
KERALA HIGH COURT

Hon'ble Justice V. R. Krishna Iyer, J.

Amikutty Umma v. Veerankutty Haji

Citations: 1969 KHC 102 : 1969 KLT 440 : 1969 KLJ 409 : 1969 KLT
SN 11 : 1969 KLR 513

JUDGMENT

1. A ticklish point of procedural importance is raised in this revision petition. The impact of the decision on that point may be wider than may appear on its face and so I requested the members of the bar present to help, with their light, solve the question as amicus curiae. However, there is not much to be said one way or the other, and the scope for elaborate arguments being restricted in the nature of the language of the statute, one has to be guided largely by the object of the legislation and the letter of the law. In view of the present temporary legislation, will an appeal by a landlord for arrears of rent be entertainable at all or will it only be stayed after it is taken on file?
 2. The Kerala Stay of Eviction Proceeding Act, Act 9 of 1967, - called the Act, for short - is obviously designed to interdict and intercept litigations against tenants and kudikidappukars where the relief claimed is eviction or recovery of arrears of rent. Where the litigation has not been instituted, the statute inhibits it and where it has already been commenced, the statute freezes it. The policy behind the measure, therefore, appears to be that till the legislature enacts a comprehensive legislation there should be a sort of moratorium. That construction of the statute which serves as a disincentive for the landlords to come to Court is to be preferred from that standpoint. Even apart from this consideration, if the eventual legislation forbids eviction or wipes out or pares down arrears of rent, such newly filed suit or appeal would prove a vain forensic enterprise involving wasted litigation costs for the landlord and avoidable litigation harassment for the tenant. It is an ill wind that blows nobody any good.
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3. Bearing in mind these factors as background material, let us study the actual provision. The case with which I am directly concerned in the revision petition is an order of return of an appeal by the District Judge on the ground that the subject matter is one relating to recovery of arrears of rent and is therefore, "a proceeding hit by S.5 of Act 9 of 1967". The question is whether the appeal should be entertained and stayed, or not be entertained at all.

4. I shall reproduce the relevant portions of S.5 and whatever applies to S.5 applies to S.4.

"..... no suit or application or other proceedings for the recovery of arrears of rent in respect of, or for damages for use and occupation of a holding or part of a holding or a holding or a kudikidappu, accrued due before the first day of April, 1966, shall lie in any court or Land Tribunal, and all suits, applications, proceedings in execution of decree or orders and other proceedings pending in courts or Land Tribunals at such commencement for recovery of such arrears of rent or damages shall be stayed." Thus the section is in two parts. The first part halts the institution of impending proceedings, the second part holds up pending cases. "No suit or application or other proceedings for the recovery of arrears of rent shall lie in any court" is the first part of S.5. If an appeal is a proceeding, and if the plain meaning of what I have extracted above is to be given to those words, it amounts to this that an appeal shall not lie in any Court. S.96(1) of the Civil Procedure Code reads as follows:

"Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie"

Therefore, an appeal shall lie under S.96 of the Civil Procedure Code only subject to any other law and, undoubtedly, Act 9 of 1967 is one such law. The argument would be complete only if two more links in the chain of reasoning are effectively forged. Is an appeal a proceeding? Is the institution of an appeal the commencement of a proceeding or merely the continuation of a suit? I have no doubt that an appeal is a proceeding, generally speaking, and particularly, in the context of wide words used in S.4 and 5 of the

Act and the object of the statute. If no suit should be filed against a tenant there is no understandable reasons why an appeal should be allowed to be filed, since the policy behind the rebuff of suits applies equally to appeals. And the language of the section is comprehensive. A plethora of decisions has considered the concept of proceeding. Venkataramana Rao J. in *Pallipurayil Asan Kutti v. Mukkolakkal Koyaman Kutti* (AIR 1937 Mad. 342) had occasion to consider what is a proceeding within the meaning of S.153 CPC. and adopted the definition given in Black's Law Dictionary viz., "any application to a Court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages or for any remedial object". (Vide also 1962 KLJ 428). I need not dwell at length on the connotation of this expression as it is elementary that an appeal against a decree is a legal proceeding in Court. But a slightly more difficult question confronts me when the second aspect of the question is tackled. Is an appeal a continuation of the suit? It is. Is an appeal a proceeding instituted in the appellate Court? It is. And there need not be any incompatibility between these two answers. There is no doubt that an appeal, so far as the appellate Court is concerned, is a new proceeding because till it is filed there is no proceeding in that Court. To say that an appeal, once instituted, will relate back to the suit involves a legal fiction which unless compelled by the needs of the statute or language of the provision need not be invoked. Moreover, how can we say that it is not a new proceeding when the day before the filing of the appeal there was no proceeding relating to arrears of rent or eviction in any Court? The suit had come to an end by the decree passed therein and the appeal had not come into existence because it had not been filed, and only a theory of relation back can bridge this gap and there is no need to invoke this theory for a futile purpose i. e. for salvaging the filing of an appeal which should be stayed immediately thereafter. I agree that an appeal is a rehearing of the suit, from the point of view of the powers of an appellate Court. *Lachmeshwar Prasad Shukul v. Keshawar Lal Chaudhuri* (AIR 1941 FC 5) and *Cannanore District Motor Transport Employees Cooperative Society Ltd. v. Malabar Public Conveyance, Tellicherry* (1962 KLT 446). It is also true that an appeal is a continuation of the suit for certain purposes and even may be said to be not the commencement of a new litigation. A Division Bench of the Calcutta High Court, in a ruling reported in *Damodar Mukherjee v. Bonwarilal Agarwalla* (AIR 1960 Cal. 469),

had occasion to consider whether an appeal marked the commencement of a suit or the continuation of a proceeding. The question there arose in the insolvency jurisdiction. A claim was sought to be proved by a creditor on the basis of a decree obtained by him in appeal. The contention of the insolvent was that when the creditor filed the appeal he had not obtained the leave of the Insolvency Court for filing the appeal which under S.28(2) of the Provincial Insolvency Act he was bound to obtain and since the appeal was the commencement of a new proceeding, according to the insolvent, as distinguished from the continuation of the suit, the decree obtained in appeal should be treated as non est or as a void decree. The learned Judges, after a review of the authorities, held that the decree obtained in appeal was one obtained in a proceeding which was only a continuation of the suit and as such no fresh leave was necessary before the appeal was instituted. As I observed earlier, there are circumstances and circumstances, statutes and statutes and even the expression 'sue' has received different constructions depending on the statute concerned. (See Province of Bombay v. Khushaldas (AIR 1950 SC 222). In many cases where the powers of the appellate authority have to be delineated Courts have held that it is coextensive with that of the original authority since an appeal is a rehearing (Vide Cannanore District Motor Transport Employees' Cooperative Society Ltd. v. Malabar Public Conveyance, Tellicherry (1962 KLT 446) Similarly in certain statutes an appeal may virtually amount to the continuation of the suit, but no general or universal proposition that an appeal is never a new proceeding and is always a continuation of the suit can be arrived at. So far as the present statute is concerned, I have no doubt that the language of S.5 bears the only reasonable construction that an appeal is a new proceeding instituted in the appellate Court and its institution is therefore barred by the provisions of S.4 and 5 of the Act. The proceeding, vis a vis the District Court, is a fresh one. Therefore, the return of the appeal by the learned District Judge was in order.

5. Nor is there any possible calamity in the offing for the litigants on account of this construction. S.8 of the Act provides that "In computing the period of limitation for the institution of suits, applications or other proceedings prohibited or stayed under this Act, the time during which such suits proceedings were prohibited or stayed shall be excluded". In view of this protective provision, the apprehension that suits and appeals

would be barred is out of place. Of course, there will be some inconvenience even to tenants who went to challenge decrees passed against them but cannot institute appeals in view of the construction I have put upon S.4 and 5 and many be lulled, by the statute of stay, into deceptive repose. Of course, I am not going into the question as to whether an appeal filed by a tenant against a decree for eviction or for arrears of rent is one which comes within the ambit of S.5 of the Act although I am inclined to think that such suits are descriptive of the litigation rather than indicative of the party who pilots the litigation and must therefore be covered by S.4 and 5 of the Act.

6. I therefore dismiss this Civil Revision Petition, but in the circumstances, there will be no order as to costs.
