

The State Bank of Travancore

Vs

Aravindan Kunju Panicker and Others

Civil Appeal No. 378 of 1967

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

19.03.1971

JUDGMENT

HEGDE, J. -

1. This appeal by special leave is directed against the decision of a single Judge of the Kerala High Court in a second appeal. Therein the learned Judge allowed the appeal of the plaintiffs, reversed the judgment and decree of the first appellate Court and restored that of the trial Court.
2. In order to decide the points arising for decision in this appeal, it is necessary to set out in brief the facts of the case. This litigation has a long history. The property concerned in the suit is 99 cents in extent but it contains some buildings. It is situate in a municipal town of Kottayam taluk. It appears that the property has now become very valuable. This property admittedly at one time belonged to an Ezhava Marumakkathayam Tharwad. Three junior members of that Tharwad sold that property to a third party in 1063 M.E. (Mallayalam Era). Three other junior members of that Tharwad sued for the recovery of that property in 1074 M.E. after setting aside the alienation which according to the plaintiffs therein was not valid binding on the Tharwad. That suit was decreed and the Plaintiffs therein were allowed to recover possession of that property on their paying the alienee a sum of Rs. 454/- . The decree holders were unable to pay that sum. They applied to the Court to permit one Krishnan Krishnan, a relation of theirs to deposit the amount in question into court and take delivery of the property. The Court allowed that application. Thereafter the said Krishnan Krishnan deposited Rs. 454/- into court through the plaintiffs' lawyer and took delivery of the property in 1082 M.E. through court. Kunjappi Velu, a creditor of Krishnan Krishnan filed a suit against him in 1089 M.E., obtained a decree and thereafter put sup the property in question for sale and purchased the same in court auction. He took delivery of that property through court in 1102 M.E. The said Kunjappi Velu sold the property to one Punnen Thomas very soon after he took delivery of the property. This purchase by Punnen Thomas was for and on behalf of one Kochu Thommen Kuruvilla. Punnen Thomas executed a release deed in favour of Kuruvilla in 1121 M.E. On 8-5-1128 M. E. Kuruvilla mortgaged the suit property for Rs. 37,000/- in favour of Travancore Forward Bank Ltd., Kottayam. As Kuruvilla did not discharge that debt, the bank obtained mortgage decree against him. The Travancore Forward Bank Ltd. was amalgamated with the state Bank of Travancore (the appellant herein) Thereafter the State Bank of Travancore was impleaded as an additional Plaintiff in that suit. On 12-8-1121 M.E., four members of the Ezhava Marumakkathayam Tharwad referred to earlier instituted the suit from which this appeal arises seeking possession of the suit property. The first plaintiff (since deceased) claimed to be the karanavan of the Tharwad. Their case is that Krishnan Krishnan who deposited Rs. 454/- into court and took delivery of the suit property was only an agent of the Tharwad. He had no right in that property. He was entitled to keep possession of the property until the amount deposited by him into

court was repaid to him. It was further alleged in the plaint that there was an agreement between Krishnan Krishnan and the Plaintiffs in the suit wherein the deposit was made that Krishnan Krishnan should redeliver the property to the Tharwad on receiving the amount in question. The Plaintiffs in the present case offered to pay to Krishnan's representative the sum Rs. 454/-.

3. The agreement alleged to have been entered into between the plaintiffs in the first suit and Krishnan Krishnan has neither been accepted by the first appellate Court nor was it relied upon by the High Court. There is no reliable evidence in support of that agreement.

4. The trial Court came to the conclusion that Krishnan Krishnan in law can only be an agent of the plaintiffs in the first suit. He can only have a lien over the suit property and the subsequent purchasers of his right can have no better title than what Krishnan Krishnan had. That Court also repelled the contention of the contesting defendants that Krishnan Krishnan or those who acquired his rights had perfected their title to the suit property by adverse possession. It held that the possession of Krishnan Krishnan was permissive and the same could not be considered as being adverse to the real owners. It further held that the property in question was always in the possession of the tenants and it was never in the possession of Krishnan Krishnan or those who purchased his rights. It also held that there is no evidence to show that either Krishnan Krishnan or the subsequent purchasers of the suit property even to the knowledge of the true owners asserted hostile title to the property. The trial Court also did not accept the contention of the defendants that the plaintiffs have not succeeded in proving that the Tharwad which was not succeeded in proving that the Tharwad which was the original owner of the suit property is joint or original first plaintiff was Karanavan of that Tharwad when the suit was instituted.

5. In appeal the learned appellate Judge came to the conclusion that the plaintiffs had not established that the Tharwad in question is undivided nor have they proved that the original first plaintiff was the Karanavan of the Tharwad when the suit was instituted. He further came to the conclusion that Krishnan Krishnan must be held to have acquired an absolute title to the suit property as the plaintiffs have not succeeded in proving the agreement pleaded by them. It upheld the contention of the defendants that Krishnan Krishnan and thereafter his successors in interest had acquired full title to the property by adverse possession.

6. In second appeal a learned single Judge of the High Court disagreed with each one of the conclusions reached by the first appellate Court and agreed with those reached by the trial Court. Dealing with the question whether the Tharwad in question is an undivided Tharwad, he pointed out that the evidence of the plaintiffs that the regard stands unrebutted. He also accepted the contention of the plaintiffs that the first plaintiff was the Karanavan of that Tharwad when the suit was instituted. He further held that on the basis of the material on record, the only conclusion possible is that Krishnan Krishnan took possession of the suit property as the agent of the plaintiffs in the first suit and as such his possession was permissive. He agreed with the trial Court that the actual possession of the property was always with the tenants and the possession of Krishnan Krishnan and that of his successors in interest has not been shown to be adverse to that of the true owners. Each one of these findings were challenged before us.

7. We shall first take up the questions whether the plaintiff's Tharwad was divided or undivided and further whether the original first plaintiff was the karanavan of the Tharwad when the suit was instituted. On these questions the evidence is completely one sided. The plaintiffs have adduced evidence to show that the Tharwad is undivided and that the original first plaintiff was the karanavan of the Tharwad. There is no reason to disbelieve that evidence. That evidence was

unrebutted. That apart, a Hindu family is presumed to be joint unless the contrary is established. There is no evidence on record to rebut that presumption. We agree with the learned Judge of the High Court that there was no basis for the first appellate Court doubting the fact that the original first plaintiff was the Karanavan of the Tharwad at the relevant time.

8. Now coming to the question as to the nature of of the possession of Krishnan Krishnan, the High Court has not relied on the agreement pleaded by the plaintiffs. There is no reliable evidence to support that agreement. But the evidence adduced in this case including unimpeachable documentary evidence clearly shows that assistance of Krishnan (Krishnan Krishnan was the father of some of then members of then members of the Tharwad) was sought by the plaintiffs in that suit to tide over the difficulty in the matter of depositing the required amount into Court. As mentioned earlier the amount in question was deposited into Court through the plaintiff's lawyer and Krishnan Krishnan took possession of the suit property in execution of the decree in favour of the plaintiffs in that suit. No sale deed or any other document was executed in favour of Krishnan Krishnan nor could be plaintiffs in that suit validity alienate that property as they were only junior members of the family. We agree with the High Court that as Krishnan Krishnan paid the amount that was payable by the Tharwad and took possession of the property he could only have a lien over the property for the amount advanced by him. Neither Vellu nor Kuruvilla who purchased the rights of Krishnan Krishnan can in law have greater rights in that property than what Krishnan Krishnan had. On purchasing the rights of Krishnan Krishnan they had merely stepped into his shoes.

9. Now coming to the question of adverse possession, there is conclusive evidence to show that the suit property was at all times in the possession of the tenants of the Tharwad referred to earlier. Krishnan Krishnan Vellu and Kuruvilla at best could have only collected the rent. The evidence in this regard has been discussed in detail by the learned Judge of the High Court. It is not necessary to deal with that evidence over again. We accept the conclusion of the learned Judge that the suit property was all along in the possession of the tenants. Further as Krishnan Krishnan had only a lien over the property for the amount advanced by him his possession of the suit property which in this case is symbolical, must be held to be a permissive possession. The possession of Vellu and Kuruvilla for the same reason much be held to be permissive possession. A permissive possession can not be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of twelve years or more. There is no evidence to show that either Krishnan Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before he present suit.

10. In the result we agree with the conclusions reached by the learned Judge of the High Court and dismiss this appeal with costs.

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