

(1964) 07 KL CK 0013
In the High Court Of Kerala
Case No : S.A. No. 1258 of 1962

Vamanan Nambudiri

APPELLANT

Vs

Narayana Kurup and Others

RESPONDENT

Date of Decision : 13-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 2(2), 47
Land Acquisition Act, 1894 — Section 30

Citation : (1964) KLJ 865

Hon'ble Judges : M.S. Menon, C.J; S. Velu Pillai, J; M. Madhavan Nair, J

Bench : Full Bench

Advocate : A. Achuthan Nambiar and T.P. Kelu Nambiar, for the Appellant; K.P. Ramunni Menon For Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C. J.

1. The appellant in this second appeal was the plaintiff in O.S. No. 890 of 1942 of the court of the Munsiff of Badagara. In that suit he sought and obtained the recovery of possession of an item of property under the Malabar Tenancy Act, 1929. The suit was decreed on 13-9-1943, and possession was taken from the respondents on 23-10-1943. After the passing of the Malabar Tenancy (Amendment) Act, 1956, the respondents applied for a restoration of possession by an application u/s 5(2) of that enactment, I.A. No. 101 of 1957 in O.S. No. 890 of 1942.

2. The application was allowed and the appellant before us filed A.S. No. 352 of 1959 of the court of the Subordinate Judge of Badagara. That appeal did not succeed. It was dismissed on the ground that no appeal was available from a decision in an application u/s 5(2) of the Malabar Tenancy (Amendment) Act, 1956. This second appeal challenges the correctness of that decision.

3. The sole question for determination in the second appeal is whether an appeal

is available from a decision directing a restoration of possession in an application u/s 5(2) of the Malabar Tenancy Amendment Act, 1956. In other words the question for determination is whether such a decision will constitute a decree as defined in section 2(2) of the Code of Civil Procedure, 1908, that is, whether it embodies "the formal expression of an adjudication which, so far as the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

4. Section 5(2) of the Malabar Tenancy (Amendment) Act, 1956, reads as follows:

Where before the commencement of the Malabar Tenancy (Amendment) Act, 1954 (Madras Act VII of 1954), a landlord has obtained possession of a holding in execution of a decree passed by a Court on or after the 1st July 1942 under clause (5) or clause (6) of section 14 or under clause (5) or clause (6) of section 20 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), and such decree would not have been passed if the principal Act as amended by the Malabar Tenancy (Second Amendment) Act, 1945 (Madras Act XXIV of 1945), the Malabar Tenancy (Amendment) Act, 1951 (Madras Act XXXIII of 1951), and this Act had been in force at that time the tenant shall be entitled to be restored to the possession of the holding with all the rights and subject to all the liabilities of a tenant if he makes an application in that behalf in the Court which passed the decree within twelve months of the commencement of this Act:

Provided that before such restoration is effected, the tenant shall be bound to return to the landlord, (i) the value, if any, paid by the landlord to the tenant or his improvements, (ii) the kanartham, if any, and (iii) the value of improvements, if any, effected bona fide by the landlord, between the date on which he obtained possession of the holding and the date on which possession thereof is restored to the tenant.

It is quite possible to say that the application contemplated by the subsection is a proceeding in the suit itself in which the dispossession was decreed and that the adjudication on such an application constitutes, in substance and in effect, the final adjudication of a matter in controversy in that suit, namely, the question as to whether the landlord was entitled to recover the possession of his property from his tenant. In this view the adjudication on I.A. No. 101 of 1957 in O.S. No. 890 of 1942 will be a decree as defined in Section 2(2) of the Code of Civil Procedure, 1908, and it should follow that A.S. No. 352 of 1959 before the Subordinate Judge was competent and that this second appeal should be allowed and the learned judge directed to hear and dispose of the appeal on its merits.

5. Madhavan Nair J. has taken the view that an appeal from a decision in an application u/s 5(2) of the Malabar Tenancy (Amendment) Act, 1956, is competent and Velu Pillai J. that it is not. The very fact that two eminent Judges, trained in the same legal discipline and familiar with the nuances of Indian legislation, have come to divergent conclusion is itself an indication that the section, at any rate, should be considered as ambiguous in its wording. And in

such a case where the words are not clear enough to be coercive, the canon of construction is that the ambiguity should be resolved in favour of the right to an appeal rather than against it. As stated by Sutherland:

Statutes giving the right of appeal are liberally construed in furtherance of justice, and an interpretation which will work a forfeiture of that right is not favoured." (Statutory Construction, 3rd Edition, Volume 3, Paragraph 6807).

6. To the same effect is *Samidorai Thennavarayar v Vaithilinga Thennavarayar* (A.I.R.1964 Mad. 314) wherein Jagadisan J. said that a provision for an appeal should be read "with a liberality which would favour an appeal being preferred rather than with the stringency that would defeat it". This canon of construction is no more than a part of the general principle which Maxwell states as follows:

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles, should, in all cases of doubtful significance be presumed to be the true one." (Interpretation of Statutes, 11th Edition. Page 183).

7. I agree with Madhavan Nair J. that a right of appeal against a decision in an application u/s 5(2) of the Malabar Tenancy (Amendment) Act, 1956, does exist, that the decisions in *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) in so far as it relates to the adducing of evidence in support of, or against, such an application and in *Choyikutty v Vasu* (1962 K.L.J. 517) in so far as it negatives the right of an appeal against a decision in such an application are both wrongly decided, that this second appeal should be allowed with costs and that the Subordinate Judge of Badagara should hear and dispose of A.S. No. 352 of 1959 on its merits.

Madhavan Nair, J.--

8. The appellant had obtained a decree in O.S. No. 890 of 1942 on the file of the Munsif, Badagara, for resumption of property demised, with respondents 1 and 2, who were sub-lessees in possession, also on the array of the defendants. That decree is dated September 13, 1943. In execution the appellant took possession of the property on October 23, 1943.

9. The Malabar Tenancy (Amendment) Act (Madras Act XXII of 1956), which came to force on October 27, 1956, in its section 5(2) provided:

Where before the commencement of the Malabar Tenancy (Amendment) Act, 1954 (Madras Act VII of 1954), a landlord has obtained possession of a holding in execution of a decree passed by a court on or after the 1st July 1942 under clause (5) or clause (6) of section 14 or under clause (5) or clause (6) of section 20 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), and such decree would not have been passed if the principal Act as amended by the Malabar Tenancy (Second Amendment) Act, 1945 (Madras Act XXIV of 1945), the Malabar Tenancy (Amendment) Act, 1951 (Madras Act XXXIII of 1951), and this Act had

been in force at that time the tenant shall be entitled to be restored to the possession of the holding with all the rights and subject to all the liabilities of a tenant if he makes an application in that behalf in the Court which passed the decree within twelve months of the commencement of this Act:

Provided that before such restoration is effected, the tenant shall be bound to turn to the landlord, (i) the value, if any, paid by the landlord to the tenant for his improvements, (ii) the kanartham, if any, and (iii) the value of improvements, if any, effected bona fide by the landlord, between the date on which he obtained possession of the holding and the date on which possession thereof is restored to the tenant.

On January 28, 1957, the respondents 1 and 2 filed an application (I.A. No. 101 of 1957 in O.S. No. 890 of 1942) for restoration of the property to them on the ground that the decree for their eviction would not have been passed in the Suit if the Malabar Tenancy Act as amended in 1945 and 1951 had been in force then. That application has been allowed by the Munsif. The appellant preferred an appeal before the Subordinate Judge, Badagara, who dismissed it as incompetent, relying on the decision of Raman Nayar J. in Choyikutty v Vasu (1962 K.L.J. 517). In this second appeal the appellant canvasses the correctness of that decision.

10. Though Choyikutty v Vasu (1962 K.L.J. 517) concerned an order u/s 52(1) of the Malabar Tenancy (Amendment) Act, XXXIII of 1951, the Subordinate Judge applied the dicta therein to the instant case as "the language of Section 52(1) of Act XXXIII of 1951 is practically the same as the language of Section 5(2) of Act XXII of 1956"; and he was right in that. The provision in the Act XXXIII of 1951 was thus:

52. (1) Where before the commencement of this Act, a landlord in the district of Malabar has obtained possession of a holding in execution of a decree passed by a Court on or after the 1st July 1942, under clause (5) or clause (6) of section 14 or under clause (5) or clause (6) of section 20 of the said Act and such decree would not have been passed if this Act had been in force at the time, the tenant shall be entitled to be restored to the possession of the holding with all the rights and subject to all the liabilities of a tenant, if he makes an application in that behalf to the Court which passed the decree within twelve months from the commencement of this Act:

Provided that before such restoration is effected, the tenant shall be bound to return to the landlord (i) the value, if any, paid by the landlord to the tenant for his improvements, (ii) the kanartham, if any, and (iii) the value of the improvements, if any effected bona fide by the landlord between the date on which he obtained possession of the holding and the date on which possession thereof is restored to the tenant.

11. In Choyikutty v Vasu (1962 K.L.J. 517) the nature of an order under the aforesaid sections is described thus:

The question then is whether the order can be said to be an adjudication with regard to any matter in controversy in the suit. I do not think it can, since, obviously, an application u/s 52 of Act XXXIII of 1951 is not a suit.....Nor can it be said that the order is an adjudication in the suit for eviction. That suit is no longer pending, and an order u/s 52 of Act XXXIII of 1951 does not in any way reopen the decree therein and make a fresh adjudication. The application under the section is a proceeding entirely independent of the suit for which the decree in the suit only provides a cause of action.

But the learned Judge has held in *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) that it is not open in a proceeding of the kind concerned here "to amend the pleadings and adduce fresh evidence", but "the court has to decide on the material already on record", and has followed that decision in *Choyitkutty v Vasu* (1962 K.L.J. 517). To me that observation appears to contradict the view expressed in the above quote. A judicial adjudication has to be based on pleadings and evidence. If the basis of an adjudication be the pleadings and evidence in the suit and no other, that adjudication must necessarily be a proceeding in the suit itself.

12. That the new law has to be applied to the old pleadings and evidence in the suit has no support in any expression in the Act, and, being opposed to the fundamental principles of natural justice, can not be assumed. It would, if accepted, be condemning the landlord without giving him any opportunity to be heard before he is dispossessed of property.

On an application u/s 5(2) of the Act, XXII of 1956 what the court is required to do is to investigate whether the decree for eviction would have been passed if the Malabar Tenancy Act as amended by the Acts XXIV of 1945, XXXIII of 1951 and XXII of 1956 had been in force at that time; and if the conclusion thereon be in the negative, to pass an order for restoration of the holding to the tenant. The enquiry is obviously a reconsideration of the landlord's claim to evict the tenants in the light of the amendments in the tenancy law made long after the passing of the decree. If at the end of the enquiry the court finds that the decree for eviction is justified even under the amended law, it has to dismiss the application; but if it concludes that the decree for eviction is not justified under the amended law, it has to declare so, and, without affecting the determination of other questions, if any, in the case, order restoration of possession to the tenant, subject of course to the condition mentioned in the section. I think that the order in the latter case amounts to a decree, as it adjudicates the controversy between the parties to the possession of the land concerned, which is a material issue in the suit. The insistence that the application u/s 5 (2) is to be made "in the court which passed the decree" lends support to that conclusion.

13. It is contended strenuously for the respondent-tenants that the adjudication on an application u/s 5(2) of Act XXII of 1956 is only an order not amounting to a decree. I do not find much force in that contention. The decree is defined in the CPC as "the formal expression of an adjudication which, so far as regards the

court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit". One of the matters in controversy in the suit, O.S. No. 890 of 1942, was the appellant's right to resume the land from the respondents. No doubt, it was adjudicated in what was called a decree dated September 13, 1943; and that was considered by all concerned to be a conclusive determination of that matter. But the legislature by the enactment of Act XXII of 1956 has declared the same not to be a conclusive determination and directed the court to determine afresh if it is not in conformity with the law as been amended subsequent to the decree. That in effect in my opinion, is a quashing of the old "decree" found inconsistent with the later law and directing the court to adjudicate afresh on the matter conclusively. Unless an adjudication on a matter in controversy in the suit is a "conclusive determination," so far as that court is concerned the adjudication cannot satisfy the definition of a decree; and conversely that alone will be a decree in the suit which is a conclusive determination in the court expressing it. I hold that the conclusive determination of the landlord's right to evict the tenants from the property is in the decision on the application u/s 5(2) of Act XXII of 1956 whenever "the old decree" is found un-sustainable under the amended law (as has been the case here); and that that decision being, or amounting to, a decree in the suit is appealable as such. That the Act has not said so in so many words is immaterial if its effect is that and that only.

14. Exts. A1, A2 and A3 are copies of the plaint, judgment and decree in the suit (O.S. No. 890 of 1942). They show that the appellant had claimed resumption of the land as "required for his own cultivation", and that claim was accepted by the court which passed the decree on September 13, 1943. The relevant provision of the Malabar Tenancy Act as it stood then and as amended subsequently by the Acts XXIV of 1945 and XXXIII of 1951 are as follow:

No suit for eviction of a cultivating verumpattamdar from his holding shall lie at the instance of his landlord except on the following grounds :--

(5) that, at the end of an agricultural year, the landlord requires the holding bona fide for his own cultivation or for that of any member of his family or tarwad or tavazhi who has a proprietary and beneficial interest therein.

(5) that, at the end of an agricultural year, the landlord needs the holding bona fide for the purpose of raising crops or other produce for his own maintenance or for that of any member of his tarwad, tavazhi, illom, kutumba, kavaru or family, who has a proprietary and beneficial interest in the holding.

In 1942, when the suit was instituted, or in 1943, when it was decreed, the landlord desiring to evict the tenants and to resume the land had only to convince the court that he really intended to cultivate the land directly. That the appellant had done in this case. The law was not then concerned with the purpose of his intended cultivation; nor, as has been held by Leach C.J., with the concurrence of Chandrasekhara Ayyar J. in *Narikkal Chathan v Kesavan*

Namboodiri (A.I.R. 1942 Mad. 242 (2)), with his having other land under direct cultivation to meet the needs of himself and his family. The appellant cannot therefore be blamed for not pleading that he needed the property for raising crops for his maintenance even if that, in fact, was the case with him. It was by the amendments introduced in the Act in 1945 and 1951 that the landlord's right to resume land for his own cultivation came to be limited to cases of bona fide need to raise crops for the maintenance of himself and/or his family. It became then necessary to ascertain whether the case of the appellant came within that restricted provision or not, though his suit has been closed long ago.

In *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188), Raman Nayar J. has expressed the view:

Section 5 (2) does not take the matter to any point of time anterior to the passing of the decree, and raises no question as to whether if the law even earlier had been what it is now, the plaintiff would have framed his plaint differently, or, whether the court would have allowed him, after the closing of the case, to amend his pleadings and to adduce further evidence to show that he was entitled to possession. It seems to me that all that the court has to decide u/s 5 (2) is whether, on the material already on record, but applying the new law, it would still have passed the old decree.

I feel compelled to differ respectfully from the above dictum. Before 1945, as already mentioned, the law in Malabar did not limit the landlord's right to resume property for direct cultivation to cases of absolute need, but generously allowed it whenever it was claimed. No party can be expected to overstep the current law and plead or prove facts irrelevant under the law in force at the time. The appellant had won his suit by making out the requisite fact that he needed the land for his direct cultivation. That might or might not be to meet the primary needs of maintenance of himself or his family. At the time of his suit it was quite unnecessary for him to specify why he wanted resumption of the property. It became necessary to do so after thirteen years of the closure of his action because of amendments made in the tenancy law in the meanwhile. As he cannot be expected to have forestalled legislations that came years after and particularized facts and circumstances irrelevant and unnecessary under the law of the time, he has to be given an opportunity now to plead and prove the particular need for the resumption sued for as he is sought to be put out of possession of the property under the later law. If the time of promulgation of the amended law is to be projected back to the date of the suit and the claim in the suit is to be re-adjudged in accordance therewith, it is necessary to relegate the parties also to the date of the suit and allow them to put forth their respective cases in full before the court. It is clear from the circumstances detailed above that, without supplemental pleadings and evidence, the court would not be able to decide correctly the claim of either party under the altered conditions of the amended law. The true rule is: When anything is commanded, everything by which it can be accomplished is also commanded. If the court is to decide under

the new conditions it must have before it the pleadings and proof of claims and defences in respect of such new conditions. I am afraid an enquiry otherwise would be a mere farce. The order of the Munsif shows that the appellant prayed for permission to put in supplementary pleadings and to let in additional evidence, but was disallowed. That certainly was wrong. In an enquiry u/s 52 (1) of Act XXXIII of 1951, or u/s 5 (2) of Act XXII of 1956, supplementary pleadings and additional evidence are not only not prohibited, but are essential.

15. The dicta in *Choyikutty v Vasu* (1962 K.L.J. 517) and *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) have therefore to be over-ruled and this second appeal allowed. In the result, the first appeal, found incompetent and therefore dismissed by the Subordinate Judge, has to be remitted to him for disposal de novo on its merits. The appellant has to be paid his costs by respondents 1 and 2.

Judgment accordingly.

Velu Pillai, J.:--I do not agree. Of the two decisions of Mr. Justice Raman Nayar, the correctness of which has been assailed before the full bench, the first, *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) turned on the scope of the enquiry on an application u/s 5 (2) of Act XXII of 1956 and the second, *Choyikutty v Vasu* (1962 K.L.J. 517) on the appealability of the order on a similar application u/s 52 (1) of Act XXXIII of 1951, for restoration of possession to the tenant. I shall first deal with the scope of such enquiry, before dealing with appealability. It may be premised however, that these provisions, though they occur in two enactments, are, so far as the decision of this case is concerned, governed by the same considerations.

17. The issue which arises for determination on an application by the tenant for restoration of possession of the holding is simply, whether the particular decree in execution of which he was dispossessed, would not have been passed if the principal Act, Act XIV of 1930, as amended had been in force at the time, that is, whether, if I may adopt the phraseology of Raman Nayar, J. in *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) "on the new law, the old decree would have been passed." The grounds of the decree in a suit are stated in the judgment, and the judgment, in a suit embodies inter alia, the process of applying the law to the facts of the case as alleged in the pleadings and as found to be proved in relation to the issue raised for trial. What the two Sections now under consideration enjoin to the court before which the application is made, is to apply the principal Act as amended to the same set of facts as had been alleged and proved to secure the decree, and to test whether the decree as passed could still be sustained. If it could not, restoration of possession to the tenant must follow, whatever the decree may have ordained and whatever may have been done under it. In my judgment, the question to decide on the application is not, whether on a fresh set of facts related to the new law as may be alleged and proved, the landlord would not have been entitled to a decree for eviction. The enquiry is not for a fresh adjudication of the landlord's right to

evict the tenant and does not involve a reconsideration of such right. In this, I feel supported by the words of the Sections, "such decree would not have been passed if"; the words are not, say "the landlord would not have been entitled to a decree for eviction if". For these reasons, I am of the view, that no amendment of the original pleadings themselves, no fresh or altered pleadings, or allegations, and no materials save those upon which the decree was based, are contemplated, or are to be permitted, at the enquiry into the application; I see no judicial impropriety in this, understood in relation to the nature and scope of the enquiry.

18. As observed by Raman Nayar, J. in the earlier judgment, "the generally accepted view of the provisions for eviction in the old Act, was, until that view was upset by *Narikkal Chathan v Kesavan Namboodiri* (I.L.R. 1942 Mad. 133) what is said in the present Act; and, obviously, where a landlord had brought a suit in that view and had also succeeded in making out his claim accordingly, the Legislature did not want that there should be a restoration when, even on the materials on record, the decree was in accord with the present law". In this connection, I may observe, that the 1st July 1942, was chosen as the relevant date being, as explained by the Madras High Court in *Kunnathvelli Viswanathan v Kunnambarapoyil Kanaran* (A.I.R. 1956 Mad. 604 at 607), a "rough date after which Courts would be deciding cases in accordance with" the pronouncement in *Narikkal Chathan v Kesavan Namboodiri* (I.L.R. 1942 Mad. 133) which was on the 31st July 1941. The legislature then amended the principal Act, by Act XXIV of 1945, negating the view taken in *Narikkal Chathan's* case and practically restoring the earlier view of Venkataramana Rao J. in S.A. 42 of 1938 of the Madras High Court. There might be some hardship, but only in those cases, in which, relying on the decision in *Narikkal Chathan's* case, landlords were content to plead and prove "bona fide requirement", while they might have proved "primary need" itself, as- factually covered by their allegation. If the landlord was entitled to evict the tenant under the amended Act and yet restoration was ordered, he might well have sued again to enforce his rights, though after the enactment of Act I of 1964 the situation may have changed; but that is a feature which does not bear on the interpretation of the Sections either way. On this part of the case, it is only necessary to add, that the reasons which induced the legislature to adopt this course, have to be sought in its historical background, which has been sketched by Raman Nayar J. in his earlier judgment.

19. I have endeavoured to discuss this aspect of the case at some length not only for the reason that *Narayanan Namboodiri v Madhavi Amma* (1961 K.L.J. 188) has, according to my learned brothers to be over-ruled, but also because the discussion so far, has served, in my opinion, to illustrate how limited in scope is the matter in controversy in an application for restoration of possession, a point which has some relevance in pronouncing upon the appealability of the order on the application.

20. The appealability of such an order, or an adjudication as it may be called,

must of course depend on the relevant provision in the Civil Procedure Code, that is, whether it satisfies the definition of the term "decree" in section 2 (2) of the Civil Procedure Code. Clearly, restoration of possession to the tenant if it is ordered, is dehors the decree and not in execution of it and is therefore outside section 47 C.P.C. It is not within Section 144, C.P.C. either, as the decree is not varied or reversed, but is simply ignored in consequence of a legislative mandate. There is in section 52 (1) and section 5 (2) of the two Acts, no direction to review, or amend, or modify the decree much less to set it aside and re-open the suit. The legislature might well have said so, as it had not hesitated to do whenever necessary; in these sections it has spoken differently. When the legislature says, for instance, in language which is not unfamiliar, that in the event of certain conditions being fulfilled, a stated consequence shall follow or a stated thing shall be done, notwithstanding any decree or order of court to the contrary, nothing is thereby done to the decree as such, but its existence is simply ignored. It is not, that the conclusiveness of the decree is taken away and the suit is reopened; the suit is not to be retried or proceeded with. The decree may have decided many things, such as, the title to property, the relationship of landlord and tenant, the right to recover arrears of rent, which are not touched in any case. Then are we to say, that the suit is pending only as to certain matters and not as to others? That is difficult. So, with the passing of the decree for eviction, the suit came to an end and with the delivery of possession to the landlord, the decree was executed and satisfied.

21. The new proceeding which is initiated on "an application in that behalf" has no more than a historical relation to the suit and the decree. There is no prescription in the sections, that the application be made in the suit itself, because the suit is no longer pending. The matter in controversy in the application is, whether the old decree conformed to the new law, a matter which was not in controversy in the suit, and the right adjudged is that of the tenant to be restored to possession, by virtue of a new right conferred on him. Moreover, if the suit is not pending, the controversy is not in the suit. I am therefore of the view, that a proceeding commenced by an application u/s 52 (1) of Act XXXIII of 1951 or section 5(2) of Act XXII of 1956 is not a suit or in the nature of a suit, but is an original proceeding, independent of the suit which resulted in the decree for eviction. The adjudication in such a proceeding does not, it seems to me, possess the elements of a decree as defined by the Civil Procedure Code.

22. It was however contended, that to constitute a decree the adjudication need not be in a suit. I am aware that the view has been taken, that the decision on a reference u/s 30 of the Indian Land Acquisition Act, by which even title to property may be adjudged, is a decree; judicial opinion however is not unanimous on the point, for example see the majority opinion in *Sankaran v Kochukutty* (A.I.R. 1953 T.C. 591). A proceeding initiated by an application for restoration of possession on a specified condition being fulfilled, is in no sense analogous to a proceeding u/s 30 aforesaid. So cases u/s 30 are not helpful nor are cases decided under statutes, which expressly provide that adjudications

thereunder shall have effect as decrees or shall be deemed to be decrees like S.R. Rajender and Others Vs. N.S. Govindier and Others, , of any application to the present case. It is unnecessary to consider them. I am in respectful agreement with the decisions in Narayanan Namboodiri v Madhavi Amma (1961 K.L.J. 188) and Choyikutty v Vasu (1962 K.L.J. 517) and hold that they are correct. The result is, that I dismiss this appeal with costs to respondents 1 and 2.

JUDGMENT OF THE COURT

The Second Appeal is allowed with costs. The Subordinate Judge of Badagara will deal with A.S. No. 352 of 1959 on the merits and in accordance with law. The Registrar will send down the records forthwith.