SUPREME COURT OF INDIA

P.K. Mohd. Shaffi

Vs

Pallath Mohd. Haji (dead) by L.Rs. & Ors.

21/04/2003

(BRIJESH KUMAR & P. VENKATARAMA REDDI.)

Appeal (civil) 2273 of 1998

JUDGMENT

P. Venkatarama Reddi, J.

The present appeal by special leave arises out of the judgment of Kerala High Court in a revision petition filed by the first respondent herein (since died) under Section 103 of the Kerala Land Reforms Act (hereinafter referred to as 'the Act'). The revision petition was allowed by setting aside the orders of the Land Tribunal and the appellate authority, which were in favour of the appellant, and the application of the appellant claiming tenancy rights under Section 72 of the said Act was rejected in regard to items 1, 2 & 5 to 8 mentioned in the schedule to the application. As far as two other items (3 & 4) are concerned, the matter was remanded to the Land Tribunal for fresh consideration. Items 1, 2, 7 & 8 measuring about two acres are either wet lands or seed-bed lands. Item 5 is a garden house covering an area of 1.58 acres. Item 6, which is said to be the major item or property is cashew garden of an extent of 12.41 acres.

The appellant filed an application before the Land Tribunal, Mannarghat on 24.8.1971 under Section 72B of the Act for the assignment of the right, title and interest of the land-owners and the intermediaries as regards the schedule mentioned lands on the basis that he was cultivating tenant on the date of the commencement of the Act. He also sought for issuance of 'Certificate of Purchase' under Section 72 of the Act. Most of the Respondents herein are the legal representatives of the parties in that tenancy application.

The deceased Kunhahmmed, who is the brother of one Komukutti, the maternal grand father of the appellant had kanam rights over the application-schedule properties. He died in the year 1951. The 1st respondent is the brother of appellant's mother Ayeshaumma and one of the sons of Komukutti. On the death of Kunhahmmed issueless, his properties devolved on his wife Kunheema Umma (R-9 before the Land Tribunal) and his brothers and sisters including Komukutti. Komukutti died in the year 1952. Apart from R-9, the other heirs of Kunhahmmed and Kumukutti were added as respondents before the Land Tribunal. The first respondent, who was also the first respondent before the Land Tribunal, is the maternal uncle of the appellant. The appellant claimed that he was cultivating the lands in items 1, 2 & 5 to 8 as tenant pursuant to the oral lease obtained from the legal heirs of the deceased Kunhammed including his widow Kunheema Umma prior to 1960 and that he was paying rent to the respondents 1, 2, 5, 8 & 9 who are the widow of Kunhammed (R-9),

the widow of Kunhammed's brother Komukutti and his sons and daughters, the quantum of rent being 60 paras of paddy, 100 sheaves of straw and Rs.70 per year. It was his case that the cashew plantation was raised by him, after the lease was obtained. The appellant claimed to have purchased tenancy rights in items 3 & 4 from one Syed, who was a tenant under Kunhammed, through a registered document. The first respondent contended that the applicant was not a cultivating tenant, that a portion of item No.6 belonged to him by virtue of an oral partition effected in March, 1967 among the heirs of Koyakutti and the remaining extent of item No.6 and items 7 & 8 also belonged to him and he was in exclusive possession thereof. The land in items 1 & 2 was entrusted to the applicant in the year 1967 for cultivating the same on their behalf, but, they were not leased out. As regards item No.5, the first respondent contended that it belonged to her sister Ayesha Umma and on her death, her legal heirs including himself, acquired rights over that item and certain other properties. Another contention was raised that no tenancy could have been created in the face of attachment order of the Court in O.S.No. 20 of 1945 which was a money suit filed by one Ramakrishna Iyer against Kunhammed. The rights in the decree were purchased by him and in execution of the decree, the petition schedule properties along with other properties were attached by him, the properties were sold in Court auction and he being the successful bidder at the auction, sale certificate was issued to him on 1.7.1963. The first respondent even set up a case that when the property was delivered to him on 4.11.1966, the delivery receipt was attested by the applicant (appellant). Certain additional documents were filed before the High Court to bring to light the details relating to attachment, sale and delivery of the disputed properties. It transpires from the additional documents received in the C.R.P. that the attachment was effected on 21.3.1956, the sale took place on 27.5.1963, the sale was confirmed on 1.7.1963 and delivery was effected on 4.11.1966. The alleged signature on the delivery receipt was however denied by the appellant.

One more relevant aspect to be mentioned is that in the land ceiling case pertaining to the first respondent, the appellant claimed before the Taluk Land Board that he was a tenant of the lands which were sought to be included in R-1's holding and by virtue of the tenancy rights he had, the said lands ought not to be included in the holding of the kanamdar / declarant. The claim of tenancy set up by the appellant was rejected by the Taluk Land Board. In C.R.P. No. 4699 of 1976, the order of the Taluk Land Board was confirmed and the revision was dismissed. However, on a review filed by the appellant, the High Court clarified that the finding of non existence of tenancy was only for the purpose of determination of ceiling area. The Land Tribunal accepted the case of the appellant, assigned the right, title and interest in respect of petition schedule lands in favour of the appellant subject to the deposit of Rs.5464/- as purchase price, which was payable as compensation to the ultimate land-holder and the intermediaries. A certificate of purchase was ordered to be issued to the cultivating tenant. This order was confirmed by the Appellate Authority, Land Reforms, Trichur by its order dated 11.8.1989. It is against that order, C.R.P. 2353 of 1989, which has given rise to this appeal, was filed in the High Court. The High Court held that the appellant failed to discharge the burden of proving the tenancy set up by him and that the oral lease by the legal heirs of Kunhahmmed was not supported by any evidence. The High Court also held that even if the lease set up by the appellant is accepted, the same was invalid and it could confer no right on him in view of the anterior attachment and sale in execution of the decree and the delivery pursuant thereto. The primary and appellate authorities, according to the High Court, did not appreciate the effect of delivery in execution of a decree and its binding nature on the judgment-debtor. The orders of the Land Tribunal and appellate authority were, therefore, set aside and the claim of the appellant regarding petition schedule items 1, 2 & 5 to 8 was dismissed. However, as regards items 3 & 4, the case was remanded to the Land Tribunal for fresh consideration.

It is the contention of the learned senior counsel for the appellant that the High Court should not

have, in exercise of revisional jurisdiction, reversed the finding of fact concurrently arrived at by the Land Tribunal and the appellate authority on the issue of tenancy, that the factual existence of legal and valid attachment and sale was not established and that in any case, in view of Section 7 of the Act, the said attachment and sale is not capable of affecting the rights which the tenant has. Comment was also made on the propriety of the High Court in receiving the additional document at the stage of revision and at the same time, denying opportunity to counter them. If at all, according to the learned counsel, the entire case should have been remanded instead of confining the remand to items 3 & 4 only.

First, we will concentrate on the question whether the High Court was justified in holding that the appellant's claim of tenancy stood unsubstantiated and in reversing the finding reached by the lower Tribunals in this regard.

Before we proceed further, a brief reference to relevant provisions will be apposite. To give a progressive thrust to the agrarian reforms and to further strengthen the rights of the tenant, a series of provisions starting from substituted Section 72 upto 72(s) were introduced by Act 35 of 1969 which came into force on 1.1.1970. Section 72 broadly provides for vesting of the right, title and interest of the land-owners and intermediaries in respect of the land held by cultivating tenants entitled to fixity of tenure, in the Government free from all encumbrances. Fixity of tenure of tenancy is provided for by Section 13. Every landowner and intermediary, whose right, title and interest in respect of any holding have vested in the Government under Section 72 shall be entitled to compensation as provided for by Section 72A. Then, we come to the crucial provisionSection 72B, which deals with the cultivating tenant's right to assignment. Under that Section, the cultivating tenant of any holding or part of a holding in respect of which, the right, title and interest have vested in the Government under Section 72 shall be entitled to assignment of such right, title and interest provided that the tenanted land together with the land owned by him or his family does not exceed the ceiling area. Not only that, subject to the payment of purchase price determine, the cultivating tenant is entitled under Section 72A to obtain a certificate of purchase from the Land Tribunal. The expression 'cultivating tenant' is defined in clause 8 of Section 2 as, "a tenant, who is in actual possession of and is entitled to cultivate the land comprised in his holding". The 'actual possession' and the entitlement to cultivate is obviously with reference to the date of commencement of the principal Act, i.e., 1st day of April, 1964.

In the light of the above provisions, the question that primarily falls for consideration is whether the appellant was a cultivating tenant of the intermediary (kanamdar1st Respondent) on 1.1.1964, as claimed by him. It is this question that was answered in favour of the appellant by the Land Tribunal and the appellate authority, but held against him by the High Court. There is no dispute that for adjudicating the application of the appellant under Section 72B, the crucial date, on which the appellant has to establish his possession/cultivation as tenant is 1.1.1964. After that date the creation of tenancy is prohibited under Section 74 of the Act which also declares that any such tenancy shall be invalid. It admits of doubt that the burden is on the appellant to prove the tenancy on the crucial date. If the appellant had adduced relevant evidence and it had been appreciated by the fact finding tribunals in the proper legal perspective, it is not open to the High Court in exercise of revisional power to reverse the findings of the tribunals on mere re-appreciation of evidence. Keeping in view this limitation on the power of the High Courtwhich in fact, the High Court itself was aware of, the entire issue has to be viewed.

The reasons given by the High Court to discard the plea of tenancy are these: The primary and appellate authorities did not give due weight to the fact that the applicant had not even pleaded the

date or year of the lease. Both these authorities were also in error in completely ignoring the order of Taluk Land Board as confirmed in revision (in the ceiling case pertaining to the first respondent herein). The burden of establishing oral lease by the legal heirs of Kunhahmmed cannot be said to have been discharged by the production of certain documents which had come into existence after 1.4.1964. The only evidence produced by the appellant to show that he was having tenancy prior to 1.4.1964 are Exts. P40 to P46the recent receipts, the genuineness of which was seriously disputed. In the light of the plea set up by the applicant that he was paying rent to all the heirs of Kunhahmmed, the said receipts alleged to have been issued by Kunheema Umma alone 'are clearly suspect', more so, when there is evidence to show that the said lady was in the habit of issuing printed receipts. In any case, the receipts did not go to establish the lease by the other heirs of Kunhahmmed.

Learned counsel for the appellant contended that it is not open to the High Court to go into the question of genuineness of receipts which were believed by the fact-finding authorities and, in any case, the High Court was not jusitified in viewing them with suspicion because the receipts were being issued by the elderly lady in the family who was the only daughter of Kunhahmmad. It is not necessary, the learned counsel submits, that the lessee who is closely related to the respondents should approach each and every member of the family for the receipts. The comment that the date or year of lease was not mentioned in the application has been criticized by the learned counsel for the appellant on the ground that in the proforma of the application, such date was not required to be given and in the course of evidence, the appellant made it clear that the lease was prior to 1960. He has further contended that the finding recorded in the land ceiling case of respondent No.1 is not binding or conclusive and in fact, the question of tenancy was left open by the High Court in the revision filed against that order. It is also contended that apart from recent receipts Ext. P.40 to P.46, the other documents such as land tax receipts, levy notices and extracts from cultivation accounts in respect of some of the survey nos. are not irrelevant though most of them relate to the period subsequent to 1.4.1964.

The learned senior counsel for the respondents, apart from commenting that the alleged receipts did not see the light of the day till the appellant was examined, has drawn our attention to the observations of the appellate authority in regard to these disputed documents. Two reasons were given by the appellate authority in paragraph 45b of the order. "I find to my naked eyes", he observed, "that the signatures of Kunheema Umma differ in all the exhibits and therefore I cannot observe with any precision that the rent receipts produced by the tenant in Exts. P.40 to P.46 are not the ones signed and issued by the said Kunheema Umma." The learned counsel for the respondents also referred to the second reason given by the appellate authority to the effect that the respondent/kanamdar did not resort to take steps seeking the opinion of hand-writing expert to disprove the genuineness of the said exhibits. Both these reasons given by the appellate authority, according to the learned counsel for the respondents, are perverse and utterly untenable. The learned counsel pointed out that the burden was on the appellant to prove the genuineness of the rent receipts which were disputed by the other side. It is the appellant, who should have obtained the opinion of handwriting expert or produce other reliable evidence to prove the authenticity of the rent receipts. Moreover, the learned counsel commented that if the signatures differed from receipt to receipt, that does not mean that they are genuine. These contentions of the respondent's counsel are not without force. However, we do not consider it necessary to delve further into these aspects, in view of what we propose to direct. The High Court on its part, did not come into grips with the reasons which weighed with the appellate authority. But, it proceeded to give its own reasoning to doubt truth and relevancy of the receipts. The learned Judge of the High Court rested his conclusion mainly on the ground that the receipts were not signed by all the heirs of Kunhahmmed to whom the

appellant was allegedly paying rent as lessee. However, the fact that the rental receipts were being signed only by Kunheema Umma, may not be a clinching factor as pointed out by the learned counsel for the appellant, though it could be one of the relevant factors. Moreover, the High Court, in exercise of revisional power, cannot enter into re-appreciation of evidence, unless, of course, the acceptance or rejection of the evidence was based on a wrong legal approach or application of wrong legal proposition. Having considered all these aspects, we are of the view that the manner in which the conclusion has been reached vis--vis, the reliability of rent receipts (Exts. P40 to P46) by the appellate authority as well as the High Court is not satisfactory and that issue still looms large and needs to be decided afresh in the interest of justice.

Regarding the other documentary evidence viz., land tax and property tax receipts and levy notices etc., we are of the view that there was no proper scanning and analysis of these documents either by the Land Tribunal or by the appellate authority. For instance, levy noticesindisputably, are not relatable to cashew garden. It is also doubtful (though we do not express a definite opinion), whether the land tax receipts and extracts from cultivation accounts relate to the cashew garden which is the major disputed item. Some of these documents at random were picked up, read over and translated in the open Court. It is not clear as to which items of land these receipts pertain to and whether the factum of possession as lessee could be inferred therefrom. Moreover, almost all these documents pertain to post-1964 period. Whether and to what extent they could be relied upon to give a finding that the appellant was in actual possession and cultivation on the crucial date is a matter which needs further examination by the statutory authority. It must be remembered that it is not the volume of the evidence that matters, but the relevancy and reliability of the evidence to prove the fact in issue that matters. Except making an omnibus reference to a bunch of documents, as already observed, there was no endeavour on the part of primary and appellate authorities to analyse and judge their relevancy and the weight to be attached to them. In the light of the above discussion and in order to meet the ends of justice while at the same time shortening the further course of litigation, we deem it just and expedient to pass the following order:--

The impugned order of the High Court as well as the order of the appellate authority is set aside and the C.R.P. and appeal shall stand restored to their respective files. Within six months from the date of receipt of this order, the appellate authority, on a reconsideration of the evidence on record as well as any other additional evidence that the parties may rely on in regard to the rent receipts (Exts. P40 to P46), submit its findings to the High Court on the question whether the appellant was in the possession as cultivating tenant of various items of land mentioned in the schedule to Section 72B application on and before the crucial date i.e., 1.1.1964. The High Court should, thereafter, consider these findings, keeping in view the limits of revisional jurisdiction vested in it and pass appropriate orders.

If the tenancy rights of the appellant as on the crucial day are negatived, no further question arises for consideration. However, if on a fresh consideration of the findings that will be submitted by the appellate authority, the High Court comes to the conclusion that the tenancy is established in respect of all or any of the items, the High Court will then proceed to examine afresh, whether there could be a valid lease of the lands in question by the heirs of Kunhahmmed, in the face of the attachment order/sale in execution of the decree in O.S.No. 20 of 1945. In that context, the High Court may also examine whether the appellant can take shelter under Section 7 of the Act, notwithstanding such attachment or sale, to sustain the legality of the tenancy.

The appeal is allowed accordingly and the case is remitted to High Court for fresh consideration. The High Court may, after receipt of findings of the appellate authority, endeavour to dispose of the

C.R.P. expeditiously, so that this three decade old litigation may come to an early end.