

S. Vanathan Muthuraja

Vs

Ramalingam Alias Krishnamurthy Gurukkal and Others

Civil Appeal No. 3039 of 1986

03.04.1997

ORDER

1. This appeal by special leave arises from the judgment of the learned Single Judge of the Madras High Court, made on 16-7-1983 in Second Appeal No. 222 of 1979. For the purpose of disposal of this appeal, it is not necessary to state all the facts. Suffice it to state that one Ayyasamy Gurukkal was the common ancestor in respect of the suit property. He had four sons, namely, Annasamy, Subbiah, Sundara and Neelkanda. Ramani is the grandson of Ayyasamy Gurukkal who was impleaded as first defendant. The appellant had purchased his 1/3rd share in the property under the sale deed, Ex. A-6, dated 6-5-1967. Subbiah Gurukkal having died unmarried; Sundara Gurukkal and Neelkanda Gurukkal had 1/3rd share each; Sundara died leaving behind him four grandsons, D-3 to D-6 through his son Rajarathina, widow Dorai, D-7; and another son Ramalingam, D-2. Neelkanda died leaving behind him his widow, D-8 and daughter, D-9. His widow D-8 had sold her 1/3rd share to Plaintiff 1 under the sale deed, Ex. A-7, dated 26-6-1970. Initially, the plaintiff had filed OS No. 1848 of 1967 for a declaration of title and injunction of the property purchased under Ex. A-6. Therein, it was held that though sale of undivided 1/3rd share is valid, no injunction could be granted against the co-owners and, therefore, the suit came to be dismissed. After the purchase of the property under Ex. A-7, OS No. 946 of 1972 came to be filed for partition of the 2/3rd share and separate possession thereof. The defendants pleaded in the written statement that the lands are service inam lands and are burdened with service of performing pooja to the temple. Since Annasamy, eldest son of Ayyasamy Gurukkal had failed to perform the duty, he lost his right to the property. Ultimately Sundara, having been in possession, perfected his title of adverse possession and, therefore, the appellant did not acquire any title to the property. The trial court has accepted the defence and dismissed the suit. However, on appeal, it was reversed with the holding that they did not acquire title of adverse possession against the co-owner. The finding in that respect is correct in law.

2. When the appeal was pending under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (30 of 1963), the Tehsildar had initiated suo motu enquiry for grant of ryotwari patta. After enquiry, the Tehsildar found that ryotwari patta was granted in favour of the institution. An appeal filed before the tribunal was dismissed. Thus the patta granted to the institution became final. When the second appeal was filed, the learned Judge held that by virtue of the provisions contained under the Act, the suit is not maintainable. Accordingly, the suit came to be dismissed. Thus, this appeal by special leave.

3. The patta under Ex. B-1 dated 28-2-1974 granted under Section 8(2)(ii) of the Act by the Tehsildar was confirmed. On appeal, it was confirmed which order has become final. Thus, the title to the property was vested in the institution and thereby, none of the parties has any right, title and interest in the property. Therefore, the suit of the appellant without impleading the institution is not maintainable. Under Section 9 CPC, the courts shall, subject to the provisions contained therein,

have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would take cognizance of it. Therefore, the normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set-up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. However, in the development of civil adjudication of civil disputes, due to pendency of adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of civil disputes with less expensive but expeditious disposal. It is settled legal position that if a tribunal with limited jurisdiction cannot assume exclusive jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the court that is required to decide whether the Tribunal with limited jurisdiction has correctly assumed jurisdiction and decided the dispute within its limits. It is settled law that when jurisdiction is conferred on a tribunal, the courts examine whether the essential principles of jurisdiction have been followed and decided by the tribunals leaving the decision on merits to the tribunal. It is also equally-settled legal position that where a statute gives finality to the orders of the special tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil court would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Where there is an express bar of jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides remedy for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the tribunal so constituted and the question whether remedies are normally associated with the action in civil courts or prescribed by the statutes or not require examination. Therefore, each case requires examination whether the statute provides right and remedy and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof. After the advent of independence, the land reforms was one of the policies of the Government abolishing feudal system of land tenures and conferment of the ryotwari patta on the tiller of the soil. Thereby, the land reform laws extinguish pre-existing rights and create new rights under the Act. The Act provides for the jurisdiction of the tribunals in matters relating thereto and hierarchy of appeals/revisions are provided thereunder giving finality to the orders passed thereunder. Thereby, by necessary implication, the jurisdiction of the civil court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded giving not only the finality to the decisions of the tribunal but also ensuring disposal of the matters by the tribunal and making the ryotwari patta granted to the tiller of the soil conclusive. Under the normal course of civil procedure, the jurisdiction for the trial of the civil suits, in relation to the matters covered under the Acts, being time-consuming and tardy, and there being the lack of financial resources or otherwise incapacity to defend or want of knowledge of the parties as to their rights, energy-sapping civil suits with hierarchy of appeals are intended to be avoided. Obviously, therefore, the civil suits by necessary implication stand excluded unless the fundamental principles of procedure are followed by the

tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires tribunals to enquire into the rival claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil court stands excluded.

4. That apart, in view of the law laid down by this Court in Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu [1991 Supp (2) SCC 228] wherein entire case-law including the law laid down in State of T.N. v. Ramalinga Samigal Madam [(1985) 4 SCC 10] was discussed, we held that the suit is not maintainable as held by the learned Single Judge.

5. The appeal is, accordingly, dismissed. No costs.