

(1991) 03 KL CK 0045
In the High Court Of Kerala
Case No : Q.P. No. 11506 of 1990

Kunhammed and others

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 2, 101

Citation : (1991) 2 KLJ 52

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; A.B. Molly (Govt. Pleader) and Pulikool Aboobacker, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Petitioners in this Original Petition seek a writ of mandamus directing the second respondent to give a copy of the order already passed by it on 16-7-1990 and also for a writ or direction restraining the second respondent from proceeding with the re-hearing of R. C. 10 of 1989. The case of the petitioners is that R. C. 10 of 1989 was argued before Mr. V. V. Balan, Special Tahsildar (LR) and Land Tribunal, Perambra on 6-7-1990, 11-7-1990 and 16-7-1990 and the case was posted for orders, that they came to know on 18-7-1990 that Mr. Balan was transferred, that on knowing about it they went to the Land Tribunal and ascertained whether he had pronounced the judgment in R. C. 10 of 1989 and that they came to know that the judgment had already been signed and passed by Mr. Balan. Petitioners stated that they applied for a certified copy of the order and so far they have not received it. They received Ext. P1 notice informing that the case is posted for fresh arguments on 12-12-1990.

2. Contention of the petitioners is that the order in R. C. 10 of 1989 was written and signed by Mr. Balan and so his successor ought to have pronounced it and should not have attempted to re-hear the case.

3. Second respondent filed counter affidavit stating that Mr. V. V. Balan, the former Special Tahsildar has returned the case file with his findings to his office only on 19-9-1990 and as the judgment showed date 16-7-1990 it was not proper or fair in pronouncing the order with previous date and the case was posted fresh arguments.

4. Petitioners applied to get a carbon copy of the order on 16-7-1990. As no order was passed on 16-7-1990, it is sheer impossibility to issue a carbon copy of the non - existing order. As the former Land Tribunal has not signed the order, the only thing that could be done was to re-hear the matter. It was only for that purpose Ext.P1 notice was issued to the petitioners intimating the date of hearing of R. C. 10 of 1989.

5. Learned counsel for the petitioners referred to Order 20 Rule 2 C. P. C. which states that a judge shall pronounce a judgment written but not pronounced by his predecessor. Learned counsel for the respondents pointed out that Order 20 Rule 2 is not made specifically applicable to proceedings before the Land Tribunal and so it cannot have any application. Section 101 of the Kerala Land Reforms Act empowers the Land Tribunal to have the powers of a civil Court in respect of certain specified matters. It includes summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavit, issuing commissions for the examination of witnesses or for local investigation and any other matter which may be prescribed. Rule 92 (1) of the Tenancy Rules provides that the Land Tribunal shall have the power to issues commissions, grant injunctions, appoint receivers and make during the pendency of the proceedings such other interlocutory orders as may appear to the Land Tribunal to be just and necessary to meet the ends of justice. Rule 92 (2) gives the Land Tribunal the power to allow amendments - of petitions or applications made before it or sent to it for disposal, in accordance with the procedure laid down under the Civil Procedure Code. Under Rule 92 (3) Land Tribunal is also vested with the power to add as parties the legal representatives of a deceased party. Thus, from Section 101 and Rule 92 it can be seen that the powers conferred on the Land Tribunal are not all the powers of a civil Court under the CPC but only limited powers. That being the position, it cannot be said that Order 20 Rule 2 C. P. C. can have any application to the proceeding: before the Land Tribunal. Contention of the petitioners that the order in R. C. 10 of 1989 prepared by Mr. V v. Bilan could have been pronounced by his successor invoking Order 20 Rule 2 C. P. C. is not tenable as the Land Tribunal is not vested with such power There is no merit in the contention that Ext. P1 is liable to be quashed. Equally there is no merit in the contention that the second respondent should be restrained from proceeding with the re-hearing of R. C. 10 of 1989.

The Original Petition is dismissed with no order as to costs.