

(1960) 08 KL CK 0012
In the High Court Of Kerala
Case No : O. P. No. 405 of 1959

Thamukutty and Another

APPELLANT

Vs

Athankutty and Another

RESPONDENT

Date of Decision : 10-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 9 Rule 9
Constitution of India, 1950 — Article 227

Citation : (1960) KLJ 1348

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : P.C. Balakrishna Menon, for the Appellant; K.A. Mohammed, A. Rajappan and P.K. Mohammed Hassan For 1st Respondent, for the Respondent

Judgement

Velu Pillai, J.—This petition is by the landlord, and is under Article 227 of the Constitution, to bring up the records in C. M. Appeal 150 of 1957 in the Court of the Subordinate Judge, Kozhikode, for quashing the order passed by him thereon, on December 1, 1958, remanding an application for the fixation of fair rent u/s 16 of the Malabar Tenancy Act, 1929, which may be referred to hereafter as the "Act" for decision afresh by the Rent Court. The first respondent in this petition, who is the tenant, had made a previous application u/s 16 which was dismissed for default; an application made by him for its restoration was also dismissed. He then made a fresh application u/s 16, but the Rent Court, accepting the objection of the petitioner to its maintainability, dismissed the same. The first respondent preferred the C. M. Appeal aforesaid, when the order impugned came to be passed. The learned Subordinate Judge has held, that the second application u/s 16 is maintainable, by reason of the proviso to Section 16 and of Section 20 of the Act. In my opinion, both these grounds, are untenable. The proviso to Section 16 reads:

Provided that such determination shall take effect in respect of any agricultural year, only if the application is made in that year or within three months of the

expiry thereof.

and Section 20 reads:

The fair rent determined by the Rent Court shall not be liable to be revised on the application of the landlord before the expiry of twelve years from the date of the order of the Rent Court, but may for sufficient cause be reduced by the said Court on the application of the tenant.

The object intended to be served by the proviso to Section 16 is to declare, when the determination of fair rent shall take effect, that is, if the application is made in a particular year, the determination shall take effect in respect of that year or within three months of the expiry thereof; it has no other effect. Section 20, which provides for the revision of rent, presupposes as a necessary condition, a prior determination of fair rent by the Rent Court. Obviously, where, as in the present case, there is no such determination no question of revision could arise. The learned Subordinate Judge was therefore in error in acting upon these two provisions for remanding the application.

But in my judgment, the petitioner has to fail for a different reason. There is no specific provision in the Act imposing a bar on a second application in such circumstances. But it was contended by the learned counsel for the petitioner, that the provisions of the CPC being made applicable to "the hearing of an application under this Act" by the Rent Court by Section 15(2) and to "proceedings relating to applications under this Act" by Section 49 of the Act, Order IX, Rule 9, C.P.C. which debars a plaintiff from instituting a subsequent suit on the same cause of action in the event of the dismissal of an application to restore the suit, must similarly preclude a party from making a subsequent application for the fixation of fair rent. The argument was, that, as in the case of a suit, in the case of an application u/s 16 too, there is a cause of action for it, and that a second application can be based only on the same cause of action, as the first. I cannot find my way to agree with this proposition. Under Order VII, Rule 1, C.P.C. the particulars to be contained in the plaint include, by clause (e) thereof, "the facts constituting the cause of action and when it arose", but there is no such prescription in Rule 10 of the Malabar Tenancy (Determination of Fair Rent) Rules, 1954, which was framed in the exercise of the rule-making power u/s 57 of the Act and which lays down, what every application to the Rent Court for the fixation of fair rent should contain; a large number of such particulars are set forth in Rule 10, but cause of action, is not one of them. In my view, the Act has dispensed with the necessity for a cause of action for an application, or at any rate, has not made it a necessary element for an application u/s 16. Whether a cause of action as known to the CPC is at all necessary, to sustain an application u/s 16, itself is doubtful. The learned counsel has urged, that the word "dispute" occurring in the Section does not imply the existence of a cause of action. I am led to think, that it relates merely to the occasion which necessitates an application u/s 16 being made, and does not per se import the existence of a cause of action. Sections 49 and 15(2) of the Act do not enact, that every

provision in the CPC shall be made applicable to proceedings under the Act or in the Rent Court but only those which can be made applicable to them. The words "so far as may be" occurring in these provisions, give a certain elasticity to the procedure to be followed under the Act, rendered necessary, on account of the peculiar nature of the proceedings, as distinguished from suits. I therefore hold, that the provisions of Order IX, Rule 9, C.P.C. cannot be wholly applied to applications u/s 16. If that is so, the petitioner cannot contend, that the dismissal of the application for restoration operates as a bar to the second application u/s 16.

2. In this view, there is no reason to quash the order of remand, which is hereby maintained, though for different reasons. The Rent Court shall proceed with the determination of fair rent u/s 16, pursuant to the order of remand. This petition is disposed of as above; but I make no order as to costs.