
(1987) 12 KL CK 0002
In the High Court Of Kerala
Case No : C.R.P. No. 724 of 1985

Madhavi Parvathy Varasiar and others	APPELLANT
Vs	
Sulaiman and another	RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11

Citation : (1988) 1 KLJ 114

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : S. Rama Warriar, for the Appellant; S.R. Dayananda Prabhu and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Padmanabhan, J.—The person in possession of the land in which there is a homestead or hut in the occupation of a kudikidappukaran is referred to as the land-holder in the Kerala Land Reforms Act. u/s 75(1) of the Act, the kudikidappukaran is given a restricted fixity or immunity from eviction subject to certain conditions. He is given certain restricted rights and easements. Subject to certain conditions, he is given the right u/s 80 A to purchase the kudikidappu and sec. 80B provides for the procedure. When once he purchases the kudikidappu, his restricted rights mature into full ownership. Thereafter, he cannot be evicted by anybody. Till then one of the restrictions imposed on his rights, of which alone we are concerned in this case, is the right given to the land-holder u/s 75(2). He can require the kudikidappukaran to shift to a new site belonging to him if he bona fide requires the land.

(a) for constructing a building for his own residence or for the residence of any member of his family including major sons and daughters; or

(b) for purposes in connection with a town planning scheme approved by the competent authority; or

(c) for any industrial purpose and then complying with the following conditions:

(i) that he pays the price of the homestead, if any, erected by the kudikidappukaran.

(ii) that a new site fit for erecting a homestead and within one kilometer from the existing kudikidappu is offered,

(iii) that the new site is having the specified area

(iv) and that he transfers ownership and possession of the new site to the kudikidappu and pays reasonable cost of shifting to the new site.

On satisfaction of these requirements and compliance of the conditions including demand, the kudikidappukaran is bound to shift. If he does not do so section 75(4) read with section 77 gives the land-holder the right to apply before the Land Tribunal for shifting. In this revision filed by the land-holders the main question for consideration is whether the land-holders can go on filing any number of such applications or whether the principles governing, the rule of res judicata embodied in section 11 C.P.C. will restrict such unfettered rights.

In 1971, the revision petitioners filed such an application on the ground of bona fide requirement for the construction of a building for their residence. That requirement was accepted, but the application happened to be dismissed in 1972 since they failed to pay the shifting charges, Again in 1976, they filed a second application on the same grounds. This time, the bona fide requirement itself was found against on the merits by the Land Tribunal and Appellate Authority and the application and appeal were dismissed. While the revision against that order was pending before this Court they filed the present application, O.A. 97 of 1978, on the same requirement with the only difference that the new site offered is different. Thereafter, the revision was dismissed as not pressed. Both the Land Tribunal and the Appellate Authority rejected the prayer on the ground of non-maintainability applying the principle of res judicata. Hence they come up in revision.

2. A Full Bench of this Court in *Koran v. Karan Shetty* (1977 KLT 358) said:

The principle of finality or conclusiveness of a prior decision or the general principle of resjudicata is applicable even to quasi judicial bodies like the Land Tribunals functioning under the Kerala Land Reforms Act. On principle it appears to us that this should be so, as these Tribunals are invested with the task of deciding important rights and have to do so on principles of natural justice and fair play. In these circumstances the rules of res judicata are applicable to them.

But that decision did not consider the question whether the rule of "might and ought" embodied in Explanation IV to Section 11 of the CPC can be regarded as part of the general rule of res judicata and whether it can have application to proceedings before these Tribunals, on the ground that it did not directly arise for consideration. The question whether an order u/s 72 B rejecting an application

filed by the tenant to purchase the landlord's right will operate as res judicata making a reference u/s 125 (3) in a subsequent civil litigation unnecessary came up for consideration before another Full Bench in Govindan Gopalan Raman Gopalan (1978 KLT 315). That decision said that even in suits, decisions made by quasi judicial Tribunals can be res judicata based on general principles provided such Tribunals-had the jurisdiction to decide the issues involved and it is not necessary that the Court or Tribunal deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter.

3. Both these decisions referred to cases where the Land Tribunal decided either purchase of kudikidappu by kudikidappukaran or purchase of landlord's right by tenant involving decisions on the respective rights. But a question may arise that in an application u/s 75(4) read with section 77 no decision of such a right is necessary, and what is involved is only a need based requirement for shifting not affecting the rights of anybody. I do not think that such distinction is of any consequence. The relationship of land-bolder and kudkidappukaran and their conflicting rights as well as the right of one to continue and the right of the other for shifting based on certain requirements and conditions are involved in such cases also and these matters will have to be decided between them in such an application as well. The only difference is that in some cases under different circumstances and new requirements unconnected with the earlier one, the dismissal of a previous application may not be a bar to a second application on the principle of res judicata. That is because of the difference in the cause of action. The cause of action for the requirement u/s 75(2) entitling shifting may be recurring and sometimes entirely new. The three bona fide requirements contemplated in section 75(2) may arise at different times in different contexts and under different circumstances and requirements. As held by the Supreme Court in 1982 (1) R.C.J. 499 the requirement must exist on the date of action and continue throughout the progress of the litigation and must exist on the date of decision also. In M.M. Quasim Vs. Manohar Lal Sharma and others, the Supreme Court said that when a co-owner, who obtained an order for eviction on the ground of bona fide requirement, lost his interest in the property subsequently by partition, the appellate authority can take note of this subsequent event to deny relief. It is difficult to attribute a permanent bar in all cases to raise the ground of bona fide need in a subsequent proceeding when once it was rejected in a former proceeding. In considering almost identical provisions in Section 11 of the Rent Control Act read with the bar contained in section 15 thereof, two Single Judges of this Court held so in 1986 KLT 109 and 513.

4. A need for construction of a residential building for one's own residence or for the residence of a member of the family might not have been there when an earlier application was filed and dismissed. At a later time such a bona fide need on account of some contingency may arise, say by the holder losing his other properties or by a member of the family getting married and requiring separate

residence. Likewise bona fide requirements under Clauses (b) or (c) also could arise later. The requirement is not static and it is relative also. Everything depends upon the cause of action. When circumstances and needs continue the same, cause of action also may be the same and an earlier decision may bar a subsequent action. But when cause of action becomes different on account of new bona fide needs and requirements, the matter is for independent consideration and not to be decided on the principle of resjudicata. But even in such cases, findings on disputed questions like jural relationship and status may continue to bind the parties and operate as a bar on the principle of resjudicata. When bona fide requirement is found and the application was dismissed for non-compliance of one or more of the conditions along then also a subsequent application may be barred on the same cause of action. Cause of action for shifting will be complete only when the conditions are also fulfilled. If a person who suffers a dismissal of his applications by willful omission to comply with any condition is allowed to file successive applications on the same cause of action without any change of requirements and circumstances that may amount to harassment. Not only on the same cause of action without any change of circumstances and requirement alone a second application will be barred. Cause of action involving the claims available at the time of the earlier application, but omitted to the pleaded will bar a second application not only on the principle of Order 2 Rule 2 Civil Procedure Code, but also on the principle of constructive res judicata embodied in Explanation IV to Section 11 Civil Procedure Code. In other words, the question will be whether the aground was in the region of availability when the earlier application was filed and not only whether it was alleged and disallowed. Any ground that might and ought to have been taken, if omitted, will be taken as alleged and disallowed.

5. A single Judge of this Court in *Thomas v. Punnoose* (1973 KLT 1000) held that the principles of res judicata embodied in section 11C. P. C. are not applicable to proceedings under the Land Reforms Act. (1975 KLT 406) is the decision in appeal there from. The Division Bench sustained that decision not on the ground that principles of res judicata are not applicable, but only on the ground that a bona fide requirement which did not exist on a previous occasion may well crop up on a subsequent one and hence a plea of res judicata in the broad and unqualified form in which it has been raised could not be sustained. A subsequent single Bench decision in *Kunhappa Nair v. Suresh Kumar* (1984 KLT 330) considered these decisions and the Full Bench decision in 1977 KLT 358 (*Koran's case*) and said that in view of the decision in *Koran's case* the decision in *Thomas case* (1975 KLT 406) ceased to be good law and principles of res judicata will apply even in an application for shifting. But the principles laid down in *Thomas v. Punnose* (1975 KLT 406) was not held bad law by the Full Bench in *Koran's case* (1977 KLT 358). *Thomas' case* (1975 KLT 406) only said that res judicata in the broad and unqualified form is not applicable. That rule was not interfered by the Full Bench. A discussion of these aspects is now unnecessary because of the Supreme Court decisions holding that general principles of res

judicata and even the principle of constructive res judicata is applicable in decisions of quasi judicial tribunals provided it was with jurisdiction. Further section 108 A of the Kerala Land Reforms Act introduced on 7-7-79 by amendment has now made the provisions of sec. 11 C.P.C. applicable as far as may be. That means res judicata is now applicable to the extent it could be applied.

6. Res judicata involves the principle of estoppel which is a rule of evidence. It is the broader rule of evidence which prohibits the reassertion of a cause of action. The basis of every action is the cause of action which alone enables the action to be brought before Court. A cause of action that is brought before Court and results in a decision thereby loses its identity and validity as the cause of action merges in the judgment or order. Thereafter, it has no independent existence as the cause of action, whether all facts constituting that cause of action is presented before Court for decision or not. Thereafter the remedy or relief is only based on the judgment or order. When the decision becomes unenforceable the relief based on the cause of action is also lost. This rule is based on the finality and conclusiveness of decisions as a matter of public policy in the interest of the community at large and to protect individual interests also from multiplicity of litigations. A second decision for the same cause of action is impermissible. Otherwise it will lead to conflicting decisions on the same cause of action by equally competent authorities leading to harassment and multiplicity of actions at the hands of cantankerous litigants and the administration of justice itself will be put to contempt and disrepute. The cause of action cannot thus survive the decision of Court on the basis of what is stated above which is known as the general principles of res judicata (see State of U.P. Vs. Nawab Hussain,).

7. Now it is well established that on the question of res judicata section 11 C.P.C. is not exhaustive. Section II itself provides that the bar is not confined to issues which the Court is asked to decide. It also covers issues or facts which are so clearly part of the subject matter and could have been raised but not raised. If such issues in the same cause of action are allowed to be raised in a subsequent litigation it will amount to opening flood gates to miscreants for abusing the process of Courts by successive litigations on the same cause of action when one fails. If on the same set of facts more than one cause of action are there, all of them should be put together and not separately. That is necessary for subduing a cantankerous litigant by the bar of res judicata from successive actions. This is constructive resjudicata which is an aspect or amplification of the general principle provided under Explanation IV.

8. Section 11 C.P.C. is applicable as such only to Civil proceedings for which C.P.C. or Sec. 11 is made applicable. But that question does not now arise in as much as the provisions of Sec. 11 C.P.C. as far as may be, is made applicable to proceedings under the Kerala Land Reforms Act by Sec. 108A introduced by amendment. Ever without that amendment, on account of the object and purpose of Sec. 11, the Supreme Court by a series of decisions extended

applicability of the principles embodying Sec.11 to be applicable to other areas also. In *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, it was held that though the rule of constructive res judicata is in a sense a somewhat technical or artificial rule prescribed by the Civil Procedure Code, it is founded on considerations of public policy and private justice and if it is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds. Explaining the earlier decisions it was held that the principle of res judicata is applicable to writ petition also. In *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, the law laid down was that the provisions of Section 11 Civil Procedure Code are not exhaustive with respect to an earlier decision in a proceeding operating as res judicata in a subsequent suit with respect to the same matter inter partes and do not preclude the application of the rule to regular suits on the general principles of res judicata based on public policy and applied from ancient times. Finally it was said that it is unnecessary that the Court deciding the matter formerly must be competent to decide the subsequent suit or that the former, proceeding and the subsequent suit must have the same subject matter or same nature. Reviewing all the previous decision *State of U.P. Vs. Nawab Hussain*, made the position abundantly clear that irrespective of the subject matter, nature of the proceeding or competency to entertain the subsequent suit, the decisions in the former proceedings will operate as res judicata, provided it is rendered with jurisdiction, on the principles laid down in Section 11 Civil Procedure Code. Explanation VIII to Section 11 has now practically accepted this position.

9. The two Full Benches of the Kerala High Court categorically made the principles of res judicata applicable to proceedings under Kerala Land Reforms Act. The reasons for application of the principle of constructive res judicata is there with equal force in such proceedings also. A land-holder who approaches the Court for the relief u/s 75(4) read with section 77 must allege and establish all then available grounds u/s 15 (2) and comply with all the conditions. Any failure will meet with the consequences of the bar and a fresh application will be maintainable only on a new cause of action available u/s 75(2) which was not there when the earlier application was filed. When such an application is filed on a new cause of action the failure of the earlier action for non-compliance of the conditions in the earlier application by itself may not operate as a bar. Anyhow, these are matters for consideration on the facts on each case depending on bona fides. In this case earlier application which was dismissed on the merits and the present application are on the same grounds on the same cause of action. The question of constructive res judicata itself is therefore not there. The fact that a different new site is offered will not make any new cause of action. No new circumstance was also alleged. Therefore this is a case in which the principle underlying section 11 CPC is squarely applicable. Further this application itself was filed during the pendency of the earlier application at the stage of revision before this Court. They could have pursued their remedies there. Such an application is an abuse of the process of Court. The Land Tribunal and the

appellate authority were correct in dismissing the application as not maintainable. Otherwise it amount to harassment by successive applications on the same cause of action.

The Civil Revision Petition is therefore dismissed with costs.