
(1993) 08 KL CK 0036
In the High Court Of Kerala
Case No : C.R.P. No. 481 of 1993-H

K.A. Khader

APPELLANT

Vs

Rajamma John Madathil and Others

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 25
Transfer of Property Act, 1882 — Section 52

Citation : AIR 1994 Ker 122 : (1994) 2 ILR (Ker) 704

Hon'ble Judges : T.V. Ramakrishnan, J

Bench : Single Bench

Advocate : S. Parameswaran, for the Appellant; P.T. Sebastian and Roy Chacko, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Ramakrishnan, J.—The defendant, who raised a question of jurisdiction of the Court to entertain the suit p. S. No. 230 of 1989 on the file of the Munsiffs Court, Vaikom, is the petitioner in this revision petition. The two original plaintiffs and the two additional plaintiffs impleaded later on are the respondents.

2. The suit was one filed by respondents 1 and 2 for recovery of arrears of rent and possession of the plaint schedule room and lean-to portion occupied by the petitioner. After the filing of the suit Government of Kerala issued a Notification G. O. (MS) No. 43/90/Housing dated 6-10-1990 which was published in the Kerala Government Gazette No. 42 dated 23-10-1990 making the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short "the Act") applicable to Chempu Panchayat within the jurisdiction of which the plaint schedule building and property are situated. Even before the issue of the above notification, plaint schedule building with land appurtenant thereto seems to have been purchased by the Ksheerolpadaka Society No. K.76(D) Chempu (for short "the Society") as per a sale deed dated 31-1-1990. On the basis of the said

purchase on 9-4-1990, the President and Secretary of the Society filed I. A. No. 586 of 1990 under Order XXII, Rule 10, CPC to implead them as additional plaintiffs in the suit. The said petition was allowed. However, no consequential amendments in the pleadings including the relief portion were sought for or made by the additional plaintiffs simultaneously. Later, on 12-10-1992 the additional plaintiffs (respondents 3 and 4) filed an application for amendment of the plaint including the relief portion seeking recovery of possession of the plaint schedule building by the Society. The counsel for the respondents has submitted that the application for amendment of the relief portion has also been allowed during the pendency of the revision petition.

3. While so, the petitioner filed I. A. No. 1289 of 1992 raising the question of jurisdiction to entertain the suit in the light of the notification dated 6-10-1990 and requesting the Court to try the said question as a preliminary issue. It was contended by the petitioner that on the issuance of the notification G.O.(MS) No. 43/90/ Housing dated 6-10-1990 there was an ouster of jurisdiction of the Court to entertain the suit by virtue of the provisions contained in the Act conferring exclusive jurisdiction on the authorities under the Act to entertain proceedings for recovery of buildings coming within the areas to which the Act is made applicable. The said prayer of the petitioner was objected to by the respondents mainly relying upon another notification, S.R.O. No. 1225 of 1979 and issued u/s 25(1) of the Act. The learned Munsiff as per the impugned order upheld the objection raised by the plaintiffs in the suit and dismissed the petition holding that it has jurisdiction to entertain the suit in view of the fact that as per notification, S.R.O. No. 1225 of 1979 all buildings owned by the Cooperative Societies in the State are exempted from the provisions in Section 11 of the Act. Aggrieved by the above decision, the petitioner has preferred this revision petition.

4. The short question that arises for consideration is whether in the facts and circumstances of the case there is ouster of jurisdiction in the light of the notification dated 6-10-1990 issued under the Act as contended by the petitioner.

5. Admittedly, at the time when the suit was filed the Court had jurisdiction to entertain the same as the Act was not applicable to the areas included in the Chempu Panchayat. The Act was in fact made applicable to the areas only as per notification dated 6-10-1990 published in the Kerala Government Gazette dated 23-10-1990. Normally the Civil Courts would cease to have jurisdiction to entertain the suit for recovery of the building in question with effect from the date on which the notification was brought into force making the provisions of the Act applicable to such buildings. On the application of the Act, recovery of buildings to which Act applies can be had only in accordance with Section 11 of the Act and that too only through the forums prescribed by the Act following the procedure laid down by the Act in that regard. In the light of the scheme for eviction of buildings contained in the Act there cannot be any doubt about the legal position that the Civil Court's jurisdiction to entertain suits for recovery will

stand ousted with reference to the buildings situated in areas to which the Act is made applicable. However, the question to be considered in this case is whether the notification S.R.O. No. 125 of 1979 would counter act the effect of the notification of 6-10-1990 and would save the jurisdiction of the Court to entertain and dispose of the suit even after the Act is made applicable to the areas in which the plaint schedule building is situated.

5A. S.R.O. No. 1225 of 1979 issued u/s 25(1) of the Act is in the following terms :

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), the Government of Kerala being satisfied that it is necessary so to do in the public interest hereby exempt the buildings owned by the Cooperative Societies in the State from the operation of the provisions of Section 11 of the said Act with effect from the date of publication of this notification in the Gazette (No. 75487/ Es/PW dated 5-10-1979 in K. G. No. 44 dt. 6-11-1979)."

6. Section 25(1) under which the above notification issued is as under :

"Notwithstanding anything contained in this Act the Government may, in public interest or for any other sufficient cause, by notification in the Gazette, exempt any building or class of buildings from all or any of the provisions of this Act."

7. The validity of the notification as such has not been challenged in this case. As such it has to be proceeded on the basis that Government's power to exempt any building or class of buildings from all or any of the provisions of this Act in public interest or for any other sufficient cause by issuing notification in the Gazette is conceded by the petitioner. The wording of the notification would indicate that Government has in public interest exempted all buildings owned by the Co-operative Societies from the provisions in Section 11 of the Act. Going by the provisions in the notification it has to be held that the buildings owned by the Society are exempt from the provisions in Section 11 of the Act. There is no dispute that the Society represented by the additional plaintiffs in the suit has purchased the building in question and 5 cents of land appurtenant thereto. As such prima facie the contention that to the building in question the provisions of the Act is not applicable is liable to be upheld. It is taking the above view that the learned Munsiff has upheld the objection of the plaintiffs and dismissed the application holding that the Court has still jurisdiction to entertain and dispose of the suit in accordance with law.

8. However, learned counsel for the petitioner has advanced a very ingenious contention that since the sale transaction by which respondents 3 and 4 have obtained the plaint schedule building and the land appurtenant thereto is hit by lis pendens, the question of jurisdiction has to be decided ignoring the effect of the notification, S.R.O. No. 1225 of 1979 granting exemption in respect of the buildings owned by the Cooperative Societies. According to the counsel the effect of the provisions contained in Section 52 of the Transfer of Property Act which incorporates the principle of lis pendens is to exclude from consideration the

effect of all dealings entered into by any of the parties to the proceeding from the consideration of the Court while deciding the issue involved in the suit. In the light of the said provision it was submitted that the question of jurisdiction has to be decided eschewing altogether the effect of the sale which took place during the pendency of the suit. It was submitted that there cannot be any doubt about the legal position that the sale of the property which was the subject matter of the suit at the time when it was effected will be hit by the provisions contained in Section 52 of the Transfer of Property Act and as such the sale effected during the pendency of the suit cannot affect any of the rights of the petitioner in relation to the building in question.

9. Section 52 of the Transfer of Property Act is in the following terms :

"Transfer of property pending suit relating thereto -- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the Court and on such terms as it may impose."

The effect of the doctrine of *lis pendens* as embodied in Section 52 of the Transfer of Property Act is not to annul all voluntary transfers effected by the parties to a suit but only to render it subservient to the rights of the parties thereto under the decree or order which may be made in that suit. Its effect is only to make the decree passed in the suit binding on the transferee if he happens to be a third person even if he is not a party to it. The transfers will remain valid subject, however, to the result of the suit. That this is the true legal effect of the provision will be clear from the latter part of the rule which states that the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein. The doctrine of *lis pendens* as observed by Fawcett J. in *Krishnabai v. Savlaram* AIR 1927 Bom 93, is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a suit should be binding not only on the litigating parties but on those who derive title from them *pendente lite* whether with notice of the suit or not. In fact what is intended by the provision is only that the transfers *pendente lite* should not affect the rights of any other party to the suit under any decree or order made therein and no more. In other words, the doctrine of *lis pendens* is not a doctrine which mandates that the transaction *pendente lite* should be treated as *non est* in law. In *Nagubai Ammal and Others Vs. B. Shama Rao and Others*, , Venkata-rama Ayyar, J. (as he then was) while dealing with the particular aspect of the doctrine of *lis pendens* relevant for the purpose has observed thus (at page 602) :

"But it is argued for the appellants that having regard to the words of Section 52 that pendente lite "the property cannot be transferred", such a transfer must, when it falls within the mischief of that section, be deemed to be non est, that in consequence Keshava-nanda must, for purposes of lis pendens, be regarded as the owner of the properties, notwithstanding that he had transferred them, and that the official receiver who succeeded to his rights had a right to be impleaded in the action.

This contention gives no effect to the words "so as to affect the rights of any other party thereto under any decree or order which may be made therein", which make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto."

Again the Supreme Court has in Jayaram Mudaliar Vs. Ayyaswami and Others, , held that (para 50) :

"..... The purpose of Section 52 of the Transfer of Property Act is not to defeat any just and equitable claim but only to subject them to the authority of the Court which is dealing with the property to which claims are put forward."

While coming to the above conclusion the Supreme Court has relied upon the following statement of law contained in the Corpus Juris Secundum, Vol. LIV, page 570 :

"Lis pendens literally means pending suit, and the doctrine of lis pendens has been defined as the jurisdiction, power or control which a Court acquire over property involved in a suit pending the continuance of the action, and until final judgment therein".

After quoting the above observation, the Supreme Court has further observed as follows (Para 48 of AIR) :

"Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject matter of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the Court to deal with it and thus make the proceedings infructuous."

It may be very useful to remember this background of Section 52 of the Transfer of Property Act when we consider the scope and effect of the said Section.

10. If this be the correct legal position as far as the effect of the doctrine of lis pendens on transactions between parties to a suit is concerned, I do not think that there is any justification for holding that the legal effects of transfer in this case is liable to be altogether eschewed from consideration while deciding the question of jurisdiction. The only effect of the doctrine of lis pendens on the sale transaction is to make it subject to the decree or order to be passed in the suit.

The transaction effectively transfers title to the transferee subject to the decree to be passed in the suit. It may not be legally possible to treat the transferor as having title to the property in question treating the transfer as non est. Unless the transaction as such is bound to be treated as non est and totally ineffective for any valid reason, the Court is bound to take note of all legal consequences of the same subject to the qualification that such transaction shall not affect the rights of any other party to the suit under any decree or order which may be passed ultimately in the suit. In this view of the matter, I would hold that the sale transaction in this case cannot altogether be excluded from consideration and as such a decision regarding the jurisdiction of the Court to entertain the suit must be taken having regard to the transaction of sale effected during the pendency of the suit also.

11. The next question to be considered is, if title to the building in question had been transferred validly to the Society, whether recovery of building owned by the Society is governed exclusively by the provisions contained in the Act or not? In the light of notification S.R.O. No. 1225 of 1979 issued u/s 25(1) of the Act, there cannot be much dispute about the fact that building owned by Co-operative Societies are exempt from the provisions in Section 11 of the Act. The notification in terms expressly states so. As such, it may not be open to the petitioner to contend that on transfer (assuming the transfer to be real and valid) the Society can get recovery of the building exclusively as per the provisions of the Act and as such the Civil Court has no jurisdiction to entertain a fresh suit for recovery of its building. If that is the legal position as far as a fresh suit for recovery is concerned, it may not be possible for the petitioner to contend that the Society is not entitled to get itself impleaded in the suit and continue the suit for recovery filed validly by its transferor. Since the building in question was owned by the Society on the date when the Act was made applicable to Chempu Panchayat simultaneously on the application of the Act, the building in question went out of the purview of the Act as a result of the notification issued u/s 25(1) of the Act and as such the Society automatically became entitled to file a fresh suit if they wanted the building to be recovered. In the light of the pendency of the suit, the society gets a right to be impleaded in the suit under Order 22 Rule 10, CPC and to continue the same as an assignee of the rights or the original plaintiffs. The contention that only a Co-operative Society is entitled to take advantage of the exemption granted u/s 25(1) of the Act and as such notification issued u/s 25(1) can be relied upon only in a case instituted by the Society itself cannot, in my view, be accepted as sound. If the Society can institute a fresh suit immediately on transfer relying upon the notification issued u/s 25(1) of the Act, I do not find any justifiable reason to take the view that the Society cannot get itself impleaded in the suit and to proceed with the suit relying upon the provisions in Order 22, Rule 10, CPC which authorises the assignees to come on record. The fact that along with the prayer for impleadment, the society has not prayed for amendment seeking recovery cannot also be held to be a reason to hold that the Court has lost jurisdiction to entertain the suit. It is a highly

technical contention which cannot be accepted especially in view of the fact that the Society has already sought for amendment of the plaint to incorporate a relief of recovery of possession in its name.

12. The contention that the Act as whole was brought into force with a view to protect the tenants from unreasonable eviction and to confer on them right to be in occupation of the rented premises till evicted in accordance with the provisions contained in the Act, sale transaction which took place during the pendency of the suit should altogether be excluded from consideration and the issue arising in the suit is bound to be disposed of as if the original owners continued to be the owners of the building cannot be accepted as legally sustainable. If the petitioner has got a case that the transfer effected in this case during the pendency of the suit is a transfer collusively made in order to deprive the petitioner of the benefits conferred upon him under the Act or that it is sham and nominal one entered into collusively between vendor and vendee, it is up to the petitioner to establish the same and get necessary relief in the suit itself. At this stage when the question is raised as a preliminary issue, it may not be open for the Court to go into those disputed questions of fact.

13. In this view of the matter, I do not find any merit in the contention of the counsel for the petitioner that the question whether the Court has still jurisdiction to entertain the suit is to be decided without reference to the transfer effected during the pendency of the suit and without treating the additional plaintiffs (respondents 3 and 4) as the owners of the building sought to be recovered. I would accordingly hold that the suit instituted in the Munsiffs Court for recovery of the building in question is maintainable in the light of the notification S.R.O. No. 1225 of 1979 at the instance of the Society also.

14. It is strange and interesting to note that in this case, the petitioner is relying upon the doctrine of *lis pendens* to oust the jurisdiction of the Court which validly had jurisdiction to entertain the suit which is brought by the respondents against the petitioner. By the doctrine of *lis pendens* what is intended to be maintained is the status quo as on the date of the institution of the proceedings unaffected by the act of any party to the litigation pending its determination. The following weighty observations of the Privy Council in *Dutt maharaj v. Sukur Mohommed* is to that effect :

"The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination....."

The observations in *Jayaram Mudaliar Vs. Ayyaswami and Others*,) already quoted by me is also to the same effect and would indicate that the reliance placed on the doctrine of *lis pendens* for the purpose of arguing that the Court which had jurisdiction originally has lost the same is inappropriate. In the circumstances, I do not find any merit in any of the arguments advanced by the counsel for the petitioner to contend that the Court in this case has lost its jurisdiction to continue the suit in question.

Accordingly, I would confirm the order of the Court below and dismiss the Revision. However, there will be no order as to costs.