
(1960) 07 KL CK 0053
In the High Court Of Kerala
Case No : C.R.P. No. 389 of 1959

Janaki Nethiar Ammo

APPELLANT

Vs

Pichunni alias Rama Iyer and Others

RESPONDENT

Date of Decision : 13-07-1960

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 19

Citation : (1960) KLJ 979

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : V.P. Gopalan Nambiar and P.C. Balakrishna Menon, for the Appellant;
N. Sundara Iyer, V.R. Venkitakrishnan and K. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

Vaidialingam, J.—In this C. R. P. on behalf of the first defendant-petitioner, Mr. V. P. Gopalan Nambiar, his learned counsel, challenges the concurrent views of both the subordinate courts that his client namely, the jenmi of the property, is liable to the plaintiff in damages for having cut and appropriated a "thani" tree standing on the property which is in the possession of the plaintiff as verumpattom tenant. Though the plaintiff claimed a sum of Rs. 70, ultimately it is seen that the trial court has fixed the claim for damages in the sum of Rs. 40 and that is the amount that has now been decreed by both the courts.

2. The main defence of the landlord, the first defendant, appears to have been that by virtue of clause 4 of the terms of the lease, namely, Ext. A 1 in this case, the tenant and the landlord have entered into an agreement whereby the tenant had expressed in unequivocal terms the landlord's full rights in respect of spontaneous trees which already existed and which may come into existence in future and further by virtue of the same clause the tenant has also agreed to permit the landlord to cut and appropriate those trees whenever he pleases without any obstruction from the tenant.

3. This clause which was very strongly relied upon by the first defendant-petitioner to support his action in allowing the second defendant to cut the one thani tree from the suit properties was contested by the plaintiff on the ground that it is void as it is opposed to the clear provisions of section 19 of the Malabar Compensation for Tenants' Improvements Act, Act I of 1900. The relevant part of section 19 is to the following effect:

Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.

Both the subordinate courts on the basis of the Division Bench ruling of the Madras High Court, reported in *Narayani Amma v Kunchukutti Amma* (32 M. L. J. 541) have accepted the plea of the plaintiff that clause 4 in Ext. A1 is void as being repugnant to the provisions of section 19 of the Madras Act referred to above. It is also seen that a later Full Bench decision of the same High Court, namely, the one reported in *Chidambara Iyer v Bhavadasan Nambudiripad* (1953-11 M. L. J. 673) appears to have been relied upon by the first defendant. According to the first defendant, the scope of the applicability of section 19, and the stage when it comes into play have been considered and laid down by the Full Bench Judgment. Therefore, evidently the contention must have been that the decision in *Narayani Amma v Kunchukutti Amma* (32 M. L. J. 541) should not be given full effect as relied upon by the plaintiff in this case. But both the subordinate courts were not satisfied that any doubt have been cast by the later Full Bench decision of the Madras High Court on the earlier Division Bench ruling reported in *Narayani Amma v Kunchukutti Amma* (32 M. L. J. 541). Therefore, both the courts were of the view that clause 4 of Ext. A1 is void and therefore the landlord had no right to cut the thani tree and appropriate it for his use. On consequence the claim for damages which was ultimately fixed at Rs. 40 was decreed in favour of the plaintiff.

4. Mr. Gopalan Nambiar, learned counsel for the petitioner, contended that both the courts have missed a very important aspect which has to be borne in mind in cases like this. According to the learned counsel, before a particular clause in a lease deed can be considered to effect a restriction on the tenant's right, or found to be opposed to the provisions of Section 19 of the Malabar Compensation for Tenants' Improvements Act, the essential question that has to be considered and found by the courts is as to whether the act of cutting by the landlord in this case is an "act of improvement" or an "act of enjoyment". It is the further contention of Mr. Gopalan Nambiar that it is only if it is found to be an act of improvement that the question of such a provision being hit by the provisions of section 19 arises at all.

5. This contention of Mr. Gopalan Nambiar raised in this form appears to be quite attractive in the first instance. But unfortunately in this case, at any rate, the parties have not joined issue on this ground, namely, as to whether the cutting of this thani tree by the landlord, first defendant, is an act of improvement or an

act of enjoyment. The only point on which the parties have joined issue is about the validity of a clause like clause 4 in the face of the provisions contained in Section 19 of the Act.

6. The question as to whether a particular cutting of a tree or trees is an act of improvement or an act of enjoyment is a matter which requires investigation into facts and there is no material in this case, at any rate, to come to a conclusion that it is an act of enjoyment.

7. As mentioned by me earlier, the only point that appears to have been pressed by the landlord in support of his right to get and appropriate this tree is the reliance placed by him on clause 4 of the lease deed, Ext. A1. So far as this question is concerned, it is concluded against the petitioner by a direct decision of a Division Bench of the Madras High Court reported in *Narayani Amma v Kunchukutti Amma* (32 M. L. J. 541) consisting of Mr. Justice Coutts Trotter and Mr. Justice Seshagiri Aiyar. The learned Judges had to consider a clause somewhat similar to clause 4 in Ext. A1 before me. There the right of the landlord to cut and appropriate the trees that were on the land at the time of the lease which had grown spontaneously and which are yet to grow in future belonged to the landlord absolutely and that they could be cut and removed for his own purposes. There was a dispute in that case as to the right of the tenant to get compensation from the landlord. It is in connection with that that Mr. Justice Coutts Trotter observed at page 546 as follows :

It therefore becomes necessary to examine that clause in the contract and see whether it is obnoxious to the provisions of S. 19. It is clear that under the Act the tenant would be entitled to claim compensation for all spontaneously grown trees which he left standing at the end of his tenancy. It follows that a contract which allows the landlord to come on the land and cut and remove such trees must necessarily limit the right of the tenant to claim compensation for such improvements. I therefore hold that the provision in the kychit that the landlord may cut and remove these trees is contrary to the Act and bad.

To the same effect is the observation of the other learned Judge who constituted the Bench, namely, Mr. Justice Seshagiri Aiyar and that observation is to be found at page 551 of the reports:

The argument is that this clause does not either take away or limit the right of the tenant to make improvements; it was conceded that if the clause operated in that direction it cannot be binding upon the defendant. I am unable to agree that the effect of this clause is not to restrict the tenant in his right to make improvements. The clause implies that the landlord can enter upon the land and cut and carry away the trees. It would impede the operation of the tenant in making improvements if the landlord is permitted to enter on the land, whenever he chooses to cut and carry away the trees. Further, it undoubtedly debars the tenant from claiming compensation, because if the landlord cuts and carries away the trees, nothing will be left outstanding at the time of eviction, and the

tenant would be disentitled to compensation if they are not there. I therefore think that the clause in Ext. A is opposed to section 19 of the Act of 1900 and S. 7 of the Act of 1887.

I am in respectful agreement with the views expressed by the learned Judges and these observations apply on all fours to clause 4 in Ext. A1.

8. But Mr. Gopalan Nambiar referred me to the Division Bench ruling reported in *Sreedevi v Kurikkal* (A. I. R. 1939 Mad 934) of the learned Chief Justice and Mr. Justice Somayya which has been considered and approved by the later Full Bench decision of the Madras High Court reported in *Chidambara v Bhavadasan* (A. I. R. 1954 Madras 287). Mr. Gopalan Nambiar's contention is that in that case notwithstanding the fact that there was an agreement by which the tenant bound himself to pay the full value of the trees cut, the learned Judges upheld the validity of that arrangement and have found in favour of the landlord.

9. But the essential basis of the decision in *Sreedevi v Kurikkal* (A. I. R. 1939 Madras 934), so far as I could see, is on the ground that the cutting of trees in that case was not an act of improvement but that it was really an act of waste committed for the tenant's own pecuniary benefit and trees were of spontaneous growth. Therefore, I am not able to find any support for Mr. Gopalan Nambiar's contention that clause 4 in this case can be taken out of the provisions of section 19 of Act I of 1900.

10. Though Mr. Gopalan Nambiar referred to certain observations in the judgment of the Full Bench of the Madras High Court referred to earlier I cannot accept his contention that the Full Bench has in any way cast any doubt as regards the correctness of the earlier Division Bench ruling in *Narayani Amma v Kunchukutty Amma* (32 M. L. J. 541). On the other hand, the learned Judges specifically advert to this decision and they do not at all express any doubt regarding the principles laid down in the said decision and the view of the learned Judges of the Full Bench that the said decision has no bearing on the point in controversy before the Full Bench. Even in the Full Bench case it will be seen that the learned Judges had come to the conclusion that the cutting of trees was not an act of improvement but it was only a mode of enjoyment in view of the fact that such trees were felled periodically once in four or five years.

11. This Full Bench decision need not detain me any further because, as I mentioned at the beginning of this judgment when dealing with the contention of Mr. Gopalan Nambiar, there is no plea raised in this case by the landlord that the cutting of the thani tree is not an act of improvement but is only a mode of enjoyment by felling such trees periodically. It may be that in a proper case where a plea is taken and sufficient materials are placed before the court, the exact scope and application of the principles laid down in *Sreedevi v Kurikkal* (A. I. R. 1939 Madras 934) as also in the subsequent Full Bench decision reported in *Chidambara v Bhavadasan* (A. I. R. 1954 Madras 287) have to be more fully considered.

12. Even in this connection Mr. V. R. Venkatakrishnan, learned counsel appearing for the plaintiff, has drawn my attention to certain observations in paragraph 16 of the judgment of the learned Judges of the Full Bench to the effect:

Even assuming that it can be deemed to be an act of improvement, it could not be said that a claim to a one-third share of the money received in this case could in any way deter the tenant from cutting the trees. It is only when the amount claimed is equivalent to the full value or is a major part of it, it may be said to be so unreasonable as to be prohibitive of the cutting of trees.

13. As I mentioned earlier, the scope of the decision of the Full Bench, as also the decision which was accepted by the learned Judges of the Full Bench, namely, the one reported in *Sreedevi v Kurikkal* (A. I. R. 1939 Madras 934) have all to be considered in a proper case when the question directly arises for decision.

14. It is also seen that both the courts ate of the view that inasmuch as the commissioner appointed to sell these properties has not executed a registered conveyance in favour of the first defendant, the latter has no right to cut the trees because he has not obtained the rights of the landlord. In view of my decision on the first point, namely, about the provision of clause 4 being opposed to the provisions of section 19 of the Malabar Compensation for Tenants' Improvements Act, Act 1 of 1900, it becomes unnecessary for me to consider this contention. The C. R. P. fails and is dismissed with costs.