SUPREME COURT OF INDIA

Mathai Mathai

Vs.

Joseph Mary @ Marykkutty Joseph

C.A.No.4479 of 2007

(Gyan Sudha Misra and V.Gopala Gowda JJ.)

25.04.2014

JUDGMENT

V.GOPALA GOWDA, J.

1. This appeal is directed against the impugned judgment and order dated 1.7.2005 passed by the High Court of Kerala at Ernakulam in Civil Revision Petition No. 873 of 1997(C) allowing the Civil Revision Petition and rejecting the O.A. No. 230 of 1981, urging various facts and legal contentions.

2. Necessary relevant facts of the case are stated hereunder:- The appellant herein filed Original Application No. 230 of 1981 before the Land Tribunal, Kottayam claiming to be a deemed tenant under Section 4A of the Kerala Land Reforms Act, 1963 (hereinafter referred to as the K.L.R. Act) read with Kerala Land Reforms Tenancy Rules (for short the Tenancy Rules) and stating that his uncle had executed a mortgage deed in the year 1909-1910 in favour of the appellants mother late Smt. Aley as a collateral security for a sum of 7000 Chakram which was the dowry amount.

3. It is the case of the appellant that his mother has been in possession of the land involved in the case as a mortgagee from the date of execution of the mortgage deed referred to supra and she has been in continuous possession of the same for more than 50 years as on the date of the commencement of the K.L.R. Act (substituted by Act 35 of 1969) immediately preceding the commencement of the Kerala Land Reforms

(Amendment) Act, 1969 which was published in the Kerala Gazette Extraordinary No. 295 dated 17.12.1969 w.e.f. 1.1.1970. Therefore, he should be registered as deemed tenant in respect of the land in question as it has conferred a statutory right on him to purchase the mortgaged land in toto to the extent of 2 acres 48 cents. In the said proceedings the father of the appellant got impleaded and opposed the claim made by the appellant and further denied that the mother of the appellant had right as the mortgagee and was in possession and holding the land as a deemed tenant for the 50 years immediately preceding the amended provisions of Section 4A of the K.L.R. Act, which provision came into effect from 1.1.1970. Therefore, he has contended that he is not entitled to be registered as a deemed tenant and cannot obtain purchase certificate of the land in question as per Section 72B of the K.L.R. Act. Vide order dated 21.3.1994, the Land Tribunal, after recording the finding of fact, held that the appellant is a deemed tenant under Sections 4A of the K.L.R. Act and therefore, he is entitled to get the purchase certificate.

4. Aggrieved by the said order, the first respondent and others filed an appeal before the Appellate Authority (Land Reforms) under Section 102 of the K.L.R. Act questioning the correctness of the order dated 21.3.1994 passed by the Land Tribunal, Kottayam, on various factual and legal contentions. The Appellate Authority has adverted to certain relevant facts in respect of the previous proceedings in relation to the same land initiated by the appellant under Section 72 of the K.L.R. Act in O.A. No. 531 of 1975, which was allowed by order dated 25.4.1978 which order was challenged by the first respondent herein before the Land Reforms Appellate Authority, Ernakulam as L.R.A.S. 534 of 1978 which appeal came to be allowed and the case was remanded to the Land Tribunal for reconsideration. In the said proceedings the Revenue Inspector had filed his Report dated 23.4.1992 as contemplated under Section 105A of the K.L.R. Act. The same was marked as Exh.C1, after examining Revenue Inspector in the proceedings. The said report was not challenged by the first respondents father and the same was accepted in toto by the Land Tribunal. It is further stated that the objection of the father of the first respondent was taken in the original application before the Land Tribunal but he was not examined as a witness in support of his claim as he died during the pendency of the case. However, he was examined as a witness before the Land Tribunal in the previous O.A. No. 531 of 1975. In his deposition he has clearly stated that the possession and enjoyment of the disputed property was by the appellant herein. The said deposition is marked as Exh.A8 before the Land Tribunal.

5. The Appellate Authority after referring to the registered mortgage deed which is marked as Exh.A1, has recorded the finding of fact holding that the property involved in the original application of the appellant has been in his possession and enjoyment of the appellant and he has effected improvements on it and cultivated the property and that the first respondent has no title or possession over the property at any time. To prove the mortgage deed, A1 the appellant herein and independent witnesses were examined on behalf of the appellant as A2 and A3 and documentary evidence produced were marked as Exhs.A1 to A9 in support of his claims. The said evidence has been corroborated by the Revenue Inspectors report and the first respondent was examined and she did not have direct knowledge of the property in dispute and her evidence was not accepted by the authorities. It is observed by them that the respondents evidence does not carry any weight and reliance was placed upon both oral and documentary evidence of the appellant and the finding recorded by the appellate authority holding that he is the deemed tenant and the order passed by the Land Tribunal does not call for interference as there is no merit in the appeal and the order of the Land Tribunal was confirmed by dismissing the appeal of the first respondent with no cost by its order dated 9.4.1997. This order was challenged by the first respondent before the High Court of Kerala under Section 103 of the K.L.R. Act, urging various legal contentions. The High Court passed a cryptic order after adverting to certain rival contentions and examined the correctness of the same in the Revision Petition. The learned Judge of the High Court at para 3 of the impugned order has recorded the finding of fact holding that the factum of possession of the appellant cannot be disputed in view of the concurrent finding of fact. However, he has further held that mere possession of the disputed land does not give right of tenancy of the same on the basis of Exh.A1, the registered mortgage deed, which is the hypothecation bond and held that no possession of the disputed land was granted under the said document. Hence, it is held that Section 4A of the K.L.R. Act is not attracted to the fact situation of the case on hand to enable the appellant to get purchase certificate in respect of the disputed land under Section 72B of the K.L.R. Act as it was necessary to prove that he is a cultivating tenant holding the property in possession as a mortgagee which is absent in the present case. The learned Judge of the High Court held that the concurrent finding of fact by both the appellate authority as well as the Land Tribunal that Exh. A1 is the deed of mortgage under which the appellant is claiming possession of the land in question as the mortgagee, is not factually and legally correct and accordingly has allowed the Revision Petition of the

first respondent and rejected the Original Application No. 230 of 1981 filed by the appellant.

6. The correctness of the said order is under challenge before this Court raising certain questions of law. Mr. M.T. George, the learned counsel for the appellant has contended that the High Court exceeded its jurisdiction under Section 103 of K.L.R. Act in as much as there is a failure to decide any question of law and has rendered an erroneous decision on the question of law framed by the appellate authority. He further urged another legal contention that the High Court was not justified in interfering with the orders of the Land Tribunal and the Appellate Authority, both on the factual and legal question which was not agitated by the first respondent before the Land Tribunal and the Appellate Authority. Further, the High Court was not justified in reversing the orders of the Land Tribunal as well as the Appellate Authority, when it found that the appellants mother was a mortgagee and it is further found by both the authorities as well as the High Court the fact that the appellants mother and the appellant were in possession of the property for the statutory period prescribed under Section 4A of the K.L.R. Act. The Land Tribunal and the Appellate Authority recorded the finding on the contentious issue and held that the appellant is the deemed tenant of the land in question under Section 4A of the K.L.R. Act, which order has been erroneously interfered with by the High Court in exercise of its revisional jurisdiction. It was urged on behalf of the appellant that the appellant is entitled for the relief as he is the deemed tenant under Section 4A of the K.L.R. Act when his deceased mother was admittedly the mortgagee of the land in question and he continued as such and both the fact finding authorities have found them to be in possession of the land in question for more than the statutory period as provided under the above provision of the Act. It was contended that the High Court in exercise of its revisional jurisdiction should not have interfered and annulled the orders of both the Land Tribunal and the Appellate Authority and it has erroneously set aside the concurrent findings of fact recorded by both the authorities vide the impugned order passed in the Revision Petition. Therefore, he submits that the impugned order is liable to be set aside as it is not only erroneous but also suffers from error in law. The appellants contention is that the property was mortgaged as a collateral security for the Stridhan amount given on behalf of the appellants mother at the time of her marriage with the father of both the appellant and the first respondent and though the document does not contain anything regarding delivery of possession of the property to the deceased mother of the appellant in the mortgage deed, nonetheless the appellant was put in possession of the

property in question on the date of the mortgage itself and she continued to be in possession with the same till her death and thereafter, the appellant came into possession. The appellants counsel has contended that the conclusion of the High Court on the contentious issue is unwarranted and not justified and that both the Land Tribunal and the appellate authority have correctly held on facts that the appellant is the mortgagee and has been in possession together with his mother for more than 50 years as on the date the amended provision has come into force, and therefore, they have rightly held that he is a deemed tenant of the land, and hence entitled to get the purchase certificate in respect of the property in question. He has further contended that all that the law requires is that the tenure of the appellant as a mortgagee must be for a period of not less than 50 years and Section 4A does not demand that the mortgagee has to be put in possession under the mortgage deed itself. Therefore, the finding of the High Court in the impugned order that no possession of the land in question was given under the document is an unwarranted finding which is outside the scope of revisional jurisdiction while examining the correctness of the concurrent finding on the contentious issue.

7. This appeal is strongly opposed by the first respondents counsel who sought to justify the correctness of the finding recorded by the High Court in its order in exercise of its revisional jurisdiction after noticing the pleadings and documentary evidence on record. The first respondent, in her counter affidavit and written submissions has stated that the appellant is bound to prove the fact that he is the mortgagee and that the possession of the property has come to him as the mortgagee and that his deceased mother and the appellant have continued in possession of the property in dispute for more than 50 years as on 1.1.1970, the date on which the K.L.R. Act came into force to get the benefit of deemed tenancy upon the land in question. It is contended by the learned counsel that there is no recital in the document of the mortgage deed and that Ex. A1, the mortgage deed does not stipulate that the mortgagee is put in possession by virtue of that document. There is no express clause for delivery of possession of the schedule property in favour of the mortgagee at the time of registering the document nor impliedly or by implication which binds the mortgagor to deliver the possession of the mortgage property to the mortgagee. The first respondent has further contended that as far as the mortgage deed is concerned, the brother of the appellants father is the mortgagor and the claim can only be made against him and his property but however, the appellant has not claimed the right against him but instead against the first respondent and their father. The mortgagor

was not impleaded as a party and it is the contention of the first respondent that the appellant is attempting to get the ownership of the entire property. Further, both the Land Tribunal and the Appellate Authority have failed to take into consideration the relevant fact namely, that at the time of the death of his mother, the appellant was a minor and therefore, could not have acquired possession over the property as claimed by him. Therefore, they have not taken into consideration the fact that after the death of the mortgagee, the mother of the appellant, possession of the land came to the father of the appellant and the first respondent and therefore, the appellant is not entitled to claim continuous possession of the same to get the benefit under Section 4A of the K.L.R. Act, even assuming without conceding that the appellants mother acquired a right under Exh.A1, the mortgage deed. Both the Land Tribunal and the Appellate Authority should have noticed the fact that the mortgagee-mother of the appellant was not at all in possession of the property but it was in the exclusive possession of his father. As per family settlement of the year 1965, 94 cents of property covered under Exh. A1 was allotted to the first respondent. Again as per the sale deed of 1975, 1 acre 68 cents of land covered under Exh. A1 was given to first respondent and ever since she is in exclusive possession and enjoyment of that extent of the property which was originally covered under Ex. A1-mortgage deed. Therefore, it is seen that the property covered by Ex. A1-mortgage deed was in the exclusive possession and enjoyment of the appellants father. It was contended by the learned counsel that this aspect of the matter has not been considered by the Land Tribunal and the Appellate Authority. Further, it is urged that the appellant and the first respondent are children of the deceased Mathai Mathai, though they are only half-brother and sister being born to two different mothers. Therefore, the first respondent is also one of the legal heirs and entitled to inherit the property of her father but the appellant utilizing or misusing the position as a mighty man with muscle power managed to get oral evidence in his favour though there was no documentary evidence supporting his claim and he has tried to grab the entire property left behind by their father in exclusion of the first respondent and therefore, she requested this Court not to interfere with the impugned order.

8. We have heard the learned counsel for the parties and with reference to the above factual and rival legal contentions urged on behalf of the parties the following points would arise for our consideration :-

1) Whether Exh.A1, the mortgage deed dated 1909-1910 is a valid mortgage

deed and even if it is so, whether it is a simple or usufructuary mortgage in terms of Sections 58(b) and 58(d) of the Transfer of Property Act, 1882?

2) Whether the concurrent finding of the Appellate Authority in its judgment passed in AA No. 216 of 1994 is based on legal evidence on record and in accordance with law?

3) Whether the finding recorded in the impugned judgment by the High Court in exercise of its revisional jurisdiction with regard to possession of the property holding that the appellant is not in possession under the document Exh. A1-mortgage deed, and therefore, he is not the deemed tenant of the land in question under Section 4A of the K.L.R. Act, is legal and valid? 4) What order?

Answer to Point No. 1

9. The first point is required to be answered against the appellant for the following reasons:-

It is an undisputed fact that Exh. A1 is the mortgage deed executed by the uncle of the appellant and the first respondent in favour of the deceased mother of the appellant as collateral security towards the dowry amount. At the time of execution and registration of the document, it is an undisputed fact that the age of the mortgagee, the deceased mother of the appellant was 15 years as mentioned in the mortgage deed itself. Therefore, she had not attained the majority under the Indian Majority Act, 1875. To acquire the competency to enter into a contract with the uncle of both the appellant and the first respondent the parties should have been of age of majority as required under Section 11 of the Indian Contract Act, 1872. The aforesaid aspect fell for interpretation before the Privy Council in the case of Mohori Bibee v. Dharmodas Ghose[1], wherein the Privy Council after interpretations of relevant provisions of Section 11 of the Indian Contract Act, 1872, has held that the contracting parties should be competent to contract as per the above provision and the minors contract was held to be void as he cannot be the mortgagor, the relevant paragraphs referred to in the aforesaid decision are extracted hereunder :-

Looking at these sections their Lordships are satisfied that the Act makes it

essential that all contracting parties should be competent to contract, and expressly provides that a person, who by reason of infancy is incompetent to contract, cannot make a contract within the meaning of the Act

In the later part of the same paragraph, it is stated,

The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant. Their Lordships are therefore of opinion that in the present case there is not any such voidable contract as is dealt with in section 64.

Thus, it was held that a minor cannot be a contracting party, as a minor is not competent to contract as per Section 11 of the Indian Contract Act. At this juncture, it is also necessary to extract Sections 2 and 11 of the Indian Contract Act, 1872 which read as under:-

2.Interpretation-clause. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(c) The person making the proposal is called the promisor and the person accepting the proposal is called the promisee;

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each

other, is an agreement;

(f) Promises, which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreement which is enforceable by law at the option of one or more of the parties- thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

11. Who are competent to contract- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

This important factual and legal aspect has been conveniently ignored by the authorities including the High Court while adverting to Exh.A1, the mortgage deed. A strong reliance was placed upon it by both the Land Tribunal and the Appellate Authority in allowing the claim application of the appellant holding that he is a deemed tenant under Section 4A of the K.L.R. Act without noticing the aforesaid relevant factual aspect of the matter. Therefore, we have to hold that the mortgage deed-Ex. A1 executed by the uncle of the appellant and the first respondent, in favour of the deceased mother of the appellant, is not a valid mortgage deed in respect of the property covered in the said document for the reason that the deceased mother at the time of execution and registration of the document was a minor, aged 15 years, and she was not represented by her natural guardian to constitute the document as valid as she has not attained majority according to law. Many courts have held that a minor can be a mortgagee as it is transfer of property in the interest of the minor. We feel that this is an erroneous application of the law keeping in mind the decision of the Privy Council in Mohori Bibees case (supra).

10. As per the Indian Contract Act,1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interests of the minor unless she is represented by her natural guardian or guardian appointed by the court. The law cannot be read differently for a minor who is a mortgagor and a minor who is a mortgagee as there are rights and liabilities in respect of the immovable property would flow out of such a contract on both of them. Therefore, this Court has to hold that the mortgage deed-Ex.A1 is void ab initio in law and the appellant cannot claim any rights under it. Accordingly, the first part of first point is answered against the appellant.

11. As regards to the later portion of the first point, even if we assume that it is a valid mortgage deed as per recitals of the documents, it is evident that it is a simple mortgage in terms of Section 58(b) of the Transfer of Property Act, 1882, but not a usufructuary mortgage as defined under Section 58(d) of the Transfer of Property Act. The relevant provisions of the same are extracted hereunder:-

> 58.(b)-Simple mortgage - Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.
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> (d) Usufructuary mortgage - Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

On a careful reading of the recitals in Exh.A1, the mortgage deed and the aforesaid provisions of the Transfer of Property Act, i.e. the definitions of simple mortgage and usufructuary mortgage, wherein simple mortgage is defined as the mortgage where property is mortgaged without delivering possession of the mortgaged property to the mortgagee whereas usufructuary mortgage is defined as the mortgage where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and further authorises him to retain such possession until payment of the mortgage- money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money. It is clear that in the present case, it is a simple mortgage and not a usufructuary mortgage. Here, it is relevant to mention the case of Pratap Singh @ Babu Ram & Anr. v. Deputy Director of Consolidation, Mainpuri & Ors.[2], wherein this Court held as under :- In the case of possessory or usufructuary mortgage, possession is delivered to the mortgagee. Delivery of possession to the mortgagee is a sine qua non of such a mortgage. It is delivered in terms of the mortgage by the mortgagor of his own volition to the mortgagee. The mortgagee gets possession over the land only because it has been delivered to him in terms of the mortgage deed which equally binds him.

Thus, it is apparent that if a mortgage needs to be a usufructuary mortgage, possession has to be delivered under the aegis of the mortgage deed itself. Further, as per section 58(d) of the Act, in a usufructuary mortgage, the mortgagor authorises the mortgagee to receive the rents and profits accruing from the property in order to pay off the loan and in the present case, there is nothing to show that this was happening and it is not substantiated by the appellant by producing documentary evidence. Further, the mortgagor has agreed to pay interest at the rate of half chakram per year for every hundred towards repayment of the loan amount and this is detailed in the mortgage deed itself and hence we can infer that there was no intention on the part of the parties to allow the mortgagee to appropriate the rents and profits accruing out of the mortgaged property. It is also stated in the mortgage deed that, on payment of the principal, this mortgage deed will be redeemed, and if the

principal and interest are not repaid, then it was agreed to realize it charged upon the security property and on me, meaning the mortgagor. Thus, it is very clear that the mortgage deed only purports to be that of a simple mortgage. Merely the fact that the mortgagee herein happened to be in possession of the mortgaged property will not make it sufficient to rule that he/she was a mortgagee in possession under the deed. Further, the argument that possession of the property was delivered immediately after the deed was executed also cannot be a ground to hold that mortgagee was in possession of the land in question as per the deed as there is no recital in the deed which delivers possession of the land to the mortgagee under the deed. In the case of Ramkishorelal & Anr. v. Kamal Narayan[3], it was held that the course of conduct of the parties is of no relevance for the construction of a document which is in itself, unambiguous. In the present case, the mortgage deed is unambiguous and it is patently clear that the mortgagor did not intend to deliver possession of the mortgaged property as he has clearly mentioned that he is paying interest but there is no delivery of possession of land as per the deed.

12. By perusing the recitals of the mortgage deed, it is seen that it neither expressly or by implication binds the mortgagor, the uncle of the first respondent to deliver possession of the property and for the mortgagee to retain such possession of the same until payment of the mortgage money but on the other hand the mortgage is a simple mortgage as the recitals fall within the definition of simple mortgage and there is no express recital in the deed to deliver possession of the mortgaged property.

By a careful reading of the orders passed by the authorities, it is clear that the appellant has not produced any revenue records to evidence the fact that after Exh.A1-mortgage deed was executed by the mortgagor in the name of the deceased mother of the appellant, her name was entered in the revenue records as the mortgagee in possession of the mortgagors property covered in Exh. A1, and in this regard no piece of evidence has been produced to establish this fact which would have been material documentary evidence. But on the other hand, the Land Tribunal and the Appellate Authority have preferred to simply rely on the Revenue Inspectors report as well as the deposition of the father of the first respondent and the appellant as per Exh.A8 in the proceedings in O.A. No. 531 of 1975 in order to hold that the appellant was in possession as the mortgagee. Even assuming the said document Exh.A8 deposition of the father is taken on

record as evidence under Section 80 of the Evidence Act, the said document at best will disclose the fact that the appellant is in possession of the property but not as a successor of the deceased mother, the mortgagee of the property. He also could not have claimed that he has succeeded in possession of the land in question of the deceased mother for the reason undisputedly as stated by the first respondent that at the time of death of the deceased mother-mortgagee, the appellant was a minor and therefore, he could not have come into possession and continued as such after the death of the deceased mortgagee and so the possession of the land falls to the father of the appellant. The appellant has failed to produce and establish the fact in the absence of recital in the mortgage deed Exh.A1 as to how the mortgagee has come into the possession and how he continued possession as successor of the mortgagee. The aforesaid factual and legal aspect has not been taken into consideration by both the authorities while coming to the conclusion on the basis of Exh.A1 and instead, accepted the oral testimony of the appellant, and the finding is erroneously recorded by them in his favour holding that the deceased mortgagee was in possession of the land in question and after her death he continued in possession as a mortgagee. Therefore, the concurrent finding of fact of the appellate authority that he has proved this claim as a deemed tenant under Section 4A of the K.L.R. Act and he is entitled to get the purchase certificate of the owner of the property is not only an erroneous finding but suffers from error in law and it has been rightly set aside by the High Court in exercise of its wider civil jurisdiction by recording a finding that the appellants possession of the property is not that of a mortgagee under the mortgage deed.

Answer to Point Nos. 2 and 3

13. Even in the absence of the reasons which we have given in this judgment, the conclusion and the concurrent finding of fact arrived at by the Land Tribunal and the First Appellate Authority is not only an erroneous finding but suffers from error in law. Further, another important aspect of the case that has been ignored by both the authorities and the High Court is that the mortgagor (or his legal heirs) have not been impleaded as a party to the original claim or to subsequent proceedings. There is also no mention whatsoever of the status of the original dowry amount for which the property was mortgaged in the first place. Was the obligation discharged? What is the mortgagors stand on the issue? Nothing is clear. Further, the first respondents claim of

ownership through her father is also highly curious as it is not stated how the father is claiming ownership over the property. In the absence of this important evidence, we cannot adjudicate upon the ownership of the property. We can only hold that the appellant cannot claim to be a deemed tenant of the land in question under the K.L.R Act and it is open to the parties to litigate on the question of ownership of the property in question before the appropriate authority. We hold that the impugned judgment of the High Court is perfectly legal and valid, and that the orders of the Land Tribunal and Appellate Authority are erroneous for the reason that the facts and legal evidence have been wrongly appreciated and held in favour of the appellant, although it is contrary to the recitals of Exh.A1, as well as the provisions of the Indian Contract Act and the provisions of the Transfer of Property Act. Therefore, the findings and reasons recorded by both the Land Tribunal and the Appellate Authority are erroneous and suffer from error in law for the reasons referred to supra. We answer the point Nos. 2 and 3 against the appellant.

Answer to Point No. 4

14. In view of our findings on the point Nos. 1 to 3 against the appellant, we hereby dismiss this appeal and uphold the impugned judgment of the High Court passed in the Civil Revision Petition. It is open to the parties to litigate before the appropriate court with regard to the ownership rights of the property under the relevant provisions of law to get their rights settled upon the property in question. No costs.

[1] (1903) I.L.R. 30 Calc. 539
[2] (2000) 4 SCC 614
[3] AIR 1963 SC 890