

# SUPREME COURT OF INDIA

K.C. Mathew and Sons

Vs.

A. Sulaikha Beevi

C.A.No.5616 of 1997

(K. T. Thomas, D. P. Wadhwa and S. S. M. Quadri, JJ.)

19.01.2000

## ORDER

1. First appellant is a firm which claims a right under Sec. 106 of the Kerala Land Reforms Act in respect of the suit property when the first respondent-plaintiff filed a petition for eviction of the appellant under certain sections of the Kerala Building (Lease and Rent Control) Act, 1965. The Rent Control Court felt that the contention raised by the tenant claiming permanent tenancy requires to be considered in a regular civil suit. Thereupon parties were directed to approach the Civil Court. Pursuant to the said direction first respondent filed the suit for eviction under Secs. 11(3) and 11(4)(i) of the Kerala Building (Lease and Rent Control) Act. As the appellants in the written statement, raised a claim of permanent tenancy based on Sec. 106 of the Kerala Land Reforms Act the question was referred to a Land Tribunal as required under Sec. 125 (3) of the Kerala Land Reforms Act. The Land Tribunal decided the question in favour of the appellant and sent the records back to the Civil Court. Subsequently, the original Civil Court dismissed the suit filed by the first respondent.

2. The matter was taken up before the First Appellate Court at the instance of the first respondent and that court confirmed the decision of the first court and dismissed the appeal. Then first respondent moved the High Court in Second Appeal. A Division Bench of the High Court of Kerala

set aside the decree of the two courts below and allowed the Second Appeal and decreed the suit for eviction as per the impugned judgment.

3. The main reasoning adopted by the Division Bench of the High Court is that though there was an earlier lease prior to 1956 the same was surrendered by the tenants as per Ext. B-9 dated 14-4-1956 and even that was surrendered subsequently as per the Ext. A-2 dated 1-1-1962. When the original lease was surrendered the tenants of that lease cannot claim right under Section 106 of the Kerala Land Reforms Act, according to the Division Bench of the High Court.

4. Sh. T.L.V. Iyer, learned senior counsel arguing for the appellant contended that neither Ext. B-9 nor Ext. A-2 could have been used by the High Court as both of them were described as lease deeds for periods more than one year and they were unregistered documents and hence inadmissible evidence. He alternatively contended that those documents could not have created or extinguished any right and Sec. 49 of the Registration Act was a bar against admissibility of those documents.

5. Although the Second Appeal was admitted by the High Court on the questions of law formulated by the first respondent in the memorandum of appeal filed before the High Court, we have noticed that the Division Bench has not considered any of those questions.

6. The three questions formulated by the first respondent in the memorandum of appeal are the following:

"A. When a fresh lease is executed under which the quondam tenant expressly surrenders in property under the previous lease, is not the lessee bound by the terms if the fresh lease as a fresh demise?

B. If in the earlier lease the tenant who had constructed a building with the materials supplied by the landlord agrees to take the building as the landlord's building and to pay rent on that footing and surrender it at the expiry of the lease is it open to the tenant to contend that the building is his own?

C. If the defendant is holding the building and premises under the lease of 1962 and no building has been constructed thereafter can he claim rights under Section 106 of the Kerala Land Reforms Act on the footing that he, as a lessee under a commercial lease, has constructed buildings."

7. Section 100 of the Code of Civil Procedure states that an appeal shall lie to the High Court under the said Section only "if the High Court is satisfied that the case involves a substantial question of law." Sub-s. (4) empowers the High Court to formulate the substantial question of law involved in the case, though it is open to the High Court to formulate other substantial questions of law subsequently.

8. The impugned judgment is bereft of any reference to any substantial question of law. Sh. P. Krishnamurthi, learned senior counsel arguing for the first respondent made an endeavour to impress upon us that the Division Bench had in fact considered a question in the following sentence mentioned at the commencing portion itself.

9. "The prime question involved in this appeal is whether the first respondent-tenant is entitled to protection under Sec. 106 of the Kerala Land Reforms Act". Learned counsel pleaded that the said question was treated by the High Court as substantial question of law. That question appears to be too omnibus in nature as that was the main issue of the suit. Substantial questions of law, if any, shall be resolved for deciding the main issues involved in the suit. At any rate we cannot treat the above as a substantial question of law to be determined by the High Court in the Second Appeal.

10. Though learned counsel on both sides suggested certain questions of law we are not inclined to set those questions, for, it is open to the Division Bench to formulate such substantial questions of law which would arise and which requires to be answered in the Second Appeal. If no such substantial question of law is actually involved in the appeal there is no scope for entertaining the Second Appeal. Hence we leave it to the High Court to determine whether there is any such question of law, and if so to decide the same.

11. We, therefore, allow this appeal and set aside the impugned judgment and remand the Second Appeal to the High Court for disposal afresh in accordance with law and in the light of the observations made above.

Appeal allowed.