Sankaranarayanan Potti (Dead) by L.Rs.

Vs

K. Sreedevi

(S. B. Majumadar, K. Venkatswami, A. P. Misra JJ)

26.03.1998

JUDGMENT

S.B. MAJUMADAR J

1. Leave granted.

2. I.A. No. 4, Application for substitution of the heirs of deceased original petitioner is granted. We have heard learned senior counsel for the appellants, heirs of the original petitioner in the S.L.P. as well as learned senior counsel for the respondents finally.

3. A Bench of two Judges of this Court has referred the Special Leave Petition from which this appeal arises for decision of a larger Bench of three Judges by order dated 25th October, 1996 and that is how these proceedings have been placed before us for final disposal. The reference as aforesaid has been made presumably on the ground that there is an apparent conflict between two decisions rendered by two Judge Benches of this Court in the case of Mathevan Padmanabhan alias Ponnan (Dead) through LRs. Vs. Parmeshwaran Thampi and others (1995 Supp. (1) SCC 479) and in the case of Chettam Veettil Ammad and another etc. etc. Vs. Taluk Land Board and others etc. etc. [AIR 1979 SC 1573].

4. In order to highlight the controversy arising in the present appeal it will be necessary to note a few relevant background facts.

Background Facts

5. The present appellants predecessor was defendant No. 2 in a civil suit O.S. 75 of 1958 filed by the original plaintiff for setting aside Sale Deed dated 27th July 1955 executed by defendant no. 1 one of the co-owners of the suit property. In favour of defendant no. 2 and also for redemption of the suit mortgage being otti mortgage (an anomalous mortgage) executed by the original mortgagors in favour of defendant no. 2 mortgagee. We shall refer to the parties to this appeal as defendants and plaintiffs respectively in the latter part of this judgment for the sake of convenience. The said mortgage dated 01st December 1944 was executed by the Tarwad of the plaintiff in favour of one Parameswaran Pillai and his sons. In the said suit for redemption a preliminary decree was passed by the Trial Court on 22nd January 1963 for redemption of the otti mortgage of defendant no. 2 on payment of mortgage amount and value of improvements by the plaintiffs. Defendant no. 2 challenged the said preliminary decree by filing regular appeal A.S. 527 of 1963 before the Appellate Court. The said appeal came to be dismissed on 27th November 1965. Thereafter defendant no. 2 carried the matter in Second Appeal No. 334 of 1966 before the High Court of Kerala. The said second appeal with another cognate second appeal was dismissed by the High Court on 19th February 1969. Thus the preliminary decree for redemption of the suit mortgage and

for partition of the suit property became final as no further proceedings were initiated by defendant No. 2 against the aforesaid decision of the High Court in second appeal. Thereafter Original Suit No. 75 of 1958 remained pending at the stage of passing final decree. In the meantime Kerala Land Reforms Act, 1963 [hereinafter referred to as the Land Reforms Act] which had come into force with effect from 01st April 1964 got amended by Amending Act 35 of 1969. According to defendant no.2 the said Amending Act gave him a statutory right to purchase the suit mortgage property as he got covered by the wider definition of 'tenant' as envisaged by the said Amending Act. On that ground defendant No. 2 filed an application under Section 72 B of the Land Reforms Act before the Land Tribunal. The Land Tribunal by its order dated 18th July 1974 issued a preliminary order holding that the applicant was a tenant entitled to purchase landlord's rights. Thereafter final orders were passed by the Land Tribunal on 28th October 1974 directing issuance of a certificate of purchase in favour of the applicant-defendant no.2. Accordingly certificate of purchase was issued to him under Section 72 K of the Land Reforms Act on 25th July 1975. A few years later, in the pending suit O.S. 75 of 1958, 11th defendant Kamalal Bai filed an application being I.A. 5092 of 1979 dated 17th November 1979 requesting the Trial Court to pass a final decree in the light of the preliminary decree which had become final between the parties. She also filed I.A.No. 630 of 1980 on 15th February 1980 before the Trial Court for condoning the delay in filing the application for final decree. Defendant no. 2 on the other hand filed objection in I.A. No. 5092 of 1979 contending that the application for final decree was barred by limitation and the otti sought to be redeemed is a tenancy coming within the purview of the provisions of the Kerala Land Reforms (Amendment) Act and that the order of the Land Tribunal, finding him to be entitled to fixity of tenure and assignment of the landlords' rights, required the suit against him to be dismissed. The Trial Court by its order dated 07th April 1982 dismissed I.A. No. 5092 of 1979 filed by the 11th defendant, for passing the final decree, on the ground that the application for final decree was barred by limitation. Application for condonation of delay was also dismissed. Thereafter 11th defendant filed A.S. No. 198 of 1982 against the dismissal of her I.A. No. 5092 of 1979 for passing final decree. The learned District Judge allowed the appeal of defendant no. 11 on 10th January 1983, it was held by the learned District Judge that the final decree application was not barred by limitation. The learned District Judge also directed that the Trial Court should consider other objections raised by defendant no. 2 to the final decree proceedings. It was also held that thee 11th defendant was entitled to file application for passing of final decree. Defendant no. 2 thereafter carried the matter to the Kerala High Court in Civil Miscellaneous Appeal No. 114 of 1984 challenging the judgment of the District Court in A.S. No. 198 of 1982 by which proceedings were remanded to the Trial Court for proceeding further in connection with the passing of final decree. The said miscellaneous appeal was dismissed by the High Court on 19th August 1989. It is not in dispute between the parties that no further proceedings were initiated by defendant no. 2 against the decision of the High Court in C.M.A. No. 114 of 1984. It is thereafter that on 30th August 1994 defendant no. 2 filed I.A. No. 1307 of 1994 in O.S. 75 of 1958 praying that the question whether the plaintiffs were entitled to get final decree may be decided as a preliminary issue. Same contentions were re-agitated by him by submitting that as he was armed with a certificate of purchase issued by the Land Tribunal the title of landlord was extinguished and it was also contended that Tribunal the little of landlord was extinguished and it was also contended that since more than 30 years, after the time statutorily fixed for deposit of redemption money, had expired redemption price could no longer be deposited, nor could the property be redeemed. This I.A. was dismissed by the Trial Court on 31st May 1995. Thereafter defendant no. 2 carried the matter in revision before the High Court by way of C.R.P. No. 1271 of 1995 which came to be dismissed by the impugned judgment dated 18th October 1995. It is the judgment of this High Court which is challenged in the present appeal on grant of special leave to appeal.

Rival Contentions

6. Learned senior counsel Shri T.R.G. Warriyar, appearing for the appellants, submitted that after the preliminary decree got confirmed by the High Court the Kerala Land Reforms Act got amended and under the amending provisions a new statutory right got conferred on defendant no. 2 to become a deemed purchaser of the suit land which was earlier held by him as otti mortgagee and as this was a new statutory right he was entitled to get it enforced through the Tribunal and that is what he had done and had obtained purchase certificate from the competent tribunal which had become final between the parties and, therefore, on the principle of res judicata the said certificate which had become conclusive under the Amending Act had to be given effect to by the Trial Court and the final decree proceedings were required to be dismissed qua defendant No. 2. It was also submitted that the decision of this Court in the case of Mathevan Padmanabhan (supra) was required to be re-considered as it had erroneously held that proceedings under Section 72 B of the Amending Act could not be entertained by the Tribunal till the Civil Court resolved the controversy whether the claimant was a tenant or not. That the Amending Act was a complete code in itself laying down its own machinery for adjudication of rights of parties and as the decision was rendered by the competent tribunal which had become final inter parties it cold not be held as laid down in the aforesaid decision of this Court that Section 72 B proceedings could not be finalised by the Tribunal till the question of tenancy was finally decided by the Civil Court in the hierarchy of appeal. In this connection strong reliance was placed on the earlier decision of two Judge Bench of this Court in the case of Chettiam Veettil (supra) for submitting that once the Land Tribunal issues certificate of purchase under Section 72 K of the Amending Act it becomes final and conclusive and cannot be gone behind by the Civil Court and the earlier decision of two Judge Bench of this Court in Chettiam Veettil (supra) was not noticed in the latter decision rendered by two Judge Bench of this Court in Mathevan Padmanabhan (supra). Learned senior counsel for the appellants, therefore, contended that I.A.No. 1307 of 1994 was wrongly rejected by the Trial Court as well as by the High Court and should have been granted. In the alternative it was contended that in any case final decree proceedings would not survive as they were barred by limitation and that the earlier decision of the Appellate Court holding that the final decree proceedings were not barred by limitation and hence remanding the proceedings for decision on merits was a remand order which was confirmed by the High Court in Miscellaneous Appeal but against the said decision the appellant could not have filed a special leave petition as it was at an interiocutory stage but now before this Court he can legitimately contend that the final decree proceedings were barred by limitation and even on that additional ground his application I.A.No. 1307 of 1994 ought to have been granted. In support of this contention it was submitted that the preliminary decree was dated 22nd January 1963 while the final decree application was moved by defendant no. 11 as late as on 17th November 1979. It was, therefore, filed beyond the permissible period of three years under the residuary Article in the scheme of Limitation Act for filling such application. In any case, placing reliance on a decision of this Court in the case of Mohd. Abdul Khader Mohd, Kastim and another Vs. Pareethii Kunju Sayed Ahammed and others [(1996) 11 SCC 83]. it was submitted that as the redemption money was not deposited within statutory period of six months by the plaintiffs or by any of the other supporting defendants the final decree proceedings could not be continued any further and the application for passing the final decree was required to be dismissed even on that ground. He, however, lastly submitted that in case this Court is inclined to remand the application of the appellant, I.A.No. 1307 of 1994, for a fresh decision by the Civil Court on the issue of tenancy of defendant no. 2 then the question of limitation may also be kept open for consideration of the Trial Court.

7. Learned senior counsel Shri T.L.V. Iyer, appearing for the respondents on the other hand submitted that there is no conflict between the aforesaid two decision of the two Division Benches

of this Court. That in the case of Mathevan Padmanabhan (supra) K. Ramaswamy, J., speaking for the Bench had to consider the question whether in a suit filed after the amendment of the Kerala Land Reforms Act in 1969 when the issue of tenancy arose for consideration and was not finally decided, an application under Section 72B by such a claimant could have been granted. The said decision on the facts of that case was rightly rendered by holding that 72 B application should have been kept pending by the Land Tribunal till the question of tenancy of the claimant was finally decided in the hierarchy of proceedings. It was also submitted that the said view propounded by the Division Bench of two learned Judges of this Court is not in conflict with the earlier decision of the other two Judge Bench in Chettiam Veettil (supra) as in that case an entirely different question was considered, namely, when a claimant had got his tenancy rights adjudicated upon by the Tribunal and got a certificate of purchase under Section 72 K which was final and conclusive whether in a separate and independent proceedings under the very Act before the Land Revenue Board for deciding the question of surplus holding of such tenant the said certificates could be gone behind by the Land Revenue Board. Thus the controversy posed for consideration of the earlier Bench of this Court in Chettiam Veettil (supra) was entirely different and consequently it cannot be said that there was any conflict of the decisions rendered by the two Benches of this Court. It was next contended that even assuming that the Amending Act could be pressed in service by defendant no. 2, as he was seeking to invoke the provisions of this Act pending the civil litigation between the parties Section 103 sub-section (3) of the very same Amending Act on which he placed reliance would stare in the face and would have required him to move the Civil Court for appropriate direction under the Amending Act read with the parent Act and under these circumstances proviso to sub-section (1) of Section 125 of the parent Act would get attracted to such a controversy and as it was a pending suit wherein such a question was raised it was for the Civil Court to decide this question and consequently the Land Tribunal would naturally have no jurisdiction to go into this question. As a result, whatever decision the Land Tribunal might have rendered in favour of defendant no. 2 and the consequential purchase certificate issued to him would all be an exercise in futility and would be without jurisdiction. Hence the Trial Court rightly rejected defendant no. 2's application I.A. No. 1307 of 1994 and consequently the impugned decision of the High Court in revision application confirming that order of the Trial Court cannot be found fault with. He, however, fairly stated that even in earlier proceedings the Appellate Court had clearly observed while remanding the final decree proceedings for decision of the Trial Court that all other contentions which could be put forward by defendant no. 2 would be open for scrutiny of the Court and consequently whether he can get benefit of the protection of the Kerala Land Reforms (Amendment) Act could even now be considered by the Civil Court afresh without in any way being influenced by the incompetent and infructuous proceedings earlier initiated by defendant no. 2 before the Land Tribunal and the certificate of purchase obtained by him consequent thereto. On the question of limitation it was submitted that once the application for passing final decree was held to be within limitation by the Appellate Court which remanded the proceedings for decision on merits and as that decision was confirmed by the High Court in Miscellaneous Appeal, this is not the stage in the special leave petition arising out of the decision on interim application No. 1307 of 1994 for raising such a contention and if at all such a contention may be open to the appellants for being canvassed on any legally permissible grounds centering round the question of limitation it can be raised only when the final decree proceedings culminate against them in the hierarchy of proceedings and if an occasion arises for the appellants to ultimately come to this Court in further S.L.P. against such final decree if passed against them. But even in those future proceedings at least up to the stage of the High Court such a contention would not be open for being canvassed again. In this connection our attention was invited to a decision of a Bench of three learned Judges of this Court in the case of Satyadhyan Ghosal and others Vs.Smt. Deorajin Debi and another [AIR 1960 SC 941].

Points for determination

8. In view of the aforesaid rival contentions the following points arise for our consideration :

1. Whether the decision rendered on 18th July 1994 by the Kerala Land Tribunal holding defendant no. 2 to be a tenant entitled to purchase the landlord's rights and the final order dated 28th October 1974, directing issuance of certificate of purchase, passed by the Tribunal and the certificate of purchase no. 53 dated 25th July 1975 issued to him under Section 72 K of the Kerala Land Reforms Act as amended by Act 35 of 1969 can be treated to be final and conclusive and binding on the parties and on account of which the final decree proceedings against defendant no. 2 should be held to be incompetent and are required to be closed.

2. If the answer to the aforesaid point is in the negative whether the Trial Court in the final decree proceedings which are pending between the parties can consider the contentions that defendant no. 2 had got the benefit of the provision of the Amending Act 35 of 1969 as a cultivating tenant to purchase the suit land.

3. If the appellants are held entitled to agitate the said contentions and if ultimately the said contention is held in their favour in the hierarchy of proceedings can the appellants thereafter request the Land Tribunal to issue appropriate certificate of purchase under Section 72 K of the Kerala Land Reforms Act in the light of the final decision of the Civil Court rendered in their favour on this aspect.

4. Whether there is any conflict between the decisions of this Court in the case of Chettaim Veettil (supra) and in the case of Mathevan Padmanabhan (supra).

5. Whether the final decree proceedings are barred by limitation.

6. What final order ?

We will deal with these points seriatim.

Point No. 1

9. So far as this point is concerned we must keep in view the salient facts of the case which have stood well established on the record. It is not in dispute between the parties that original defendant no. 2 was an otti mortgagee pursuant to the mortgage dated 01st December 1944 binding between the parties. It is also not in dispute that the Sale Deed said to have been executed by original defendant no. 1 in favour of defendant no. 2 on 27th July 1955 is finally held to be not legal and operative and consequently defendant no. 2 could be treated to be only an otti mortgagee. It is also not in dispute between the parties that preliminary decree for redemption which had been passed by the Civil Court has stood confirmed up to the High Court in Second Appeal No. 334 of 1966 which was dismissed by the High Court on 19th February 1969 and thus the preliminary decree has become final. It was thereafter that defendant no. 2 during the pendency of final decree proceedings before the Civil Court tried to agitate his contention before the Kerala Land Tribunal that he was a protected tenant as per the provisions of the Kerala Land Reforms (Amendment) Act 35 of 1969 and on the basis of that contentions he ultimately got order in his favour from the Tribunal. The question is whether, pending the civil suit against him for redemption, such an exercise could have been legally undertaken by him before the Tribunal and whether the Land Tribunal acting under the

provisions of the Amending Act 35 of 1969 had jurisdiction to grant him any such relief. For deciding this question relevant provisions of the Kerala Land Reforms Act, 1963 as amended by the Amending Act 35 of 1969 will have to be seen. Learned senior counsel for the appellants fairly stated that the parent Act being Kerala Land Reforms Act, 1963 which came on the Statute Book with effect from 01st April 1964 did not give defendant no. 2 any right of tenancy and the further right to become a deemed purchaser of the land. However, according to him, after the Amending Act 35 of 1969 became operative from 01st January 1970 the situation changed and a fresh statutory right came to inhere in defendant no. 2. In order to appreciate this contention it is necessary to note a few relevant provisions of the said Act.

10. With effect from 01st January 1970 pursuant to the Amending Act 35 of 1969 the definition of 'kanam' as found in Section 2 (22) was amended by the legislature and it is this amended definition which is pressed in service by the learned senior counsel for the appellants for submitting that defendant no. 2 became a kanam-holde__r. The very same Act defines a 'tenant' as per Section 2 (57), amongst others, to include a kanamadar. Putting store on these provisions defendant no. 2 straightaway approached the Land Tribunal under Section 72 B of Act alleging that as he was a cultivating tenant of the land he had a righto get the land assigned to him under the said provision and it was that application which was allowed by the Tribunal which fixed the purchase price as per Section 72D of the Kerala Land Reforms Act as amended by the Amending Act and then certificate of purchase was issued in favour of defendant no. 2 under Section 72 K. The moot question is whether pending the civil suit between the parties it was open to defendant no. 2 to directly approach the Tribunal for getting the aforesaid orders which according to learned senior counsel for the appellants have become binding as res judicata between the parties. It is now well settled that even if a decision is right or wrong if it is rendered by a competent court inter parties it would bind as res judicata. Therefore, the short question is whether the Land Tribunal under the amending provisions had jurisdiction to grant the said relief to defendant no. 2. So far as this question is concerned the very same Amending Act 35 of 1969 contemplated a class of claimants of tenancy rights who had already suffered decrees for possession from competent civil courts passed prior to the coming into force of the Amending Act or against whom civil suits for such reliefs were pending on the date on which the amending provisions came into force, that is 01st, January 1970. These two provisions which were styled as transitory provisions in the Amending Act are required to be noted. Section 108 sub-section (2) and (3) read as under :-

> "108 (2) -Any decree passed before the commencement of this Section for the dispossession of a person from the land in his possession, pursuant to which dispossession has not been effected, may, on the application of such person to the court which passed the decree be reopened and the matter may be disposed of in accordance with the provisions of the principal Act as amended by this Act.
>
> (3) - If in any suit, application, appeal, revision, review, proceedings in execution of a decree or other proceedings, pending at the commencement of this section before any court, tribunal, officer or other authority, any person claims any benefit, right or remedy conferred by any of the provisions of the principal Act or the principal Act as amended by this Act, such suit, application, appeal, revision, review, proceedings, in execution or other proceedings shall be disposed of in accordance with the provisions of the principal Act as amended by this Act."
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> It is not in dispute that these transitory provisions still hold the field. A mere look at Section 108 (2) as found in the Amending Act shows that it would apply in cases

where decrees for possession are already finally passed against persons who seek benefit of the Amending Act. In the present case as the civil suit for partition and redemption was pending at the stage of passing final decree it could not be said that there was a final decree for redemption and possession passed against defendant no. 2. Hence Section 108 (2) is out of picture. However, Section 108 sub-section (3) would directly apply to the facts of the present case. In the present pending suit O.S. No. 75 of 1958 after the stage of preliminary decree and before final decree is passed which even till date is not finally disposed of by the Trial Court and the final decree is still not passed, defendant no. 2's claim to be a tenant protected by the provisions of the Amending Act with effect from 01st January 1970 as he claimed such a benefit or right or remedy conferred by the provisions of the principal Act as amended by the Amending Act, has to be disposed of by the Trial Court in accordance with the provisions of the principal Act as amended by the Amending Act. This is the mandate of Section 108 (3) of the Amending Act. Keeping in view this legislative mandate we have to find out as to what should have been done in such a situation by defendant no. 2 as well as by the Civil Court where the suit is pending. In such a pending suit when a contention is raised by defendant no. 2 about his claim of protected tenancy under the Amending Act the Civil Court obviously has to follow the procedure laid down in Section 125 of the principal Act. Section 125 with its sub-sections reads as under :

"125. Bar of jurisdiction of civil court :- (1) No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government.

Provided that nothing contained in this sub-section shall apply to proceedings pending in any court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969.

(2) No order of the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government made under this Act shall be questioned in any civil court, except as provided in this Act.

(3) If in any suit or other proceeding any question regarding rights of a tenant or of a kudikidappukaran including a question as to whether a person is a tenant or a kudikidappukaran arises, the civil court shall stay the suit or other proceedings and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

(4) The Land Tribunal shall decide the question referred to it under sub-section (3) and return the records together with its decision to the civil court.

(5) The civil court shall then proceed to decide the suit or other proceedings accepting the decision of Land Tribunal on the question referred to it.

(6) The decision of the Land Tribunal on the question referred to it shall, for the

purpose of appeal be deemed to be part of the finding of the civil court.

(7) No civil court shall have power to grant injunction in any suit or other proceeding referred to in sub-section (3) restraining any person from entering into or occupying or cultivating any land or kudikidappu or to appoint a receiver and property in respect of which a question referred to in that sub-section has arisen, fill such question is decided by the Land Tribunal and any such injunction granted or appointment made before the commencement of the Kerala Land Reforms [Amendment] Act, 1969, or before such question has arisen shall stand cancelled.

(8) In this section, "civil court" shall include a Rent Control Court as defined in the Kerala Buildings (Lease and Rent Control) Act, 1965."

Consequently, in the present pending suit the Civil Court's jurisdiction would have remained barred to decide or deal with any of the questions raised by defendant no. 2 about his tenancy but for the proviso to sub-section (1) of Section 125 which clearly states that nothing contained in that sub-section shall apply to proceedings pending in any court at the commencement of the Kerala Land Reforms (Amendment) Act, 1969. Because of this proviso the net result is that in the present pending suit there will be no bar of jurisdiction of the Civil Court in deciding the question whether defendant no. 2 was a protected tenant under the amended provisions of the Kerala Land Reforms (Amendment) Act with effect from 01st January 1970 or not. This claim of defendant no. 2 could be decided only by the Civil Court in the present pending suit and consequently there would remain no occasion for the Civil Court to follow the procedure of sub-section (3) of Section 125 which obviously would apply to only such suits and other proceedings which are filed after the Amending Act came into force and wherein such contentions are raised about the status of a party to the suit to be a tenant under the Amending Act. It is obvious that in all types of civil disputes civil courts have inherent jurisdiction as per Section 9 of the Code of Civil Procedure unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. On a conjoint reading of proviso to Section 125 (1) of the principal Act and Section 108 (3) of the Amending Act it must, therefore, be held that the question of status of defendant no. 2 under the Amending Act 35 of 1969 could have been decided only by the Civil Court in the pending suit and not by the Land Tribunal under the Amending Act. Consequently the direct approach made by him to the Land Tribunal under the Amending Act must be held to be premature and incompetent and it must also be further held that consequently the orders obtained by him from the Land Tribunal were rendered by a tribunal which had no jurisdiction to pass orders and they were nullities. Hence, no question of res judicata would arise in connection with such orders of an incompetent authority. Learned senior counsel for the appellant was right when he contended that the Kerala Land Reforms Act, as amended, is a complete code in itself and it is only the Land Tribunal which can issue purchase certificate under Section 72 K and the Civil Court cannot give such a purchase certificate. That may be so. However, such certificate cannot be granted to all and sundry. The claimant must prove that he is cultivating tenant under the Act. That would be a condition precedent to be established by the claimant before he could get such purchase certificate. The fulfilment of such a condition precedent would require decision on the basic question whether he is a cultivating tenant under

the Amending Act or not. If the suit was not pending before the Civil Court and if defendant no. 2 being an otti-holder had gone to the Land Tribunal after the Amending Act came into force, he would have been justified in invoking the jurisdiction of the Land Tribunal and if the Tribunal after hearing the parties had granted such a purchase certificate it would have remained conclusive and binding between the parties, but such is not the fact situation in the present case. In the present case, as seen above, the suit was already pending between the parties. Not only that, defendant no. 2 had suffered the preliminary decree for redemption of suit mortgage by the time Amending Act came into force. Consequently, proviso to Section 125 (1) squarely got attracted and did not prevent the Civil Court from deciding such a contention as canvassed by defendant no. 2 regarding his alleged rights flowing from the Amending Act as a protected tenant entitled to purchase the land. Hence, the emphasis put by the learned senior counsel for the appellants on the alleged conclusiveness of the purchase certificate issued to defendant no. 2 by the Land Tribunal under Section 72 K, on the facts of the present case, is found to be totally devoid of any efficacy Point No. 1, therefore, must be answered in the negative against the appellants and in favour of the contesting respondents. Point No. 2

11. In the light of the decision on the first point it is obvious that when in a pending suit the defendant raises the contention about his tenancy rights under the amended provisions of the Kerala Land Reforms (Amendment) Act, such a contentions would validly attract the provisions of Section 108 (3) of the amendment Act. As seen earlier, once that happens and once it is held that Civil Court had jurisdiction to entertain such a contention and such jurisdiction is not barred, Application No. 1307 of 1994 moved by defendant no. 2 can legitimately be treated as one moved under Section 108 sub-section (3) of the Amending Act read with proviso to Section 125 (1) of the parent Act. Consequently, before deciding to pass final decree in the redemption suit the Civil Court would be required to adjudicate on merits of this contention after hearing the contesting parties. It will be for the Civil Court to find out whether defendant no. 2 was entitled to be treated as tenant under the Kerala Land Reforms (Amendment) Act and whether he could validly invoke provisions of Section 72 B to be a cultivating tenant within the sweep of Kerala Land Reforms Act as amended by Act 35 of 1969 and whether accordingly he was entitled to get further benefit of fixation of purchase price and issuance of purchaser certificate under the said provisions of the Amending Act. All these consequential statutory benefits claimed by defendant no. 2 would depend upon the moot and the basic question whether he was a cultivating tenant within the sweep of the Amending Act or not. Consequently, the wholesale rejection of defendant no. 2's application I.A. No. 1307 of 1994 by the Trial Court and as confirmed by the High Court in the impugned judgment in C.R.P. No. 1271 of 1995, must be held to be uncalled for and unsustainable on this ground alone. Point No. 2 is therefore, answered in the affirmative in favour of the appellants and against the contesting respondents. Point No. 3

12. So far as this point is concerned it is obvious that if ultimately the Civil Court in the proceedings to be remanded pursuant to our present order decides I.A.No. 1307 of 1994 in favour of the appellants and if it is held, after hearing the contesting parties and after permitting them to lead whatever evidence they want to lead on this point that defendant no. 2 was a cultivating tenant entitled to the benefit of the provisions of the Amending Act 35 of 1969 and if it is finally held in the hierarchy of these proceedings that the appellants, as his heirs, are entitled to purchase the land in question being armed with such a final order of the Court which would bind inter parties as res judicata to submit before the Land Tribunal for fixation of appropriate price of the land as required

by the procedural provisions of Section 72 D and other succeeding relevant provisions of the Act in connection with the fixation of the purchase price and after that gamut is gone through by the competent tribunal ultimately a situation would be reached where a certificate of purchase under Section 72 K can be issued to the appellants. But all these stages from 72 B to 72 K would only arise after a final decision is rendered by the Civil Court in the remanded proceedings in IA No. 1307 of 1994 that original defendant No. 2 was a cultivating tenant entitled to the protection of the Kerala Land Reforms (Amendment) Act, 1969 and not before. Learned senior counsel for the appellant was right when he contended that the Civil Court cannot issue any purchase certificate. He was also right when he contended that the time for applying for purchase certificate under the Kerala Land Reforms Act has already expired. But this difficulty voiced by learned senior counsel for the appellants on the peculiar facts of this case can obviously not come in his way for the simple reason that defendant no. 2 had already earlier applied to the competent authority under the Amending Act 35 of 1969 as early as on 24th December 1973 under Section 72 B being O.A. 599 of 1973. Even though we have found that the said proceedings as filed were premature and were filed before incompetent authority at that stage with the result that the consequential orders are found to be without jurisdiction, still it cannot be gainsaid that defendant no. 2 had tried to invoke within time the provisions of Section 72 B of the Kerala Land Reforms (Amendment) Act. Thus the said application, on the peculiar facts of this case, can be deemed to be pending before the competent authority awaiting the final decision of the Civil Court in the hierarchy of the proceedings pursuant to our present order. Even otherwise on the facts of the present case it would be equally open to the competent authority in the light of the final decision if at all rendered by the Civil Court in hierarchy of proceedings in favour of original defendant no. 2 to the effect that he has entitled to the protection of the Amending Act as a cultivating tenant, to exercise suo motu powers for passing appropriate orders in the light of the final decision of the Civil Court in the hierarchy of proceedings by resorting to the machinery provisions of Section 72 B onwards culminating into the issuance of appropriate purchase certificate under Section 72 K. Point No. 3, therefore, is answered in the affirmative on the supposition and assumption that the appellants ultimately succeed in convincing the Civil Court and also the higher authorities in the hierarchy of proceedings that defendant no. 2 was a cultivating tenant entitled to the protection of the Amending Act 35 of 1969. We should not be treated to have decided one way or the other whether the appellants are in fact entitled to such a benefit of the Amending Act. That question is kept open for decision in the remanded proceedings by the Civil Court on relevant evidence to be lead by the parties. The said decision shall be rendered by the Civil Court while deciding the remanded I.A. 1307 of 1994 without in any way being influended by the abortive exercise earlier undertaken by defendant no. 2 before the Land Tribunal and the orders passed therein including the purchase certificate issued in his favour by the said authority on 25th July 1975. In short as all these earlier proceedings are treated to be null and void, the Civil Court will have to decide the entire question do novo afresh on its own merits. Point No. 4

13. So far as this point is concerned as we will presently point out in fact there is no conflict between the decisions of two Judge Benches of this Court in the case of Mathevan Padmanabhan (supra) and in the case of Chettiam Veettil (supra). In the cases of Mathevan Padmanabhan (supra) a Bench of two learned Judges presided over by K. Ramaswamy, J. had to consider the question whether in a suit filed after the coming into operation of the Kerala Land Reforms Act as amended by Act 35 of 1969, if question of tenancy of the claimant was not finally decided in the hierarchy of proceedings an application under Section 72 B of the Amending Act could have been finally decided by the competent authority under the Act. Answering this question in the negative the following observations were made in paragraph 5 of the Report:

> "The first question is whether the High Court was justified in holding that the Land Tribunal would have kept the application filed under Section 72-B pending till the dispute of the tenancy is finally determined. On a conspectus of the relevant provisions, the scheme of the Act and on the facts and circumstances of the case, we consider that the High Court is right in its approach. The very dispute whether the appellant is a tenant and is entitled to purchase the property by virtue of that capacity, hinges upon the determination of the question whether he is a tenant. When that dispute is pending adjudication the Tribunal was not right in directing the appellant to purchase the property. Ultimately, if the High Court on appeal, finds that the appellant is not a tenant, his entitlement to purchase the property also is lost. Under those circumstances, the appropriate course for the Tribunal would have been to keep the application filed under Section 72-B pending till the dispute is resolved in the court. Therefore, the High Court is right in recording a finding in this behalf."

In our view on the facts of the case before that Bench no other conclusion was legally possible. Before an application under Section 72 B of the Amending Act could be granted the condition precedent whether the claimant was a cultivating tenant or not had to be decided. It is after the decision on the said question that further question about the fixation of price etc. would arise. On the facts of the case before the Bench the question of alleged tenancy of the claimant was not finally decided in the hierarchy of proceedings. Obviously, therefore, application under Section 72 B could not have been finally decided and was required to be kept pending. Learned senior counsel for the appellants submitted that the Tribunal is a competent authority under the Act to deal with such questions and merely because a civil suit is pending the statutory obligation of the authority could not be by passed. As a general proposition the said contention cannot be gainsaid. However, that would pre-suppose a situation where the Land Tribunal is approached on a clean slate meaning thereby no other proceedings are pending in any other court and the Tribunal has to decide the jurisdictional question whether the claimant is a cultivating tenant entitled to the benefit of Section 72 B or not. In such a situation it is the Tribunal which has to be decide both the condition precedent for applicability of Section 72 B and the consequential orders which are to be passed therein. But when in a pending suit issue of tenancy is referred to the Tribunal under Section 125 (3) and once the finding of tenancy is returned to the Civil Court and when such a finding becomes that of the Civil Court as per Section 125 (6), then it if is pending for further scrutiny by the Appellate Court it has to be held that the status of cultivating tenant has not become final and so long as that has not become final there is no occasion for the Land Tribunal to pass final orders under Section 72 B. We have also to keep in view that in the case before the Bench presided over by K. Ramaswamy, J. the proviso to Section 125 (1) was out of picture as the suit in which the controversy arose was filed subsequent to the coming into force of the Amending Act 35 of 1969. Therefore, when Section 125 (3) read with Section 125 (6) of the Kerala Land Reforms Act applied, a reference had to be made to the Land Reforms authorities for deciding the status of such a tenant and once such finding was returned to the Civil Court it became a finding of the Civil Court itself which could be challenged and was challenged higher up in the hierarchy and that finding had not become final. Therefore, as rightly held in that case, there remained no occasion for the Land Reforms authorities to proceed under Section 72 B onwards and to pass final orders till that finding became final inter parties. Therefore, on the peculiar facts of the case before the Bench in the above case, the conclusion to which that Bench reached as found in paragraph 5 of the Report cannot be said to be in any way uncalled for or erroneous as tried to be submitted by learned senior counsel for the appellants. So far as the facts of the present case are concerned, as we have seen earlier, the suit for redemption was already pending and is still pending and in the meantime the Amending Act 35 of 1969 came into

force from 01st January 1970. Consequently, strictly speaking, the decision of this Court in Mathevan Padmanabhan (supra) does not get attracted for resolving the controversy posed before us.

14. So far as the judgment of the earlier Division Bench of the two learned Judges of this Court in the case of Chettiam Veettil (supra) is concerned it proceeds on an entirely different set of facts. In that case the Land Tribunal had already decided the question about the right of the cultivating tenant to be the deemed purchaser of the land and had fixed the purchase price and also issued certificate of purchase. When that was done no civil suit was pending inter parties filed either prior to the coming into force of the Amending Act or even subsequently. Hence proceedings under Section 72 B were fully competent and had resulted into a valid purchase certificate which had remained final, conclusive and binding. The question was when the cultivating tenant was a deemed purchaser armed with such certificate, while deciding his surplus holding of land the Taluk Land Board functioning under that very Act could go behind such a certificate. On the scheme of the Act the conclusion to which this Court reached, speaking through Shinghai, J. was obvious that the said certificate issued under Section 72 K did raise irrebutable presumption as per sub-section (2) thereto and even after considering the conclusive eventuality following thereto the Taluk Land Board had ample jurisdiction under Section 85 (5) to pass appropriate order regarding the surplus holding of the occupant. We fail to appreciate how the ratio of the aforesaid decision rendered on the peculiar facts of that case and deciding entirely a different controversy could ever be pressed in service in the present case or even for demonstrating any supposed conflict between the said decision of this Court and the decision rendered in Mathevan Padmanabhan (supra) in the light of a different set of facts and circumstances, as seen earlier.

15. Before parting with the discussion on this point we may take stock of the resultant situation -

> 1. In civil suits between the disputing parties pending on or before 01st January 1970 when the Kerala Land Reforms (Amendment) Act, 1969 came into force, if a contention is raised by one of the contesting parties requiring determination of any matter which is by or under the Amending Act required to be settled, decided or dealt with by the authorities functioning under the Amending Act the Civil Court before which such a question arises will not lose jurisdiction to decide such a question in view of the proviso to sub-section (1) of Section 125 of the principal Act read with Section 108 (3) of the Amending Act and such a question can be decided by the Civil Court itself by applying the relevant provisions of the Amending Act read with the principal Act so far as the question of the status of tenancy of the contesting party is concerned and once such a question is finally decided in favour of the contesting party and it is held to be entitled to the benefit of the Amending Act then appropriate consequential orders and relief on the basis of the final decision as aforesaid could be obtained from the competent authorities functioning under the Amending Act.
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> 2. After coming into operation of the Amending Act 35 of 1969 if a question arises whether a person is a cultivating tenant entitled to the benefits of the Amending Act and no civil suit is pending wherein such a person is a party then appropriate proceedings can be initiated by such a person before the competent authority under the Amending Act and if such person is found entitled to the benefit of the Act in the hierarchy of proceedings under the Amending Act then appropriate further relief could be obtained by such person from the authorities under the Act and if purchase certificate is issued to such a person under Section 72 K of the Amending Act it

would be binding and conclusive between the contesting parties in proceedings before such authorities.

3. If after coming into operation of the Amending Act 35 of 1969 a civil suit is filed wherein a question arises regarding the status of a contesting party to be a tenant and such a question by then is not already decided finally between the contesting parties by competent authority under the Amending Act, then the Civil Court will have to follow the procedure of Section 125 (3) read with sub-section (6) thereof and having made a reference to the competent court under the Amending Act obtain appropriate finding on the said question from the said authority and once such finding is received and which will be treated as a finding by the Civil Court itself, subject to the said finding becoming final in the hierarchy of proceedings before the appellate authorities entitled to re-consider the said finding of the Civil Court appropriate further orders in favour of such contesting party which is finally held to be a tenant can be obtained from the competent authority under the Amending Act including certificate of purchase under Section 72 K of the Amending Act and such a certificate would be treated as binding and conclusive between the parties.

4. After the coming into operation of the Amending Act 35 of 1969 and in the absence of any suit by then filed wherein the contesting pany claims tenancy rights, if such a person already gets appropriate orders from the competent authorities under the Amending Act and his status as a tenant entitled to purchase the disputed land is finally decided by the competent authorities in the hierarchy of proceedings under the Act and certificate of purchase is obtained under Section 72 K of the Amending Act, and thereafter it a civil suit gets filed against it by the other contesting party then in such a civil suit it could be said that the question of determination of right of the contesting party as a tenant would not service as it was already decided by the competent authority under the Act earlier and the said decision having become final in the hierarchy of proceedings under the Amending Act would operate as res judicata between the parties. Under such circumstances there will be no occasion for the Civil Court to follow the procedure of Section 125 (3) read with Section 125 (6) and only on the basis of the binding decision of competent authority under the Amending Act between the parties the Civil Court can dispose of such subsequently filed suit.

16. Aforesaid are the four categories of situations which would emerge on account of the interaction of the Amending Act 35 of 1969 on the one hand and the Civil Court proceedings on the other between the very same contesting parties as and when such occasion arise. It becomes at once clear that present is a case which falls in the first category. Decision of the Division Bench of this Court in the case of Mathevan Padmanabhan (supra) was concerned with a case which fell in category no. 3, while the earlier decision of the Division Bench of this Court in the case of Chettiam Veettil (supra) was concerned with a case which fell in category no. 2. Obviously, therefore, there could never be any conflict between the ratio of the decisions rendered in these two cases. Point No. 4 is, therefore, answered in the negative by holding that there is no conflict between the ratio of the aforesaid two judgments of this Court. Point No. 5

17. So far as this alternative contention is concerned it has to be kept in view that the Trial Court by its order dated 07th April 1982 dismissed the application of defendant no. 11 on the ground that the application for final decree was barred by limitation. Defendant no. 11 then filed A.S. 198 of 1982

against that decision. The Appellate Court by its judgment dated 10th July 1983 allowed the appeal holding that the final decree application was not barred by limitation. Consequently the final decree application was remanded to the Trial Court for passing final decree after considering other objections raised by the second defendant. The 2nd defendant challenged the order of remand by filing C.M.A. No. 114 of 1984 before the High Court and the High Court by its order dated 19th August 1989 held that the Appellate Court was right in holding that the final decree application was competent and was not barred by limitation. It is of course, true that at that stage defendant no. 2 had no occasion to file an S.L.P. against the said remand order of the Appellate Court as confirmed by the High Court. But that does not mean that during the remanded proceedings when his application I.A. 1307 of 1994 got dismissed, and said dismissal got confirmed by the High Court by the impugned order, in this S.L.P. against the impugned order of the High Court pertaining only to I.A. No. 1307 of 1994, the appellants could raise the contention of limitation and challenge the remand order in A.S. No. 198 of 1982 as confirmed by the High Court on 19th August 1989. The reason is obvious. As laid down by this Court in Satyadhyan Ghosal (supra) an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken can be challenged in an appeal from the final decree or order. A special provision is made in Section 105 (2) Civil Procedure Code as regards orders of remand. But even under Section 105 (2) the correctness of an order of remand can be challenged in appeal from the final decision provided the order of remand is not appealable. The question whether final decree proceedings have become barred by limitation or not would arise for consideration of this Court only if ultimately final decree gets passed against the appellants pursuant to the earlier finding reached by lower appellants court and High Court at interlocutory stage that these proceedings were not barred by limitation. It is only then that the appellants can bring in challenge the earlier remand order which results into the final decision against them and can urge that the said interlocutory order of remand as confirmed earlier by the High Court was itself not correct. That stage is still not reached for the appellants. Hence we keep this question open at this stage. It is, of course true that at the earlier stage when the Appellate Court remanded the proceedings the question of limitation canvassed for consideration was on one aspect, namely, whether an application for final decree could be filed after three years of the passing of the preliminary decree. In the present proceedings the appellants also sought to raise an additional contention whether the final decree could ever be passed when the redemption money is not deposited within six months and for which reliance is placed on a decision of this Court in the case of Mohd. Abdul Khader Mohd. Kastim (supra). However, even this contention is also an additional facet of the plea of limitation regarding passing of final decree. The question whether final decree proceedings have got barred by limitation on the ground that application for the same was initiated after three years of the preliminary decree or whether they have become barred on account of nonpayment of redemption money in time, would all the same pertain to the issue of limitation of passing the final decree. All these contentions, therefore, for whatever they are worth cannot now be agitated at this stage by the appellants in support of the application No. 1307 of 1994 which we are ordering to be remanded for a fresh decision pursuant to the present order. In these remanded proceedings the only question to be examined by the Civil Court will be to the effect whether the appellants can claim any legal rights flowing for defendant no. 2 from the Amending Act 35 of 1969 as a cultivating tenant. It is obvious that if this contention succeeds ultimately and gets confirmed in the hierarchy of proceedings throughout then there would be no occasion for the court ultimately to pass any final decree for redemption against the appellants as they would succeed on merits. Then three would remain no occasion for them to urge the question of limitation. If on the other hand the appellants fail all throughout on the contention about the benefit of Amending Act 35 of 1959 and suffer a final decree for redemption then at that stage in any future S.L.P. before this Court only, they can raise

the contention of limitation and try to demonstrate whether the remand order of the Appellate Court and as confirmed by the High Court on 19th August 1989 was legal and valid and while raising such a contention the appellant at that stage wood be able to raise a further ground touching upon the very question of limitation for passing the final decree, namely, whether the final decree for redemption could be passed on account of non-payment of redemption money within the requisite period. We, therefore, hold that this contention is too premature to be raised at this stage. We keep it open and do not express any opinion one way or the other on this contention, in our view, therefore, it is equally not open to the appellant to raise this contention before the Civil Court in the proceedings to be remanded to it pursuant to the present order. This point for determination is answered by holding that it is not necessary to decide this contention at this stage keeping it open to be decided in appropriate future proceedings before this Court if at all such need arises for the appellants, as discussed earlier. Point No. 6

18. As a result of the aforesaid discussion on these points it must be held that the order passed by the Trial Court below I.A. 1307 of 1994 on 31st May 1995 as well as the impugned order passed by the High Court in C.R.P. No. 1271 of 1995 decided on 18th October 1995 are not well sustained and are required to be set aside entirely on different grounds as shown by us earlier and not on the grounds which weighed with the Trial Court as well as with the High Court in dismissing the said I.A. I.A. No. 1307 of 1994 filed by original defendant no. 2 is restored to the file of the 1st Additional Sub-Judge, Trivandrum with a direction to decide the said application, as indicated hereinabove, afresh on the question of defendant no. 2's claim to be entitled to the protection of the Kerala Land Reforms (Amendment) Act 35 of 1969 as a cultivating tenant. In the light of the decision rendered on this I.A. by the Civil Court in the remanded proceedings, it shall proceed further in accordance with law in connection with the question of passing appropriate final decree in the suit. Appeal is allowed accordingly. In the facts and circumstances of the case there will be no order as to costs.