

(1965) 03 KL CK 0009
In the High Court Of Kerala
Case No : A.S. No's. 323 and 324 of 1960

Joseph

APPELLANT

Vs

Ayamkudi Devaswom

RESPONDENT

Date of Decision : 05-03-1965

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 112, 132

Citation : (1965) KLJ 896

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : M.M. Mathew, for the Appellant; C.K. Sivasankara Panicker, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai J.

1. These appeals are by the second plaintiff, in two land acquisition reference cases Nos. 60 and 261 of 1954 and they concern the apportionment of land compensation between him and the first respondent, the Ayamkudi Devaswom, which is the alleged jenmi of the property, bearing survey No. 166/6, of which two portions were acquired. According to the respondent, the appellant is in possession of the property under a lease Ext. C of the year 1053 in favour of his great grandfather. The appellant denied the lease and claimed to be the owner of the property, having been in possession of it in continuity with his predecessors-in-interest for a long time, and to be entitled to the whole of the compensation for the land. The District Judge held in favour of the respondent and awarded the entire compensation for land to it, but apportioned the compensation in respect of the improvements. The only point for decision is, whether the appellant is entitled to land compensation to any extent. The District judge found for a fact, that the property was being held by the appellant and his predecessors-in-interest in pursuance of Ext. C. Though there was no specific plea by the appellant, the identity of the property with that in Ext. C was also questioned.

The District Judge held, that Ext. C related to this property. The pattah for the property is in the name of the respondent, Ext. Q being the chitta; Exts. D and E are the thandapers of the respondent evidencing payment of rent to it by the appellant's predecessor-in-interest, in the years 1085 and 1097. Exts. F to O are the counterfoils of receipts issued by the respondent to the appellant's predecessors. In particular, Ext. II contained the signature of the father of the appellant. The appellant paid revenue, under the pattah in favour of the respondent. The name of the property is Madathikunnel and the appellant took his address after this name which suggests, that the property was the seat of his family. The respondent could not establish the identity of the boundary properties with sufficient clearness; but this, as the District Judge has observed, is not a grave defect. Identification of boundary properties by the names by which they were known in the year 1053, is not always feasible. The appellant had no case, that Ext. C related to some other property for which he paid revenue under Ext. R and rent under the several receipts evidenced by Exts. F to O. On these considerations, I agree with the District Judge in holding that Ext. C related to the property, survey No. 166/6.

2. The more important contention that was passed was, that on the dates of the acquisitions, which may be taken to be the 23rd October, 1953, in L. A. R. 60 of 1954 and the 29th April, 1954, in L. A. R. 261 of 1954, on which Government took possession of the portions acquired, Act VIII of 1950 was in force by which, had the landlord obtained a decree for eviction, he was prevented from recovering the property for a specified period and so the respondent had no right to share in the compensation. As the Full Bench has decided in *Palghat Valia Raja v Veeraraghava Iyer* (1961 KLT 103) the question must depend upon the rights of the parties at the dates of the acquisitions. Ext.C was not a permanent lease as suggested at the hearing. It was not a lease for a specific term either and the absence of a provision in it for eviction is immaterial, the liability to eviction being an ordinary incident of a lease. So on the dates of the acquisitions, the respondent had the right to evict the appellant. The provision in Act VIII of 1950 made no inroad on the quality or extent of the respondent's right to property, except that it imposed a temporary procedural bar for a period against recovering possession in execution of a decree. It is too much to view this, as even a temporary immunity against eviction in any event, I am not prepared to hold, that this bar or immunity has curtailed the respondent's right in property and enlarged the rights of the appellant. The bar was no doubt continued by later legislations, but this is irrelevant. Under Act I of 1964, the position is of course different. The tenant has acquired a right to be in enjoyment for all time, with perhaps a liability to be evicted in rare circumstances. I am therefore of the view, that notwithstanding the provision in Act VIII of 1950, the respondent was the full owner of the property and the appellant had no right to the property at the dates of the acquisitions except for compensation for any improvements which he may have made. It was then contended, that this case must be decided in accordance with the provisions of Act I of 1964. Assuming that Section 132 of,

the Act has application, the question to be decided is what were the rights of the respective parties as on the dates on which the acquisitions were made. No provision in Act I of 1964 has affected those rights. The provision in Section 112 for apportionment of compensation cannot have retrospective operation, in the absence of a specific provision. I over-rule this contention.

For these reasons, the appeals have no merit and are dismissed with costs to the first plaintiff-respondent.