

(1971) 08 KL CK 0013
In the High Court Of Kerala
Case No : C.R.P. No. 596 of 1971

Thomas

APPELLANT

Vs

Thomman

RESPONDENT

Date of Decision : 30-08-1971

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 108, 108(3), 32

Citation : (1971) KLJ 751

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Advocate : P.K. Kesavan Nair, for the Appellant; C.S. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

K. Sadasivan, J.—The question concerned in this revision petition is as to the applicability of S. 32 of the Land Reforms Act. The section as amended stands to this effect:-- During the pendency of an application for determination of fair rent before a Land Tribunal, no court shall entertain any suit for eviction of the applicant from the land to which the application relates, or pass any order of injunction prohibiting him from entering the land or pass any order staying the proceedings before the Land Tribunal.

In the case before me the respondent who is the defendant in O.S.20/69 claims tenancy right in respect of the property covered by the suit. According to him he is varamdar of the property. O.A.263/68 was filed by him before the Land Tribunal, Quilon for fixation of fair rent. Thereupon the landlord caused the suit to be filed by his Mukthiar holder against the respondent for injunction. That was resisted by the respondent and the court after hearing both sides rejected the prayer for interim injunction. It was after that that the present suit O.S.20/69 was filed by the landlord for recovery of the plaint schedule property on the strength of title. The respondent, therefore, prayed for stay of the suit under S. 32 of the Act. The landlord's contention is that S. 32 is not applicable, firstly for

the reason that this is a suit for recovery of property from a trespasser; and secondly that it was instituted prior to the amendment of S. 32 by Act 35/69. The contention is not correct. A Full Bench of this Court has held in *Narayanan Nair v. State of Kerala* (1970 KLT 659 FB) that S. 32 is designed to prevent the institution of suit by land-owners as a counter-blast to application by tenants for the determination of fair rent. Such a suit implies that the applicant for determination of fair rent is in possession of the land, and that being so, there is no objection to a suit for eviction being stayed pending disposal of the fair rent application. In the present case, as already stated, the land owner's suit was instituted after the tenant had filed his application for fixation of fair rent. In the first suit, which was one instituted by the land owner's Mukthiar holder at his instance, was withdrawn as he could not succeed in getting a temporary injunction. The civil court found in that case that the tenant was in possession and as such it was improper to issue an injunction against him. After that the present suit was filed. The position is in no way better for the land owner now also. Learned counsel would contend that as the suit was filed before the amendment, the section (S.32) can have no application in the present case. I am unable to accept this contention also. S. 32 is saved by S. 108(3) of the amending Act (Act 35/69). The section reads:--

(3) All suits, applications, appeals, revisions, reviews proceedings in execution of decrees and other proceedings with respect to any matter arising under and provided for by the principal Act, pending before courts, tribunals officers or other authorities at the commencement of this section, shall be disposed of in accordance with the provisions of the principal Act as amended by this Act.

2. Learned counsel argues that this section is inapplicable to the present case since here the subject matter of the suit is not one arising under and provided for by the principal Act. In other words, the argument is that the present suit is one for recovery of possession evicting a trespasser and such a suit is not one in respect of any matter arising under and provided for by the principal Act. I do not think section 108 can so glibly be got over in the present instance. The suit is not one for eviction of a trespasser. Even though the suit is so framed, it is in fact a suit to evict the varamdar whose application for fixation of fair rent is pending before the Land Tribunal. In the eye of the land owner it might appear that he is only a trespasser; but in the eye of law, as it now exists, the matter is one between the land owner and his tenant. I see no force in any of the contention. The order of the court below is confirmed and this revision petition is dismissed.