

P. Velayudhan and Others

Vs

Kurungot Imbichia Moiduu's Son Ayammas and Others

Civil Appeal No. 108 of 1974

(S. Natarajan, M. M. Dutt JJ)

20.10.1989

ORDER

1. This appeal is at the instance of the plaintiff and is directed against the judgment and decree of the Kerala High Court whereby the High Court reversed the judgment and decree of the learned Subordinate Judge, Kozhikode, setting aside those of the learned Additional Munsif, Kozhikode.
2. The plaintiff filed the suit praying for recovery of possession of the suit property with past and future mesne profits. It was alleged by the plaintiff that he became insane some time in 1951 and had to be hospitalised in a mental hospital where from he was released some time in 1961. After he was released from the hospital, he came to know that defendant 1, since deceased, had encroached upon the suit property. Thereafter, he filed the present suit for recovery of possession. The plea of defendant 1 was, however, that he had been in possession of the suit property since 1947 as a lessee under an oral lease from the plaintiff and that he had assigned his leasehold interest in the suit property to defendants 2 and 3. Further, the defence of defendant 1 was that as he had been continuously in possession of the suit property for over 14 years, the suit was barred by limitation.
3. The trial court, after considering the evidence adduced by the parties, came to the finding that defendant 1 had been in possession of the suit property as the lessee under an oral lease from the plaintiff. In view of the said finding, the trial court dismissed the suit.
4. On appeal by the plaintiff, the learned Subordinate Judge held that the possession of defendant 1 started in 1950 and the suit having been filed in 1961, it was not barred by limitation. Further, it was held that defendant 1 had failed to prove that he had been in possession of the suit property as a lessee of the plaintiff under an oral lease. Upon the above findings, the learned Subordinate Judge set aside the judgment and decree of the trial court and decreed the suit for possession and mesne profits.
5. The defendants preferred a second appeal to the High Court. The High Court, however, on a reappraisal of the evidence adduced by the parties came to the finding that defendant 1 had been in possession of the suit property since 1950 as a lessee of the plaintiff under an oral lease from him. In coming to the said finding, the High Court relied upon the payment of revenue by defendant 1 since 1950 onwards. In view of the said finding, the High Court set aside the judgment and decree of the lower appellate court and restored that of the learned Additional Munsif.
6. Mr. A. S. Nambiar, learned counsel appearing on behalf of the plaintiff-appellant, submits that the High Court was not justified in interfering with the finding of the fact of the first appellate court in a second appeal. In our view, the contention has much force. The High Court has interfered with the

finding of fact arrived by the first appellate court which is the final court of facts. The High Court should not have reappraised evidence and interfered with findings of fact arrived by the first appellate court.

7. In the circumstances, we set aside the judgment and decree of the High Court and restore that of the first appellate court. The appeal is allowed. There will be no order as to costs.

8. We, however, make it clear that this order will be without prejudice to the right of the defendant to seek any relief under Section 7 of the Kerala Land Reforms Act, 1964 as amended by Act 35 of 1969.

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