

(1953) 03 KL CK 0012
In the High Court Of Kerala
Case No : C.M.A. No. 111 of 1952

Easwari Pillai Bhagavathi Pillai

APPELLANT

Vs

Arathan Pillai Sankara Pillai

RESPONDENT

Date of Decision : 26-03-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 87, 104(1), 7
Travancore Civil Courts Act, 1084 — Section 14
Travancore Jenmi and Kudiyan Act, 1071 — Section 33, 34, 40
Travancore-Cochin Civil Courts Act, 1951 — Section 19, 20

Citation : (1953) 03 KL CK 0012

Hon'ble Judges : Vithayathil, J;Sankaran, J

Bench : Division Bench

Advocate : N. Padmanabha Panicker, for the Appellant; M. Krishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

Vithayathil, J.—Defendant 19 is the Appellant in this civil miscellaneous appeal. The appeal is from an order refusing to set aside the auction sale in Small Cause Suit No. 37 of 1110 on the file of the Trivandrum District Court. The suit was for arrears of jenmi dues filed u/s 33, Travancore Jenmi and Kudiyan Act, 5 of 1071. Under that section suits of jenmi dues have to be filed in the District Court when the value of the claim exceeds Rs. 30 but does not exceed Rs. 100, and u/s 34 of the Act the procedure to be followed for the trial of such suits shall be the procedure prescribed by law for the trial of non-appealable cases.

In execution of the decree the decree-holder proclaimed for sale one acre and 83 cents of garden land out of which 50 cents were sold for Rs. 161-8-6. Defendant 19 put in a petition to set aside the sale under Order 21, Rule 87, Travancore CPC on the ground of material irregularity and fraud in publishing and conducting the sale. The Court below rejected the petition by its order dated 28-1-1952. The appeal is from that order.

2. A preliminary objection was raised by learned Counsel for the Respondent that an appeal would not lie from the order of the Court below. The argument is that the order is one passed in a Small Cause suit and is, therefore, not appealable. It is not disputed that under the new CPC and under the new Civil Courts Act (Act 22 of 1951) the order is not appealable. u/s 7, CPC the provisions of the Code relating to execution of decrees in suits excepted from the cognizance of a Court of Small Causes and those relating to execution of decrees against Immovable property shall not apply to Courts in Part B States exercising jurisdiction corresponding to that exercised by a Court of Small Causes under the Provincial Small Cause Courts Act, 1887.

Section 19, Civil Courts Act, Act 22 of 1951, provides that

the procedure prescribed in the Code of Civil Procedure, 1908, except the provisions specified in Section 7 and Order 50 thereof as inapplicable to suits tried as Small Causes, shall be the procedure followed in a Court of Small Causes and in a Court exercising the jurisdiction of a Court of Small Causes in all suits cognisable by it, and in all proceedings arising out of such suits.

Under Section 20, Civil Courts Act

the decisions of Judges of Small Cause Courts and of Munsiffs, Subordinate Judges and District Judges in the exercise of the small cause powers shall be final except orders specified in Clause (h) of Sub-section (1) of Section 104, Code of Civil Procedure, 1908, from which an appeal shall lie, subject to the provisions of the said Code relating to reference and revision.

It is thus clear that under the CPC and the Civil Courts Act now in force the order of the Court below is not appealable.

3. But the auction sale in this case took place before the new Civil Courts Act was enacted and before the present CPC came into force in this State, and the petition to set aside the sale was also filed before the coming into force of the new CPC and the Civil Courts Act.

Under the General Clauses Act when any Act repeals an enactment, unless a different intention appears, the repeal shall not affect any investigation, legal proceeding or remedy in respect of any right acquired or accrued under the repealed enactment and any such investigation, legal proceeding or remedy, may be instituted, continued and enforced as if the repealing Act had not been passed. There is nothing in Act 2 of 1951 extending the CPC to Part B States to show that the provision contained in Section 7 of the Code will apply to proceedings started before the date on which that Act came into force. Neither is there anything in the Travancore-Cochin Civil Courts Act, 22 of 1951, to show that the provisions of that Act Will apply to proceedings started before the commencement of that Act.

It is well settled that the right of appeal is a substantive right and that it will not be affected by a repealing or amending enactment unless it is expressly taken

away by that enactment. The leading case on the subject is - "Colonial Sugar Refining Co. Ltd. v. Irving" (1905) AC 369 (A) . In - Alley Rasul Ali Khan and Another Vs. Balkishun and Others it was held that where a new Act is passed subsequent to the filing of a suit, the suit and an appeal and the proceedings in execution arising therefrom are governed by the old Act unless the new Act expressly provides that they will be governed by the new Act. To the same effect is the decision of the Madras High Court in - Daivanayaga Reddiar and Others Vs. Renukambal Ammal, .

In - Ram Singha and Another Vs. Shankar Dayal and Another it was held that a right of appeal in a suit is governed by the law prevailing at the date of the institution of the suit and not by the law prevailing at the date of the decision of the suit or at the date of the filing of the appeal.

4. The question therefore for consideration is whether under the law that was in force when the auction-sale in this case took place and when the petition to set aside the sale was filed an appeal would lie from an order refusing to set aside a sale of immovable property held in execution of a Small Cause decree. It was argued for the Respondent that u/s 40, Jenmi and Kudiyan Act, 5 of 1071, the order is not appealable. That section reads thus:

The decision of Munsiffs and Zilla Judges passed in Summary Suits under this Part shall be final but shall be subject to revision by the High Court in the manner provided by Section 568 of the Civil Procedure Regulation, 2 of 1065:

Provided that no judgment, decree or order in supercession of the decision or order of the Subordinate Court shall be passed by the High Court without giving the parties an opportunity to state their case either in person or by vakils.

This section obviously applies only to the decision in a summary suit. Just as decisions in Small Cause Suits are not appealable but are only subject to revision by the High Court the decisions in suits for jenmi dues tried in a summary manner under the Jenmi and Kudiyan Act are also made non-appealable. But Section 14(e), Travancore Civil Courts Act, Act 2 of 1084, which was the law in force when the auction sale took place in this case and when the petition to set aside the sale was filed, provides that

appeals and second appeals shall lie against orders passed by the Court in execution of Small Cause decrees against immovable property in the same manner and to the same extent as if such orders had been passed in the exercise of the ordinary original jurisdiction of such Court.

Section 34, Jenmi and Kudiyan Act provides thus:

Except as otherwise provided by this Regulation, the procedure prescribed by any law for the time being in force for the trial of non-appealable cases shall be the procedure to be followed by the District Munsiffs and Zilla Judges in all suits and proceedings summarily cognisable by them under this Regulation.

The procedure prescribed by Section 14(e), Civil Courts Act, 2 of 1084, is the procedure prescribed by law for the trial of non-appealable cases and it has therefore to be followed in suits and proceedings summarily cognizable by the District Munsiffs and Zilla Judges under the Jenmi and Kudiyan Act. It has also to be noted that the section refers not only to suits but also to proceedings. We are, therefore, of opinion that Section 14(e), Civil Courts Act, 2 of 1084, applies to orders passed by the Court in respect of immovable property in execution of decrees passed in suits summarily tried under the Jenmi and Kudiyan Act. It follows that the order passed in this case refusing to set aside the sale of immovable property is appealable u/s 14(e) of Act 2 of 1084.

5. Coming to the merits of the appeal, the main ground that was urged on behalf of the Appellant is that there has been gross undervaluation of the property by the decree-holder and that as a result of such undervaluation the property happened to be sold for a very inadequate price.

The property proclaimed was 1 acre and 83 $\frac{1}{2}$ cents. The value given by the decree-holder was 1000 fanams, (about 5 $\frac{1}{2}$ fanams per cent). There were 50 bearing and 10 non-bearing cocoanut trees, 30 arecanut tress, 3 palmyras, 5 jack tress and 6 tamarind trees in the property as can be seen from the Amin's report. The Amin valued the property at Rs. 1840 (about Rs. 10 per cent). The Court sold 50 cents out of the total extent of 1 acre and 83 $\frac{1}{2}$ cents and the assignee-decree-holder purchased it for Rs. 161-8-6.

A commission was issued to ascertain the value of the property. Exhibit I is the Commissioner's report. According to the Commissioner the 50 cents sold formed the best portion of the decree schedule property. The Commissioner valued it at Rs. 664-12-0 on the basis of yield, while according to cent value the property was stated to be worth Rs. 1000. It is not shown that the commissioner's valuation on the basis of yield is in any way incorrect. If the value given by the commissioner is accepted, it will be seen that the property was sold for about one-fourth of its real value.

It is also clear that there has been gross under-valuation of the property by the decree-holder, the value given by him in the proclamation being only about 5 $\frac{1}{2}$ fanams per cent. The decree-holder has filed certain documents to prove the value of the property. Exhibit A is a sale deed dated 15-10-1115 relating to 17/8 cents out of the decree schedule property. The consideration was 50 fanams, that is about Rs. 3 $\frac{1}{2}$ per cent. Exhibit B is a sale deed dated 12-8-1115. The price of the property under that sale deed was about Rs. 6 per cent. Exhibit C is a sale deed dated 3-1-1118 and the price under it was about Rs. 6 $\frac{1}{2}$ per cent. It is not disputed that the price of properties had increased considerably in 1950 when the sale took place. There is therefore no reason to think that the value given by the Commissioner is incorrect.

There can be no doubt that the property was sold for an inadequate price. If there has been gross under-valuation of the property by the decree-holder and if

as a result of that undervaluation the property was sold for an inadequate price it is a material irregularity and the sale can be set aside on that ground. Vide - "Veeramom Iyer v. Pathumma Veevi" 9 Trav LJ 271 (E); - "Bhagavathi Perumal Chettiar v. Kadan Mahayaaun" 10 Trav LT 1084 (F); - "Varkey v. Samala Iyer" 27 Trav LJ 1009 (G) and - "Chakko v. George" 31 Trav LJ 1126 (H). It is true that under-valuation by itself will not be a sufficient ground for setting aside a sale. But if there is reason to believe that the property was sold for a very inadequate price as a result of the under-valuation that will be a sufficient ground for setting aside the sale. It may even amount to fraud on the part of the decree-holder.

In this particular case the decree-holder him self purchased the property for a low price. It is also seen that all the notices issued to Defendant 19 in execution were served by affixture. It is further seen that a portion of the decree schedule property is in the possession of the assignee decree-holder and his children and that they also are liable to pay the jenmi dues for which the decree was obtained., It was only the property in the possession of Defendant 19 that was sold for the decree-debt. In the circumstances we think that the sale in this case should be set aside. We, therefore, allow the appeal and set aside the sale. There will however, be no order as to the costs of this appeal.