

(1964) 07 KL CK 0045
In the High Court Of Kerala
Case No : C.R.P.No. 753 of 1963

Sankara Bhatta

APPELLANT

Vs

Ramayya Shetty

RESPONDENT

Date of Decision : 09-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Kerala Tenants And Kudikidappukars Protection Act, 1963 — Section 4(vi)

Citation : (1964) KLJ 983

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : N. Sundara Iyer, V.R. Venkitakrishnan, P.R. Balachandran, for the Appellant; T.S. Venkiteswara Iyer, R.C. Plappilly, for the Respondent

Judgement

Vaidialingam, J.—In this revision Mr. P.R. Balachandran, learned counsel for the debtor-petitioner, challenges the order of the learned Subordinate Judge, Kasaragod overruling the objections made by his client in execution proceedings taken by the decree-holder. The decree itself was in respect of arrears of rent for two years--1959 and 1960. It is seen that the petitioner appears to have deposited certain amounts towards the claim of the plaintiff and after obtaining decree, the plaintiff in execution applied for payment out of those amounts to him.

2. The judgment-debtor namely, the petitioner, raised objection on the ground that he is entitled to the benefits of Kerala Act 7 of 1963 and therefore the entire amount should not be paid over to the landlord.

3. The executing court has gone into this aspect and has ultimately come to the conclusion that in this case section 4 (vi) of Kerala Act 7 of 1963 will apply and therefore when that provision applies, the petitioner will not be entitled to the protection given under the Act because the Act itself will not apply.

4. The particular provision that is referred to above relates to tenancy in respect

of land or buildings or both created by persons holding only life interest or other limited interest in the land or in both.

5. It is the view of the executing court that the landlord in this case holds only a life interest and therefore by virtue of section 4(vi), the Act itself cannot apply to such lease granted by such persons and therefore over-ruled the objections of the petitioner.

6. Mr. P.R. Balachandran, learned counsel for the petitioner urged that the views expressed by the executing court that the revisions of section 4 (vi) applied to the particular tenancy in question is erroneous.

7. Mr. T.S. Venkiteswara Iyer has raised the preliminary objection to the maintainability of this C.R.P. apart from contesting the proceedings on merits also. The learned counsel quite naturally relied upon the decision of the Privy Council in (1947) L.R. 74 I.A. 264 (Privy Council) which has also been followed by this Court in the decision reported in Subramania Nadar v. Purushotam Ramjee (1959 K.L.R. 233) to the effect that inasmuch as these proceedings, though under a special statute, arise out of orders passed in execution of decree, the proper remedy available to an aggrieved person is not to come to this Court u/s 115, C.P.C. but to file a regular appeal before the competent authority.

8. The learned counsel also urged on the merits that the views expressed by the trial court that his client must be considered to be holding only a life interest in the property in question is also correct.

9. So far as the preliminary objection is concerned, there seems to be considerable force in that objection that is raised by the learned counsel for the respondent. Even apart from that, in my view, the views expressed by the trial court were really on the basis of the provisions contained in Section 4 (vi) of the Act and when protection was claimed on the basis of the Act it was perfectly competent for that court to consider the question as to whether the particular lease in respect of which a claim is made under the Act, has taken out the provisions of that Act. It is in that contest that the trial court had to consider that question. As to whether that view expressed by the trial court that the landlord in this case must be considered to be a person holding only a life interest is correct or not also need not be considered by this Court because the statute itself is no longer in force and the question is purely academic. Therefore, this C.R.P. is rejected; but I make it clear that if the petitioner is entitled to any relief under the provisions of Kerala Act I of 1964, it is open to him to take proceedings to obtain that relief. But when any such application is filed, objections that may be raised by the decree-holder will also be properly considered by the Court. The revision fails and is dismissed. Parties will bear their own costs.