

(1989) 07 KL CK 0058
In the High Court Of Kerala
Case No : S.A. No. 298 of 1984

Gnanamoni Rosamma and Others

APPELLANT

Vs

Thankappan Nair and Another

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105(2), 99
Kerala Land Reforms Act, 1963 — Section 125, 125(1), 125(3), 125(3), 13

Citation : (1989) 2 KLJ 212

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : S. James Vincent, for the Appellant; V. Vyasani Poti and Harun -Al-Rasheed, for the Respondent

Final Decision : Dismissed

Judgement

S. Padmanabhan, J.—Defendants 2, 3 and 5 to 7 in a suit for redemption are the appellants. Their plea of tenancy under the Land Reforms Act was negated without reference to the Land Tribunal. Alternative claim of kudikidappu right was directed to be considered in execution. Value of improvements was assessed and decree for redemption was passed. In appeal, they only challenged the quantum of improvements. Confirming the finding on redeemability, the decree was set aside and the case remanded solely for the purpose of passing a fresh decree after re-assessing improvements. Improvements were re-assessed and a fresh preliminary decree was passed. In A.S. No. 151 of 1983, filed against that decree, the challenge was only that kudikidappu was not protected and improvements were not properly assessed. Second appeal is against the dismissal of that appeal. In this second appeal, the grounds taken are three fold They are:

(a) The decree for redemption without referring the claim of tenancy and kudikidappu to the Land Tribunal is illegal and void;

(b) Rejection of kudikidappu right by the appellate court is not justified; and "

(c) Value of improvements assessed is not proper.

Kudikidappu right, if any, will arise only on redemption. The matter could and must be considered only in execution. No ground was made out for interference in the assessment of value of improvements. If so, the only question for consideration is whether rejection of the tenancy right requires interference.

2. Learned counsel, in support of his contention, brought to my attention various decisions, including Eapen Chacko v. Provident Investment Co. (P) Ltd. (1977 KLT 1), Chidambaran v. Arunachalam (1978 KLT 571), George v. Vareed (1978 KLT 691), Kesava Bhat v. Subraya Bhat (1979 KLT 766), Ramadas v. Krishnan Nair (1984 KLT 371), Narayanan v. Kunchi Amma Parukutty Amma (1986 KLT 1340) and Subbayya Chettiar v. Ayyappan Pillai (1989 (1) KLT 917), in order to contend that in a suit filed after 1-1-1970 when a question of tenancy was raised a decision without complying with the provisions of Section 125(3) of the Kerala Land Reforms Act is a matter affecting the jurisdiction of the Court and, therefore, void. There cannot be any dispute that the decision of the trial court, without reference to the Land Tribunal, is without jurisdiction and as such void. But the appellants filed an appeal against that decree in which the denial of tenancy right was not challenged at all. The appellate decree, confirming the finding of redeemability and remanding the case only for assessing the value of improvements, was not challenged in appeal and allowed to become final even though they could have appealed. Against the revised preliminary decree for redemption passed after remand when they filed appeal the only grounds taken up were that kudikidappu right was not protected and value of improvements was not properly assessed. Tenancy claim was not taken up and could not have been taken up in view of the remand order which became final.

3. Section 105 (2) of the CPC says that where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. Correctness of a remand order cannot be subjected to further investigation and consideration in view of the above said provision. Courts cannot correct such orders of remand which have become final when the remedy of appeal provided by law was not resorted to. If any authority for this position is required, it could be had from the decision in Kunhammed v. Pathumotti (1984 KLT 1055) and the decisions referred to therein.

4. It is well settled that the decision of a court rendered without jurisdiction and as such void could be challenged in appeal in the same way as a decision rendered with jurisdiction. In other words a decision with jurisdiction and on; without jurisdiction are equally appealable. (Janardan Reddy and Others Vs. The State of Hyderabad and Others,). Section 125 of the Land Reforms Act only inhibits the powers of the trial court by making it obligatory to refer the question of tenancy to the Land Tribunal and dispose of the case accepting and incorporating its finding. Powers of the appellate court is not only not limited or crippled, but it is required to treat the finding as that of the trial court and sit in judgment over it. That means, the power of the appellate court under the CPC is

not in any way affected or limited. It is thus open to the appellate court to go into the finding and assess its correctness irrespective of the question whether the finding is that of the trial court itself or that of the Land Tribunal accepted and incorporated by it. If on a material question, on which a finding is necessary for the decision of the case, the trial court did not enter a finding, the appellate court can remand the case, or call for a finding or without doing any of these things, it could by itself decide the matter for the first time if there is evidence on record. The finding of the trial court on the question of tenancy without reference to the Land Tribunal in violation of Section 125(1) and (3) is without jurisdiction and as such no finding at all. In such a situation, the appellate court can remand the case for reference to the Land Tribunal, or retain the appeal and call for a finding after reference to the Land Tribunal or even dispose of the appeal after entering a finding of its own if it feels that materials on record are sufficient for that purpose. The appellate court, which is not inhibited by the provisions of Section 125, will be acting with jurisdiction under the CPC even if it goes into the question of tenancy and enters a finding for the first time when there is no reference to the Land Tribunal. That finding cannot, in any way, be said to be without jurisdiction. The appellate decree, after such a finding, cannot have any of the defects which could be attributed to a decree of the trial court without complying with the provisions of Section 125 (3). If there is a statutory appeal from a decree passed with jurisdiction that right of appeal will not be defeated simply because it was passed without jurisdiction. In other words, the statutory right of appeal is not deprived simply because of usurpation of jurisdiction. Exercise of the right of appeal, whether it be against a decree passed with jurisdiction or without jurisdiction, is binding on the parties so long as the appellate court has no lack of jurisdiction. The decree of the appellate court with jurisdiction which superseded the decree of the trial court without jurisdiction is valid and binding on the parties and will operate as *res judicata* against the parties unless challenged and corrected. Section 99 of the CPC indicates that an appeal is maintainable against a decree passed without jurisdiction (*Kunjan v. Janaki*-1980 KLT 796).

5. None of the decisions relied on by the learned counsel dealt with this aspect of the matter. The challenge against the trial court decree is thereafter no longer available if the appellate decision has become unassailable. Further in the appeal filed against the revised preliminary decree passed by the trial court also, the question of tenancy was not raised. The claim in that respect is clearly barred by *res judicata*. The appellants are not entitled to contend that the remand order by the appellate court is without jurisdiction. It is well established that even a wrong decree passed with jurisdiction is binding just like a correct decree if it is allowed to become final between the parties. The contention that the decree of the trial court was one passed without jurisdiction and, therefore, void was a contention which might and ought to have been raised before the appellate court in A.S. No. 189 of 1979. In that appeal, the only contention raised was regarding value of improvements. They suffered a decree to the effect that Exts. A2 and A3 are

redeemable and that they are not entitled to the tenancy right claimed before the trial court. Such a contention cannot now be heard. Then it was argued that the non-obstante clause contained in Section 13 of the Kerala Land Reforms Act by itself is sufficient to take away the effect and binding force of all the decisions including the decree in A.S. No. 189 of 1979.;The argument is far from being acceptable. The general "words "notwithstanding any law" should not be taken to abrogate every rule of law which is intended to serve different purposes and which have no similarity and. affinity to laws such as those introduced for agrarian reforms as in the case of the provisions of the Kerala Land Reforms Act, It would be prudent to construe the general words as intended to achieve the objects and purpose sought to be ensured by the Kerala Land Reforms Act. In other words, the non-obstante clause must not be so read as to. abrogate every conceivable principle of law embodied in any statute whatever and for any reason whatever. The approach must be to find out whether the law which is said to be abrogated by such non-obstante clause occupied the same field or dealt with the same object. Laws which fall under the category must certainly be abrogated by the non-obstante clause, This principle should not, however, be extended to other laws enacted on the basis of public policy meant for protection of interests and for the finality of pronouncements of courts which have nothing, to do with the objects and purposes sought to be achieved by the statute (Mohamed Mytheen v. Sreedharan - 1976 KLT 919 FB). It is, therefore, clear that the non-obstante clause contained in Section 13 of the Kerala Land Reforms Act cannot be extended in its application to take away the bar of res judicata afforded by concluded decisions between the parties.

Subject to what is stated above, second appeal is dismissed No costs.