property vested in them and that therefore the two are not in parity. I cannot say that this contention has no force; but, even if the term Official Receiver would not include a court receiver, the reasoning as regards the latter in *Jacob v Subramonia Iyer* in the quote above would stand and that is sufficient to hold that the so-called leases granted by a Court receiver are not leases in reality to attract the Act IX of 1967.

5. In *Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee*, the Supreme Court has observed:

the use of term "rent" cannot preclude the landlord from pleading that there was no relationship of landlord and tenant. The question must therefore depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favor of the tenant.....The relationship of landlord and tenant can come into existence only by a transfer of interest in immovable property, in pursuance of a contract.

Those observations seem, in my opinion, to apply with greater force in the case of entrustments by receivers for cultivation in consideration of an agreed rent.

The receiver is only "the right arm of the Court in exercising jurisdiction in such cases for administering the property." Though they may grant leases, and make contracts for the purpose of the administration which may not be challenged by the parties, they are acts in the course of judicial administration and therefore not leases or contracts in the normal way. The following observations in *P. Lakshmi Reddy Vs. L. Lakshmi Reddy*, appear pertinent here:

In Woodroffe on the Law relating to Receivers (4th Edition) at page 63 the legal position is stated as follow:

The Receiver being the officer of the Court from which he derives his appointment, his possession is exclusively the possession of the Court, the property being regarded as in the custody of the law, in *gremio legis*, for the benefits of whoever may be ultimately determined to be entitled thereto.

The doctrine of Receivers possession being that of the successful party cannot, in our opinion, be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver's possession to his subsequent adverse possession.

6. Counsel urged that in the light of Order XL rule 1 C. P. C. particularly of sub-clause (d) of clause (1) therein, the dictum in *Jacob v Subramonia Iyer* requires reconsideration. That Rule reads thus:

1. Appointment of receivers :-(I)Where it appears to the Court to be just and convenient, the court may by order:-

(a) appoint a receiver of any property;

(b)...

(c)..... and

(d) confer upon the receiver all such powers, as to beginning and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.

This Rule defines the Court's powers in the matter of appointment of receivers. It is expressed in the widest terms, as it ought to be. But the indication is clear in sub-clause (d) that in conferring powers on a receiver the Court has unlimited discretion if the power concerns "bringing and defending suits....." but has its discretion restricted to the purposes of realization, management, protection preservation and improvement of the property" if the power concerns the collection or the application and disposal of the rents and profits of the property or the execution of documents concerning it. The purpose of appointing a receiver under Order XL Rule 1 C. P. C. is to conserve the property and its income for the benefit of the party who ultimately wins the cause. The powers of a receiver contemplated under Order XL Rule 1 C P. C. cannot envisage an

authority to create transactions that might deprive the rival parties of the subject of their dispute.

7. Salmond in his well-known book on Jurisprudence says:

A third form of secondary judicial action includes all those cases in which courts of justice undertake the management and distribution of property.

(12th Edn. page 106).

A receiving order appears to be in exercise of such an administrative function of the Court, though made in the course of a judicial enquiry or trial of a suit. It is a measure to avoid or mitigate the evil results of the delay in the trial and decision of the cause by the court, and has little to do with the determination of the rights in controversy. It is a cardinal principle of judicial administration that no act of the Court shall prejudice any party. When parties are at controversy on possession of landed property and the Court assumes possession of the property and entrusts the same to its officer, the receiver, or to a receiver's lessee in order to ward off a scramble between the parties, it only gives him a nominal custody for a definite purpose and no further. It does not confer any interest in the property to such person. For several purposes and in various contexts, the receiver may be said to have possession of the property concerned; but it is only relative and not absolute. Strictly speaking, the receiver's possession is only a custody for purposes of management, and conservation from devastation or deterioration. He cannot then be said to have an interest in the property which can be transferred to a lessee of his. The receiver's lessees are not therefore lessees in the proper sense of the term, much less within the meaning of statutes on agrarian reforms, inclusive of the Act IX of 1967.

8. Even otherwise, "It is well settled that a limited interpretation has to be made on words used by the legislature in spite of the generality of the language used where a literal interpretation in the general sense would be so unreasonable or absurd that the legislature should be presumed not to have intended the same" (Shahdara (Delhi) Saharanpur Light Railway Company Ltd v Upper Doab Sugar Mills, Ltd - A. I. R. 196 S. C. 695 at 701). The institution of receiver is necessary for an effective administration of properties in dispute in the course of administration of justice between parties. Any construction of his powers as competent to act to the prejudice of the parties would be a negation of the primary purpose of the institution being the conservation, preservation and management of the estate for successful party in the cause. A construction of his powers as enabling him to deprive the parties of their property and give it to a third person can only be the adoption of the law of the monkey who took the bread which the cats claimed between themselves. That would bring the administration of justice to a mockery and therefore has to be avoided.

I agree with the courts below that receiver's lessees are not within the comprehension of the Act IX of 1967.

9. The appellants attack also the findings of the Courts below regarding mesne profits, damages and compensation for improvements. As they relate to pure questions of fact decided concurrently in the Courts below, they cannot be canvassed here in second appeal as has been held in *Sri. Sinha Ramanuja v Sri Ranga Ramanuja* A. I. R. 1961 S. C. 1720 at 1730). The second appeal fails and is dismissed. I make no order as to costs here.