

SUPREME COURT OF INDIA

Amina Beevi

Vs.

Thachi

S.L.P.(Civil) No.15221 of 2007

(D.K.Jain and A.K.Patnaik JJ.)

27.10.2010

ORDER

A.K.Patnaik, J.

1. These Special Leave Petitions have been filed against the common judgment and decree dated 28.03.2007 passed by the Kerala High Court in Second Appeal Nos. 517 of 1988 and 311 of 1988.

2. The facts very briefly are that Makkar Sahib was the owner of the suit property and in the year 1945-46 he made an oral lease of the suit property in favour of Kunjali on an annual rent. Pursuant to the oral lease, Kunjali obtained possession of the suit property and remained in possession of the suit property. Makkar Sahib died and on 24.07.1968, the legal heirs of late Makkar Sahib, namely, his wife Mariyumma, his daughter Kochu Pathu and his son Abdul Kadar executed a sale deed (Ext. A1) in respect of three acres of land out of the suit property in favour of Aisu and another sale deed (Ext. A2) in respect of two acres and one acre out of the suit property in favour of Fathima Beevi and Amina Beevi. On 29.07.1968, Kunjali executed a leasehold assignment deed (Ext. A3) in favour of Abdul Kadar. On 29.07.1968 Mariyumma, Kochu Pathu and Abdul Kadar executed a sale deed (Ext. A4) in favour of Kunjali in respect of 75 cents of land. The purchasers of the suit property under Exhibits A1 and A2, namely, Aisu, Fathima Beevi and Amina Beevi obtained loans from the State Bank of Travancore and mortgaged the properties purchased by them under Exhibits A1 and A2 in favour of the Bank as security for the loan. When the loan was not repaid, the State Bank of Travancore filed a mortgage suit, O.S. No.131 of 1974, and obtained a decree for sale of the mortgaged property. In the year 1974, Mariyumma, Kochu Pathu and Abdul Kadar also sold some portions of the suit property to V.K. Kesavan and Janaky. Kunjali died leaving behind his wife Thachi, sons C.A. Sulaiman and M.A. Karim and daughters Aisha, Pathu and Howa. Thachi, Sulaiman, Aisha, Pathu and Howa (Plaintiffs) filed a suit, O.S. No.129 of 1980, against Mariyumma, Kochu Pathu, Abdul Kadar, Fathima Beevi, Amina Beevi, Aisu, V.K. Kesavan, Janaky and the State Bank of Travancore (defendant nos. 1 to 9) and the Trial Court decreed the suit declaring that the plaintiffs have leasehold right over the

suit property and are entitled to recover possession of the suit property from defendants no. 1 to 9 and are also entitled to mesne profit from the date of suit till recovery of the possession or till expiry of period of 3 years whichever was earlier. Aggrieved, the State Bank of Travancore, Amina Beevi, V.K. Kesavan and Janaky filed three appeals, A.S. Nos. 111, 117 and 121 of 1986. By a judgment and decree dated 30.10.1987, the Additional District Judge, Parur, dismissed the appeals. Against the judgment and decree of the Additional District Judge, Parur, Amina Beevi and the State Bank of Travancore filed Second Appeal Nos. 517 of 1988 and 311 of 1988 under Section 100 of the Code of Civil Procedure, 1908 and by the impugned common judgment and decree dated 28.03.2007, the High Court dismissed the second appeals.

3. Mr. C. S. Rajan, learned senior counsel appearing for the petitioner in S.L.P. (C) 15221 of 2007 Amina Beevi, submitted that the High Court has taken a view that Ext.A3 was a surrender of the interest of the tenant Kunjali in the suit property in favour of the landlord Abdul Kadar and such surrender of the interest of the tenant in favour of any party other than the Government was prohibited under Section 51 of the Kerala Land Reforms Act, 1963 (for short 'the Act'). He submitted that a plain reading of Ext.A3 would show that it is not a surrender but an assignment by Kunjali in favour of Abdul Kadar and, therefore, the High Court was not right in coming to the conclusion that Ext.A3 was a surrender hit by the statutory prohibition in Section 51 of the Act. He next submitted that in any case the fact remains that the plaintiffs in the suit, who are the legal heirs of the tenant Kunjali, had been dispossessed of the suit land and their remedy was not a suit in the civil court but an application to the Land Tribunal under Section 13A of the Act for restoration of possession. He cited the decision of this Court in *Koyappathodi Puthiyedath Ahammedkutty v. State of Kerala and Others*¹ in which it has been held that when a surrender is shown to have been made contrary to the provision contained in Section 51 of the Act, the tenant concerned would be entitled to restoration of possession under Section 13A of the Act.

4. Mr. Parag Tripathi, learned senior counsel appearing for the petitioner in SLP(C) 19320 of 2007, the State Bank of Travancore, submitted that proviso (a) to sub-Section (1) of Section 13A of the Act makes it clear that land sold to a bona fide purchaser is saved from the provisions of Section 13A of the Act. He submitted that Aisu, Fathima Beevi and Amina Beevi were bona fide purchasers of the suit property under Exhibits A1 and A2 and hence the purchases of land made by them were protected under Proviso (a) of sub-Section (1) of Section 13A of the Act. He further submitted that in accordance with the provisions of sub-Section (3) of Section 125 of the Act, the Trial Court in the present case referred the question whether the plaintiffs were tenants in respect of the suit property to the Land Tribunal and a reading of the order passed by the Land Tribunal would show that the Land Tribunal has not properly decided the question whether the plaintiffs were tenants in respect of the suit property.

5. In reply, Mr. C.S. Vaidyanathan, learned senior counsel appearing for the plaintiffs-respondents, submitted that a plain reading of Ext.A3 would show that under Ext.A3 Kunjali has surrendered his leasehold right in favour of Abdul Kadar and therefore the High Court

was right in coming to the conclusion that Ext.A3 though styled as leasehold assignment deed was actually a surrender of tenancy rights which was prohibited by Section 51 of the Act. In reply to the contention of Mr. Rajan that the only remedy of the plaintiffs-respondents was to apply to the Land Tribunal under Section 13A of the Act and not a suit in a civil court, he submitted that Section 13A of the Act was an additional remedy given to the tenant who is dispossessed of his land and did not bar a civil suit for declaration of right of tenancy and for recovery of the possession of land covered by the tenancy. He submitted that Aisu, Fathima Beevi and Amina Beevi who were impleaded as defendants No.4, 5 and 6 in the suit have not taken any plea in their written statement that they were bona fide purchasers of the suit property and hence the contention of Mr. Parag Tripathi that the Act protected bona fide purchasers of land does not arise for decision in this case. He relied on the order passed by the Land Tribunal to show that the Land Tribunal has gone into the evidence at length and decided that the plaintiffs-respondents were tenants in respect of the suit property.

6. The first question that we have to decide is whether the High Court was right in coming to the conclusion that Ext.A3 though styled as assignment of leasehold right was in fact a surrender of the leasehold right by lessee in favour of landlord and therefore hit by Section 51 of the Act which prohibits surrender of interest of a tenant except in favour of the Government. We have perused Ext.A3, copy of which has been annexed to SLP (C) 15221 of 2007 as Annexure P3, and we find that under Ext.A3 Kunjali, who was the tenant of the suit land, has assigned his "leasehold right and possession" and "relinquished" all his rights over the property in favour of Abdul Kadar. In substance, therefore, Ext.A3 is a surrender of leasehold or tenancy right by the lessee or the tenant in favour of landlord. Sub-Section (1) of Section 51 of the Act provides that notwithstanding anything contained in the Act, a tenant may terminate the tenancy in respect of any land held by him at any time by surrender of his interest therein but makes it clear in the proviso that no such surrender shall be made in favour of any person other than the Government. Hence, under Section 51 of the Act any surrender of his interest by the tenant to any person other than the Government is prohibited. Ext.A3, being a surrender by the tenant of his interest in favour of a person other than the Government, was in contravention of Section 51 and was void. We are, therefore, not inclined to disturb the finding of the High Court that Ext.A3 though styled as a leasehold assignment deed was in fact a surrender of the interest of the tenant and was prohibited by Section 51 of the Act.

7. The second question which we are called upon to decide in this case is whether the only remedy of the plaintiffs-respondents was to apply to the Land Tribunal under Section 13A of the Act and consequently the suit filed by the plaintiffs-respondents was barred under the Act. Section 9 of the Code of Civil Procedure, 1908 provides that Civil Courts have jurisdiction to try all suits of a civil nature excepting suits which are either expressly or impliedly barred. Hence, we have to consider whether the suit filed by the plaintiffs-respondents for declaration of their tenancy rights in respect of suit land and for recovery of possession of the suit land was expressly or impliedly barred by Section 13A of the Act.

8. Sections 13A and 125 of the Act, which are relevant for deciding this question are quoted herein below: "13A. Restoration of possession of persons dispossessed on or after 1st April, 1964 - (1) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of Court, where any person has been dispossessed of the land in his occupation on or after the 1st day of April, 1964, such person shall, if he would have been a tenant under this Act as amended by the Kerala Land Reforms (Amendment) Act, 1969, at the time of such dispossession, be entitled subject to the provisions of this section to restoration of possession of the land: Provided that nothing in this sub-section shall- (a) apply in any case where the said land has been sold to a bona fide purchaser for consideration before the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette; or (b) entitle any person to restoration of possession of any land which has been resumed under the provisions of this Act. (2) Any person entitled to restoration of possession under sub-section (1) may, within a period of six months from the commencement of the Kerala Land Reforms (Amendment) Act, 1969, apply to the Land Tribunal for the restoration of possession of the land. (3) The Land Tribunal may, after such inquiry as it deems fit, pass an order allowing the application for restoration and directing the applicant to deposit the compensation, if any, received by the applicant under any decree or order of Court towards value of improvements or otherwise and the value of improvements, if any effected on the land after the dispossession as may be determined by the Land Tribunal, within such period as may be specified in the order. (4) On the deposit of the compensation and value of improvements as required in the order under sub-section (3), the Land Tribunal shall restore the applicant to possession of the land, if need be by removing any person who refuses to vacate the same.

"125. Bar of jurisdiction of Civil Courts - (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 proceedings 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 the Land Tribunal on the question referred to it. (6) The decision of the Land Tribunal on the question referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Civil Court.

(7) No Civil Court 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 for any property in respect of which a question referred to in that sub-section has arisen, till 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.”

9. A plain reading of Sub-Section (1) of Section 13A of the Act quoted above would show that a person who has been dispossessed of his land in his occupation on or after 1st April, 1964 and such person would have been a tenant under the Act as amended by the Kerala Land Reforms (Amendment) Act, 1969, at the time of such dispossession, would be entitled subject to the provisions of the Section to restoration of the possession of the land. It, thus, appears that any person who has been dispossessed of land under his occupation on or after 1st April, 1964 and such person would have been a tenant under the Act as amended by the Kerala Land Reforms (Amendment) Act, 1969 has been provided with a special remedy of restoration of possession of land under Section 13A of the Act. None of the sub-sections of Section 13A expressly state that a suit by a tenant for recovery of possession of land which was under his occupation was barred. Hence a suit for recovery of possession by a tenant is not "expressly" barred.

10. We cannot also hold that such a suit was "impliedly" barred by Section 13A of the Act because of what is provided in Section 125 of the Act. Sub-Section (1) of Section 125 of the Act quoted above states that 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 and sub-Section (3) of Section 125 states that if in any suit or other proceedings any question regarding rights of a tenant including a question as to whether a person is a tenant arises, the Civil Court shall stay the suit or other proceeding 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. Sub-Section (4) of Section 125 further states that 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 and under sub- section (5) of Section 125 the Civil Court shall then proceed to decide the suit or other proceedings

accepting the decision of the Land Tribunal on the question referred to it. These provisions make it amply clear that in any suit regarding rights of a tenant, the rights of the tenant including a question whether a person is a tenant will have to be referred by the Civil Court to the Land Tribunal and after the Land Tribunal decides the question, the Civil Court will decide the suit in accordance with the decision of the Land Tribunal.

“Considering these clear provisions of Section 125 of the Act, we are of the considered opinion that the suit of the plaintiffs- respondents for declaration that they were tenants in respect of the suit property and for recovery of possession of the suit property from the defendants and for mesne profit was not barred either expressly or impliedly by Section 13A of the Act. This Court has also not held in *Koyappathodi Puthiyedath Ahammedkutty v. State of Kerala and Others* (supra) cited by Mr. Rajan that the tenant cannot institute a suit in a Civil Court for declaration of his tenancy in respect of a land and for recovery of possession of the land covered by the tenancy.”

11. We may now take up the contention of Mr. Tripathi that the Land Tribunal, to which the claim of tenancy of the plaintiffs-respondents was referred, has not considered the claim properly. We have perused the order dated 13.11.1984 of the Land Tribunal, Perumbavoor, a copy of which has been annexed as Annexure R-2 in I.A. No.2 of 2010 in SLP (C) No.19320 of 2007, and we find that the Land Tribunal has dealt with the oral evidence of several witnesses and a large number of documents filed on behalf of the parties and has come to the conclusion that the father of the plaintiffs- respondents and after him the plaintiffs-respondents had leasehold rights in the light of the available evidence. We also find that the Trial Court has accepted this finding of the Land Tribunal upholding the leasehold right of the plaintiffs- respondents and has decided Issue No.1 in the suit accordingly. The finding of the Land Tribunal and the Trial Court on this point is a finding of fact based on oral and documentary evidence and we are not inclined to disturb this finding in this Special Leave Petition.

12. We also find that no issue was raised before the Trial Court whether Aisu, Fathima Beevi and Amina Beevi were bona fide purchasers of the suit property and therefore the Trial Court has not recorded a finding on this issue. In the absence of any finding on this issue of fact, we do not think it necessary to decide in this case whether a tenant could or could not recover land which was under his occupation from a bona fide purchaser by virtue of what is provided in Proviso (a) to Sub-Section (1) of Section 13A of the Act.

13. In the result, we hold that there is no merit in these Special Leave Petitions and we accordingly dismiss the same. No costs.

¹[1987 (Supp) SCC 158]