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(1969) 10 KL CK 0014

In the High Court Of Kerala

Case No : Second Appeal No. 1036 of 1965

Krishna Pillai Narayana Pillai APPELLANT

Vs

Kutti Amma Panki Amma RESPONDENT

Date of Decision : 21-10-1969

Acts Referred:
Kerala Land Reforms Act, 1963 — Section 12(1), 13(1)

Citation : AIR 1970 Ker 270

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K. Velayudhan Nair, V.S. Moothath, M.C. Sen, T.K.M. Unnithan and N.R.K. Nair, for the Appellant; K.N. Narayana Kaimal, for the Respondent

Final Decision : Allowed

Judgement

Krishnamoorthy Iyer, J.—A decree for redemption of Ext. Dl dated 24-4-1085 and for recovery of possession of the plaint schedule properties was passed on 12-6-1959. After the passing of Act I of 1964 the 4th defendant contended that Ext. Dl is a transaction which will attract the benefits of Act 1 of 1964 and claimed fixity of tenure u/s 13 of the said Act. The claim of the 4th defendant was allowed by the learned Munsiff. But on appeal the learned District Judge of Allepey disallowed the claim for the reason that in view of the decree overruling the plea of the 4th defendant that Ext. Dl is not redeemable he is debarred from raising the contention in execution. The correctness of this view is challenged before us in the second appeal.

2. The learned appellate Judge has not expressed any opinion on the nature of Ext. Dl. His view is based on the decision of one of us sitting single in Kuriau v. Chacko 1965 Ker LT 453. The said decision was based on the wording of Section 12(1) of Act 1 of 1964 particularly because of the absence of the expression decree" or ""judgment" in the non obstante clause in that Section. The substantive right under Act 1 of 1961 is conferred by Section 13 thereof and the non obstante clause therein enables a tenant as defined therein to claim rights

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notwithstanding anything in any decree obtained for recovery of possession of the holding. Section 12(1) is only an enabling provision in the matter of adducing evidence for establishing the substantive right granted by Section 13(1) of Act 1 of 1964. The scope of Section 13 was not brought to the notice of the Court when 1965 KLT 453 was decided. This decision was distinguished in Varghese v. Thomas 1966 KLT 595 and we are of the view that the scope of Section 12(1) of Act I of 1964 has been correctly decided in 1966 KLT 595 and we follow the same. The decision of the appellate Judge cannot therefore be sustained. We set aside that decision and direct him to take back the appeal to his file and dispose of the same on the merits after ascertaining the nature of the transaction in Ext. Dl. The second appeal is thus allowed. We make no order as to costs.

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