Poovollaparambil Chathu and Others

Vs

V. P. Sudheer and Others

Civil Appeal No. 5500 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

06.11.1998

ORDER

1. Leave granted.

2. This appeal is moved by the original defendants. In the suit of the respondents an issue about the defendants' tenancy is not referred to the Lands Tribunal for consideration under Section 125 of the Kerala Land Reforms Act, 1964 by the High Court. The relevant Issue 6 reads as under :

> "6. Whether Defendants 1, 3 and 4 are entitled to fixity of tenure ?"

3. Relevant provisions of Section 125 of the Kerala Land Reforms Act are extracted as under :

> "125. Bar of jurisdiction of civil courts. - (1) No civil court shall have jurisdiction to settle, decide or deal with any question or to determining 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 :
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> (3) If in any suit or other proceeding any question regarding tenant of Kudikidappukarn (including a question as to whether the person is a tenant or a Kudikidappukara) 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. We have heard learned counsel for the parties. Mr P. S. Pot, learned Senior Counsel for the respondents, invited our attention to a decision of a Full Bench of five learned Judges of the Kerala High Court in the case of Kesava Bhat v. Subraya Bhat [1979 Ker LT 766] wherein the Full Bench of five learned Judges overruled the earlier view of a Full Bench of three learned Judges and held that as in a suit for injunction only question of possession was relevant. An issue of tenancy put forward by the defendant in his written statement cannot be said to have been covered expressly by Sections 125(1) and (3) of the Kerala Land Reforms Act, 1964.

5. Learned counsel for the appellants on the other hand submitted that the facts of the present case are squarely covered by a judgment of this Court in the case of Mathevan Padmanabhan v.

Parmeshwaran Thampi [1995 Supp (1) SCC 479]. Learned Senior Counsel for the respondents has placed before us the relevant pleadings. The plaintiffs in para 6 of the plaint have averred as under :

> "Though the aforesaid Kelan had executed a registered Kanankuzhikanam document in favour of Kuzhikandiyil Cheeru and her children Chathu and Mathu on 27-1-1923 in respect of the property measuring EW 40 SN 30 Koles including property described in para 2 above which is the property described in the schedule hereunder. Kelan had not handed over the lease deed to them and possession of the property was not given to Cheeru and 2 others. Cheeru and 2 others had not registered any marupat and given to Kelan following the lease deed. The aforesaid Kuzhikanam document was only a sham document and not acted upon. The property described in the schedule hereunder was never taken possession of by the above-mentioned Cheeru, Chathu and Mathu or their legal representatives or the defendants and there was no occasion for that. The plaintiffs are in joint possession and enjoyment of the property mentioned in the schedule hereunder as co-owners in exclusive possession. On and after 27-1-1923, the date of the Kuzhikanam document, the property mentioned in the schedule hereunder was in the exclusive possession and enjoyment of Kelan till his death, thereafter Krishnan till his death, in the possession and enjoyment of the legal heirs of Krishnan till the above-mentioned partition decree, subsequently in the possession and enjoyment of Lakshmanan, the father of the plaintiffs till the date of execution of the settlement deed and from the date of the settlement deed the plaintiffs as their own property with the knowledge of all without any objection continuously for more than 12 years. If the above-mentioned Cheeru, Chathu and Mathu or their heirs or the defendants have any right over the property mentioned in the schedule hereunder, it is lost by adverse possession and limitation. For the aforesaid reasons it is prayed that there may be declaration that the plaintiffs are in exclusive possession and enjoyment of the property as co-owners."

6. Learned Senior Counsel for the defendant-appellant on the other hand invited our attention to paras 6 and 7 of the written statement which reads as under :

> "6. The suit is for declaration of right and title over the plaint schedule property to the plaintiffs. These defendants claim tenancy under the predecessor-in-interest and now under the plaintiffs. These defendants are entitled to get fixity of tenure. The plaintiffs have no right to dispute the tenancy. Since the question of title and tenancy is involved, the civil court (sic rule) out jurisdiction under Section 125(1) of the KLR Act and so the suit is liable to be stayed under Section 125(3) of the KLR Act and refer the matter to the Land Tribunal concerned for a finding on the tenancy claimed by these defendants.
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> 7. The allegation that the lease deed dated 27-1-1923 is a share/documents and there is no valid lease, etc., are all absolutely false and all such allegations are hereby denied. The allegation that there is no 'marupat' and due to that the lease is invalid lease, the allegation that Krishnan was in possession, etc., are all totally false and all such allegations are hereby denied. Krishnan or his son Lakshmanan were never in possession of the plaint marginal property. The revenue receipts produced along with the suit does not pertain to the plaint schedule property and the 1986 assignment in favour of Mathu is created by the plaintiffs and others in order to defeat these defendants."

7. In our view, on these pleadings, an issue would squarely arise whether the original lease dated 27-1-1923 was ever acted upon or not and whether pursuant to the said lease the defendants are in possession and continued as such in possession as tenants. This question is squarely covered by Section 125 of the Kerala Land Reforms Act. We may mention that the Full Bench judgment of five learned Judges in the case of Kesava Bhat [1979 Ker LT 766] was dealing with a case where the plaintiff had averred that the defendant is an agent and only the plaintiff's possession was being tried to be disturbed by such an agent while the defendant's plea was that he was a tenant. On the peculiar pleadings of that case it was found that an issue of tenancy did not arise.

8. It is obvious that in such a case without getting decided the status of tenancy, injunction suit could be decided on the question of possession on the date of the suit.

9. Such being not the pleadings and issues arising in the present case they, in our view, are squarely covered by the decision of this Court in the case of Mathevan Padmanabhan [1995 Supp (1) SCC 479]. It has been observed therein that the respondents in that case had laid the suit before the principal Subordinate Judge, Trivandrum for possession on the ground that the appellant had surrendered his tenancy rights and thereafter trespassed into the land; thereby he was in illegal possession. It was the case of the appellant-defendant that he never surrendered the land and he continued to be the tenant and that, therefore, the respondents were not entitled to the possession of the land. This Court took the view that in such a case the issue of tenancy would arise under Section 125 of the Kerala Land Reforms Act and the civil court will have no jurisdiction to decide the said dispute of tenancy by itself.

10. Under these circumstances, it is not necessary for us to examine whether the question about reference of tenancy issue was rightly decided by the Full Bench of five learned Judges of the Kerala High Court or not on the facts of that case or whether this Full Bench judgment is impliedly overruled by the decision of this Court in the case of Mathevan Padmanabhan [1995 Supp (1) SCC 479]. We leave this question open.

11. In the result, this appeal is allowed. The impugned order of the High Court is set aside and the order of the Munsif dated 6-2-1997 is restored. We direct the learned Munsif to refer the requisite issue pursuant to his order which is being confirmed by us to the Land Tribunal concerned. We direct the said Tribunal, on the receipt of the reference, to decide the same after bearing the parties and permitting them to lead relevant evidence on which they rely, as expeditiously as possible and preferably within a period of six months from the date of receipt of the said reference.

12. No costs.