

(1980) 07 KL CK 0006
In the High Court Of Kerala
Case No : Unnumbered M.F.A. of 1980

Chalil Varkey

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 14-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8(1), 8A

Citation : AIR 1980 Ker 194 : (1981) 1 ILR (Ker) 127

Hon'ble Judges : V. Balakrishna Eradi, C.J.; M.P. Menon, J.; G. Balagangadharan Nair, J

Bench : Full Bench

Advocate : P.K. Shamsuddin, for the Appellant;

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—This matter has come up before us for determination of the question regarding the maintainability of this appeal u/s 8-A of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter called the Act).

2. The appellant had filed O. A. No 77 of 1978 before the Forest Tribunal seeking a declaration that an extent of 2 acres of land scheduled to the application was not a private forest and had not therefore become vested in the Government under the provisions of the aforementioned Act. That application was finally disposed of by the Tribunal on 18th July, 1979 allowing the application and declaring that the property described therein had not become vested in the Government under the Act. Subsequently, on 4th Dec., 1979 the appellant herein filed a petition before the Tribunal purportedly u/s 152, C. P. C. praying for an amendment of the aforesaid final order passed by the Tribunal by effecting a correction in regard to the name of the village wherein the property is situated, by substituting the words "Sholayoor" in the place of the words "Agali" contained in the order. That petition was rejected by the Tribunal stating that there was no mistake in the order passed by it and hence no amendment was called for. It is

against the said order dated 24-12-1979 passed by the Tribunal that the appellant has come up with this appeal.

3. Section 8-A of the Act provides that the Government or any person objecting to any decision of the Tribunal may, within a period of 60 days from the date of that decision appeal against such decision to the High Court, The scope of the section was considered by a Division Bench of this Court in *Muhammadvutty v. Forest Tribunal* (1978 KLT 619) and it was held that every order passed by the Tribunal is a proceeding instituted before it u/s 8 of the Act is not appealable u/s 8-A and that the expression "decision" used in Section 8-A(1) connotes only the final decision rendered by the Tribunal in the dispute made mention of in Section 8(1) of the Act and that orders which do not resolve or finally decide such dispute are not appealable u/s 8-A(1). This decision was followed by another Division Bench of this Court in Unnumbered M. F. As. of 1978 against I. A. Nos. 195 and 202 of 1978, to which one of us (Eradi, J.) (as he then was) was a party. We are in respectful agreement with the aforesaid view.

4. The order now sought to be appealed against is one passed in an application filed purportedly u/s 152 of the Civil P. C. for amendment of the decision already rendered by the Tribunal in the dispute raised u/s 8(1) of the Act. In rejecting the said application it cannot be said that the Tribunal has passed an order deciding that dispute over again. Such being the position, we consider that the office is right in raising the objection that the appeal is not maintainable in law. The M.F.A. is accordingly rejected on the ground that an appeal does not lay u/s 8-A of the Act.

5. The appellant has filed C.M.P. No. 8514 of 1980 praying for conversion of this Miscellaneous First Appeal as an Original Petition under Articles 226 and 227 of the Constitution of India. We are not inclined to grant the said prayer for conversion of this appeal into an Original Petition. The appellant may, if so advised, file a separate Original Petition and the dismissal of this C. M. P. will not operate to his prejudice in regard to the said matter.