Mancheri Puthusseri Ahmed and Others

Vs

Kuthiravattam Estate Receiver

Pannikot Madathil Lakshmikutty Amma and Others

Vs

Kuthiravattam Estate Receiver

Civil Appeals No. 868 of 1980 With No. 869 of 1980

(N. P. Singh, S. B. Majmudar JJ)

11.09.1996

JUDGMENT

S.B. MAJMUDAR, J. –

1. Both these appeals by special leave challenge the judgment of the High Court of Kerala at Ernakulam rendered in two revision applications moved by two different sets of defendants/judgment-debtors who were parties to Original Civil Suit No. 22 of 1946 of the Sub-Court, Manjeri and who were sought to be evicted from the suit property by the decree-holder in one and the same Execution Petition No. 543 of 1962. Two separate revision applications came to be filed in the High Court raising identical contentions by these two sets of contesting defendants because they had lost in two separate appeals filed by them against the executing court's order before the Sub-Court at Manjeri. In both these revision applications the appellants raised identical contentions which were repelled by the High Court and that is how they are before this Court in these two appeals. As identical question arises for our consideration the appeals were heard together and are being disposed of by this common judgment.

2. A short point arises for our consideration in these appeals. The appellants contend that they are entitled to the benefit of Section 4-A of the Kerala Land Reforms Act 1964 (Act 1 of 1964) as amended by Act 35 of 1969 (hereinafter referred to as "the Act"). The said provision seeks to confer the status of deemed tenancy on mortgagees in possession under circumstances mentioned in the said section. The appellants who were erstwhile mortgagees in possession of the suit land contend that despite the decree for redemption passed by the civil court having become final against them, even during execution proceedings they are entitled to get the benefit of Section 4-A of the Act. Therefore, their possession should not be disturbed. The executing court as well as the appellate court and also the revisional court have negatived this common contention.

3. In order to appreciate the grievance of the appellants/judgment-debtors centering round the aforesaid provision a few relevant facts may be noted at the outset.

4. The suit land was mortgaged by the predecessor-in-interest of the respondent decree-holder with the predecessor-in-interest of the appellants. The predecessor-in-interest of the respondent filed

Original Suit No. 212 of 1946 in the Munsif's Court at Manjeri for redemption of the suit usufructuary mortgage in favour of the appellants and other defendants. In all there were 83 defendants who represented the mortgagees in possession. Various defences raised by the defendants were negatived and ultimately the trial court decreed the suit except as regards a part of the property in possession of the 81st defendant. The dissatisfied plaintiff filed an appeal being AS No. 164 of 1989 before the appellate court against the 81st defendant against whom the suit was dismissed by the trial court. The remaining 82 defendants do not appear to have challenged the said decree of the trial court against them. The appellate court by its order dated 12-3-1956 allowed the appeal of the plaintiff against the 81st defendant and held that property held by the 81st defendant was also included in the mortgage deed Ext. A-1 dated 15-12-1896. The 81st defendant carried the matter in civil appeal before the High Court being Second Appeal No. 163 of 1956 which also came to be dismissed on 10-6-1960. Thus by that date the decree for redemption of the suit mortgage against all the 83 defendants became final. Thereafter the respondent plaintiff-mortgagor filed Execution Petition No. 543 of 1962 for recovery of possession of the property from the respective judgment-debtors. During the pendency of the execution proceedings Kerala Land Reforms Act came into force from 1-4-1964. The Act created certain deemed tenancies and granted fixity of tenure to those deemed tenants. This Act was amended by Act 35 of 1969 by which Section 4-A, with which we are concerned, was brought on the Statute-Book with effect from 1-1-1970. The appellants contended before the executing court that they were entitled to the benefit of Section 4-A and, therefore, they could not be evicted from the suit property in their possession as they had become deemed tenants of the lands occupied by them. The executing court, as noted above, rejected these contentions and that decision which has been upheld by the appellate court and the revisional court is the subject-matter of challenge before us. Section 4-A on which strong reliance is placed by the learned Senior Counsel for the appellants reads as under :

> "4-A. Certain mortgagees and lessees of mortgagees to be deemed tenants. - (1) Notwithstanding anything to the contrary contained in any law or in any contract, custom or usage, or in any judgment, decree or order of court, a mortgage with possession of land, other than land principally planted with rubber, coffee, tea or cardamom, or the lessee of a mortgagee of such land shall be deemed to be a tenant if -
>
> (a) the mortgagee or lessee was holding the land comprised in the mortgage for a continuous period of not less than fifty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969; or
>
> (b) the mortgagee or lessee has constructed a building for his own residence in the land comprised in the mortgage and he was occupying such building for such purpose for a continuous period of not less than twenty years immediately preceding such commencement :
>
> Provided that a mortgagee or lessee falling under this clause shall not be deemed to be a tenant if he or, where he is a member of family, such family was holding any other land exceeding two acres in extent on the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette; or
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> (c) the land comprised in the mortgage was wasteland at the time of mortgage or land to which the Madras Preservation of Private Forests Act, l949, would have applied if that Act had been in force at the time of mortgage, and -

(i) the mortgagee or lessee was holding such land for a continuous period of not less than thirty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969, and

(ii) the mortgagee or lessee has effected substantial improvements on such land before such commencement.

Explanation I. - For the purposes of this sub-section, in computing the period of continuous possession or occupation by a lessee, the period during which the mortgagee was in possession or occupation, as the case may be, shall also be, taken into account.

Explanation II. - In computing the period of fifty years referred to in clause (a) or the period of thirty years referred to in clause (c), the period during which the predecessor-in-interest or predecessor-in-interest of the mortgagee or lessee was or were holding the property shall also be taken into account.

Explanation III. - For the purposes of clause (b), -

(i) 'mortgagee' or 'lessee' shall include a predecessor-in-interest of the mortgagee or lessee, as the case may be;

(ii) 'building' includes a hut.

Explanation IV. - In computing the period of twenty years referred to in clause (b), occupation of the building by any member of the family of the mortgagee or lessee for residential purpose shall be deemed to be occupation by the mortgagee or lessee, as the case may be, for such purpose.

Explanation V. - In calculating the extent of land held by a family for the purposes of clause (b), all the lands held individually by the members of the family or jointly by some or all of the members of such family shall be deemed to be held by the family.

Explanation VI. - For the purposes of sub-clause (ii) of clause (c), -

(i) improvements made by the mortgagee shall be deemed to be improvements made by the lessee;

(ii) 'mortgagee' or 'lessee' shall include a predecessor-in-interest of the mortgagee or lessee, as the case may be.

Explanation VII. - For the purposes of clause (c) -

(i) improvements shall be deemed to be substantial improvements if the value thereof on the date of commencement of the Kerala Land Reforms (Amendment) Act, 1969, is not less than twenty-five per cent of the market value of the land on that date;

(ii) a land shall be deemed to be wasteland notwithstanding the existence of scattered trees thereon.

(2) Nothing contained in sub-section (1) shall apply to a lessee if the lease was granted on or after the commencement of this Act."

5. A mere took at the said provision shows that the said section will operate notwithstanding any judgment, decree or order of any court against the mortgagee-in-possession concerned if the following conditions are satisfied :

1. He must be a mortgagee-in-possession of the land on the date of the coming into force of that section which is not retrospective in nature meaning thereby that the person who wants the benefit of Section 4-A must be a mortgagee-in-possession of the land on 1-1-1970. As we are not concerned with other types of excluded lands we need not refer to them.

2. Such a mortgagee-in-possession on 1-1-1970 must satisfy the further condition that he was holding the land comprised in the mortgage for a continuous period of not less than fifty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969 meaning thereby for a period of not less than fifty years immediately before 1-1-1970. As we are not concerned with clauses (b) and (c) in the present proceedings we need not dilate thereon.

When we turn to the facts of the present cases, it becomes clear that none of the aforesaid two conditions has been satisfied by the appellants. It is true that the appellants were mortgagees-in-possession through their predecessor-in-interest since 15-12-1896 and can get benefit of Explanation II and, therefore, years back they had completed more than fifty years of possession as mortgagees. It is also true that decree for redemption of the suit mortgage against them had become final and during execution proceedings Section 4-A had come into force. However there is a farther fact which stares in the face of the appellants. In the execution proceedings themselves the respondent decree-holder mortgagor deposited the mortgage amount and value of improvements on 14-3-1969 and consequently the executing court ordered delivery of property on such payment to the decree-holder. Once that happened the status of the appellants as erstwhile mortgagees in possession underwent a metamorphosis and thereafter they continued to remain in possession only as judgment-debtors illegally sticking to the land. The relationship of mortgagor and mortgagee between the parties got snapped. It is now well settled that despite the decree for redemption which might have been passed by a competent court and which might have become final till the mortgage amount is deposited by the mortgagor the relationship of mortgagor and mortgagee does not come to an end. Conversely once the amount is deposited by the mortgagor decree-holder even during the execution proceedings the relationship between the parties as mortgagor and mortgagee ceases and thereafter till actual delivery of possession the erstwhile mortgagee-in-possession remains merely as judgment-debtor in illegal possession. In the case of prithi Nath Singh v. Suraj Ahir [AIR 1963 SC 1041 : 1963 BLJR 675] it has been held by Raghubar Dayal, J., speaking for the two-member Bench of this Court that when the mortgage money is paid by the mortgagor to the mortgagee, there does not remain any debt due from the mortgagor to the mortgagee, and therefore, the mortgage can no longer continue after the mortgage money has been paid. Further, the definition of usufructuary mortgage itself leads to the conclusion that the authority given to the mortgagee to remain in possession of the mortgaged property ceases when the mortgage money has been paid up. When the mortgage money has been paid up, no question of appropriating the rents and profits accruing from the property towards interest or mortgage money can arise. If the mortgage money has been received by the mortgagee and thereafter he refuses to perform the acts which he is bound to do under Section 60 the mortgagor can enforce his right to get back the mortgage document, the

possession of the mortgaged property and the reconveyance of that property through court.

6. The same view was reiterated by a later decision of this Court in the case of Parameswaran Govindan v. Krishnan Bhaskaran [1993 Supp (1) SCC 572]. K. Ramaswamy, J., speaking for the two-member Bench of this Court while considering the scope and ambit of Section 4-A of this very Act held that from the date of deposit of the decretal amount the possession of the mortgagee-respondent would be unlawful. Section 4-A of the Land Reforms Act would not denude the right to repossession of the mortgagor under Section 60 of the Transfer of Property Act, 1882 without the assent of the President of India. Section 4-A of the Land Reforms Act which engrafts a non obstante clause is of little assistance to the respondent, as he did not complete 50 years of continuous possession on the date when the amending Act 35 of 1969 came into force. It was further observed that a conjoint reading of Section 60, Section 76(h) read with Section 83 of the Transfer of Property Act would amplify that on deposit of the mortgage amount, the contractual relationship of mortgagor and mortgagee ceases. There does not remain any debt from the mortgagor to the mortgagee and, therefore, the mortgage can no longer continue after the mortgage money is paid. On the payment of mortgage money or deposit thereof in the court by the mortgagor, the mortgage comes to an end and the right of the mortgagee to remain in possession is also coterminous. Thereafter, the mortgagee continues in unlawful possession.

7. In view of this settled legal position, therefore, it must be held that the appellants' status as mortgagees-in-possession came to an end on 14-3-1969 when the mortgage money was deposited by the respondent decree-holder in execution proceedings. Thereafter the appellants' possession became unlawful and they were liable to be forthwith evicted in execution of the decree for redemption which had become final. Consequently it must be held that the very first condition for applicability of Section 4-A of the Act was not satisfied by the appellants. To recapitulate the first condition for applicability of Section 4-A is that the person concerned who seeks the benefit of Section 4-A for getting the status of deemed tenant must be in possession of the land concerned as a mortgagee on 1-1-1970 when Section 4-A came into force. Almost 9 months prior to 1-1-1970 the appellants had ceased to be mortgagees-in-possession and were only in unlawful possession of the decretal land. Thus the very first condition for applicability of Section 4-A was not fulfilled by the appellants. Once this first condition was not satisfied, Section 4-A went out of picture for the appellants. Even that apart the second condition was also not satisfied for applicability of Section 4-A in their favour. They cannot get the benefit of Section 4-A unless even the second condition is satisfied namely that they must be in continuous possession as mortgagees-in-possession for 50 years and more, immediately preceding the commencement of Section 4-A meaning thereby that prior to 1-1-1970 for continuous 50 years backwards without a break they must have continued to remain in possession as mortgagees-in-possession. The words "50 years immediately preceding the commencement of the Amendment Act of 1969" are very significant. In order that continuous period of fifty years can start immediately preceding the coming into force of Section 4-A it must start from a day earlier, i.e. from 31-12-1969 backwards up to a period of fifty years meaning thereby stretching back till 31-12-1919. Thus even though the mortgagee-in-possession may be holding the possession of the land as mortgagee on 1-1-1970 he must further show that he had remained as a mortgagee-in-possession by himself or through his predecessor-in-interest continuously atleast from 31-12-1919 till 31-12-1969 without any break. On the facts of the present case it cannot be disputed and it is not in dispute that the appellants were not in possession as mortgagees-in-possession for this whole period but their status as mortgagees-in-possession had come to an end and the relationship of mortgagor and mortgagee had got snapped between the parties from 14-3-1969 onwards. Thus for a period of almost 9 months prior to 1-1-1970 the appellants were not in possession as mortgagees. On the contrary from 14-3-1969 onwards their

possession of the suit land was unlawful. Thus even the second condition is not satisfied for applicability of Section 4-A.

8. Having realised this difficulty in the way of the appellants the learned Senior Counsel for the appellants submitted that there is a non obstante clause for applicability of Section 4-A and consequently despite there being a judgment, decree or order against them which has become final they are entitled to get the benefit of this section. We fail to appreciate how the said non obstante clause can be of any assistance to the appellants on the facts of the present cases. All that the non obstante clause means to convey is to the effect that even though a mortgagee-in-possession might have suffered a judgment or decree against him which might have become final so long as his status as mortgagee-in-possession has survived even pending execution proceedings and by that time if on 1-1-1970 the section gets attracted then such a mortgagee-in-possession even though having an adverse judgment or decree against him can get the benefit of Section 4-A if the relevant conditions of the said section are fulfilled by him and in such an eventuality merely because such a mortgagee-in-possession is covered by the sweep of any final judgment or decree for redemption the same will not come in his way. On the facts of the present cases, however, as we have seen, not only the appellants were covered by a final decree for redemption but they had lost the status of mortgagees-in-possession almost 9 months prior to the coming into force of Section 4-A. Therefore, on the date on which the section operated they were no longer mortgagees-in-possession. Consequently the non obstante clause which would have otherwise helped them if they had continued as mortgagees-in-possession on 1-1-1970 does not avail the appellants on the facts of the present cases. The learned Senior Counsel for the appellants next contended that in any case the appellants had remained in possession as mortgagees by themselves and through their predecessors for more than fifty years, that the mortgage was of 1896 and even by the date the suit was filed, fifty years' period was over. That may be so. However the requirement of the second condition, as we have shown earlier, is that such a mortgagee-in-possession who wants to avail of the benefit of Section 4-A must show that he continued in possession as mortgagee for fifty years or more continuously at least from 31-12-1919 up to 31-12-1969 which was immediately preceding the commencement of Section 4-A with effect from 1-1-1970. The learned Senior Counsel in this connection submitted that the words "immediately preceding the commencement" may be given a more expanded meaning as this is a beneficial provision. It is difficult to agree. In the first place the section creates a legal fiction. Therefore, the express words of the section have to be given their full meaning and play in order to find out whether the legal fiction contemplated by this express provision of the statute has arisen or not in the facts of the case. Rule of construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legal fiction the court is to ascertain for what purpose the fiction is created, and after ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction. In this connection we may profitably refer to two decisions of this Court. In the case of CIT v. Shakuntala [AIR 1966 SC 719 : (1961) 43 ITR 352] a three-Judge Bench of this Court speaking through S.K. Das, J., made the following pertinent observation in paragraph 8 of the Report :

> "The question here is one of interpretation only and that interpretation must be based on the terms of the section. The fiction enacted by the legislature must be restricted by the plain terms of the statute."

In another case reported in the same volume at page 870, namely, CIT v. Moon Mills Ltd. [AIR 1966 SC 870 : (1966) 59 ITR 574] another three-Judge Bench of this Court speaking through Subba

Rao, J., observed in paragraph 8 of the Report in connection with the provision creating such legal fictions as under :

> "The fiction is an indivisible one. It cannot be enlarged by importing another fiction...."

In the present cases fiction created by Section 4-A is circumscribed by its express words. Before such a deemed tenancy can arise it must be shown by the beneficiary concerned of the said provision that he was a mortgagee-in-possession for a continuous period of not less than fifty years immediately preceding the commencement of the said section. The words "immediately preceding the commencement" must necessarily be given their ordinary and full meaning. They necessarily point out the legislative intent that the fiction is created only for covering such type of cases where the mortgagee-in-possession not only exists on the land as mortgagee on 1-1-1970 but also continuously existed as such for a period backward stretching up to at least 50 years in past from 31-12-1969 which was the day immediately preceding such commencement. Argument of the learned Senior Counsel was that if the words "50 years of continuous possession as mortgagee at any time prior to the coming into force of the amending Act" are read in the section by implication, he would qualify for the benefit of Section 4-A. Such a contention would have stood the test if the section would have been worded differently, namely, as follows :

> "Such mortgagee was in continuous possession for a period of not less than 50 years prior to the coming into force of the amending Act."

Such words are not found in the section. In fact the learned Senior Counsel for the appellants wants us to read the section after omitting the word 'immediately', advisedly prefixed by the legislature to the word 'preceding'. Such an exercise is not permissible for the Court. We have to keep in view that as per the section the 50 years' period is circumscribed by further requirement that such continuous period of occupation as mortgagee-in-possession must exist without break or any hiatus till the date of the coming into force of the Act and must consist of at least 50 years' continuous occupation immediately prior to the coming into force of Section 4-A, as such mortgagee-in-possession. However beneficial may be the scope and ambit of the legal fiction created by the legislature while enacting Section 4-A such fiction can arise only when the express language of the section laying down the conditions precedent for raising of such a fiction is complied with by the mortgagee-in-possession concerned seeking the benefit of such a deeming fiction. Such a fiction cannot be extended by the court on analogy or by addition or deleting words not contemplated by the legislature.

9. As a result of the aforesaid discussion it must, therefore, be held that the appellants have failed to fulfil both the conditions precedent for applicability of Section 4-A and for getting the benefit of deemed fiction arising therefrom. Consequently the High Court as well as the courts below were perfectly justified in not extending the benefit of Section 4-A to the appellants. In the result these appeals fail and are dismissed. On the facts and circumstances of the cases there will be no order as to costs.