

KERALA HIGH COURT

Neelakandhayya Pillai

Vs

Sankaran

(M. S. Menon, J.)

03.04.1961

JUDGEMENT

M. S. Menon, J.

(1.) THE appellant is the plaintiff who, on the basis of an assignment of the jenmi's rights to him as per Ext. P3 dated 4-5-1945, sued on 12-10-1945 for redemption of a kanom Ext. P1 dated 15-5-1929. THE suit having been decreed by the trial court on 17-1-1946, the plaintiff reduced the property to his physical possession in 1946 itself.

(2.) THE defendant had appealed against the decree of the trial court and by the time it came up for disposal before the learned subordinate Judge, the Malabar Tenancy (Amendment) Act VII of 1954 came into force introducing a provision: "section 25. No suit for eviction of a kanamdar shall lie at the instance of his landlord except in the following grounds:
. Provided further that -.
. (iii) no person whose right to evict arises under an instrument or transfer inter vivos shall be entitled to sue for eviction on the ground specified in clause (4) or clause (5) until the expiry of two years from the date of the instrument. '.
. It was further enacted therein that all suits, appeals and other proceedings which are pending at the commencement of the Act shall from and after such commencement be disposed of in accordance with the provisions of the Malabar Tenancy Act as amended by this Act. This Amending Act came into force on the 19th March 1954. The learned Subordinate Judge took the view that the inhibition of suits for eviction for two years after an assignment of the landlord's rights contained in S. 25 quoted above would apply to the institution of this suit which had been instituted within five months of the assignment in favour of the plaintiff, and dismissed the same. The plaintiff has therefore come up in this Second Appeal. The provisions of S. 25 of the Malabar Tenancy Act as amended by Madras Act VII of 1954, as indicated by the expression "no suit shall lie", "no tenant shall be evicted", "no person shall be entitled to sue" in that section, are only prospective in application. There is nothing in the said S. 25 indicating a retroactive operation for any of the provisions therein. As

the prohibition to the institution of the suit within two years of an inter vivos assignment relates only to the institution of the suit, it cannot, without an expression thereto, be made to affect institutions already had. It is pertinent to note that the section does not provide for a dismissal or even stay of any suit already instituted. Most probably the natural effect of the provision in S. 25 quoted above may be to stay the trial of a suit already instituted before the commencement of the Act for a period which comes within two years of the assignment of the landlord's rights in the plaintiff's favour. Anyhow, that question does not arise in the instant case as the assignment in this case was in 1945 and even the two years of bar to institute the suit had expired by 1947 long before the Act itself came into being and long before the learned Subordinate Judge applied the provision to the disposal of this suit.

(3.) EVEN if the section is held to apply literally to the institution of the present suit, the defect of prematurity at the institution of this suit cannot entail its dismissal in 1954, the period of two years after the assignment in favour of the plaintiff having expired by 1947. The pendency of the suit after 1947 and the trial that the suit had since then cannot be found to be affected by any defect. The learned counsel for the respondent brought to my notice two rulings of the Madras High Court one in *Sankaran v. Andy*¹ and the other in *Kumhambu v. Tagnan Nambudiri*² I do not feel persuaded with all respect to accept the view taken in those two decisions. It has been held several times, as observed by B. K. Mukherjea, J. (with whom Sharpe, J. concurred) in *Tarak Chandra v. Anukul chandra* (AIR. 1946 Calcutta 118), that the court is to look into events subsequent to the institution of the suit for the purpose of doing complete justice to the parties in the case and particularly to avoid further litigation between them. The subsequent event relevant herein is the subsequent accrual of the cause of action after the expiry of the period of prohibition. ;

Cases Referred.

1(1954-11 MLJ. 581)

2(1956-1 mlj. 297)