

(1961) 06 KL CK 0008

In the High Court Of Kerala

Case No : O.P. 738 and 751 of 1959 and 228/60

Kunhiraman and Others

APPELLANT

Vs

Kunhi Kanaran and Others

RESPONDENT

Date of Decision : 12-06-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) KLJ 1083

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer, K.N. Sambasivan in O.P. 738/59 and V.M.B. Menon in O.P. 751/59 and 228/60, for the Appellant; V.K.K. Menon, C.S. Padmanabha Iyer, M. Ramachandran for Respondent No. 1 in O. P. 738/59, A. Achuthan Nambiar, T.P. Kelu Nambiar for 2nd Respondent in O.P. 751/59, V.R. Krishna Iyer, R. Krishnaswamy for 1st Respondent in O.P. 228/60 and Government Pleader for 4th Respondent in O.P. 738/59, 1st Respondent in O.P. 751/59 and 3rd Respondent in O.P. 228/60 in O.P. 751/59, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—These are three petitions under Article 226 of the Constitution, in which, one of the questions pertaining to jurisdiction is common and which may therefore be disposed of by this judgment, although the parties in them are different. In each of these cases, one of the claimants to a tenancy right, invoked the jurisdiction of the Tahsildar against his rival claimant, u/s 7A of the Kerala Stay of Eviction Proceedings Act, 1957, Act I of 1957, as amended by the Kerala Stay of Eviction Proceedings (Amendment) Act, 1958, Act XXX of 1958, the landlord being no party to the dispute or to the proceeding. Before the Tahsildar, the opposing party in each case, objected to his jurisdiction to act u/s 7A in a dispute between rival claimants to the tenancy, but he overruled the objection. Though Act I of 1957, as amended, has now been repealed by the Kerala Agrarian Relations Act, 1960, Act IV of 1961, the orders impugned having been passed by the Tahsildar u/s 7A, and being in force, these petitions have been

filled to quash them. u/s 7A, the dispute must of course relate to the right to cultivate the land. The jurisdictional objection was that such dispute must be between the landlord on the one hand and the tenant on the other, but that a dispute which is solely between persons setting up rival claims to the tenancy, is outside the purview of the section. The plain reading of section 7A(1) does not lend support to this objection, for it only reads:

Any person claiming to be in possession and cultivating u/s 4 or claiming to be entitled to cultivate any land u/s 6 or Section 7, if prevented or obstructed from cultivating the land, may apply to the Tahsildar of the Taluk in which the land is situate for an order that he is so entitled.

Sections 6 and 7 of Act I of 1957 to which reference is made in the above are not germane to the present case. It can hardly be disputed, that the parties in each case who set up a right in each to cultivate the land, fulfilled the character of "any person claiming to be in possession and cultivating u/s 4" referred to above. What is more important still is that it is not provided, that the prevention or obstruction to the cultivation must be by the landlord, which, if it were so, would have clinched the issue. Nor does any question of ouster of the normal jurisdiction of a civil court arise, as all that is done, is to provide a machinery for securing an interim and a speedy remedy, subject to the remedy which may be obtained through the Civil Court in due course of law. On a matter of construction of Section 7A, I find it extremely difficult to restrict the scope of the dispute, to one arising between a landlord and his tenant.

2. But it was argued, that the object underlying Act I of 1957, as disclosed by its preamble, which is "to take immediate action to provide for the temporary protection of tenants....." must control the interpretation of the section. The argument is no doubt attractive, but seems inconclusive, and in any event, not sufficient for overriding the plain meaning of the section. The argument, which assumes, that a provision for speedy adjudication of a dispute between tenants inter se, as to the right to cultivate or to be in possession, is one which operates more for the protection of the landlord than of a tenant as against his landlord, and therefore cannot fall strictly within the purview of the object aforesaid, seems to ignore the important consideration, even if the assumption is justified, that in a legislation designed to promote the tenants' interests and to afford protection to them as against landlords, such incidental safeguards to landlords, who have been deprived though temporarily of their right of eviction but are still interested in knowing who is in possession and has the right to cultivate their lands, would not be out of place. Alternatively, even if the object is construed to be to regulate the rights of landlords and tenants inter se, a provision which brings about the above result, may still fit very well into the scheme. No conclusive argument is available to the petitioners from the terms of Section 7B of Act I of 1957 as amended, in which also the language employed is general, for it reads:

Where any Court has passed an interim order of injunction without giving notice

to the opposite party and thereupon the opposite party enters appearance disputing the possession of the plaintiff and offering to adduce evidence to prove his possession or his right to cultivate the land u/s 6 or Section 7, the injunction order shall stand vacated pending final orders on the application for injunction.

There is nothing in the opening part of this Section to limit it to a landlord who has secured an order of injunction, for it is difficult to conceive of a person who is in possession, as a landlord. However, it is unnecessary to interpret Section 7B in these cases, and I desist from doing so. It is sufficient for me to hold that the objection to the jurisdiction cannot be sustained. In O. P. 738 of 1959 no other point was pressed. In O. P. 751 of 1959 I am not satisfied, that the reliance by the Tahsildar, more on boundaries than on other details of description, constitutes an error of law apparent on the face of the record. In O. P. 228 of 1960 the objection now taken, that a prevention or obstruction to cultivation having been alleged in the petition before the Tahsildar, he had no jurisdiction to proceed u/s 7A, was not taken before him and I decline to entertain it. The result is, that these original petitions are dismissed with costs.