

(1999) 01 SC CK 0091

In the Supreme Court Of India

Case No : Civil Appeal No. 700 Of 1987

Easo Yohannan (D) by Lrs. and Others

APPELLANT

Vs

Bahelamma Koshy and Another

RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 13, 72

Citation : (2002) 10 SCC 126

Hon'ble Judges : S. S. M. Quadri, J;K. T. Thomas, J;D. P. Wadhwa, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

K.T. Thomas,; D.P. Wadhwa and; S.S.M. Quadri, JJ.-The appellants are the legal representatives of a person called Easo Yohannan who was a tenant of the land having an extent of 3.81 acres in a suit filed by legal representatives of one Perumal for recovery of possession of the property. The trial court dismissed the suit holding that the tenant has got fixity of tenure. The aforesaid finding was taken by the trial court as the Land Tribunal to which the question was referred has recorded such a finding. When an appeal was filed by the lessor, the trial court decree was confirmed and the appeal was dismissed. But the High Court in a second appeal interfered with the concurrent findings and granted a decree for recovery of possession of the property. Hence this appeal by special leave.

2. Some more facts would be of use for disposal of this appeal which are stated below:

The suit property originally belonged to two brothers as co-owners. They are Perumal and his brother Koshy. Perumal died in the year 1948 leaving behind him his widow Annamma and daughter and granddaughter (or daughters or granddaughters) through a predeceased son. It is the case of the plaintiff that the lease was created in favour of Easo Yohannan by the aforesaid Annamma and the aforesaid Koshy pursuant to which Easo Yohannan was put in possession.

3. The legal representatives of Easo Yohannan are admittedly continuing in possession under the same lease and they are the defendants in the suit and they have filed this appeal.

4. Learned Single Judge of the High Court interfered with the concurrent finding on a premise that the lease was originally granted by Annamma who had only a limited interest and hence such a lease was exempted from the provisions relating to fixity of tenure and therefore Perumal's rightful heirs are entitled to get a decree for recovery of possession. Learned Single Judge has also found that Annamma was not the only lessor because along with her, Koshy also joined as a lessor.

5. If Koshy was a lessor of the property either done (sic) as in conjunction with any other it has to be examined whether Koshy was a co-owner of the property who was entitled to lease the land. The word "tenant" is defined in the Kerala Land Reforms Act, 1963 as follows:

"2. (57) "tenant" means any person who has paid or has agreed to pay rent or other consideration for his being allowed to possess and enjoy any land by a person entitled to lease that land, and includes-

6. Under Section 72 of the said Act, the right, title and interest of the landowners and intermediaries in respect of holdings held by a cultivating tenant entitled to fixity of tenure shall vest in the Government free from all encumbrances. Section 13(1) of the Act says:

"13. (1) Notwithstanding anything to the contrary contained in any law, custom, usage or contract, or in any decree or order of court, every tenant shall have fixity of tenure in respect of his holding, and no land from the holding shall be resumed except as provided in Sections 14 to 22."

7. The High Court has not examined, when it found that Annamma was only a limited owner, as to whether the lease created in favour of Easo Yohannan by the said Annamma in conjunction with Koshy would attract the beneficial provisions contained in Sections 13 and 72 of the Act. Without considering those aspects, it is not possible to give a decree for recovery of possession of the suit property. We deem it necessary that the High Court in second appeal should go into that aspect also.

8. We therefore set aside the impugned judgment and remit the second appeal to the High Court for disposal afresh in accordance with law and in the light of the observations made above. The appeal is thus disposed of.