

Aboobacker Babu Haji & Others

v.

Edakkode Pathummakutty Umma (D) by LRS

(Supreme Court Of India)

S.N. VARIAVA HON'BLE MR.JUSTICE H.K. SEMA

C. A. No. 982 of 2003 | 12-02-2004

1. This appeal is against the judgment of the High Court dated 28th May, 2002.

2. Briefly stated the facts are as follows:

The respondents filed a suit for redemption of a mortgage. The appellants in their defence claimed protection of the Kerala Land Reforms Act. The matter was therefore referred to the Land Tribunal. Before the Land Tribunal two contentions were taken; (i) that there was an oral lease given in the year 1941 and (ii) that the mortgage deed of 1951 was in reality a lease. The Land Tribunal concluded that there had been an oral lease in 1941 but did not decide the second question. On the basis of the finding of the Land Tribunal the suit was dismissed by the Trial Court.

3. The respondents filed an appeal. The Appellate Court held that the document was a deed of mortgage. On the basis of that document the Appellate Court decreed the suit. The appellants filed an appeal to the High Court which has been dismissed. The High Court has confirmed the finding that the document was a deed of mortgage. The High Court has, however, accepted the argument that even if redemption was to be allowed, the value of improvements made had to be taken into consideration. The High Court has, therefore, remitted the case back to the Trial Court to determine the value of improvements.

4. It is submitted that as the High Court was remitting the matter back it should remit in respect of all aspects. We see no substance in this submission. It is no longer open to the appellants to contend that the document is not a mortgage. That finding has already been confirmed by the High Court. That finding has to

stand and cannot be allowed to be reopened, particularly, in view of the fact that no evidence was led by the appellants to show that the document was a lease and not a mortgage. Thus there can be no interference on this aspect.

5. The next point urged before the High Court and urged before us is that the amendment made to Order 34 of the Code of Civil Procedure by the High Court of Kerala is contrary to Order 34 as provided in the Civil Procedure Code. It is submitted that this amounts to excessive legislation must, therefore, be struck down.

6. These amendments are made pursuant to Section 122 of the Civil Procedure Code which reads as follows:

“122. Power of certain High Courts to make rules.—[High Courts [not being the Court of a Judicial Commissioner]] may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.”

7. Thus Section 122 of the Civil Procedure Code empowers each High Court to annul, alter or add to all or any of the rules set out in the First Schedule. Order 34 is one of the rules set out in the First Schedule. Power given under Section 122 of the Civil Procedure Code is not a piece of excessive legislation. It is the High Courts who are familiar and knowledgeable about the procedure which governs them and the Courts subordinate to them. It is for this reason that the Legislature has in its wisdom given this power to the High Court. If the High Court deems it appropriate, as it has done in this case, that instead of two stages of decree, there should be one composite decree, then such a rule, framed by virtue of power given under Section 122, cannot be said to be a piece of excessive legislation. It is within the competence of the High Court to do so. We, thus, see no substance in the challenge to the rule so framed.

8. In this view of the matter, we see no substance in the appeal. The same stands dismissed with no order as costs.