
(1966) 08 KL CK 0030
In the High Court Of Kerala
Case No : S.A. 194 of 1962

Vasudevan Nambeesan

APPELLANT

Vs

Marimuthu Pandaram and Others

RESPONDENT

Date of Decision : 09-08-1966

Acts Referred:

Kanam Tenancy Act, 1955 — Section 49

Citation : (1966) KLJ 1043

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;S. Velu Pillai, J

Bench : Division Bench

Advocate : V. Sankara Menon, V.P. Joseph and K.K.K. Kurup, for the Appellant;

Final Decision : Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.—In this appeal filed by the plaintiff, the main question that arises for consideration is the rate at which the price of paddy due to the plaintiff by way of jenmikaram has to be calculated. The courts below on the basis of the Notification No. E4-16727/56/RD dated 22.11.1957 (published in the Kerala Gazette dated 3-12-1957) issued u/s 49 of the Kanam Tenancy Act, 1955 (XXIV of 1955) directed that the price of paddy has to be fixed at Re.1 nP. 75 per para having a capacity of 480 ounces. The learned advocate for the appellant submitted that 480 ounces which is given as the capacity of one standard para in the above notification is a mistake for 440 ounces and in support of his submission he relied on the decisions in Hrishikesan Nambudiripad v. Madhavan 1965 K. L. T. 989 and Koodalmanikkam Devaswom v. Kumaran C. R. P. 734 of 1964. Section 49 clause (1) of the Kanam Tenancy Act, 1955 (Act XXIV of 1955) is in the following terms:

Subject to the provisions of this Act, the Government may from time to time fix the rates for the commutation into money of paddy or other commodities for the purposes of this Act and notify the same in the Gazette, and the rates so fixed shall be the rates for commutation for the purposes of this Act.

In their proceedings dated 31st March, 1956, the Government constituted a Committee u/s 49 clause (3) of the Kanam Tenancy Act, 1955 (Act XXIV of 1955) to advise them for fixing the rate of commutation for paddy and other commodities for the purposes of payment and recovery of Jenmikaram in the Cochin area. The report of the Committee is dated 7th of July 1957. In paragraph 6 of the report, it was stated thus :

The standard para measures 480 ounces while paras of different capacities are also not uncommon. The paras in the use of jenmies are generally of the capacity of either above or below that of the standard para.

The concluding portion in paragraph 8 of the report is as follows.

In this view the Committee considers that the sum of Rs. 1--12--0 or Re. 1 Np. 75 worked out on the basis of the evidence recorded, may be adopted as a reasonable commutation rate for paddy for one standard para. This rate may be taken as uniform for the whole of the Cochin area and applicable for all the crops.

The notification F4--16727/56/RD dated 22.11.1957 was issued after considering the report. The notification as is relevant for this appeal is as follows:

Revenue (6) Department.

Notification

No E4--16727/56/RD.

Dated, Trivandrum, 22nd November 1957

In exercise of the powers conferred by Section 49 of the Kanom Tenancy Act, 1955 (XXIV of 1955) and after having considered the report of the Committee appointed under Rule 7 of the Commutation Rules issued under the said Act the Government of Kerala hereby fix the following rates for the commutation into money of paddy and other commodities for the purposes of the said Act for the whole area to which the said Act is applicable.

1. Paddy I Rupee 75 Np. (1 Re. 12 As.) for I standard para (480 ounces)

.....

2. The question is whether the capacity of I standard para given as 480 ounces is a mistake for 440 ounces in the notification cited above. Madhavan Nair, J. held that the commutation rate of paddy in the notification quoted above is fixed with reference to the Cochin standard para and therefore the capacity of standard para given as 480 ounces in the notification is a mistake for 440 ounces. The above dictum was followed by Vaidialingam J. in Koodalmanikkam Devaswom v. Kumaran C. R. P. 734 of 1964. We are also of the view that the capacity of one standard para given as 480 ounces is really a mistake for 440 ounces.

3. The power of the court to remedy obvious misprints, mistakes and admissions in Statutes is thus stated in Halsbury's Laws of England, Volume, 36, page, 390,

paragraph 584

Thus, while terms can be introduced into a statute to give effect to its clear intention by remedying mere defects of language and to rectify obvious misprints or misnomers, no provision which is not in the statute can otherwise be implied to remedy an omission.

Although, as a rule, it is not permissible to supply omissions in a statute, even though they are evidently unintentional, yet, if particular words of a statute are so obscure or doubtful in their meaning that they are not capable of a grammatical construction, but the intention of the legislature is plain on the construction of the statute as a whole, it is permissible, in order to give effect to the statute and avoid manifest absurdity or injustice. (1) to reject words or phrases as surplusage, if no sensible meaning can be given to them; (2) to supply omitted words or expressions; (3) to transpose, interpolate or otherwise alter words; (4) to read negative words as affirmative as negative; disjunctive as conjunctive, and vice versa ; (5) to put upon words a sense possible but not usually attributable to them; (6) to expand their literal meaning.

Maxell in his book Interpretation of Statutes (11th edition) at page 243, stated thus:

Clerical errors may be read as amended, as where, for instance, an Act refers to another by title and date, and mistakes the latter.

It has been asserted that no modification of the language of a statute is ever allowable in construction except to avoid an absurdity which appears to be so not to the mind of the expositor merely, but to that of the legislature, that is, when it takes the form of a repugnancy. In this case the Legislature shows in one passage that it did not mean what its words signify in another, and a modification is therefore called for, and sanctioned beforehand, as it were by the author. But the authorities do not appear to support this restricted view. They would seem rather to establish that the judicial interpreter may deal with careless and inaccurate words and phrases in the same spirit as a critic deals with an obscure or corrupt text, when satisfied, on solid grounds, from the context or history of the enactment, or from the injustice, inconvenience or absurdity of the consequences to which it would lead, that the language thus treated does not really express the intention and that this amendment probably does.

In quoting the above passage with approval Harman, J. observed in Lockwood. Deed. In re. (1958) 1 Ch. 231 at 237 thus:

A judge in these circumstances is confronted with a familiar dilemma. How far may he go in modifying the terms of a statute in order to make it conform to what he is convinced must have been the intention of the legislature? Mr. Buckley, for the Crown, argued that to ignore the offending words here would be an instance of legislation by construction, and that it is for Parliament to repair the blunder if there be one. Maxwell on the Interpretation of Statutes has much

to say on this topic, notably the words of Sir Francis Bacon (wrongly there styled Lord Bacon, a title he never had) in these words. "Non est interpretatio, sed divinatio, quae recudit a litera" (Advancement of Learning," cited in Maxwell, 19th Edn.p.258). Mr. Buckley contended that to ignore words is only legitimate in order to make sense of what is otherwise nonsense, that here the sub-section as it stands has an effect not absolutely repugnant to the rest of the statute, while, if the words be ignored, the sub-section has no effect at all. Further, he says a treatment so drastic can only be justified where the court can see what the legislature did intend, whereas here no plain intention can be gathered. I feel the force of this line of reasoning, though it leads to a most lame and impotent conclusion. As Maxwell pungently has it (at p. 7, cp. cit.): The difficulty lies in deciding between words that are plain but absurd, and words that are so absurd as not to be deemed plain." On the whole, I have come to the conclusion that I am entitled to ignore the words, "or issue of any member of that class." or rather, to treat them as not binding me to construe the word "class" in the earlier part of the sub section as confined to the primary class of aunts and uncles.

We are therefore in respectful agreement with the dictum in *Hrishikesam Nambudiripad v. Madhavan* 1965 K. L. T. 989 and *Koodalmanikkam Devaswom v. Kumaran* C. R. P. 734 of 1964 and hold that paddy has to be valued at the rate of Re. 1. Np. 75 per standard para having a capacity of 440 ounces.

4. The learned advocate for the appellant raised another contention that should have been granted a decree for the tax paid by him. No such contention was raised before the lower appellate court. We therefore over-rule the same. In the result, the decree and judgment of the court below are modified by directing that the paddy will be valued at the rate of Re. 1 nP. 75 per standard para having a capacity of 440 ounces. In all other respects the decree and judgment of the court below are confirmed. The appeal is allowed to the extent indicated above. No costs.