

K. Moosa Haji's widow Smt. Kannadiyil Ayissu and Others

Vs

Executive Officer, Shree Lakshmi Narasimha Temple

Civil Appeal No. 8402 of 1995

K. Ramaswamy, Mrs. Sujata V. Manohar JJ)

01.05.1996

JUDGMENT

1. This appeal by special leave arises from the judgment of the Kerala High Court dated March 20, 1995 made in S.A. No. 995/89. The admitted position is that the appellants-predecessor one Mr. Vellu had entered into an agreement with the respondent Devaswam for construction of residential premises on an extent of 3-1/2 cents of land under Ex. A-1 dated November 25, 1921. The extent is of 5 x 7 ft. Koles with a boundary specified thereunder. The building constructed on this land has Municipal No. 177. Thereafter it would appear that the appellant had extended their possession to 10-3/10 cents and 13-1/5 cents at different times. The respondent has filed the suit for eviction of the appellants and possession thereof. The trial Court and the appellate Court have dismissed the suit and the appeal. But in the second appeal, the High Court declared that the permission granted by the Executive Officer. Ex. B-8 does not confer any title. The appellants claim cannot extend beyond what has been granted to her predecessor-in-interest. Ex. A-1. Accordingly, it directed the trial Court to appoint a Commissioner to identify the land covered under Ex. A-1, demarcate the same and that rest of the land should be taken possession of.

2. It is contended by Shri Sukumaran, counsel for the appellant that the High Court has committed error in directing to take possession of 10-3/10 cents since the appellants had purchased it under the Land Reforms Act and, therefore, the decree to that extent is not correct in law. When we asked Mr. TLV Iyer, the counsel for the respondent, he stated that they have specifically excluded to the above extent and would pursue the remedy as provided under the Land Reforms Act. In that view, it is not necessary to go into the question as to the extent of 10-3/10 cents of the lands. The respondents are, therefore, entitled to recover the balance area admeasuring 13-1/5 cents.

3. It is then contended that the trial Court and the appellate Court after due consideration of evidence found that the house was existing in the land. The boundary prevails over the extend and that, therefore, the appellants cannot be ejected from the land on which the house was erected. We find no force in the contention. When we pointedly asked the counsel to point out the source for the right, the appellant fell upon Ex. B-8, rent receipt, as source of title. The appellant does not get any legal title based on it since Ex. B-8 is only a rent receipt which does not confer any title. There is no other document evidencing the title of the land on which the building came to be constructed in excess of 3-1/2 cents and the purchase certificate which covers 10-3/10 cents. The appellants cannot have any right more than what was conferred under Ex. A-1 which specifically mentions 3-1/2 cents and the purchase certificate which covers 10-3/10 cents including 3-1/2 cents. Under those circumstances, the decree of the High Court does not warrant interference, except for the exclusion

of total area of $10\frac{3}{10}$ cents of land covered by the purchase certificate from the decree.

4. The appeal is dismissed with the above modification. No costs. Appeal allowed.