

(1970) 09 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 1070 of 1969

Govinda and Others

APPELLANT

Vs

Mary Fernandes and Another

RESPONDENT

Date of Decision : 25-09-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115
Mysore Land Reforms Act, 1962 — Section 14, 18 (1)

Citation : AIR 1971 Kar 75 : (1970) 2 MysLJ 466

Hon'ble Judges : E.S. Venkataramiah, J;C. Honniah, J

Bench : Division Bench

Advocate : B.P. Holla, for the Appellant; U.L. Narayana Rao, for the Respondent

Judgement

1. Malimath, J. has referred this Civil Revision Petition for a decision by a Division Bench as he was of the view that the view taken by Chandrashekhar, J. and Sadananda Swamy, J. in C. R. P. No. 2032 of 1969 and C. R. P. No. 182 of 1968. respectively that a revision petition does not lie to this Court against an interlocutory order passed by the Land Tribunal under the Mysore Land Reforms Act, 1961 (to be hereinafter referred to as the "Act".) was not in accordance with the law laid down by the Supreme Court, and hence, that view required to be reconsidered by a Division Bench.

2. The facts which have given rise to this revision petition, briefly stated, are these:

Marry Fernandes and Theresa Fernandes two landladies filed an application in R. L. C. No. 83 of 1968 on the file of the Land Tribunal at Coondapur against their tenants-respondents therein for resumption of certain lands u/s 14 of the Act. Sometime later, the land ladies filed an application under Order VI, Rule 17 of the CPC by which they wanted the following amendment to the original application filed by them:

Add: "For non-agricultural purpose, construction of houses for the family

members of applicants and also for applicants" in column 7 in Annexure "J" against items 15, 16, 17, 23.

"Add: "Garden" in Col. 8 in annexure "J" against items 15, 16, 17, 23."

In support of this application, they filed an affidavit stating that while preparing the original application, by oversight and mistake, the classification of items 15, 16, 17, 21 and 23 was shown as wet and in fact they were garden lands and while stating the purpose for which they sought resumption, by mistake and inadvertence, they omitted to mention that they required the land for non-agricultural purpose, namely, for construction of houses also. The tenants opposed the application on various grounds. The tribunal, however, allowed the amendment holding that the amendment sought for did not change the nature of the application and that the amendment sought for was bona fide. Aggrieved by this order, the tenants have filed the present civil revision petition.

3. The main question that arises for consideration is whether u/s 115 of the CPC a revision petition lies to this Court from an interlocutory order passed by the Land Tribunal in an application u/s 14 of the Act. In order to answer this question, it is necessary to refer to Section 118 (1) of the Act That Section reads:

"Save as otherwise provided in this Act, from every decision or order passed by the Tribunal an appeal shall lie to the appellate Authority; and the order of the Appellate Authority on such appeal shall be final."

The other sub-sections of this section are not necessary for the purpose of this case. This provision has been amended by Act VI of 1970 with effect from 15th January, 1970. All that has been done by the amendment is that for the word "Tribunal" the word "Court" is substituted and for the expression "Appellate Authority" the expression "District Court" is substituted. This section provides that an appeal shall lie from every decision or order passed by the Tribunal (now the Court). It is contended as contended before Malimath. J. by the landladies, that the expression "every decision or order" in Section 118 (1) of the Act includes all interlocutory orders also and, if that be so. only an appeal lies as provided u/s 118 (1) of the Act and no revision lies to this Court u/s 115 of the Civil Procedure Code. In fact that was the view taken by Chandrashekhar, J. and Sadananda Swamy, J. in the two revision petitions referred to earlier. It is seen from the decisions of the two learned Judges in those revision petitions, that two decisions of the Supreme Court were not brought to their notice, they being (1) Central Bank of India Vs. Shri Gokal Chand, and (2) Bant Singh Gill Vs. Shanti Devi and Others,

4. In the first case, the question that came up for consideration was the construction of Section 38(1) of the Delhi Rent Control Act, 1958. In that case, the landlord made an application to the Controller for eviction of the tenant on the ground that he bona fide required the premises for his occupation. The tenant filed an application before the Controller alleging that the accommodation in premises No. 17, Alipur Road, in which the landlord was living, consisted of

more than three rooms and consequently the landlord did not bona fide require the premises in dispute for his own occupation and praying for the issue of a commission to go to the said premises and to prepare a plan of the same. By his order dated 29th May, 1965, the Controller rejected the application. From that order, the tenant filed an appeal to the Rent Control Tribunal which was the appellate Authority. The Tribunal held that no appeal lay from the aforesaid order of the Controller u/s 38(1) of the Delhi Rent Control Act, 1958. and on that basis it dismissed the appeal. The High Court agreed with this decision of the Tribunal. Later on, the tenant took up the matter by special leave to the Supreme Court and before the Supreme Court he relied upon Section 38(1) of the Delhi Rent Control Act, 1958. which read:

"An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette."

He contended that the expression "every order of the Controller" passed under that section included the order passed by the Controller refusing to appoint a commissioner also, and hence, the appeal was competent. Dealing with that question, this is what the Supreme Court said:

"The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1). the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37. such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it affects some right or liability of any party."

5. In the second case also Bant Singh Gill Vs. Shanti Devi and Others, . the Supreme Court approved the principle laid down in the Central Bank of India Vs. Shri Gokal Chand, referred to above.

6. An order on an interlocutory application allowing amendment under the Act. cannot, therefore, be construed as one which affects the rights and liabilities of the parties. It is only an interlocutory order, the correctness of which can be questioned in an appeal against the final decision in the main case. If the argument of the landladies is to be accepted, then an appeal would lie from every order passed in the case even though it does not affect the rights and liabilities of the parties finally. We do not think that this was the intention of the Legislature as observed by the Supreme Court in the Central Bank of India Vs. Shri Gokal Chand, referred to above. We are, therefore, of the opinion that no appeal lies from such interlocutory orders which do not affect the rights and liabilities of the parties as such; therefore, a revision petition is maintainable u/s 115 of the Civil Procedure Code. In appropriate cases, the High Court may interfere with interlocutory orders in revision. That does not mean that the tenants in this case, who are the petitioners before us, can succeed on the merits of the case. It is open to them to raise all grounds of objections including the grounds which they have raised now against the order allowing the amendment, in the appeal which may be filed against the final order to be passed in the main application.

7. In the result, we accept the view taken by Malimath, J. in his order of reference, but dismiss this revision petition on merits.

8. No costs.