Rev. Fr. K. C. Alexander

Vs

State of Kerala

Civil Appeal No. 744 of 1967

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

16.08.1973

JUDGMENT

JAGANMOHAN REDDY, J. –

1. This appeal is by special leave against the judgment and decree of the High Court of Kerala which dismissed an appeal against the judgment and decree of the subordinate Court of Mavelikkara. The appellant had filed a suit on October 24, 1942, for the recovery of Rs. 2 lakhs and interest thereon from the date of the suit and for costs originally against the State of Travancore now the State of Kerala - the respondent - and three others who however were not made parties in appeal before the High Court. It was alleged in the plaint that the plaintiff (appellant) was wrongfully dispossessed from 160 acres of land along with the improvements which had been effected by him and as the State had appropriated those improvements without any right or title thereto he claimed the value of those improvements. It was the appellant's case that he had been in occupation of the said 160 acres of Cherikkal land (unregistered dry lands in hilly tracts) about which and the adjoining lands there was a dispute as to whether the same belonged to a Jenmi family known as Koodalvalli Illom - hereinafter called 'the Illom' - or to the Government of the erstwhile Travancore State. The appellant's father and the appellant had occupied these lands, made improvements thereon by planting coconut trees, arecanut palms, peppervines, rubber-trees, jack trees, other trees, and by constructing bungalow, huts, wells etc. in the bona fide belief that the lands belonged to the Illom. It was stated that according to the practice prevailing in the erstwhile State of Travancore the cultivators could enter into unoccupied waste lands belonging to the Jenmies with the object of cultivating and improving them, and as they held the lands under them by paying rent, the consent of the Jenmies to such occupation was implied. This practice, it seems, was also current in respect of lands belonging to the Government before the Travancore Land Conservancy Act 4 of 1091 (24-7-1916) (hereinafter called 'the Act). It is case of the appellant that even after the Act was passed, unauthorised occupants of land belonging to the Government who had made improvement therein had, under the rules made both under the Act and the Land Assignment Act a preferential claim over other for getting Kuthakapattam or assignment of the property in their possession.

2. It may be mentioned that in respect of the 160 acres of land of Illom which were occupied by the appellant's father and the appellant, there was a dispute between the Illom and the Travancore State from about 1848. While this dispute was pending it appears the appellant applied to the Conservator of Forests for registration of the lands in his name, but the application was rejected on June 14, 1919 stating that the land applied for cannot be registered (Ext. A). While the application for registration was pending, the dispute between the Illom and the State of Travancore had reached a stage when the Illom had to institute a suit O.S. No. 126 of 1096 (January 1918) in the District Court at Quilon for a declaration of its title to those properties. In that suit the appellant, after his application for

registration was rejected, sought to get himself impleaded, but that application also was rejected. Thereafter the suit filed by the Illom was dismissed on 28-6-1109 (February 10, 1934). An appeal against it was dismissed on September 27, 1943. It may here be mentioned that while the suit of the Illom i.e. O.S. No. 126 of 1096 M.E. was pending in the District Court, Quilon, the Government of Travancore had initiated proceedings in ejectment against the appellant by L.C. Case No. 112 of 1100 (1925 A.D.). As the suit of the Illom had been finally disposed of and the title of the Illom to the lands was not established, the appellant apprehending that he might be ejected in the above L.C. Case filed a suit No. O.S. 156 of 1103 M.E. (1927-28 A.D.) in the District Court at Quilon against the respondent to establish his right and title to the said 160 acres and in the adjoining Cherikkal lands in his possession. In that suit an injunction was prayed for in respect of 100 acres of the property involved in the suit, but the prayer was rejected. Against that order a Civil Miscellaneous Appeal No. 206 of 1110 M.E. (1934-35 A.D.) was filed in the High Court Travancore. The High Court issued a commission for inspecting the properties and the Commissioner in his report para 13 of Ext. CC set out the improvements made by the appellant on the lands which comprised of a bungalow in which the appellant was residing, a number of small houses, a rubber estate, and a large number of other valuable trees like jack trees, mango trees, coconut trees etc. It appears that as there was no injunction restraining his dispossession in L.C. Case No. 112 of 1100 M.E. an order was passed for dispossessing the appellant on July 24, 1939, Ext. VI. The appellant, pursuant to this order, was dispossessed from the lands and possession of these lands was given to the second defendant Nair Service Society Ltd. in August 1939. Thereafter the suit out of without this appeal arises was filed against the Government on October 24, 1942.

3. The respondent-State contended that the appellant encroached on the suit lands, that proceedings were taken against him in L.C. Case No. 112 of 1100 M.E. and he was evicted in due course, that the trespass by the appellant was of recent origin, that the allegation that the entry was made in the belief that the land belonged to the Illom was false, that the Revenue and Forest Departments did not harass the appellant but they took steps for dispossessing him only in accordance with the law, that the Commissioner's report was not correct in that all the improvements noted by the Commissioner were not made by the appellant but by other independent squatters, that after due notice an order of forfeiture had been passed in L.C. Case No. 112 of 1100 M.E. and the appellant was therefore no entitled to claim any value for improvements as it was his duty to remove any building before he was evicted. The respondent also averred that it had not taken possession of any crops or movables as stated in the plaint and that the movables found in the building were attached for the realisation of arrears of fine etc. There were other allegations also but it is unnecessary for the purposes of this appeal to refer to them.

4. Several issues were framed, but it is not necessary to refer to them except to say that the suit was decreed only for Rs. 3,000/- being the value of the appellant's bungalow taken possession of by the respondent. The rest of the claim was dismissed. It was observed by the trial Court that though there is no specific evidence to show when exactly the possession of the appellant had commenced, the evidence however indicated that it must have started close to the year 1100 M.E. and that in any case the claim of the appellant that possession was from 1030 M.E. was not true inasmuch as from the year 1067 M.E. when the Act was passed possession without permission was penal and it could not be imagined that the appellant was left in peace for all these long year. The trial Court also held that all through these long years there had been a dispute as to the title between the Illom and the State and after the suit of the Illom was dismissed and the Illom's title was not sustained, the allegation that the improvements were effected cannot be state to be bona fide. It pointed out that the plaintiff (appellant) had applied to get himself impleaded on O.S. No. 126 of 1096 M.E. but his application was rejected, and after that suit was dismissed the appellant again applied for registry,

but that was also rejected. All this, according to the trial Court, would show that the appellant was aware that he was remaining on Government lands without title. It was further held that the greater part of the improvements were effected by the appellant after the proceedings in the L.C. Case. No. 112 of 1100 M.E. were stayed, as such it cannot be said that these improvements could have been effected in good faith. With respect to the allegation that an order of forfeiture was not served on the appellant under Section 9 of the Act, the Court observed that though the State had in its written statement contended that such an order had been passed, no order was produced in evidence and consequently it was conceded by the Government Pleader that no such order was passed. In the circumstances the question that had to be considered was whether without an order of forfeiture being passed, the respondent could forfeit the improvements. On this issue it was held that no notice of forfeiture of trees need by given under Section 9 of the Act and, therefore, no compensation or damages were payable in respect thereof.

5. The High Court accepted the finding of the trial Court on this issue. It observed that the evidence in the case indicated that the possession of the father of the appellant must have commenced close to the year 1100 M.E. and consequently the claim of the appellant that he was in possession from 1030 M.E. cannot be true. It then said : "If the possession commenced only the year 1100, it certainly cannot be under any bona fide claim of title for even on 12-6-1094, the petitioner knew that the land was Government land and had then applied for assignment of the land". Accordingly the High Court found that at no time the occupation of the land by the appellant was under a bona fide claim of title.

6. The contention of the appellant that the trees which are the subject-matter of the appeal should have been forfeited by an order passed under Section 9 of the Act and in the absence of such an order his right to the value of those trees had to be adjudged and paid to him was also negatived, as the Court held that the words "any crop or other product raised on the land" occurring in Section 9 of the Act would not include trees. In its view these words take in what is familiarly known in law as 'emblements' which according to Black's Law Dictionary mean "Such products of the soil as are annually planted, severed and saved by manual labour, as cereals, vegetables, grass maturing for harvest or harvested, etc., but not grass on lands used for pasturage". In this view it held that compensation for trees which are to be dealt with under the general law cannot be decreed against a mere trespasser who had no rights therein. It was also of the view that the claim for compensation for trees which has to be dealt with under the general law under which a mere trespasser would have no rights to the payment of compensation, nor could the appellant be allowed to remove them after this dispossession.

7. Another reason for disallowing the compensation for trees given by the High Court was that the position of a trespasser - whether he be a mere trespasser or a trespasser under a bona fide claim of title - cannot be better than that of a tenant, and that if this is correct, then the appeal has to be dismissed on the short ground that there is no principle of law or equity which requires the payment of compensation in respect of trees, the ownership of which was all along, or at any rate from the date of the trespasser's dispossession, vested in the State.

8. The learned advocate for the appellant has reiterated the submissions made before the trial Court and the High Court and contends that there is no order forfeiting the improvements as required under Section 9 of the Act, and if Section 9 does not apply and there is no right of forfeiture as contemplated under Section 9, then the appellant is entitled to compensation under the general law. Apart from this contention, towards the end of his argument, the learned advocate for the appellant sought to make out a fresh case, namely, that as the appellant was not served with a notice to quit as

required under Section 9 of the Act but was forcibly evicted without giving him an opportunity of cutting and taking away the trees etc. from the lands from which he was evicted, he would be entitled to claim compensation for the improvements made by him.

9. It may be stated that the finding that the possession of the appellant commenced after his application for registration was rejected in 1919, and the improvements if any must have been effected only thereafter with full knowledge that the title to the lands was in dispute between the Illom and also to the fact that after the application for registration was rejected the appellant tried to get himself impleaded in the suit filed by the Illoms against the State which application was also rejected, and so the claim that his possession was bona fide or that he was a bona fide trespasser has no validity. This finding is fortified by Section 5 of the Act which provides that from and after the commencement of the Act it shall not be lawful for any person to occupy land which is the property of the Government whether Poramboke or not without the permission from the Government or such officer of the Government as may be empowered in that behalf. In view of this specific provision the contravention of which is punishable under Section 6 thereof, his conduct in applying for registration and for getting himself impleaded in the suit of the Illom against the Government, would show that he knew that the land was Government land or land in which the Government had a claim. In these circumstances he cannot be said to be a bona fide trespasser particularly after he had applied to the Government for obtaining a registration in his name on the basis that it was Government land.

10. It is however urged before us that the High Court was is error in thinking that the appellant did not occupy the lands as trespasser with a bona fide claim of title because it was his case that the trespasser upon the land with a bona fide intention to improve the land, and as such he can still be considered as a bona fide trespasser entitled to improvements under the general law.

11. Before dealing with this aspect, we will first considered the question whether trees are included within the meaning of Section 9, so as the entitle the appellant to a notice of forfeiture thereunder. Section 9 of the Act is in the following terms :

> "Any person unauthorisedly occupying any land for which he is liable to pay a fine under Section 6 and an assessment or prohibitory assessment under Section 7, may be summarily evicted by the Division Peishkar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other structure erected or anything deposited thereon shall also, if not removed by him after such written notice as the Division Peishkar may deem reasonable, be liable to forfeiture. Forfeiture under this section shall be disposed of as the Division Peishkar may direct.
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> An eviction under this section shall be made in the following manner, namely :
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> By serving a notice on a persons reported to be in occupation or his agent, requiring him, within such time as the Division Peishkar may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and, if the officer removing any such person shall be resisted or obstructed by any person, the Division Peishkar shall hold a summary enquiry into the fact of the case and, if satisfied that the resistance or obstruction still continues, may issue warrant for the arrest of the said person, and on his appearance may send him with a warrant in the form of the Schedule for imprisonment in the Civil Jail of the District for such

> period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance :
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> Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Sections 176, 179 and 181 of the Travancore Penal Code, in respect of the same facts."

This section provides for two notices to be given, one notice is to be given to the person who is in unauthorised occupation of Government land to vacate the land within a reasonable time an the other notice is to forfeit any crop or other product raised on the land or to remove any building or other structure erected or anything deposited therein within a reasonable time as may be stated in the notice. It was conceded before the trial Court and not attempt was made to establish anything to the contrary before the High Court that no notice of forfeiture as required under Section 9 was given to the appellant. In these circumstances, the question that would arise for determination is whether the trees come within the description of "other product raised on the land". It is stated before us that at the time when the appellant was evicted the Transfer of Property Act was not in force. But this is not relevant as what has to be considered is whether trees can be said to be "other product raised on the land". The words "raised on the land" quality both the 'crop' and 'other product', so the words "other product" have to be read in the context of the word 'crop' which precedes it.

12. It was pointed out by the learned advocate that the High Court was in error in equating other product raised on the land with emblements because the definition of crop in Black's Law Dictionary does include emblements, as such the words 'other product' cannot also be treated as emblements and must therefore be given a different meanings which according to him would include trees. No doubt one of the meanings given in Black's Law Dictionary does say that in a more restricted sense the word is synonymous with 'fructus industriales'. But the meaning to be ascribed to that words is that it connotes in its larger signification, products of the soil that are grown and raised yearly and are gathered during a single season. In this sense the term includes "fructus industriales" and having regard to the etymology of the word it has been held to mean only products after they have been severed from the soil. The same dictionary gives the meaning of the words "product" as follows :

> "Product, with reference to property, proceeds; yield; income; receipts; returns.....
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> The 'products' of a farm may include the increase of cattle on the premises....."

Even under this definition "product" cannot mean anything which is attached to the land like trees. It may, however, include the fruit of the trees. This view of ours is supported by the case of Clark and Another v. Gaskarth (8 Taunt 431.). That was a case of a trespass for breaking and entering the closes of the plaintiffs and tearing up, digging up, cutting down, and carrying away the plaintiff's trees, plants, roots and seeds, growing on the closes. Notice of this trespass was given to the defendant. At the time of the distress the sum of pounds pounds 281.6 s. was due from the plaintiffs to the defendant for rent in respect of the nursery ground. The question before the Court was whether the plaintiffs were entitled to recover against the defendant damages caused to them by cutting down and carrying away the plaintiff's trees. It was contented that the defendant's action was justified under the statute 11 G. 2, C. 19, Section 8, which after enumerating certain crops, empowered the landlord to seize as a distress any "other product whatsoever which shall be growing

on any part of the estate demised" and, therefore, the trees and shrubs in question came within the description. The Court rejected the contention that the trees and shrubs could be distrained and held that the word "product' in the eighth section of the statute did not extend to trees an shrubs growing in a nurseryman's ground, but that it was confined to products of a similar nature with those specified in that section, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidental. In our view, therefore, trees are not included within the meaning of 'other products raised on the land' in Section 9 of the Act and there is, therefore, no obligation on the Government to give notice of forfeiture under that section.

13. It is then contended that even if trees are not included in Section 9 and no notice of forfeiture is necessary, under the general law even a trespasser on the land, whether bona fide or not, is entitled to compensation or damages for the improvements made by him on the land. We have already agreed with the trial Court and the High Court that the appellant was not as bona fide trespasser. But the learned advocate for the appellant submits that it was not his case nor is it under the general law necessary for a person who trespassed on the land to trespass with a claim of bone fide title. According to his submission a person in nevertheless a bona fide trespasser if he enters upon the land with a bona fide intention of improving the land. No authority has been cited for this novel proposition, and if accepted, it would give validity to a dangerous principles which will condone all acts of deliberate and wrongful trespass, because any person desperate enough to trespass on other man's land without any claim of title can always plead that he had a bona fide intention of improving the land whether the owner of the land wants that improvements or not. This vicarious and altruistic exhibition of good intention may even cause damage to the land of an owner who may not want improvements of such a kind as tree plantation. It is true that the maxim of the English law "quicquid plantatur solo credit" i.e. whatever is affixed to the soil belongs to the soil, is not applicable in India but that is not to say that a wrongful trespasser can plant trees on some one else's land an claim a right to those trees after he is evicted. The case of Vallabdas Narainji v. Development Officer, Bandra (AIR 1929 PC 163 : 31 Bom LR 834 : 56 IA 259 : 117 IC 13.), which was cited by the learned counsel for the appellant does not assist him, for the Privy Council did not think it necessary to give a decision on a what it termed to be a far-reaching contention. That was a case in which the Government had taken possession of the lands and had created certain buildings on the land before a declaration under Section 6 of the Land Acquisition Act was made as to the appellant's property and it was contended that the appellant should be allowed the value of the land in the state in which it then was i.e. with buildings on it. It appears that the Government had resolved to acquire the land in question and other lands and by arrangement with certain of the sutidars it took possession of such land, including a portion which was in the occupation of the appellant. Upon such land, including a portion in the possession of the appellant they proceeded to erect buildings without the necessary notification under Section 6 of the Land Acquisition Act which was not served until November 4, 1920 on these findings it was observed that the Government were in a position, by law at any rate, to regularize their possession by such a notification - a fact which becomes material when it has to be considered what the nature of the trespass is. Both the Assistant Judge and the High Court negatived the claim of the appellant. Before the Privy Council it was contended on behalf of the appellant that in the various cases relied upon, there was at least some genuine claim or belief in the party erecting the buildings that he had a title to do so, even though he was eventually held to be a trespasser; and it was urged that no such claim or belief existed in that case, in which it was said the Government, without any pretence of a right, tortiously invaded the appellant's property and proceeded to deal with it as their own. It is in this context that the respondent's contention that even if the appellants were considered to be mere trespassers they would still be entitled to the value of the improvements and contest the claim of the

appellant was described, as already stated, as a far-reaching contention. The Board, however, agreed with what was a apparently the view of both Courts in India that under the circumstances of this case, as already set forth, by the law of India, which they appear to have correctly interpreted, the Government officials were in possession "not as mere trespassers" but under such a colour of title that the buildings erected by them on the land ought not to be included in the valuation as having become the property of the land owner. This case does not support the contention that a mere trespasser who has deliberately and wrongfully, contrary to the provisions of Section 5 of the Act, entered upon another's land which makes such an act even punishable under Section 6 thereof is entitled to compensation for the trees planted by him on the land.

14. In any case, as the High Court rightly observed, the position of a trespasser cannot be better than that of a lawful tenant who having lost his possession cannot claim compensation or damages for anything erected on the land or any improvements made therein. The appellant's claim after he was evicted cannot, on the same parity of reasoning, be held to be valid. Once the appellants counsel was confronted with this proposition, he tried to raise an entirely new point, namely, that no notice of eviction was given to the appellant, and if such a notice had been given to him under Section 9 he would have cut the trees and taken them away within the time allowed for him to vacate the lands. In support of this contention he has referred us to the pleadings contained in paragraph 3 of the plaint in which it is stated :

> "The improvements effected by the plaintiff have a value of Rs. 2 lakhs as per the accounts shown below. In his helplessness the plaintiff had even applied the Government to give him the land in which he had effected improvements, on Kuthakapattam. But out of the said land 160 acres were taken out of may possession and given to the 2nd defendant even without giving me the opportunity to remove the movable improvements, such a cultivation, cattle, machines, utensils, houses, stocked crops, ripe crops etc., belonging to me."

These averments in the above paragraph do not clearly allege that he was evicted without notice, nor has any allegation been made that he was forcibly evicted from the lands with the help of the police, etc. as it has now been contended before us. On the other hand what the plaintiff (appellant) stated shows that on opportunity was given to him to remove the movable improvements, such as cultivation, cattle, machines, utensils, houses, stocked crops, ripe crops etc. which belonged to him. There is nothing stated by him that he had no opportunity to cut trees and take them away. Even in paragraph 4 of the plaint where he complaints that no notice of forfeiture was given to him, he mentions only the items referred to in paragraph 3. It is in this connection, he says, that no legal procedure had been followed by Government for taking them into possession, which only implies that it is in respect of the items mentioned in paragraphs 3. It is again state in paragraph 4 that "It was irregular on the part of Government to take possession of the above items". The respondent did not understand the averments in the plaint as alleging that no notice to quit was given to him is evident from the written statement of the respondent in paragraph 7 where it is stated thus :

> "This defendant submits that after due notice an order of forfeiture has been passed in Poramboke Case 112 of 1100 and the plaintiff is therefore not entitled to claim by value of improvements or value of any building."

The issue that had been framed by the trial Court also do not refer to this aspect. No doubt in the evidence of the plaintiff P.W. 1 states that he was evicted from the lands without giving him an opportunity to remove the improvements, and in cross-examination he was asked whether he was

not given any notice prior to the dispossession and he said that certainly no notice was received. P.W. 4 the Manager was asked in cross-examination whether he had been given any prior information or notice about eviction and this witness also said that there was no prior information or notice. While these passages might show that no notice of eviction was given, even at that stage there was no application from an issue being framed, nor has such an application been made in the appeal before the High Court, nor even before this Court. When it has been held that the appellant was not a mere trespasser and had deliberately entered upon the lands knowing fully well that he had no right, claim or title to the lands or had in any manner a right to a enter the land and has been rightly evicted as a trespasser, he cannot now be permitted to raise this contention before us.

15. In the view we have taken, the appeal has no substance and is accordingly dismissed with no order as to costs but the court fee will be recovered from the appellant.

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