

(1968) 08 KL CK 0021

In the High Court Of Kerala

Case No : Second Appeal No. 1490 of 1964

Bhagavadas Krishnadas and Another

APPELLANT

Vs

P.S. Soma Iyer and Others

RESPONDENT

Date of Decision : 19-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 95, Order 21 Rule 96, 65, 68

Contract Act, 1872 — Section 70

Evidence Act, 1872 — Section 101, 102, 103, 104

Citation : AIR 1969 Ker 263

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Advocate : P.C. Balakrishna Menon and K.P. Radha Krishna Menon, for the Appellant; T.L. Viswanatha Iyer, for the Respondent

Final Decision : Dismissed

Judgement

K. Sadasivan, J.—Defendants 1 and 2 are the appellants in the second appeal. The suit against them was for compensation for use and occupation. The plaint property belonged to one Krishnadas. For arrears of income tax due, the property was brought to sale in revenue recovery proceedings and purchased by the plaintiff on 15-5-1954. There were two buildings in the property, buildings bearing numbers 682 and 683 which were both occupied by the defendants. Till 30-11-54 that is, the date of confirmation of the sale the defendants were in possession and they were taking the usufructs from the property. On 30-11-54 they were dispossessed of the compound; but at the request of the defendants they were allowed to continue their residence in the buildings, on their agreeing to compensate the plaintiff for the loss of rent that he was likely to sustain thereby. On 21-10-1955 the defendants were dispossessed of the buildings also; but nothing was paid by them by way of damages for the period between 30-11-54 and 21-10-55 as was agreed to by them. Accordingly the suit was instituted for damages for the said period. The defendants contested the claim and stated that they got knowledge of the sale only on 1-12-54, Thereafter the

income from the property was not taken by them. They are not liable for any amount by way of damages or otherwise to the plaintiff from 15-5-54 to 1-12-1954. After 1-12-54 they were in occupation of the buildings by permission from the plaintiff and there was no agreement to pay any amount by way of damages for use and occupation or on any other account. The learned Munsiff accepting the above contention of the defendants has dismissed the suit; but the decree was reversed in appeal by the learned subordinate Judge of Kozhikode. There a decree was granted to the plaintiff for Rs, 1674-54 np. with proportionate costs.

2. On behalf of the appellants It is contended that even though the revenue sale was held on 15-5-54 it was confirmed only on 30-11-54 and only from the latter date the plaintiff will be entitled to claim any damages from the defendants. Relying on Order 21, Rules 95 and 96 of the C. P. C. it is contended for the appellants that the title of the plaintiff would become absolute only from the date on which the sale is confirmed. It is true that the purchaser's title becomes perfected and complete only on the issue of the sale certificate. But u/s 65 of the C. P. C. the property is to be deemed to have vested in the purchaser from the date of the sale. The purchaser, therefore, is entitled to the profits of the property, from the date of sale. Section 65 reads:--

"Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute."

3. So even though the property does not vest in the purchaser until the sale has become absolute, when it does vest in him it shall be deemed to have vested on the sale becoming absolute, from the time when it was sold. The vesting of the property is thus made to relate back to the date of sale (vide Janak Raj Vs. Gurdial Singh and Another, and also Jamuna Devi Vs. Mangal Das and Others, , even when the sale is held by the Collector under rules framed by the local Government u/s 68 of the Code and the auction-purchaser is entitled to sue for profits from the date of the purchase. (Vide Mulla's C. P. C. 13th Edn. Vol. 1, p. 321). But according to the learned counsel for the appellants Section 65 C. P. C. is not applicable to the present case since sale in the present instance was under the Revenue Recovery, Act. I do not think the C. P. C. is made expressly inapplicable to the sales under the Revenue Recovery Act; but all the same even under the Revenue Recovery Act it has to be presumed that the purchaser gets title to the property from the date of the sale. Section 43 of the Revenue Recovery Act is pertinent in this connection. Section 43 reads:--

"Arrears of rent which on the date of sale may be due to a defaulter from his under-tenant shall in the event of the sale be recoverable by him after the sale by any process except distraint which might have been used by him for that purpose before the said sale."

This means that the defaulter is not entitled to collect any rent from his undertenant after the sale. Even though the sale is confirmed and the sale certificate issued at a later date the right of the defaulter (defendant) to collect rent from his undertenant ceases by the sale. This is because his title has been lost by the sale. Thus there cannot be any dispute on the point that from the date of sale the plaintiff is entitled to the usufructs of the property.

4. Now coming to the buildings, the case put forward is that the plaintiff had allowed the defendants to continue in occupation until other accommodation was secured by them and under the arrangement there was no obligation on his part to pay any rent or other damages for use and occupation. The case of the plaintiff, on the other hand, is that he is entitled to damages for use and occupation in any event because there was no understanding that the defendants need not pay any compensation. u/s 70 of the Indian Contract Act:

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered."

One cannot expect the plaintiff to grant such a concession free. There is no indication also, anywhere in the evidence to show that the plaintiff had done so gratuitously. In the circumstances the law would cast the duty on the defendants to pay for the services rendered to them and by which they have been benefited, in the written statement the defendants had no case that they were allowed to occupy the house rent free. On the other hand what they say is that no rent or other remuneration was stipulated or demanded from them by the plaintiff. They would further state in para 4 of the written statement that they had only asked for some time and that was granted by the plaintiff; but from these facts it cannot be inferred that they were allowed to occupy the building rent free. D. W. 1 the only witness examined on the side of the defendant would say that they were permitted to occupy the house till they got other accommodation and they were not expected to pay any rent. Even according to this witness there was no agreement by which right to demand rent or other damages had been relinquished by the plaintiff.

The learned counsel would point out that in so far as the plaintiff has based his claim on agreement to pay rent or other remuneration his action must fail since the agreement has not been proved, No doubt the plaintiff has not come forward to give evidence in the case and his Karyastha who was examined on his side is not very helpful in the matter of proving the agreement. But even in the absence of an agreement the plaintiff is entitled to remuneration for use and occupation. In *Chaterji v. Mukerji* (1913) 18 Ind Cas. 751 the Calcutta High Court has observed in a similar circumstance:--

"It was no longer open to the defendant to question the title of the plaintiff, who was entitled to maintain an action for recovery of damages for use and

occupation of the land."

There the title of the plaintiff was declined in a suit against the defendant, and the plaintiff obtained symbolical possession; but he allowed the defendant to continue in actual occupation of the land. He asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land. Thus the, plaintiff's right to get damages for use and occupation cannot be divested in any, event. It is for the defendants to prove by satisfactory evidence that they were allowed to occupy the building free of any obligation to pay rent. No evidence in fact has been put forward by them and even the contention that they were allowed to occupy the buildings free was raised by them at a late stage in the proceedings. On the quantum of damages the learned Judge has relied on the commissioner's report and I see no reason to differ from him. The commissioner being a no-party man, the fixation made by him can be accepted.

5. In the result, the decree passed by the learned appellate Judge is confirmed and this second appeal is dismissed with costs throughout.