

SUPREME COURT OF INDIA

Thirumangalath Kunhirattan Appu Kurup

Vs.

Koiloth Kamath Janaki

(M Punchhi and K Vennkataswami JJ.)

01.11.1996

JUDGMENT

VENKATASWAMI, J.

The undisputed facts are the following :

The suit land was assigned under an assignment deed dated 5.6.1897 by one Nambra Kurup in favour of one Rayiru Kurup, Madhavi Amma and Chiruthayi Amma. they being brother and sisters. The said Rayiru Kurup purported to have executed a registered deed of kuzhikanam(lease) dated 25.5.1946 in favour of his son by name Appu Kurup (appellant herein), stipulating a sum of Rs. 5/- and 50 coconut leaves as purappadu (rent) Though the said Rayiru Kurup mentioned the names of his sisters as co-assignees. they were not parties to the said kuzhikanam deed. The legal heirs of Chiruthai (one of the assignees). being respondents 4-31 herein. filed a suit No. 642/58 on 26.5.1958 for partition of their 1/3rd share in the suit land with their share of future mesne profits ignoring the lease (kuzhikanam) above- mentioned. A preliminary decree in that suit was passed on 14.11.1960 expressly rejecting a claim put forward by the present appellant of his tenancy rights in the suit property. The appeal filed by the appellant was dismissed on 2.12.1963. Thereafter, the plaintiffs in the suit filed a petition for passing final decree. On 16.12.1967, a final decree came to be passed. Against that final decree. the appellant preferred A.S. 335/67 before the subordinate court. When the appeal was pending. Kerala Land Reforms (Amendment) Act. 1969 came into force with effect from 1.1.1970. Taking advantage of that, the appellant moved the learned Sub-Judge in the pending appeal to grant him leave to file additional ground on the basis of Sections 7 and 78 of the Kerala Act 1 of 1964 as amended by Act 35 of 1969. The first Appellate Court allowed that application. However. by a judgment dated 22.10.1971, the appeal was dismissed on the ground that the lease deed executed by Rayiru Kurup was a collusive one and purposely created to defeat the right of the plaintiffs and defendants Nos 3 to 17 in the suit. Therefore such a lease deed cannot be pressed into service to claim fixity of tenure under Section 7 or 7B of the Act. The appellant herein preferred a further Second Appeal No. 1074/71 before the High Court of Kerala. The High Court remanded the matter to the trial court to find out factually whether the appellant herein who was the first defendant in the suit. was in possession on 1.1.1970 of the land over which he claimed tenancy rights. After remand, the trial court by judgment dated 17.11.1977 upheld the claim of the appellant under Section 7B in respect of the plots A, B and C in the Ext. C-4 Plan filed in the suit .

Accordingly, the right of the appellant in those plots for fixity of tenure under Section 7B was upheld. The plaintiffs (respondents Nos 4 to 31 herein) preferred a Revision to the Kerala High Court against the order of the trial court and the High Court by order dated 28.5.1982 upset the trial court's order and rejected the claim of the appellant under Section 7B of the Kerala Land Reforms Act in respect of the plots A, B and C. It is under these circumstances, the present appeal is preferred by the appellant.

We have gone through the judgments of the trial court and High Court and heard counsel for the parties. We have seen in the narration of the facts that Rayiru Kurup knowing that there are two other co-assignees, has deliberately and in order to deprive his sisters (co- assignees) of their right in the suit land cunningly executed the said lease in the year 1946. The High Court, apart from noticing the findings rendered in the suit both by the trial court and by the appellate court (before remand by High Court) to the effect that the said lease was a collusive document, and therefore, not valid and bindings came to the same conclusion independently also. But for the amendment in the year 1970, the appellant would not have got the right of fixity of tenure. As a matter of fact, it is not in dispute that a portion of the plaint schedule land was taken possession of by the heirs of another co-assignee, namely, Madhvi Amma. For some reason or other, the plaintiffs could not take delivery of their share and in the meanwhile the amendment to the Kerala Land Reforms Act came into force from 1.1.1970.

In all these circumstances, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution to interfere with the order to the High court which has done substantial justice to the parties in the facts and circumstances of the case. Accordingly, we dismiss the appeal, however, there will be no order as to costs.