

(1983) 12 KL CK 0025
In the High Court Of Kerala
Case No : C.R.P. No. 2345 of 1982

Eroth Unikat Bhaskara Menon

APPELLANT

Vs

Kandiringath Gangadharan and Others

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 109(a)
Constitution of India, 1950 — Article 133, 133(1), 134A, 226
Kerala Land Reforms Act, 1963 — Section 102, 103, 103(1), 103(1)(i), 4A

Citation : (1983) KLJ 209

Hon'ble Judges : S.K. Kader, J

Bench : Single Bench

Advocate : V.P. Mohan Kumar, K.P. Sreekumar, V. Ram Kumar, P. Santhoshkumar and N. Sankara Menon, for the Appellant; K. Ramakumar, B. Satheeschothandan and Government Pleader, for the Respondent

Judgement

S.K. Kader, J.—A preliminary objection against the maintainability of the revision has been raised by the counsel appearing for the first respondent in this revision filed by the second respondent in O.A. No. 4440 of 1976. The above application u/s 72 B of the Kerala Land Reforms Act (hereinafter called the Act) was filed by the first respondent and another for assignment of the right, title and interest of the landlords and the intermediaries in 3.82 acres of dry land comprised in R.S. 23611 and 3.46 acres of wet land comprised in R.S. 23711 in Edappalam. The 1st respondent in the application was the ultimate jenmi and the 2nd respondent, who is the revision-petitioner herein was impleaded as an intermediary. This application was contested by the revision-petitioner. The Land Tribunal dismissed the application on the ground that the applicants are not entitled to protection u/s 4A of the Act. This order of the Land Tribunal was challenged by the first respondent herein before the Appellate Authority (L.R.) Kozhikode in A.A. 329 of 1981. As the second applicant in O.A. 4440 of 1976 Devaki died; the appeal was filed by the first respondent herein who alone is said to be her legal heir. The Appellate Authority finding that the transaction

evidenced in the mortgage clearly fell u/s 6B of Act 1 of 1964, set aside the order of the Land Tribunal, allowed the appeal and remanded the case to the Land Tribunal for determination of the purchase price etc.

2. It is this order that is challenged in this revision. At the very outset of the hearing, the counsel appearing for the first respondent raised a preliminary point that the revision is not maintainable, as the order sought to be revised is not a final order coming within the meaning of Section 103 of the Act. Reliance was placed by the counsel on three Division Bench rulings of this Court (1) Joseph v Velayudhan Pillai (1976 KLT 870), (2) Kothamma v Kunjihetti (1973 KLT 390) and an unreported case in C.R.P. Nos. 28 and 29 of 1967. Counsel also relied on the decisions in Meethala Peedikayil Pokken v Chethiyam Veettil Pokkan (1981 KLN. case No. 34) and in Ouseph v State of Kerala & Others (1977 KLN Case No. 229).

3. Strongly relying on the Division Bench rulings of this Court, the counsel for the contesting respondent submitted that these decisions squarely apply to the facts of this case, that the Appellate Authority has not fully adjudicated upon the rights of the parties in the case, that there is a clear direction to fix the purchase price which the tenant is liable to pay and therefore this order of remand cannot in any way be treated as a final order.

4. The counsel appearing for the revision petitioner on the other hand contended that the correctness of the decision in Joseph v Velayudhan Pillai (1976 KLT 870) has been doubted by Viswanatha Iyer, J in Mahadeva Iyer & Others v Bhagavathy Ammal (1979 KLT 910) and also in C.R.P. No. 1222 of 1975 by another learned judge and therefore the decision reported in Joseph v Velayudhan Pillai (1976 KLT 870) requires reconsideration and the case may therefore be referred to a Full Bench for an authoritative pronouncement on the point. The counsel also relied on Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others, , Venkayya v. P. Venkatarama Rao (AIR 1956 A.P. 126) and Asbestos Cement Ltd. Vs. P.D. Sawarkar and Others, . Section 103 (1) of the Act reads:

103. Revision by High Court-(1) Any person aggrieved by-

(i) any final order passed in an appeal against the order of the Land Tribunal or,

(ii) any final order passed by the Land Board under this Act or

(iii) any final order of the Taluk Land Board under this Act may, within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law.

Article 133(1) of the Constitution of India reads:

133 (1) An appeal shall lie to the Supreme Court from any judgment, decree or

final order in a civil proceeding of a High Court in the revisions of India if the High Court certifies under Article 134A..... xxx xxx xxx.

Section 109 of the CPC reads:

109. Subject to the provision in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court retarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies xx xx xx.

5. The vital and the only question for consideration is whether the order under attack is a final order within the meaning of sub-section (1) of Section 103 of the Act. The Kerala Land Reforms Act is a special enactment which has introduced comprehensive land reforms in the State. Being a welfare legislation intended to benefit the cultivating tenants and tillers of the soil, special tribunals have been set up ousting the jurisdiction of the ordinary civil courts with a view to have the disputes determined and disposed of as expeditiously as possible. Under this Act, right of appeal has been conferred u/s 102 against certain orders of the Land Tribunal enumerated therein. An Appellate Authority has been constituted under the Act for the purpose of hearing appeals. Section 103 deals with revisions to the High Court. u/s 102 the Government or any person aggrieved by any order of the Land Tribunal under the sections referred to therein can appeal against such order within the prescribed time to the Appellate Authority. The omission of the word "final" to qualify order used in Section 102 of the Act is significant. The words used in section 102 is "any order" and this indicates that the order contemplated therein can be final or interim; whereas sub-section (1) of section 103 deals with only a final order passed in the appeal. A revision to the High Court can be filed only against a final order passed in the appeal. A Division Bench consisting of M. S. Menon, C.J. and Govindan Nair, J, as he then was, in C.R.P. Nos. 28 and 29 of 1967, had occasion to construe the words " any final order passed in an appeal against the order of the Land Tribunal" appearing in sub-section (1) of Section 103 of the Act. What was challenged before the Division Bench in the above revisions was an order of remand passed by the Subordinate Judge vacating the order of the Land Tribunal. The Division Bench holding that Article 133(1) of the Constitution of India and Section 109 of the C.P.C. are worded similar to Sec. 103 of the Kerala Land Reforms Act observed as follows:

Interpreting sections worded similar to Section 103 referred to, the view has been expressed by the Judicial Committee, the Federal Court and the Supreme Court of India that an order of remand is not a final order.

On this finding the revisions were dismissed. Another Division Bench consisting of Raghavan, C. J. and Unnikrishna Kurup, J. in Kothamma v Kunjihetti (1973 KLT 390) following the decision in C.R.P Nos. 28 and 29 of 1967 held that the language in Sec. 103 of the Act was similar to other sections which came for

considerations before the Privy Council, the Federal Court and the Supreme Court of India which held that the order of remand was not a final order for the purpose of appeal. The two revision petitions which the Division Bench was considering came up before it in pursuance of a reference made by a Single Judge; for considering whether the decision of the Division Bench in C.R.P. Nos 28 and 29 of 1967 requires reconsideration. The latter Division Bench before which the reference came, held that the decision of the earlier Division Bench was justified by the rulings of the Judicial Committee, the Federal Court and the Supreme Court and that the expression "final order" in such a case does not cover an order of remand. In those revisions the appellate authority had confirmed the decision of the Land Tribunal on certain matters and the proceedings were remanded to the Land Tribunal regarding certain other matters. Placing the matter beyond doubt, the above mentioned three Division Benches of this Court found that the language of section 103(1) (i) of the Act was similar to other sections which came for consideration before the Judicial Committee, the Privy Council, Federal Court and the Supreme Court of India.

6. The leading case on the point is *Firm Ramchand Manjimal & others v Firm Goverdhandas Vishandas Ratanchand and others* (AIR 1920 P.C. 86) and AIR 1933 58 (Privy Council) . In the latter case their Lordships were of the opinion that it was impossible to distinguish the case under their Lordships consideration from that upon which Lord Cave pronounced in the *fanner* case. It was held in the latter case that the test of finality is whether the order "finally disposes of the rights of the parties", where order does not finally dispose of these rights, but leaves them "to be determined by the courts in the ordinary way", the order is not final. It was also observed that the fact that the order "went to the root of the suit, namely, the jurisdiction of the Court to entertain it, "by itself is not sufficient. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it u/s 109(a) of the C.P.C. Even if an order of remand has decided an important and even a vital issue in the case, if it had left the suit alive, the order cannot be construed as a final order. In *Mohammad Amin Brothers Ltd. and others v The Dominion of India and others* (AIR (37) 1950 F. C. 77), five Judges of the Federal Court including the Chief Justice observed that the essential test to distinguish the final order from any interlocutory order has been discussed and formulated in several cases decided by the Judicial Committee, and that all the relevant authorities bearing on the question have been reviewed by the Federal Court in *S. Kuppuswami Rao v The Governor General of India* (AIR (36) 1949 F.C.I.). The law as far as the Federal Court was concerned has been well settled down by this decision. In full agreement with the decisions of the Judicial Committee in *Ramchand v. Goverdhandas* (AIR 1920 PC. 86) and AIR 1933 58 (Privy Council) , it was held by the Federal Court that the test for determining the finality of an order is whether the judgment or order finally disposes of the rights of the parties. The finality must be finality in relation to the suit. It was also held by the Federal Court that if the decision on an issue puts an end to the suit, the order will

undoubtedly be a final one. But if the suit is still left alive and has got to be tried, no finality could attach to the order. The decisions of the Privy Council have been approved by the Supreme Court in a number of decisions. A final order must be an order which finally determines the points in dispute in the proceeding and brings the dispute to an end. The test for determining the finality must be in relation to the suit. The fact that the order decides an important or vital issue is by itself immaterial unless that decisions put an end to the suit or proceedings. (See *Jethanand and Sons Vs. The State of Uttar Pradesh*, *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, . In order to be final, the controversy raised in the suit or proceeding must be finally over. (See *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, . An appeal and a revision is a continuation of the original suit or proceeding and the finality must therefore attached to the whole of the matter and the matter should not be a live one after the decision of the High Court if it is to be regarded as final for the purpose of appeal under Article 133 In *Shri Prakash Chand Agarwal and Others Vs. Hindustan Steel Ltd., Hidayatullah, J.*, as he then was, relying on the decision in *Jethanand and Sons Vs. The State of Uttar Pradesh*, , and distinguishing *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, observed as follows:-

Indeed, the Constitution contemplates the filing of an appeal by certificate only against a judgment, decree or final order of the High Court. It does not contemplate bringing an appeal in a suit which is still a live suit and in which further proceedings are to be taken. This has been the consistent view not only of this Court but also of the Privy Council. The leading case from the Privy Council is AIR 1933 58 (Privy Council) There is a catena of cases in the High Court and also in this Court that the Judgment, decree or order from which appeal is brought to this Court must put an end to the litigation between the parties. This re-affirmed in *Jethanand and Sons Vs. The State of Uttar Pradesh*, approving the view of the Privy Council referred to.

7. It is clear from the above decisions that the final order must put an end to the litigation between the parties and an order of remand by which something more is directed to be done in relation to the right or liability or obligation of the parties is not a final order.

8. The counsel for the revision petitioner contended that in a case of this nature, under Rule 9 of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970, a preliminary enquiry must be conducted and a preliminary order determining the status of the party has to be passed, and such an order is appealable, that the Land Tribunal has dismissed the application filed by the first respondent in this case rejecting his contention that he is a cultivating tenant, that the Appellate Authority held that he is a tenant and therefore this is a final decision on the status of the applicant and the order in question is a final order coming u/s 103. The counsel placed strong reliance on a decision of this Court in *Mahadeva Iyer v Bhagavathy Ammal* (1979 KLT 910). Meeting the contention of the revision petitioner in this regard, the counsel for the contesting respondent submitted

that if Rule 9 applies to the facts of this case Rule 10 also must necessarily apply, that Rule 10 contemplates a different stage and a further enquiry is contemplated there in and it was for that purpose the appellate court remanded the case and therefore it cannot be said that the order of remand is a final one. As pointed out by the Division Bench of this Court in *Joseph v Velayudhan Pillai* (1976 KLT 870) where an order of remand was passed in an appeal directing further proceedings to be taken thereby keeping the suit alive, the order of remand cannot be construed as a final order. In the case on hand, as is clear from the appellate order, the remand was for the purpose of taking further proceedings although an important and vital issue has been finally decided in appeal. The appellate order shows that there was no data before the appellate court to ascertain what exactly was the annual rent payable in respect of the properties and the value of the same according to the market rate. It is necessary to fix the compensation and also the purchase price payable by the tenant. But it was because there was lack of materials before the appellate court that the same was remanded for determination of the purchase price etc as contemplated under Rule 10 mentioned above. This amount is liable to be paid by the tenant. Tested in the light of the above decisions and on the facts and in the circumstances of this case; it cannot be said that the order sought to be revised is a final order coming within Sec. 103 of the Act. The further enquiries directed would not amount to a futile exercise. It cannot also be said that the appellate court has finally determined all the material issues in the litigation and the remand was practically directing the court to draw up a decree or order in terms of the order of remand.

9. The learned single Judge in *Mahadeva Iyer v Bhagavathy Ammal* (1979 KLT 910) construed the words "final order" appearing in sub-section (1) of Section 103 to mean final disposal of the appeal. According to the learned Judge the final order must dispose of the appeal and that was what was really meant by the legislature. The learned Judge also observed that finality must relate to the appeal only and not to the Land Tribunal proceedings and that the final order passed in appeal against the order of the Land Tribunal in section 103 (1) (i) can only mean final disposal of the appeal. This interpretation put on the section by the learned Judge is with great respect, inconsistent and in direct conflict with the views of and interpretation put on the words appearing in the section by the three Division Benches of this Court referred to above. This apart, according to the learned Judge, the determination of the compensation or the purchase price is more or less a mechanical process and it will not make the order of remand any the less final. The compensation due to the landlord or the purchase price payable by a cultivating tenant is a liability imposed on the person who is liable to pay the same. It cannot be said that the determination or fixation of an amount which the tenant is liable to pay is more or less a mechanical process. The expression "final order in a civil proceeding" appearing in Article 133(1) of the Constitution and Section 109 of the C.P.C. is no doubt used in a wider sense to include all proceedings which directly affects the civil rights of parties. That

takes in not only the original, appellate and revisional jurisdiction of the High Court but also decisions passed in its extra ordinary jurisdiction. A proceeding under Article 226 of the Constitution of India will be a civil proceeding where an action which is challenged affects civil rights of parties. There are also proceedings which have to be characterized as civil proceedings by reason of statutory provisions. The expression "any judgment", decree or final order appearing in Article 133 of the Constitution and Section 109 C.P.C. means a final adjudication by the court upon the right of parties. Although Viwanatha Iyer, J doubted the correctness of the interpretation put by the Division Bench in Joseph v Velayudhan Pillai (1976 KLT 870) on the language of Section 103, His Lordship further found that it was not necessary to go against the interpretation put by the Division Bench on the facts of the case cited. Balakrishna Menon, J. in C.R.P. No. 1511 of 1979-E followed the decision of the on Division Bench in Joseph v Velayudhan Pillai (1976 KLT 870); while Bhaskaran, J, in C.R.P. No. 1222 of 1975-B did not consider it necessary to refer the matter to a larger Bench, though a doubt the correctness of the decisions of the Division Bench was raised. (See 1981 KLN Case No. 34 and 1977 KLN Case No. 229)

10. The decisions reported in Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others, , and Venkayya v P. Venkatarama Rao,(AIR 1956 And. 126) have no application to the facts of the instant case. Both these decisions have been referred to and relied on in Mahadeva Iyer v Bhagavatky Ammal (1977 KLT 910). Those are cases where all the substantial rights of the parties were determined and the case was remanded practically directing the court below to draw up a decree in terms of the order of remand. In Asbestos Cement Ltd. v Sawarkar (1971 S.C. 100) the validity of an industrial award was challenged in the writ application, although that award disposed of only one of the charter of demands raised by the workmen leaving other items to be decided by a subsequent award. Several items of demand raised by the workmen were referred for arbitration but the arbitrators decided to hear and dispose of the dispute regarding dearness allowance alone before dealing with the rest of the dispute. This award passed and published in gazette became enforceable in accordance with the provisions of the Industrial Disputes Act. Therefore so far as the question of dearness allowances was concerned this award became final and nothing were remained to be determined in respect of the payment of dearness allowance, and the award on dearness allowance was therefore found to be a final order and not interlocutory order. This decision also has no application to the facts of this case. On a consideration of these decisions and in the light of the facts and circumstances referred to above, I find no adequate reason or ground for reconsideration of the decision reported in Joseph v Velayudhan Pillai (1976 KLT 870) which had followed the previous decisions of the two Division Benches. As the order under attack cannot be considered as a final order coming within section 103(1) (i) it has to be held that the revision is not maintainable. The counsel for the revision petitioner also submitted that on the facts of the case it can be seen that the contention of the first respondent is

false and frivolous, that the property has been taken delivery of by the revision petitioner through court and that the first respondent himself has attested that delivery account. Probably on the facts the revision petitioner may have a good case, but in view of the finding that the revision is not maintainable it is not proper for me to go into the facts of the case and consider the contentions raised on merits.

This revision therefore fails and is hereby dismissed, but in the circumstances of the case without any order as to costs.