

(1952) 10 KL CK 0010
In the High Court Of Kerala
Case No : Second Appeal No. 493 of 1952

Easwara Pillai Gangadhara Pillai and Another	APPELLANT
Vs	
Krishna Prabhu Nagendra Prabhu and Others	RESPONDENT

Date of Decision : 06-10-1952

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : (1952) 10 KL CK 0010

Hon'ble Judges : Vithayathil, J

Bench : Single Bench

Advocate : N.K. Narayana Pillai and P. Sivarama Iyer, for the Appellant; T.K. Joseph, for the Respondent

Judgement

Vithayathil, J.—The Plaintiffs who are two in number are the Appellants. The suit is for a permanent injunction restraining the Defendants from entering upon the plaint schedule property. The property belongs to the Defendants. It is Punja land, about 33 acres in extent. The Plaintiffs' case is that they were cultivating the properties as lessees from 1123 onwards. The harvest of the year 1126 was taken in the month of Kumbhom that year. After that the Plaintiffs did the preliminary agricultural operations for the crop of 1127 and spent Rs. 750/- and 500 paras of paddy for that purpose. The Defendants attempted to take forcible possession of the property from the Plaintiffs and therefore they filed the suit for the relief mentioned above. It was also alleged in the plaint that the Plaintiffs had effected improvements in the property of the value of Rs. 2500 and that the Defendants had agreed to pay that amount at the time of eviction. It was further alleged that the Defendants had received some amount as advance pottom for the year 1127. The amount was, however, not mentioned in the plaint.

2. In the written statement filed by the Defendants they contended that the property was leased, to me Plaintiffs only for the cultivation of 1126, hire after the harvest of 1126 was taken the property was surrendered to the Defendants and that conducted agricultural operations for the crop of 1127. They denied the

allegation that the Plaintiffs had effected improvements in the property and that the Defendants had agreed to give the value thereof. The allegation that some amount has been paid to the Defendants as advance pattom for 1127 was also denied. They contended that they were in possession of the property and that the Plaintiffs were not entitled to the relief claimed in the plaint. In the replication filed by the Plaintiffs they reiterated the allegations in the plaint and denied that they surrendered the property to the Defendants after the harvest of 1126.

3. With regard to the allegation in the plaint that the Plaintiffs had effected improvements in the property the learned Munsiff did not record a definite finding. He observed that "there is no evidence worth the name to prove that the Plaintiffs did effect some improvements". But since the first Defendant admitted in his deposition that when the property was in the possession of a prior lessee some improvements have been effected in the property by the Defendants at the cost of about Rs. 1000/- the learned Munsiff disposed of the question in the following manner:

I am forced to draw a presumption in favour of the Plaintiffs. Apart from this presumption I leave this issue open.

No issue was raised relating to the allegation in the plaint that the Plaintiffs had paid some amount to the Defendants as advance pattom for the year 1127. The Plaintiffs did not choose to adduce any independent evidence relating to this matter and they do not seem to have pressed it at the time of hearing.

4. The important issues tried by the learned Munsiff are issues 2, 3 and 5 which relate to the following questions i.e., whether the Plaintiffs surrendered the property to the Defendants after the harvest of 1126, who conducted the agricultural operations for the crop of 1127 and who was in possession of the property on the date of suit. With regard to the question whether the Plaintiffs surrendered the property to the defts the finding of the learned Munsiff was that there was no reliable evidence to prove the surrender. The learned Munsiff was of opinion that the Plaintiffs intended to continue in possession even after the harvest of 1126. With regard to possession of the property on the date of suit the finding of the learned Munsiff is not very clear. According to him even if the Defendants entered into possession of the property the entry would not be legal and it would be only an act of trespass (vide para. 16 of the judgment). In para. 17 the learned Munsiff observes thus:

Possession on the date of suit has not been properly established in this case one way or the other. But as prior possession is admittedly with the Plaintiffs and since I have already held that the surrender has not been proved the Plaintiff has discharged his primary burden to prove possession by examining himself and some of the neighbouring cultivators, P.Ws. 1, 2 and 4.

The learned Munsiff did not, however, discuss the evidence of these witnesses. As for the witnesses examined by the Defendants to prove their possession of

the property the learned Munsiff did not choose to act on their evidence. The main reason given by the Munsiff for not accepting the evidence of the defence witnesses is that the second Defendant and one Madhavan Pillai who, according to the first Defendant, have been supervising the agricultural operations in the property have not been examined in the case. The documents produced on both sides were also not relied on by the learned Munsiff for the reason that they were produced late.

An additional reason for not relying on some of the documents produced by the Defendants is that the 2nd Defendant in whose favour those documents were executed and Madhavan Pillai in whose handwriting they were written were not examined in the case. The learned Munsiff ultimately found that the Plaintiffs' possession of the property had not been disturbed (vide para 19). In paragraph 23 the learned Munsiff further observed thus:

I may be permitted to add that even if it be true that the Defendants' men entered the land and conducted some of the agricultural operations it does not amount to complete ouster of the Plaintiffs. It can only be isolated acts of trespass and the Plaintiffs are entitled to an injunction restraining them from committing further acts of trespass.

In the result, the Defendants were restrained by an injunction from disturbing the possession of the Plaintiffs till they were evicted in due course of law. Both parties were ordered to suffer their costs.

5. In the appeal filed by the Defendants from this decision the learned District Judge reversed the finding of the Munsiff relating to the possession of the property on the date of suit. The learned Judge held that the Defendants were in possession of the property on the date of suit. The oral and documentary evidence adduced by the Defendants relating to the possession of the property was believed by the learned Judge. He, therefore, held that the Plaintiffs were not entitled to an injunction restraining the Defendants from entering into possession of the property and dismissed the suit with costs.

6-7. The main question to be decided in this second appeal is - who was in possession of the plaint property on the date of suit? The only prayer in the plaint is for an injunction restraining the Defendants from entering into possession of the property. If on the date of suit the Defendants were in possession of the property, whether rightly or wrongly, the Plaintiffs would not be entitled to the relief claimed in the suit.

Apart from the evidence adduced by the Plaintiffs relating to the possession of the property on the date of suit learned Counsel for the Plaintiffs, relied on certain circumstances which, according to him, go to show that the Plaintiffs were in possession of the property. One such circumstance is that the Plaintiffs were allowed to be in possession of the paddy necessary for the seed and cultivation expenses for the crop of 1127. Another circumstance is that the first Defendant, himself admits that the Plaintiffs wanted to continue the lease

arrangement for the year 1127 also. It is, therefore, argued that it is not likely that the Plaintiffs would have voluntarily surrendered possession of the plaint property after the harvest of 1126. The third circumstance is that in view of the fact that under Act 8 of 1950 the Defendants could not evict the Plaintiffs from the property it is not likely that the Plaintiffs would have surrendered possession of the property. Before dealing with the evidence relating to the possession of the property on the date of suit it is necessary to consider the force of the argument based on the above circumstances.

8. (His Lordship considered the first circumstance and continued). In the circumstances it cannot be said that 750 paras of paddy was kept with the Plaintiffs with the consent, of the Defendants and the Grain Purchasing Proverthicar for the cultivation of the property for the 1127 crop. It may be that the Plaintiffs wanted to make use of this paddy in. case they were allowed to cultivate the property for the year 1127 also. But the mere fact that they were in possession of the paddy does not go to show that the understanding between the parties was that the Plaintiffs should cultivate the property for the year's crop. The Defendant's case is that it was because the Plaintiffs' granary was sealed as a result of the petition presented by the Defendants that this suit was filed. The granary was sealed on 24-5-1951 and the suit was tiled on 29-5-1951.

9. With regard to the second circumstance relied on by learned Counsel for the Plaintiffs, namely, that it is admitted by the first Defendant that the Plaintiffs wanted to continue the lease arrangement for the year 1127 also, what the first Defendant swears as D.W. 1 is that after the harvest of 1126 was over he told the Plaintiffs that the Defendants themselves wanted, to cultivate the property for the year 1127 and asked the Plaintiffs not to plough the field. The Plaintiffs said that they wanted to cultivate the property for one year more. The Defendants did not agree to this and they themselves conducted the agricultural operations as soon as the harvest was taken. D.W. 7 swears that when the Defendants were conducting the agricultural operations the second Plaintiffs requested him to persuade the Defendants to agree to the Plaintiffs cultivating the property for one year more. When he replied that the Defendants were not likely to agree to this since he knew that they themselves wanted to cultivate the property the 2nd Plaintiff requested him to ask the Defendants to give the Plaintiffs at least a "panku". D.W. 7 spoke to the first Defendant about the matter and the latter replied that it was not possible either to allow the Plaintiffs to cultivate the property or to give them a "panku".

From this it is argued that, in view of the fact that even according to the Defendants the Plaintiffs insisted on cultivating the property for the year 1127 also, it is not likely that they would have voluntarily surrendered possession of the property. In this connection it is necessary to consider the nature of the lease arrangement entered into by the Plaintiffs and the Defendants. Exs. 1 to 3 are the lease deeds executed by the Plaintiffs in favour of Defendants 1 to 3 respectively. It is expressly stated in those documents, that the lease was only

for the Medom crop of 1126. The following is the relevant term:

(Original in Malyalam).

We have taken on pattom for the Medom crop in 1951 (1126) and have agreed to pay the pattom without raising the question of failure of crops. We agree to give a release of the lease deed after measuring the pattom as per your pattappara in your house, within 30th Medom 1126. We also agree to surrender the properties after the period and we shall see that the properties or their boundaries are not altered in any way.

With regard to the nature of lease arrangements for the cultivation of Punja lands this is what was observed by this Court in - "Chacko Kuncheria v. Govt. of Travancore Cochin State" AIR 1951 TC 221 at p. 223 (A):

The right to cultivate these paddy lands would not come strictly under the category of leases" as defined in the Transfer of property Act. These lands were leased out for the specific purpose of cultivating paddy lie could not use that land for any other purpose so that he could not get exclusive right to enjoy the so-called leasehold. Though this arrangement was called a leasehold right, the mere use of such loose terms would not by itself confer on him all the rights of a lessee as is ordinarily understood.

According to the custom relating to the cultivation of these lands no special formality is required for the surrender of the property after the harvest is taken. When the harvest is taken and the pattom is paid to the lessor the lease arrangement comes to an end. The expression used is (sic) The lessee has no further stake in the property. Unless he does the agricultural operations for the next year also there is nothing to show that he continues to be in possession of the property or that he intends to continue in possession. The evidence of the second Plaintiff himself will make this clear. This is what he says:

(Original in Malyalam).

If the landlord wants the field back after cultivation he will tell in advance not to plough. If he did not inform ploughing would be done.

What the first Defendant swears as D.W. 1 is that after the pattom was paid by the Plaintiffs they were asked not to plough the land since the Defendants themselves wanted to cultivate the property. He was asked in cross examination whether he did anything for taking possession of the property besides asking the Plaintiffs not to plough the field:

(Original in Malyalam).

Have you done anything to reduce the field to your possession apart from telling the 2nd Plaintiff not to plough? (Question). Nothing need be done. At the time of giving the field for cultivation he was told that the field would be given only for one crop. That crop is over. He was also told about it when he measured the pattom. To that he agreed. We did the ploughing and other agricultural

operations (Answer).

It has to be noted that it was after the first Defendant was examined that the 2nd Plaintiff was examined. It will thus be seen that even if the Plaintiffs desired to cultivate the property for the 1127 crop also so long as the Defendants were not agreeable to that there was nothing to prevent the Defendants from entering upon the property after the harvest of 1126 was taken and preparing the field for the next cultivation. Although the transaction may not be of the nature of a mere licence it comes to an end as soon as the harvest is taken and pattom is paid to the lessor. If the lessee wants to cultivate the property for the next crop also a fresh arrangement will have to be entered into for the purpose. In the absence of any such arrangement the lessee is not entitled to do the agricultural operations for the next crop. Even if it is necessary that the lessor should ask the lessee not to plough the field, as sworn to by the second Plaintiff, the first Defendant swears that he so asked the Plaintiffs after the harvest was over. Therefore, from the mere fact that the Plaintiffs wanted to cultivate the property for the 1127 crop also it cannot be held that they continued to be in possession of the property after the 1126 harvest was taken. It must be established by evidence in the case that they were in actual possession of the property even after the harvest was taken.

10. With regard to the third circumstance relied on by learned Counsel for the Appellants, namely, in view of Act 8 of 1950 it is not likely that the Plaintiffs would have surrendered possession of the property, the question depends upon the fact whether the Plaintiffs had reason to believe that they were entitled to the benefit under Act 8 of 1950. The lease was only for the cultivation of a particular crop, and as stated above, the custom relating to Punja cultivation is such that such lease arrangements come to an end when the harvest is taken and pattom is paid to the landlord. It cannot, therefore, be said that the lessee would continue in possession of the property even after the harvest is taken. In the circumstances it is doubtful, whether the Plaintiffs would have believed that they were entitled to the benefit under Act 8 of 1950. The terms in the lease deeds, Exs. 1 to 2, and the custom relating to the termination of lease arrangements in respect of punja cultivation are such that it is not likely that the Plaintiffs would have believed that they could claim the benefit under Act 8 of 1950. It has also to be noted that the lease transaction in question came into existence after the date of Act 8 of 1950. The lease for the year 1123 was in favour of the second Plaintiff only as admitted by him as P.W. 1.

According to the first Defendant, the lease for the year 1124 also was in favour of the second Plaintiff alone. In any case the lease for the year 1126 was a fresh lease. This, however, may not be a material circumstance so far as the applicability of Act 8 of 1950 is concerned. The more important question is whether the Plaintiffs could claim the benefit of the Act if their possession of the property terminated with the taking of the harvest raised by them. Even if the Plaintiffs could claim the benefit under the Act and were not bound to surrender

possession of the property to the Defendants after the harvest was taken, if as a matter of fact the Defendants entered upon the property and reduced it into their possession before the date of the suit the Plaintiffs cannot succeed in this suit which is merely one for an injunction restraining the Defendants from entering into possession of the property and not one for recovery of possession of property on the basis of Section 9, Specific Relief Act.

So far as this case is concerned the only question for consideration is -who were in possession of the property on the date of suit, whether the Plaintiffs or the Defendants.

11. Before dealing with the evidence relating to the possession of the property it is necessary to refer to Anr. argument advanced on behalf of the Appellants. It is this: The first Defendant admits as D.W. 1 that while the Defendants were conducting agricultural operations in the paddy field the Plaintiffs obstructed them and that the Defendants complained to the Police about this. From this it is argued that even if the Defendants entered upon the property and did some agricultural operations it cannot be said that the plain" tiffs acquiesced in that and that the Defendants reduced the property into their possession. What D.W. 1 swears is this:

(Original in Malyalam).

After the 1st and 2nd ploughing the Plaintiffs one day for one hour took 5 or 6 cattle to the field. I informed the Police immediately. He called and warned them. The 1st and 2nd ploughing was done after putting mortar.

Before the sowing the paddy field has to be ploughed thrice. The first ploughing is called (Thalachal) the second (Maruchal) and the third (Moonnamchal). The property is about 33 acres in extent. If the whole property is ploughed by the Defendants twice, it certainly amounts to reducing the property into their possession. If the Plaintiffs acquiesced in this and subsequently obstructed the Defendants when the third ploughing was done by them it cannot be said that the Plaintiffs were in possession of the property at the time of the obstruction. The first Defendant's evidence is that even after this obstruction the Defendants did the third ploughing and other agricultural operations. Therefore, the mere fact that the Plaintiffs obstructed the Defendants at the third ploughing of the field and that the latter complained to the Police about this does not go to show that the Defendants had not reduced the property into their possession before the date of suit.

12. It was next argued for the Appellants that even in cases in which a tenant holds over after the termination of the lease without the consent of the landlord the latter cannot take the law into his own hands and eject the tenant by force and that his only remedy is to obtain possession of the property in due course of law. If the tenant is ejected otherwise than in due course of law he is entitled u/s 9, Specific Relief Act, to recover possession of the property from the landlord. Reference was made to the decisions in -"Sofaoll Khan v. Woopean Khan" 9 WR

123 (B) - "Jonardun Acharjee v. Haradhan Acharjee" 9 WR 513 (C), - Rudrappa v. Narasing Rao" 29 Bom 213 (D), - "Gulam Mahomed Azam v. Emperor" AIR 1919 Bom 97 (E), - "Secy. of State v. Dinshaw Navroji" AIR 1925 Sind 275 (F) - "Velayudhan v. Padmanabha Pillay" 4 Bom LR 53 (G). I do not think that these rulings apply to the facts of this case. If the Plaintiffs in this case can be said to have been holding over after the termination of the lease and to have continued in possession of the property it is true that the Defendants would not be entitled to evict them by force and that the remedy of the Defendants would be to recover possession of the property in due course of law. But, as stated above, the Plaintiffs in this case cannot be said to have continued in possession of the property after the 1126 crop was taken. There was, therefore, no question of ejecting them and recovering possession of the property from them. The basis of the Defendants' case is that the Plaintiffs ceased to be in possession of the property after the harvest was taken and that the Defendants entered into possession of the property for the cultivation of the next crop. The real question, therefore, for consideration in the case is whether the Plaintiffs continued to be in possession of the property after the 1126 harvest was taken. This again depends on the question whether it was the Plaintiffs or the Defendants who did the agricultural operations in the property after the taking of the harvest and before the filing of the suit.

13-14. His Lordship considered the evidence and proceeded. I, therefore, hold that the agricultural operations in the property after the date of the harvest in Kumbhom 1126 and before the date of suit were done by the Defendants and not by the Plaintiffs. It follows from this finding that the Defendants were in possession of the plaintiff property on the date of suit.

15. Learned Counsel for the Respondents argued that even if it is found that the Plaintiffs remained in possession of the property after the 1126 harvest was taken, their possession would be that of trespassers if they remained in possession against the consent of the Defendants. Reference was made to the decision in this Court in -"S. Abraham v. Mathevan Pillai" AIR 1952 TC 359 (H). In that case it was held that the possession of the lessee after the termination of the tenancy by the efflux of time against the consent of the landlord is not even that of a tenant at sufferance but is that of a trespasser. It was, therefore, argued that the Plaintiff would not in any case be entitled to an injunction restraining the rightful owner from entering into possession of the property. Learned Counsel contended that a person in wrongful possession of a property is not entitled to the assistance of the Court by way of injunction for maintaining his wrongful possession against the rightful owner and that he can ask for an injunction only for maintaining his possession as against persons other than the rightful owner, although he may be entitled u/s 9, Specific Relief Act, to recover possession of the property even from the rightful owner if the latter evicts him by force.

Reference was made to the decisions in -"Narayana Row v. Dharmachar" 26 Mad

314 (I) and - Periasami Muthiriyar and Another Vs. Anandayi Ammal and Others, This question did not directly arise for consideration in those cases although there are some observations in those cases which can be construed as supporting the position taken by learned Counsel for the Respondents. In view of the fact that I have come to the conclusion that the Plaintiffs were not in possession of the plaint property on the date of suit I do not think it necessary to express any opinion on this aspect of the case.

16. I, therefore, confirm the judgment and decree of the lower appellate Court and dismiss the second appeal with costs.