

(1988) 03 KL CK 0004
In the High Court Of Kerala
Case No : S.A. No. 382 of 1980

Parvathy Bhagini and Others

APPELLANT

Vs

Kesavan Velukutty and Others

RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 132(3)(c)
Malabar Tenancy Act, 1929 — Section 53(3)

Citation : (1988) 1 KLJ 692

Hon'ble Judges : U.L. Bhat, J;K.G. Balakrishnan, J

Bench : Division Bench

Advocate : K. Sudhakaran and U.K. Raveendran, for the Appellant; V. Vyasan Poti and N. Sugathan, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan, J.—The Kerala Land Reforms Act (Act 1 of 1964 as amended by Act 35 of 1969) brought about comprehensive land reforms in the State. As per section 72 of the Act all right, title and interest of the landowners and intermediaries in respect of the holding held by cultivating tenants (including holders of kudiyruppus and holders of karaimas) entitled to fixity of tenure subject to certain exceptions, vest in the Government free from all encumbrances. Section 72B of the Act enables the cultivating tenant to purchase the landlord's right, title and interest vested in the Government. Section 17 of the Act allowed a small holder to resume from his tenant a portion of the holding not exceeding a half. "Small holder" is defined u/s 2 (52) of the Act. Procedure for resumption has been prescribed u/s 22 of the Act. For resumption the landlord shall apply to the Land Tribunal within whose jurisdiction the land is situate. Section 132 of the Act deals with repeal and savings u/s 132 (3) (c) in respect of the pending proceedings the civil court also has been given power to deal with the application for resumption. The question that arises for consideration is whether the civil court or the Land Tribunal is the competent forum for allowing resumption. Before the learned single Judge, the learned

counsel to the appellant contended that section 132 (3) (c) may not be applicable to the instant case and the civil court has no jurisdiction. The learned Single Judge entertains doubt regarding the correctness of the Division Bench decision in *Balandra Panicker v. Ibrayil* ILR (1978 (1) Ker. 293) for the reason that the attention of the court was not drawn to the non-obstante clause in section 132 (2) of the Act. Therefore the matter has been referred to the Division Bench. The brief facts of the case are as follows: Defendants 2, 3, 4, 6, 8, 9, 10 and 13 are appellants. The suit was originally tiled for redemption of an otti kuzhikanom. The plaint schedule property originally belonged to one K. Padmanabhan. He executed an otti-kuzhikanom on 1-5-1089 in favour of one Ummini. Subsequently, Govindan, the husband of the first defendant and father of defendants 2 to 14 got assignment of the mortgage. This mortgage right devolved on defendants 1 to 14 after the death of Govindan. There was a partition in the Jenmi tarvad in 1094 among the legal heirs of Padmanabhan. Plaint property was allotted to his children Thaivani, Kochappi, Pachi and Valley. The 2nd plaintiff is the senior most member of the branch of Pachi and the first plaintiff is the senior most member of the branch of Valley. These two plaintiffs filed O. S. 579/1115 for redemption. The suit was decreed, but the decree was not executed. Thereafter the present suit was filed for redemption of the otti-kuzhikanom. The plaintiffs alter natively contended that in case the redemption cannot be allowed, they may be allowed to resume half of the property, The defendants contested the suit by claiming fixity of tenure. They also alleged that they had effected improvements in the property. The trial court held that the defendants have fixity of tenure and the plaintiffs being small holders are entitled to get resumption of half of the plaint schedule property on deposit of proportionate mortgage amount. The defendants filed appeal and the appeal also was dismissed. Hence this second appeal.

2. The finding that the plaintiffs are small holders is not disputed. It is also not disputed that the defendants are tenants in respect of the plaint schedule property by virtue of the inclusive definition of section 2(57) of the Land Reforms Act. The trial court as well as the lower appellate court held that the civil court has jurisdiction to entertain the application for resumption. However, the argument now advanced by the learned counsel for the appellant is that section 132(3) (c) of the Land Reforms Act does not empower the civil court to entertain an application for resumption and that provision does not apply to any suit of this nature.

3. In three earlier decisions of Division Bench this Court, Viz. *Subramanian v. Kunjamma* in 1983 KLT 351, *Kalliani Amma v. Kerala Varma Thirumulpad* 1985 KLT 777 and *Balachandra Panicker v. Ibrayil* and another in (1978 (1) ILR 293) held that civil court has jurisdiction. The main contention urged before us is that the attention of the court was not drawn to the commencing words contained in section 132 (3) i.e. "notwithstanding the repeal of the enactments mentioned in sub section (2)""while deciding the question.

4. Section 132 of the Act deals with repeal and savings. As per sub-section 2 of section 132 four enactments were repealed. They are: (i) The Cochin Verumpattamdars Act, VIII of 1118.

(ii) The Travancore-Cochin Prevention of Eviction of Kudikidappukars Act, 1955.

(iii) The Malabar Tenancy Act, 1929.

(iv) The Madras Cultivating Tenants (Payment of Fair Rant) Act, 1956.

Section 132(3) says that notwithstanding the repeal of the enactments mentioned in sub-section (2) certain proceedings pending before the Tribunal or civil court have to be disposed of in accordance with the provisions of the Land Reforms Act. We are mainly concerned with section 132 (3) (c) (i) which reads:-

(c) (i) Where the decree-holder, plaintiff, appellant or petitioner, as the case may be, is a person entitled to resumption of land under "his Act he shall have the right to apply to the court to allow resumption of the holding or any part thereof to which he is entitled;

The argument of the learned counsel for the appellants is that section 132 (3) (c) (i) is to be read along with the "non obstante" clause in sub-section (3) of section 132 and the civil court will get jurisdiction to entertain an application for resumption only if the same is consequential to the repeal of the four enactments mentioned in sub-section (2) of section 132. We are unable to accept this contention. Of course section 132 (3) (a) and (b) may have some connection with the repealing of the four enactments. Section 132 (3) (a) deals with a situation where a decree for eviction has been passed in any of the proceedings under the four repealed enactments. This clause empowers the court to reopen the matter and dispose of the same in accordance with the provisions of Act 1 of 1954 as amended by Act 39 of 1969. Section 132 (3) (b) deals with a restoration application filed under sections 24 and 26 or sub-section (3) of section 53 of the Malabar Tenancy Act, 1929 or any application for fixation of fair rent under the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956, and this clause empowers the court to dispose of the matter under the new provision. However, under clause (c) (i) of section 132 (3) of the Act it is not likely that any application would be pending at the commencement of Act I of 1964 or at the commencement of the amended Act, viz. Act 35 of 1969, The four enactments mentioned in section 132 (2) do not contain any provision for resumption. In Cochin Verumpattamdars Act and in the Malabar Tenancy, Act, 1929 there were certain provisions for eviction of the tenant on fulfillment of certain conditions. The right of resumption of one half of the holding does not find a place in any of the four repealed enactments. Therefore, the non obstante clause in section 132 (3) has not got much significance in interpreting section 132(3) (c) (i). Section 132(3) (c) (i) makes it clear that the civil court has jurisdiction to entertain an application for resumption in a matter pending before the court.

This question arose for consideration in Balachandra Panicky v. Ibrayil and

another (I.L.R. 1978 (1) Ker 293). There the plaintiff-appellant filed suit for redemption and recovery of possession of plaint schedule property which had been mortgaged to defendants. A decree for redemption was passed in 1953. The decree-holder filed execution petition for delivery of possession. However, execution petition remained stayed under the T. C. Act VIII of 1950. Even though the order of the executing court staying proceedings under T. C. Act VIII of 1950 was later set aside by the Sub Court and confirmed by the District Court, the judgment-debtor filed second appeal and this Court allowed the same. However the execution petition remained stayed (vide Kerala Act 1/57). Meanwhile Act 4 of 1961 was passed and the statutory stay under Act 1 of 1957 stood lifted. The decree-holder again filed execution petition for recovery of possession of the property. Consequent on the coming into force of Act 1 of 1964 the decree-holder filed application for resumption of one half of the decree schedule property. That application was dismissed by the executing court holding that it had no jurisdiction to entertain an application. This was upheld by the District Court and in the second appeal the matter was considered by the Division Bench of this Court. This Court held:

It seems to be clear that the intention of the Legislature in enacting clause (c) of sub-section 3 of section 132 was to make a departure from the procedural scheme contained in section 17 of the Act that ordinarily applications for resumption are to be filed by small holders before the Land Tribunal. An exception has been made by the Legislature in respect of cases where proceedings were already pending between the concerned parties before competent civil courts whether by way of suit or appeal or proceeding in execution of decrees. In such cases clause (c) of section 132 (3) confers a right on the decree-holder, plaintiff, appellant or petitioner, as the case may be, to apply to the court to allow resumption of the holding or any part thereof to which he is entitled. The resulting position is that in cases, such as the present one, where an application for recovery of possession in execution is pending before the executing court, the decree-holder in case he happens to be a person entitled to the relief of resumption u/s 17 of the Act, is entitled to move the executing court for the grant of such relief. Sub-clause (ii) of clause (c) states that such an application shall be made within one year from the commencement of this Act and the particulars should be incorporated therein. Sub-clause (iii) authorises the court to deal with and dispose of the application as if it were one for resumption filed before the Land Tribunal under the Act. It is therefore manifest that the court before which the suit, appeal or proceeding in execution stood pending at the time of commencement of the Act is competent to entertain an application for resumption by virtue of the specific provision contained in clause (c) (i) and to dispose it of in accordance with the provisions contained in section 17 of the Act.

Another Division Bench of this Court also considered the scheme of section 132 (3) (c) of the Kerala Land Reforms Act in the decision, Subramanian v. Kujamma reported in 1983 KLT 351 and held:

It is true that S- 22 of the Act provides that an application for resumption should be made to the Land Tribunal having jurisdiction But S. 132 (3) (c) is an exception to S. 22. S. 132(3)(c) therefore, clearly enables persons described therein to apply to the court itself to allow resumption if he is entitled to resumption of land under the Act. Sub-clause (iii) authorises the court to dispose of the application as if it is an application for resumption before the Tribunal.

So the question whether civil court has jurisdiction to entertain an application for resumption of holding has been settled by the various decisions of the Division Bench of this Court. We are in respectful agreement with the views expressed in (1) Subramanian v. Kunjamma, 1983 KLT 351 (2) Balachandra Panicker v. Ibrayil, ILR 1978 (1) 293 and (3) Kalliani Amma v. Kerala Varma Thirumulpad, 1985 KLT 777.

The Second Appeal is without any merit and the same is dismissed. No costs.