
(2014) 10 KL CK 0240

In the High Court Of Kerala

Case No : Civil Revision Petition No. 233 of 2009

Bhagirathi

APPELLANT

Vs

K. Narayana

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(7), 2(8), 3(1)(ii), 72, 72B

Citation : (2014) 4 KLJ 479

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : R.D. Shenoy, Sr. S. Vinod Bhat and Legith T. Kottakkal, Advocate for the Appellant; K.G. Gouri Sankar Rai, Adv., G. Krishnakumari, Geetha P. Menon, P.M. Neelakandan, Advocates and Suseela R. Bhatt, Spl. Government Pleader, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—The matter has got a chequered career. One Narayana, had approached the Land Tribunal No. 1, Kasaragod through O.A. No. 5 of 1971 for enforcement of his so called right under Section 72B of the Kerala Land Reforms Act (hereinafter referred to as "the KLR Act") by claiming that he is a cultivating tenant in respect of 1.04 acres of property in R.S. No. 112/1 of the Kasaragod Kasba Village. He claimed tenancy on the basis of Ext. A1 registered document No. 1498/1951 of the Sub Registry Office, Kasaragod. The Land Tribunal allowed the O.A. vide order dated 15.02.1978. Aggrieved by the same, the landlord challenged the said findings through an appeal filed before the Appellate Authority (LR) Kannur through A.A. 425 of 1978. The Appellate Authority allowed the appeal and reversed the finding entered by the Land Tribunal vide order dated 26.5.1980. The defeated applicant in the OA had preferred CRP No. 2354/1980 before this Court challenging the findings entered by the Appellate Authority. This Court, vide order dated 21.10.1986 allowed the CRP and remitted the matter to the Land Tribunal after setting aside the orders passed by the Land Tribunal as well as the Appellate Authority.

2. Again, the Land Tribunal allowed the OA vide order dated 16.5.1991. Appeals were filed before the Appellate Authority as A.A. Nos. 124/91 and 160/91. The Appellate Authority also concurred with the findings entered by the Land Tribunal, through order dated 24.03.2008. The persons claiming under the landlord have come up in revision.

3. Heard. The learned Senior Counsel Sri. R.D. Shenoy appearing for the petitioners has attacked the impugned order passed by the Land Tribunal as well as the order passed by the Appellate Authority, mainly on two grounds. The first ground is that Ext. A1 has never conferred any right on the lessee to be a cultivating tenant within the meaning of the KLR Act. Secondly, the tenant was never entitled to cultivate the land within the meaning of Section 2(8) of the KLR Act, and therefore, he could never attain the status of a "cultivating tenant". The learned Senior Counsel has further pointed out that the questions mainly revolve around the interpretation of Ext. A1 and therefore, it is necessarily a question of law. Per contra, the learned counsel for respondents 3 to 8 has argued that the Land Tribunal as well as the Appellate Authority were bound by the remand order passed by this Court in CRP 2354/1980. The argument is that the Division Bench of this Court while disposing of CRP 2354/80 had entered a specific observation that real questions to be decided in the matter is whether the tenant could be considered as a cultivating tenant as on 01.01.1964 or not. Precisely, the argument is that the interpretation of Ext. A1 has no effect at all on account of the decision rendered by the Division Bench of this Court in CRP 2354/1980. In reply, the learned Senior Counsel for the petitioners has pointed out that much waters might have flowed under the bridge from the date of execution of Ext. A1 till 01.01.1964 and it was for giving an opportunity to the tenant to prove that the tenant might have acquired the status of a cultivating tenant in the meantime, the remand order was passed by the Division Bench in the CRP.

4. The learned Senior Counsel has relied on the decision in K. Bhagirathi G. Shenoy and Others Vs. K.P. Ballakuraya and Another, and argued that the Apex Court has interpreted a document which is similar in all particulars to Ext. A1 and found that the lease in that case was in respect of a building with the land appurtenant thereto and not vice-versa. According to the learned Senior Counsel, the said interpretation of the Apex Court in respect of such a document which is *pari materia* to Ext. A1 is applicable in the case of Ext. A1 also, and therefore, this Court cannot interpret Ext. A1 in a different way.

5. The main question to be considered is whether the document involved in K. Bhagirathi(supra) is similar to Ext. A1 in all material particulars and whether the power of this Court to have an interpretation of Ext. A1 is foreclosed on account of the decision rendered by the Division Bench of this Court in CRP 2354/1980. The lease deed, which was the subject of interpretation in K. Bhagirathi(supra) was one dated 28.07.1951 executed by the very same landlord in this case in favour of a different tenant. The subject matter of that lease is clearly described in paragraph 16 of the judgment rendered by the Apex Court as follows:

"The western portion of the property lying in survey R.S. No. 112/1, having an extent of 1.60 acres and the tiled residential building (in which lessee is residing) together with a bathroom, 33 coconut trees (among which 21 are yielding), 7 jack trees, 7 mango trees, 50 cashew trees, 2 nellikai trees, and 2 casurina trees."

The Apex Court has further observed,

"It is made clear that the other pucca building situated on the land is not included in the lease."

6. Now, the question as to what is the subject matter of the lease made through Ext. A1 has also to be considered. The subject matter of the lease is described in Ext. A1 as follows:

"1.04 acres of property in R.S. No. 112/1 including tiled building containing two rooms, shop-cum-house, 1. well, 1. coconut trees, 14. jack 5, Tamarine 2, Cashew 24, soap nut tree 1, and other trees including all. The private road running through this property is excluded from the lease. Excluding that road alone all other things existing in and the property have been obtained on lease by this lease deed."

7. The extent of the property in K. Bhagirathi (supra) is 1.60 acres in R.S. No. 112/1 of the very same village. Ext. A1 also is executed on 28.07.1951, as in the case of the lease deed in K. Bhagirathi(supra). Further, the period of lease in K. Bhagirathi(supra) was for 11 months. Similar is the term of lease in respect of Ext. A1 also. In paragraph 15 of K. Bhagirathi(supra) it was held:

"In the next paragraph of the lease deed it is stated that the property described thereunder in which the house wherein the lessee resides now, is included, together with the bath-room (which was constructed by the lessor) and the trees on the property, have been demised by the lessor to the lessee for a period starting from 1-7-1951 and ending with 30-6-1952. The other stipulations in the lease deed are the following:

(1)The lessee is liable to pay the monthly rent of Rs. 9/- by the 10th day of every succeeding month. (2) If the rent falls in arrears it shall bear interest at the rate of 5 per cent per annum from the date of default. (3) All the improvements standing on the landed area would belong to the lessor. (4) The lessee has no right (a) to effect any kinds of improvement on the land, (b) to make any repairs to the building without the written consent of the lessor or to make any claim for the cost incurred for such repairs, (c) to cut any of the trees without any proper reasons, (d) to sub-lease or to alienate to any other person."

8. All the aforesaid terms and conditions as contained in paragraph 15 of K. Bhagirathi(supra) are made mention of in Ext. A1 also. Except the extent of the property and the number of trees thereon, all the other contents of the lease deed in K. Bhagirathi(supra) are *pari materia* to Ext. A1.

9. Another difference between the two cases is that in the case of the tenant in K. Bhagirathi(supra) he was a public servant working at Kasaragod, whereas in the case of the present tenant, he was an employee of a private firm at Kasaragod. In paragraph 19 of K. Bhagirathi(supra) it was held:

"Learned counsel for the appellant first pointed out the situation at which both parties were placed then. The lessor having such a pucca residential building with a sprawling compound attached to it had to remain in New Delhi as he was working as Secretary to the Government of India. The lessee who was a public servant working at Kasarcodu needed a house to live in at that place. Such facts, according to the learned Counsel, would clearly show that it was the building which was of prime consideration for the lease. The attached compound could not have been left out, for practical reasons, uncared by any one and hence it became necessary to include that compound area also as part of the lease. The said contention cannot be sidelined as without force."

It was further held,

"No lease of land can possibly be conceived without the lessee being given freedom to use the land to generate profit therefrom. Here the lease imposed a complete ban on the lessee to use the land for such purposes. All that he is permitted thereon is to take usufructs of the trees already standing on the land.

A reading of the lease deed from the above angles indicates that there was no idea for the lessor to create a right to enjoy the land independent of the building but only to take usufruct of the trees standing thereon while residing in the building. The area of the land alone cannot be a determinative factor. It was common practice in olden days for residential buildings to have sprawling areas as adjuncts to such buildings. That practice could well have been followed by the parties in the lease deed which is subject matter of the case.

For the aforesaid reasons we take the view that the lease was of building with the landed area meant as appurtenant thereto. Its corollary is that the lease is exempted from Chapter II of the Act and the consequence is that respondent cannot claim any right under Section 72B of the Act."

10. In this particular case also, the tenant was specifically prohibited from effecting any improvements in the property and further it was made clear that the tenant is not entitled to repair the house existing in the property in any manner except with the written consent of the landlord. As observed by the Apex Court, no lease of land can possibly be conceived without the lessee being given freedom to use the land to generate profit therefrom. Especially when the tenant was specifically restrained from effecting any improvements in the property, it is evident that the tenant was not given any freedom to use the land to generate any profit therefrom. Therefore, it cannot be said that the lease was purely a lease on agricultural land for generating profit through cultivation.

11. As rightly pointed out by the learned Senior Counsel for the petitioners, the

interpretation given by the Apex Court in respect of the lease deed involved in K. Bhagirathi(supra) is squarely applicable to Ext. A1 in the present case also.

12. The next question to be considered is whether an opportunity to have an interpretation of Ext. A1 in the nature of the interpretation of K. Bhagirathi(supra) made by the Apex Court is foreclosed in this case on account of the decision rendered by the Division Bench in CRP 2354/1980. At the first instance, the Land Tribunal had allowed the OA and ordered enforcement of the right of the tenant under Section 72B of the KLR Act. The same was challenged in A.A. 425/1978. The decision rendered by the Land Tribunal was reversed by the Appellate Authority. It was in that context of divergent findings, the CRP was disposed of by this Court by setting aside the orders passed by the Land Tribunal as well as the Appellate Authority, and by remitting the matter to the Land Tribunal for fresh consideration; of course, subject to the observations made by this Court in the CRP. It has to be noted that the observations made by the Division Bench of this Court in the CRP is that the question to be considered is whether the tenant was a cultivating tenant at the time of commencement of the KLR Act or not, and not as to whether he was a cultivating tenant from the date of execution of Ext. A1 onwards. Apart from that aspect, no other observations or findings were entered by the Division Bench in the CRP. It is evident that this Court has never entered a finding as to whether the tenant was a cultivating tenant or not at any point of time. It cannot be said that the Division bench of this Court had entered a finding that any time prior to the commencement of the KLR Act the tenant had acquired the status of a cultivating tenant. What was observed by this Court is that the question to be considered under Section 72B of the KLR Act is whether the tenant was a cultivating tenant as on 01.01.1964 or not. Therefore, it cannot be said that in the light of the decision rendered by the Division Bench of this Court in the CRP, the opportunity to have an interpretation of the contents of Ext. A1 is foreclosed.

13. In page 9 of the order passed by the Land Tribunal, it has been stated,

"The terms and conditions of the lease are almost similar and identical except for the fact that the building in the OA property is described as house or shop. Therefore, it is futile to contend that the lease in question is not an agricultural lease."

Almost in similar lines, the Appellate Authority has entered the following observations;

"The other important aspect in this case is that the same landlord (petitioner in A.A.) has granted similar leases in the year 1951-52 to various other tenants. The O.A. property is a portion of R.S. No. 112/1 of Kasaragod Village. On verification of the documents produced in the lower court it is seen that a portion of said survey number was granted on lease by the same landlord to other tenants i.e. one Sri. Shankara Achararya, Rama Pai, Chandra Bhandary, Appu Hengsu and all the lease land was assigned in favour of the above tenants. The

terms and conditions of all the lease are similar to the terms and conditions of the O.A. petitioner (Ext. A1) and the same landlord has treated all these similar lease deeds as agricultural leases and therefore Ext. A1 cannot be an exception to the other leases."

14. It seems that the Land Tribunal as well as the Appellate Authority have entered the finding that the tenant in this case was in the status of a cultivating tenant, by relying on the decision rendered by the Land Tribunal as well as the Appellate Authority, in the cases in respect of some other documents similar to Ext. A1. When they themselves have entered such a finding on the basis of their findings on other similar documents, it cannot be said that Ext. A1 should not be interpreted in terms of the interpretation made by the Apex Court in K. Bhagirathi (supra).

15. Section 2(8) of the KLR Act defines cultivating tenant as "a tenant who is in actual possession of, and is entitled to cultivate, the land comprised in his holding."

16. The said provision involves mainly two qualifications for a tenant to be categorised as a cultivating tenant. The first qualification is that he should be in actual possession of the land in question. The next qualification is that he should be entitled to cultivate. When both the aforesaid qualifications are there, it can be said that such a tenant is a cultivating tenant. Here, there is no quarrel to the proposition that the tenant in question is in actual possession of the land covered by Ext. A1. The next question to be considered is whether he is entitled to cultivate? The learned Senior Counsel for the petitioners has pointed out that when there is a specific restriction in Ext. A1 that the tenant should not effect any improvements in the property, much discussion is not required to conclude that he is not entitled to cultivate. Per contra, the learned counsel for respondents 2 to 8 have argued that the landlord was all along sleeping without preventing the tenant from effecting any improvements in the property. This is not a case wherein the question as to whether a person has prescribed title to the property through adverse possession and limitation arises for consideration. Admittedly, the tenant came into possession of the property through Ext. A1 lease deed. Therefore, he cannot say that he is not a tenant in respect of the property. When he came into possession of the property as a tenant under the landlord, he cannot claim that he had prescribed title to the property through adverse possession and limitation. Similarly, when an opportunity to effect improvements in the property has been specifically curtailed through Ext. A1, the tenant cannot claim that the landlord was sleeping over his right to restrain the tenant from effecting any improvements in the property and hence such a right of the landlord is foreclosed. So long as he continues to be a tenant through Ext. A1 under the landlord, the tenant cannot be heard to say that he had disobeyed the terms and conditions contained in Ext. A1 by violating the conditions in Ext. A1, and has assumed the status of a cultivating tenant by carrying out improvements in the property. The observations rendered by the Division Bench

of this Court in CRP 2354/80 cannot be interpreted in such a way that the tenant could carry out improvements in the property by violating the terms and conditions of Ext. A1 and thereby he could acquire the status of a cultivating tenant. Such an interpretation is not available to the tenant.

17. The learned Senior Counsel has invited my attention to the judgment of this Court dated 7.6.1974 in S.A. No. 858/1970 wherein it was held in paragraph 9:

"The respondent's counsel referred to Nanu Nair v. Krishnan Nair[1957 KLT 286] and Venkiteswara Iyer Vs. Vasudeva Pai, in support of his contention that the question whether a particular lease concerns a building and its site together with a garden or land appurtenant thereto or it is the other way is ordinarily a question of fact depending upon various considerations namely the extent and the nature of the land, the nature of the building, the income from the land and the proportionate rent of the buildings. The principle stated in these decisions may not be open to doubt. When the demise is evidenced by a document the intention of the parties has to be gathered mainly from the document and the relevant factors referred to in these rulings will no doubt be borne in mind in finding out the intention of the parties. As stated earlier, here it is a question of construction of a document and that being a question of law, it is open to this Court to construe the document and find out the intention of the parties in entering into a transaction."

18. In Gopal Chandra Banerjee Vs. Bhutnath Sasmal and Another, a Division Bench of the Calcutta High Court held:

"The mere fact that there is a right to plant trees or pluck the fruits of trees would not by itself convert a patta granted for a residential purpose into a horticultural lease carrying the same rights as an agricultural lease and so bring it under the Bengal Tenancy Act." It was also observed that the character of the rights as between the parties must be determined on a construction of the lease and the court has nothing to do with the conduct of the parties after the lease has once been entered into."

19. In Lekshmi v. Hendry- 1981 KLT SN page 71 Case No. 128 it was held:

"A cultivating tenant as per its definition must be a person in possession entitled to cultivate the land comprised in the holding. The expression "cultivate" as defined in the Act makes out the intention of the legislature that the cultivation is relating to land for the purpose of raising the produce of the land. From a reading of Ext. A2 it is clear that the purpose of the lease in the present case, is not for cultivation and the tenant is not a cultivating tenant within the meaning of the Act. It is only the right, title and interest of the landlord in respect of a holding held by a cultivating tenant that would vest in the Government, and it is only in respect of such rights vested that a cultivating tenant is entitled to assignment Since I find that the tenant in this case is not a cultivating tenant, the right, title and interest of the landlord do not vest in the Government and the tenant is not entitled to apply for assignment of the same."

20. In M.D. Seminary Vs. P.J John and Others, it was held:

"Having understood the position thus, let us consider whether these tenants are entitled to apply for and get the benefits provided for under S. 72B. To understand S. 72B one has to first understand the content of S. 72. Under S. 72, all right, title and interest of the landowners and intermediaries in respect or holdings held by cultivating tenants entitled to fixity of tenure vested in the government free from all encumbrances on a date notified by the government. Who is a cultivating tenant? Going by the definition in S. 2(8) he is one who is in actual possession of and is entitled to cultivate the land comprised in his holding. The word "cultivate" is defined in S. 2(7). Interpreting the definition, this Court in Lakshmi v. Hendry-CRP No. 1513/79E-(1981 KLT Short Notes 71 Case No. 128) has held that "the cultivation done in the land is for the purpose of raising the produce from the land." Such a person alone is a cultivating tenant. As observed by the Full Bench of this Court in V.N. Narayanan Nair and Others Vs. State of Kerala and Others, "there must always be a cultivating tenant on agricultural land that has been leased out." That means that the tenant who claims the benefit of S. 72B must be a tenant of the holding which belongs to the category of land called "agricultural land." The question therefore is can the tenants in these cases be called cultivating tenants as defined under S. 2(8) of the Act. On a perusal of the pleading as also the recitals in the documents, it could be seen that the tenants are not persons cultivating agricultural lands for the purpose of raising any produce therefrom. May be that they have planted some trees on the land. According to the counsel for the petitioners, they cannot plant trees or raise any other improvement except to put up buildings for their occupation. The tenants however, have a case that they are entitled to make improvements on the property. I do not propose to pronounce upon this aspect of the case, because, the holdings admittedly are interspersed between buildings and building sites within the municipal area. The tenants therefore cannot be heard to say that they are cultivating tenants within the meaning of the KLR Act, entitled to obtain the reliefs provided for under S. 72B."

21. In P.K. Mohd. Shaffi Vs. Pallath Mohd. Haji (dead) by L.Rs. and Others, , it was held in paragraph 9 as follows:

"The expression "cultivating tenant" is defined in Clause 8 of Section 2 as, "a tenant, who is in actual possession of and is entitled to cultivate the land comprised in his holding". The "actual possession" and the entitlement to cultivate is obviously with reference to the date of commencement of the principal Act, i.e. 1st day of April, 1964."

22. As per Section 3(1)(ii) of the Kerala Land Reforms Act nothing in Chapter II of the Kerala Land Reforms Act shall apply to leases only of buildings, including a house, shop or warehouse and the site thereto, with the land, if any appurtenant thereto. From the discussions made above, it can only be held that the lease in question through Ext. A1 is also with regard to the shop cum house with the land appurtenant thereto, as interpreted by the Apex Court in K. Bhagirathi(supra).

The Apex Court has held that even in cases where there is a large extent of land surrounding the building it does not matter, and the nature and character of the lease cannot be altered. In this particular case, the tenant could not prove that after the execution of Ext. A1 and prior to 01.01.1964 things changed and the tenant could acquire the status of a cultivating tenant through the renewal of the lease or through any fresh lease; whereas, still they are clinching upon Ext. A1 to show that they continued to be tenants under the landlord on the strength of Ext. A1. Matters being so, respondents 2 to 8 have failed to prove that they are entitled to have recourse to the provisions of Section 72B of the Kerala Land Reforms Act. It seems that the Land Tribunal as well as the Appellate Authority have lost sight of the aforesaid true state of affairs and have arrived at the incorrect conclusions. The decisions rendered by the Land Tribunal as well as the Appellate Authority are liable to be set aside. There is no scope for the OA and the OA is liable to be dismissed.

23. In the result, this CRP is allowed by setting aside the judgment passed by the Appellate Authority(LR) Kannur in A.A. No. 124 of 1991 and A.A. No. 160 of 1991, and by dismissing O.A. 5 of 1971, on the file of the Land Tribunal No. I, Kasaragod.

All the interlocutory applications in this CRP are closed.