

## KERALA HIGH COURT

Raghavan

Vs

Velayudhan

(K.T. Thomas, J.)

19.06.1984

### JUDGEMENT

**K.T. Thomas, J.**

( 1. ) Plaintiffs 2, 3, 5, 3 and 10 in O. S. No. 83 of 1956 on the file of the Additional Sub Court , Alleppey, are the appellants. The suit was for redemption of a mortgage and for recovery of possession of the suit properties. The plaintiffs obtained a decree on 15-7-1958 for redemption and recovery of possession. That decree was confirmed in appeal by this Court on 25-3-1965. The decree fixed the price for redemption to be deposited by the decree-holders. The mortgage amount was fixed at Rs. 3939. 50 and the value of improvements at Rs. 10467/ -. The decree-holders deposited the price for redemption and applied as per EP. No. 410 of 1966 for possession of the property to be delivered to one Sarojini Bai, in whose favour the decree-holders had executed a possessory mortgage apparently for raising the requisite money for payment of the price for redemption. Objections were raised by judgment-debtors 6 and 17. It is not necessary to advert to all the objections raised. One of the objections was that they are entitled to the benefits of S. 4a of the Kerala Land Reforms Act, as amended by Act 35 of 1969 and hence the decree for redemption and recovery of possession has become unexecutable. There was a second contention that in the event of eviction they are entitled to compensation for improvements in the property on revaluation of the same as provided for in S. 5 (3) of the Kerala Act 29 of 1958. The execution court found that the mortgagees had been in possession from 1090 onwards under the mortgage Ext. P1 and they were also in possession on the date on which Kerala act 35 of 1969 came into force. They continued to be mortgagees even after deposit of the price for redemption on 20-12-1966 for the reason that the judgment-debtors are entitled to additional value of improvements on revaluation under S. 5 (3) of Act 29 of 1958 in respect of improvements effected subsequent to the suit as well as for the improvements already valued prior to the commencement of Act 29 of 1958; and for these reasons the decree-holders are not entitled to execute the decree and obtain possession of the property. It is against this that some of the decree-holders have come up in revision. This revision was referred for decision by a Division Bench on the contention raised by counsel for the petitioners about the correctness of the

decision of a learned Single Judge of this Court reported in 1978 KLT. 459.

( 2. ) THIS Court in the said decision had held that in cases where additional value of improvements is to be paid, the mortgagee will continue to be a statutory mortgagee by virtue of the provisions contained in sub-sec. (2) of S. 4 of Act 29 of 1958. Under sub-s. (1) of S. 4 every tenant, on eviction, shall be entitled to compensation for improvements, and, notwithstanding the determination of the tenancy or the payment or tender of the mortgage money, shall be entitled to remain in possession until eviction in execution of a decree or order of court. The decree or order of court should also contain a provision for payment of compensation for improvements revalued under sub-section (3) of S. 5 of the Act. Sub-section (2) of S. 4 is extracted below: "a tenant so continuing in possession shall, during such continuance, hold as a tenant subject to the terms of his lease or mortgage, if any. " The expression "tenant" is defined in clause (d) of S. 2 to include also a mortgagee. From these provisions of the Act it is clear that a mortgagee who is entitled to be paid compensation for improvements under sub-section (3) of S. 5 will continue as a statutory mortgagee until actual eviction in execution of a decree or order of court, which should also provide for payment of the additional value of improvements due to the mortgagee under sub-section (3) S. 5. Whether the mortgagee continues in possession in terms of the mortgage deed or by virtue of the statutory provision adverted to above, the relationship of the mortgagor and mortgagee will not be determined and his continuance in possession even after the deposit of the redemption price fixed prior to the commencement of Act 29 of 1958 will also be as a mortgagee. It is for these reasons the learned Single Judge of this Court in the decision reported in 1978 KLT. 459 held that such a mortgagee is also entitled to the benefits of S. 4a of Kerala Act 1 of 1964 as amended by act 35 of 1969. The principle of the decision of the learned Single Judge was accepted by a Division Bench of this Court in E. F. A. Nos. 55 and 56 of 1976. We do not see any reason to differ from the principle laid down in the aforesaid decisions. In the present case value of improvements was fixed as early as in 1953. The suit was originally instituted as OS. No. 169 of 1124 of the District Court, Alleppey, and was re-numbered as OS. No. 83/1956 of the Sub court, Alleppey. A commission issued at the stage of execution has submitted a report, marked as Ext. C4. Ext. C4 report would show that the judgment-debtors are entitled to additional value of improvements fixed under sub-section (3) of s. 5 of Act 29 of 1958 at Rs. 6199. 06. Even though there is objection to the additional value fixed and the amount so fixed has not become final, there is no dispute that there are additional improvements to be valued under sub-section (3) of S. 5 and the mortgagees are also entitled to a revaluation of the improvements already valued, under the provisions of sub-section (3) of S. 5 of Act 29 of 1958. Applying the principle laid down in the decisions adverted to above, we see no ground to interfere with the impugned order of the execution court. The CRP. fails and is dismissed. No costs. . . ;