

Vasudeva Panicker and Others

Vs

A. V. Viswanath Iyer and Others

Civil Appeal No. 2009 of 1980

(K. Jagannatha Shetty, Dr. T.K. Thommen JJ)

19.01.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. This appeal by special leave arises from the order dated April 11, 1980 of the Kerala High Court dismissing the appellants' revision petition denying them the fixity of tenure over the land under the Kerala Land Reforms Act, 1962 (the Act).

2. The background of the case can be shortly stated :

An extent of 22 cents of land with building in Survey No. 7/81 of Angadippuram Village, is in possession of the appellants. It was originally leased to Sankunni Kurup by Gopalan Nair. Gopalan Nair's right in the property was purchased by one Venkiteswara Iyyer. Visalakshi Amma was the second wife of Venkiteswara Iyyer. He executed a will giving life interest in the property to Visalakshi Amma. In respect of the property Sankunni Kurup executed a lease deed in favour of Visalakshi Amma. The lease deed has been marked as Ex. A-1 in the present proceedings.

3. Sankunni Kurup claiming to be a tenant filed an application under the Act for assignment of the right, title and interest of the landlord in respect of the land. This was resisted by the respondents on the ground among others that what was entrusted to Sankunni Kurup was only the building and not the land. The land tribunal however, accepted the claim of Sankunni Kurup, but the appellate authority has rejected it. The appellate authority after considering the terms of Ex. A-1 and other relevant circumstances has held that the claim for fixity of tenure was not tenable. The High Court has concurred with that view. It was held that Ex. A-1 is indicative of entrustment of the building with the property around it.

4. Sankunni Kurup died during the pendency of the proceeding and the appellants are his legal representatives. They have challenged the judgment of the High Court.

5. If the subject matter of the lease is in respect of the building with the land appurtenant thereto, it is exempt under Section 3(1)(ii) of the Act. Section 3(1)(ii) of the Act reads :

"3. Exemptions. - (1) in this chapter shall apply to -

#(i) . . . ##

(ii) leases only of buildings, including a house, shop or warehouse and the site

thereof, with the land, if any, appurtenant thereto."

6. Counsel for the appellants argued that the High Court made a new case to the landlord by stating that the demised premises was the building with the land appurtenant thereto as against the case pleaded that the entrustment was only the building and not the land. We do not agree that it is a new case. The appellants are admittedly in possession of the land as well as the building under Ex. A-1. If the lease was not in respect of the land but the building, it goes without saying that the land was appurtenant to the building. Therefore, it cannot be said that the High Court has committed an error in considering the case of parties. It will be seen that the total extent of the land is only 22 cents which is less than 1/4 of an acre. It is not uncommon to have such a house site either in the rural areas. There are fruit bearing trees of different varieties. The rent stipulated is in cash at the rate of Rs. 8 per month. The lease was for a period of one year. The landlord has reimbursed the costs of repairs of the building. There are indicative of the intention of the parties that the demise was not an agricultural land but a building. The High Court has taken into consideration all these factors to arrive at the conclusion that the lease was only of the building with the land appurtenant thereto. In our opinion, the order of the High Court does not call for interference.

7. In the result, the appeal fails and is dismissed. But in the circumstances of the case, we make no order as to costs.

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