

(1952) 07 KL CK 0035

In the High Court Of Kerala

Case No : Second Appeals No. 506 of 1951

Govindan Parameswaran Padanayar

APPELLANT

Vs

Kunjan Padmanabhan Nair and Others

RESPONDENT

Date of Decision : 24-07-1952

Acts Referred:

Citation : AIR 1952 Ker 385

Hon'ble Judges : Joseph Vithayathil, J

Bench : Single Bench

Advocate : T.K. Narayana Pillai and D. Narayanan Potti, for the Appellant; P. Narayana Pillai, for the Respondent

Judgement

Vithayathil, J.—The decree-holder is the Appellant in this second appeal. The appeal relates to an order in execution. The decree is for recovery of, possession of property with arrears of rent. When the decree-holder applied for delivery of possession of property and for realisation of arrears of rent Defendant 1 filed an objection in which it was contended that delivery of possession of property should be stayed under the Holdings Stay of Execution Proceedings Act (Act 8 of 1950), that the amount claimed in the execution petition was more than what was due under the decree and that the rate at which paddy and hay were valued was excessive. The execution Court stayed delivery of possession of property but disallowed the other objections raised by Defendant 1. In the appeal filed by Defendant 1 from this order the District Court accepted the, objection of Defendant 1 regarding the amount payable under the decree. With regard to the price of paddy it was held that the nirak rate that prevailed on the date of the first execution petition, namely, 21-7-1117, was the rate that, should be adopted for valuing future rent. The decree-holder contended that the rate that prevailed on the date of the execution petition filed on 8-3-1125 after the passing of the appellate decree was the rate at which paddy should be valued. With regard to the price of hay, the lower appellate Court adopted the rate¹ fixed, in the lease deed, namely, eight annas per bundle. The cross-appeal filed by the decree-

holder impeaching the order disallowing delivery of possession of property was dismissed.

2. In this second appeal the grounds urged on behalf of the decree-holder relate to the price of/paddy and of hay, although other ground also were taken in the appeal memorandum. With regard to the price of paddy these decision reported in - "Neelamma Palni Achi v. Suppu Konar Sankar Konar" 1948 Trav ICR 1003 (A) applies to the case. The appellate decree in this case did not set aside the trial Court's decree but only modified it with Regard to the date from which mesne profits should be calculated. The decree that is executed is that of the Munsiff's Court. The first execution petition was filed on 21-7-1117 before the date of the District Court decree which was on 6-12-1120. According to the Full Bench ruling in - "Mathunni v. Kocheppan" 1948 Trav LR 110 (B) the price of paddy in respect of future rent and mesne profits has to" be calculated on the basis of the rate prevailing on the date of the first execution petition. That was the basis that was adopted in - "1948 Trav LR 1003" (A). In that case the first execution petition was on 27-1-1118. The appellate decree was passed on 6-1-1120. The subsequent execution petition was on 11-6-1122. It was held that the rate that prevailed on 27-1-1118 should be adopted for calculating the price of paddy. I, therefore, agree with the lower appellate Court in allowing the objection of Defendant 1 on this point.

3. With regard to the price of hay the lower appellate Court fixed eight annas per bundle which is the price fixed in the lease deed and in the decree. But under the decree that price applies only to the 200 bundles of hay decreed towards arrears of rent. With regard to hay to be paid towards future rent no price is fixed in the decree. It is only stated that 28 bundles of hay should be paid a year. Therefore, in respect of hay to be paid towards future rent the price of hay that prevailed on the date of the first execution petition, namely, 21-7-1117; has to be adopted. The execution Court will determine this price. Subject to this modification the judgment and decree of the lower appellate Court are confirmed and the second appeal is dismissed with costs.