
(1973) 01 KL CK 0026

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1262 of 1971

Thommen Ouseph

APPELLANT

Vs

Iype Paily and Others

RESPONDENT

Date of Decision : 10-01-1973

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 102, 31

Citation : AIR 1973 Ker 164

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; K.N. Narayanan Nair, for the Respondent

Judgement

K. Bhaskaran, J.—The main question involved in this civil revision petition filed u/s 103 of the Kerala Land Reforms Act. (1 of 1964) (hereinafter referred to as the Act), is whether the parties to proceedings for fixation of fair rent before the Land Tribunal are in terms of Section 102 of the Act, entitled to file cross-examination in an appeal filed by the opposite side.

2. The revision petitioner filed an application u/s 31 of the Act for fixation of fair rent of the holding alleged to have been held by him under the respondents. The respondents filed a joint statement before the Land Tribunal contending, inter alia, that the lease was for lemon grass cultivation and that no improvement was effected by the revision petitioner on the land. Subsequently an additional statement was filed to contend that the revision petitioner was a licensee, not a lessee, and, therefore, by virtue of Section 3 (3) of the Act, fair rent could not be fixed. After going into the matter elaborately, the Land Tribunal, mainly relying on the previous judgments, which according to it would operate as res iudicata, found that the petitioner was the cultivator tenant of the land. No appeal was filed by the respondents, but the revision petitioner filed an appeal disputing the Quantum of fair rent fixed. It is in this appeal that the respondents herein filed a cross-objection objecting to the maintainability of the petition before the

Land Tribunal, contending that the revision petitioner was not a lessee, but only a licensee. The appellate authority dismissed the appeal filed by the revision petitioner and allowed the cross-objection filed by the respondents herein. It is the correctness of this order that is being challenged in this revision petition.

3. It is contended by Sri K. S. Sebastian, the learned counsel for the revision petitioner, that the cross-objection filed by the respondents herein was not maintainable for two reasons:

(1) What was being challenged by the respondents herein by the cross-objection was the correctness of the finding on the question as to whether the revision petitioner had fixity of tenure to entitle him to apply for fixation of fair rent: which virtually was an order u/s 13 of the Act which is not made appealable u/s 102 of the Act.

(2) In terms of Section 102 the parties are not given any right to file a cross-objection.

4. As for the first ground. I do not think there is much force in the contention. The revision petitioner filed the petition for fixation of fair rent only u/s 31 of the Act. The order passed by the Land Tribunal also is in exercise of the powers vested in it u/s 31 of the Act. It may be that incidental to the question of determining fair rent the preliminary question whether the revision petitioner was a cultivating tenant entitled to apply for fixation of fair rent also might have arisen for consideration. Such consideration incidental to the determination of the main question cannot be considered to be an order passed u/s 13 of the Act. The order fixing fair rent or refusing to fix fair rent is passed, and also is purported to be passed, u/s 31 of the Act, and that order is made appealable u/s 102 of the Act. The contention of the learned counsel for the revision petitioner that the order passed by the Land Tribunal, inasmuch as it involves a decision on the question of fixity of tenure also, should be presumed to be an order u/s 13 of the Act and, therefore, the respondents herein had no right of appeal against such a decision and consequently, had no right to file a cross-objection also, applying the analogy contained in Order 41. Rule 22 of the Code of Civil Procedure, cannot be accepted,

5. Now we have to consider the second question. Sub-section (1) of Section 102 of the Act provides for appeals from orders passed by the Land Tribunal under certain provisions of the Act, and Section 31 is one of the sections the order under which is made appealable under that section. The appeal is to be filed within the prescribed time. Subsection (3) of the section reads as follows :--

"In deciding appeals under Sub-section (1) the appellate authority shall exercise all the powers which a Court has and follow the same procedure which a Court follows in deciding appeals against the decree of an original Court under the Code of Civil Procedure, 1908;"

The contention of the learned counsel for the revision petitioner is that sub-

section (3) only provides for the procedure to be followed in hearing the appeal and is in the nature of a direction to the Court rather than a conferment of right on the parties. It is contended that the right to file appeal is contained in subsection (1), which is silent about the right to file a cross-objection. Subsection (3) does not speak about any cross-objection. It only prescribes the procedure to be followed in hearing the appeal.

6. However, Sri K. N. Narayanan Nair, the learned counsel appearing for the respondent herein, contends that the provisions contained in Subsection (3) of Section 102 of the Act clothes the appellate authority with power to entertain a cross-objection inasmuch as it has got all the powers analogous to the powers of a Civil Court under Order 41. Rule 22. Civil P. C., which, inter alia, provides for cross-objection. Rule 22 of Order 41. Civil P. C. reads as follows:--

"22. Upon hearing respondent may object to decree as if he had preferred separate appeal. -- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."

The contention of Sri. K. N. Narayanan Nair is that in terms of sub-section (3) of Section 102 of the Act, the appellate authority has all the powers of a Civil Court, the procedure prescribed to be followed while hearing the appeal is as that of an appeal against the decree of an original Court under the Code of Civil Procedure, and that therefore even in the absence of specific mention about the right to cross-objection the party has got such a right as an implied one. In support of this contention the learned counsel has placed reliance on the decisions in *Alagappa v. Chockalingam*, AIR 1919 Mad 784 AIR 1940 292 (Nagpur); AIR 1943 38 (Oudh); *Ramasray Singh and Others Vs. Bibhisana Sinha and Others*, and *Bhadurmal Vs. Bizaatunnisa Begum and Others*, The provisions considered in these decisions are not similar to what is contained in Sub-section (3) of Section 102 of the Act. The decision of the Full Bench of the Madras High Court in AIR 1919 Mad 784 related to the application of the provisions contained in the Provincial Insolvency Act, 1907. regarding the right of appeal u/s 46 of the Provincial Act (1907). every party to the insolvency proceedings was given the substantial right of appeal just as every party aggrieved is given a right of appeal under Sections 98, 97 and 100, Civil P. C. Section 47(I) of the Provincial Insolvency Act (1907) had provided that, subject to the provisions of the said Act, the provincial Insolvency Court in regard to proceedings under the said Act had the same powers and had to follow the same procedure as it had and followed in the exercise of original civil jurisdiction, thus making the provisions of the CPC clearly applicable, as far as might be to original proceedings under the said Act Subsection (2) of the same section directed the High Court and District

Courts to follow the same procedure in regard to proceedings under the said Act in Courts subordinate to them as the High Court and the District Courts followed in regard to Civil Courts. It could, therefore, be seen that the CPC was applicable to all proceedings, including appeals and cross-objections. under the Provincial Insolvency Act (1907). This is not so with respect to proceedings under the Act (Kerala Land Reforms Act), and this distinction has to be borne in mind while construing the relevant provisions of the respective Acts.

7. The decision reported in AIR 1940 292 (Nagpur) also related to the procedure to be followed in appeals under the provisions of the Provincial Insolvency Act (Section 5 of Act V of 1920). In AIR 1943 38 (Oudh) it was Section 45 of the U. P. Encumbered Estates Act that came up for interpretation. Rule 6 of the Rules framed u/s 14 of the said Act, as it stood amended, reads as follows:-

"6. Proceedings under this Act shall be governed "by the provisions of the Civil Procedure Code. 1908. for the time toeing in force, so far as they are applicable and not inconsistent with the provisions of the Act and of these rules,"

Previously the Rule read as follows:--

"6. The proceedings In the Court of the Special Judge will be governed by the following provisions of the CPC of 1908. so far as they are applicable and not inconsistent with the provisions of the Act and these rules."

Construing the amended provisions, the Division Bench of the Oudh High Court held that-

"The amended rule in our opinion is much wider in scope and must be construed to mean that the whole of the CPC has been made applicable to the proceedings under the Act unless those provisions are inconsistent -with the provisions of the U. F. Encumbered Estates Act and of the rules foamed thereunder."

This is not a case where the CPC has been made applicable as such to the entire proceedings before the Land Tribunal and. therefore the decision rendered by the Oudh "High Court referred to above cannot be applied to this case.

8. In Ramasray Singh and Others Vs. Bibhisan Sinha and Others, a Division Bench of the Calcutta High Court had to consider the scope of Section 38 oi the Bengal Monev-lenders Act 1940 Sub-section (3) of Section 38 of the Bengal Money-lenders Act reads as follows:--

"A Proceedmg under this section snail be deemed to be a suit for the purpose of Section 11. Civil P C. 1908 and a declaration under this section shall be sublet to appeal, if any as if it were a decree of the Court and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed 3n appeal" Under the provisions of the Bengal Money-lenders Act a declaration u/s 38 shall be subject to appeal, if. any. as if it were a decree of the Court and the proceeding shall be deemed to be a suit: and this makes all the difference between that provision in the said Act on the one hand, and the

provision contained in sub-section (3) of Section 102 of the Act (Kerala Land Reforms Act) on the other. In the Act (Kerala Land Reforms Act) there is no provision to treat the orders passed by the Land Tribunal as decrees of the Civil Court; there is also no provision for the CPC to govern the proceedings before the Land Tribunal or to deem the proceedings as suits. Therefore, the decision of the Calcutta High Court referred to above also cannot be applied to the present case.

9. The only other decision cited before me is the one reported *Sh Bhadurmal Vs. Bizaatunnisa Begum and Others*, The Andhra High Court had to consider the scope of Sections 47 to 49 of the Settlement Act. (Act 12 of 1952). The contention in that case was that, though u/s 51 of the above Act the provisions of the CPC apply to all proceedings under Chapter III of the said Act (save as otherwise expressly provided in, the said Act), since Sections 47 to 49 provide only for on appeal, it must be deemed that the provisions of the Civil P. C. which deal with the filing of cross-objections are specifically excluded. Repelling this contention the Division Bench held as follows:--

"What Section 51 provides is for the application of the provisions of the CPC to all proceedings under Chapter III, unless some other procedure is prescribed with respect to any particular matter. The provisions of Sections 47 to 49 deal with appeals and Court-fees and grounds of appeal and in so far as this provision is concerned, it must be deemed that the provisions of the CPC in respect thereof are (sic not?) applicable. But that does not prevent the application of Order 41. Rule 22 which provides for objections to the decree or award, as if he had preferred a separate appeal. Having regard to the general scope of the application of the provisions of CPC u/s 51. we cannot accept the argument of the learned Advocate for the appellant that Order 41, Rule 22 does not apply to a case of appeal filed u/s 47." There is clear distinction between the provisions contained in Sections 47 to 49 and 51 of the Hyderabad Jagirdars Debt Settlement Act on the one hand, and the provisions contained in the Act (Kerala Land Reforms Act) sought to be applied to the case on hand on the other. In the case considered by the Andhra Pradesh High Court. Section 51 provided for the application of the provisions of the CPC to "all proceedings under Chapter III of the said Act The CPC as such is not made applicable to the proceedings under the Act (Kerala Land Reforms Act) and. therefore, it is not applicable to the present case.

10. If the respondents had filed an appeal with a petition to condone delay under Sub-section (2) of Section 102 of the Act. different considerations might have arisen. However, that question does not arise here inasmuch as the respondents have not chosen to adopt that course.

11. Upholding the preliminary objection that cross-objection filed by the respondents is not maintainable. I allow this revision, set aside the judgment of the appellate authority and send back the records to that authority to consider and dispose of the revision petitioner's appeal on merit.