
(1987) 12 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 3205 of 1982

State of Kerala

APPELLANT

Vs

Joseph Abraham and Others

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (1988) 1 KLJ 87

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; T.H. Abdul Azeez and P.K. Balasubramoniu, for the Respondent

Final Decision : Allowed

Judgement

S. Padmanabhan, J.—First respondent is the assessee in T. L. B. 1160/K.T.D of the Taluk Land Board, Kuttanad. Originally by order dated 30-11-1976 the ceiling case was dropped on the ground that the assessee has no excess land. That was by excluding 17 acres 20 cents covered by three gift deeds of 30-12-1969 from his account as on 1-1-1970. Realising that the exclusion was not legal, the order was re-opened u/s 85(9). Respondents 2 and 3 are the donees and respondents 4 and 5 are the other interested persons. After considering their objections also, the impugned order was passed on 16-11-1981. 12 acres 79 cents covered by two gift deeds, on the basis of which purchase certificates were obtained, were again excluded. Exclusion of 4 acres 30 cents by one gift deed which did not mature into purchase certificate was revoked on the ground that it is not a valid document. After excluding 12 acres 79 cents the land held by the assessee as on 1-1-1970 was taken to be 18 acres 89 cents, out of it, 40 cents was exempted u/s 81 (1) Ceiling limit was fixed at 15 acres. Balance 3 acres 49 cents was ordered to be surrendered. First respondent took up the matter in C. R. P. No. 791 of 1982 impleading the State as the respondent the order was challenged in that revision only on two grounds (I) the re-opening u/s 85 (9) and the rejection of

one gift for 4 acres 30 cents as invalid were not proper, and (2) option was not given to the assessee. Exclusion of 12 acres 79 cents covered by the two gift deeds in favour of respondents 2 and 3 on the basis of which they obtained purchase certificates were not challenged and respondents 2 and 13 were not made parties also. That revision petition was dismissed.

2. The present revision is by the State and the challenge is against the exclusion of 12 acres 79 cents covered by the two gift deeds of 1969 in favour of respondents 2 and 3. On behalf of the third respondent it was argued that "when C. R. P. 791 of 1982 was dismissed it amounts to confirmation of the order of the Taluk Land Board and that the order has thus become merged in the revisional order of this Court. Since the order of the Taluk Land Board is thus not in existence as it was superseded by and merged in the order of this Court, it was pointed out that a further revision against the order of the Taluk Land Board will not lie.

3. In the normal course in a proceeding to which the provisions of the CPC are applicable such an argument may appear sound. Rule 22 of Order 41 CAP'S. provides that any respondent in an appeal, though he may not have appealed from any part of the decree, may only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour. He may also take any cross objection to the decree which he could have taken by way of appeal provided the other conditions laid down in that rule are fulfilled. Cross objection can be even against a finding. It is true that section 102(3) of the Kerala Land Reforms Act authorise the appellate authority under the Kerala Land Reforms Act to exercise all powers which a Court has and follow the same procedure in deciding appeals against decrees under the Civil Procedure. But there is no provision to treat orders passed by the Land Tribunals or Taluk Land Boards as decrees of Civil Courts. What is provided in section 102 (3) is only to confer on the appellate authority the right to exercise the powers and follow the procedure in deciding appeals against decree under the Civil Procedure Code. Section 102 (3) only provides for the procedure to be followed in hearing appeals and it is only in the nature of a direction rather than conferment of a right. There is also no provision that the CPC should govern the proceedings as in suits and appeals before Civil Courts, Provisions of the CPC as such are not by any provision made applicable to proceedings under the Act. The "provision for cross-objection cannot, therefore, apply as in Order 41 Rule 22. An identical question came up for consideration in Thommi Ouseph v. Type Pailt and others (1973 KLT 133) and it was held:

There is no provision in the Kerala Land Reforms Act, 1964 to treat the orders passed by the Land Tribunal as decrees of the civil Court there in also no provision for the CPC to govern the proceedings as suits. The CPC as such is not made applicable to the proceedings under the Act and, therefore it is not applicable to the present case. It follows that the cross objection filed by the respondents is not maintainable.

4. When the order of the Taluk Land Board is challenged in revision only to a limited extent, the revisional court could consider the merits of the order only to the extent it is questioned and not otherwise. When the respondent in the revision is not having the right to challenge the order on other grounds by filing cross-objection or otherwise, the scope of the revision gets limited to consideration on grounds grounds challenged alone. When respondents 2 and 3 were not made parties in the revision, the order in so far as it went in their favour could not have been reversed even otherwise because such an order will not be binding on them. u/s 103 (IA) the party compulsorily to be made a respondent in revision is the state alone. Revision petitioner could not have been compelled by the State or this Court to implead respondents 2 and 3 when he did not want to challenge the order in their favour. In such a situation, the only course open to the court is to consider the order solely in the light of the challenge and the answers thereto. That means the order to the extent it is not challenged is not open to review in revision. The order in such a revision either allowing or dismissing the same could supersede the order of the Taluk Land Board only to the extent it was under challenge and not otherwise. Merger also could be only partial to that extent and the remaining portion of the order, as that of the Taluk Land Board, must be considered to be remaining as it is.

5. Rule 94 of the Tenancy Rules provides two periods of limitation, one for the State and the other for others. State need file revision only within one year whereas others will have to do so within 45 days. Even before the period of limitation for the State to file revision is over, the revision petition filed by some other party could be disposed of. There is no prohibition against such disposal and there is no provision which says that revision filed by other parties should be kept pending for disposal along with the revision to be filed by the State. If the disposal of such revision is having the effect of foreclosing the revision to be filed by the State on the ground of merger or supersession of the order by the revisional order, the right of revision given to the State will become meaningless. Further such a legal position will lead to disastrous consequences in the sense that many orders which will have to be substantially revised in order to enforce the provisions will go beyond judicial review. If these provisions are anomalous it is for the legislature to introduce proper amendments. With the existing provisions it may not be proper to introduce the doctrine of merger or supersession in order to foreclose the right of revision of the State. When a party who could have challenged the entire order chooses, to challenge a portion alone, he must be taken to have accepted and submitted to the remaining portion. He will thereafter be precluded from challenging the balance because piece meal challenge cannot be had. When the Court could consider the order only to the extent it is challenged, such a bar cannot be applied to the Court. A party to the appeal or revision who is entitled to a separate remedy but precluded in resorting to that remedy in that appeal or revision cannot be foreclosed in having the remedy otherwise available to him merely because he was a party to the earlier appeal or revision. Bar depends upon the availability of

the remedy. Similarly when a court, in an appeal or revision, gets jurisdiction only over a portion of the order, the affirmation, modification, cancellation, merger or supersession, could only be regarding that portion and not for the rest over which it did not exercise jurisdiction. Merger or supersession presupposes an opportunity to assent or dissent. Even a legal fiction of assent, dissent, merger or supersession could be had even in the absence of application of mind, only in cases where such application was possible if the Court so wanted.

6. The order of the Taluk Land Board is so far as it accepted validity of the two gift deeds covering 12 acres 79 cents and excluding that area from the account of the assessee as on 1-1-1970 was not at all the subject of challenge in C. R. P. 791 of 1982. Without respondents 2 and 3 on the party array the order to that extent could not have been challenged or interfered. The order dismissing the revision petition could only have the effect of confirming the order to the extent of reopening the earlier, order u/s 85 (9) and rejecting the claim to the extent of 4 acres 30 cents and ordering surrender of 3 acres 49 cents. Merger or supersession is partial to that alone. To that extent alone the State is precluded from challenging the order on account of the dismissal of the earlier revision. In other respects the order of the Taluk Land Board remains virgin and unaffected and open to challenge by the State. The proper course would have been to bring the revision filed by the State also to the notice of the Court and see that both are disposed of together. Anyhow, that did not happen. Such an omission cannot be allowed as a reason to see that right of revision of the State and rectification of errors are jeopardised. What has to be considered here is only what was not the subject matter of the earlier revision and what was not considered there. The two gift deeds regarding 12 acres 79 cents are of 1969. In the normal course, they are documents hit by sec. 84(1). The only reason assigned by the Taluk Land Board to overcome the invalidity is that purchase certificates were obtained and there is nothing on record to prove that the purchase certificates have been obtained by fraud or collusion. In one portion of the order, it is stated that donees were in possession even before the gift deeds. But that statement appears only as the contention of the parties and not as the finding of the Taluk Land Board. The period from when possession originated is not stated and there is nothing in the order to show that there was any gift earlier than the document. Everything depends upon the validity of the documents and not on the purchase certificate. Purchase certificate became necessary only because the subject matter of the gift was only tenancy right. Invalidity of transfers under sec. 84 (1) and other provisions is applicable irrespective of the question whether the subject matter of the transfer is full right or only tenancy right. Ceiling provisions are applicable to tenancy rights also. If the transfer is hit by the invalidating provisions it is immaterial whether what is transferred is full right or only tenancy right. Conclusiveness of the purchase certificates is only subject to errors on the face of the record and proof of fraud or collusion. When the transfer on the basis of which the purchase certificate is obtained is hit by the provisions, those questions and the conclusiveness also will not arise. A transferee under an invalid

document cannot secure his position better by obtaining a purchase certificate. If the transfer is hit by the provisions, the purchase certificate issued without an opportunity to consider that aspect cannot arm the holder with any better right so far as the ceiling provisions are concerned. These aspects were not considered by the Taluk Land Board. So also, it was argued on behalf of the 3rd respondent that the gift deeds were not the sole basis of the purchase certificates and earlier possession was also relied on. Therefore, it may not be proper to dispose of the matter here itself finally. I feel that an opportunity will have to be given to respondents 2 and 3 to substantiate their case.

7. The Civil Revision Petition is allowed and the order of the Taluk Land Board only in so far as it excluded 12 acres 79 cents on the basis of gift deeds and the purchase certificates is hereby set aside and the case remanded to that extent. The order in so far as it rejected the alienation of 4 acres 30 cents and ordered surrender of 3 acres 49 cents will stand. Remand is only for the purpose of considering the question whether on the basis of the two gift deeds and purchase certificates 12 acres 79 cents will have to be excluded from the ceiling limit of the first respondent on 1-1-1970 in the light of what is stated above. For that purpose, parties may be permitted to adduce evidence. If the finding is that the land cannot be excluded the Taluk Land Board will add that extent also to the account of the first respondent and refix the land to be surrendered, giving the right of reoption. In such a contingency, the claim of the alienees to hold lands crediting it to the account of the first respondent also will have to be considered. I make no order as to costs. Office will transmit the records forthwith and parties will appear before the Taluk Land Board on 28-1-1988.