
(1999) 01 KL CK 0065
In the High Court Of Kerala
Case No : C.R.P. 1221 of 1998

Kamalakshi Amma Thankamma

APPELLANT

Vs

Sicily Joseph and Others

RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 125(1)

Citation : (1999) 1 KLJ 274

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : B. Radhakrishnan, for the Appellant; N. Viswanatha Iyer and K.K.M. Sheriff, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This C.R.P., is filed under Sec. 103 of the Kerala Land Reforms Act against the judgment in A.A. No. 1049/77 on the file of the Appellate Authority (LR), Alleppey. According to petitioner, 1 acre of garden land comprised in Sy. No. 198/7 of Punnapra Village originally belonged to the tarwad of the revision petitioner's husband. On 9-7-1098 M.E. the said land was mortgaged to one joseph. Kochuouseph for a consideration of Rs. 500/- and thousand Kallookadan paras of paddy for a term of ten years. The nomenclature of the deed is "Otti". The consideration was not received by the mortgagor. The mortgagee was directed to discharge a prior encumbrance on the land mortgaged with the money portion of the consideration reserved with him and to construct bunds and reclaim a portion of the mortgage property with the paddy portion of the consideration. A charge for the mortgage consideration was created on all the existing improvements on the mortgage property and the mortgagor undertook personally the liability for the consideration. The revision petitioner got the ownership of the property by gift deed dated 19-12-1957. The mortgage right devolved on counter petitioners 2, 3 and 6 other persons. The revision petitioner filed O.S. 254/65 against them in the Munsiff's Court,

Alleppey for redemption of the mortgage. After a hot contest, a preliminary decree for redemption was passed on 29-11-1969. Thereafter the revision petitioner applied for passing of the final decree in the suit.

2. On 29-6-1976 counter petitioners filed the original application namely O.A. No. 2741 of 1976 under Sec. 72B of the Kerala Land Reforms Act. The revision petitioner filed objections to the original application contending that the applicants are not tenants as defined in the Act and in view of the pendency of O.S. 254/65, the Land Tribunal has no jurisdiction to decide the question. The Land Tribunal ignored the objection and held that the mortgage is a tenancy. It further held that the applicants are deemed tenants within the meaning of Sec. 4A(1)(c) of the Act. The revision petitioner filed an appeal against the order of the Land Tribunal. The Appellate Authority upheld the finding of the Land Tribunal and dismissed the appeal. It is against the above decision, the present revision is filed. I heard Sri. Sukumaran Nayar, Senior Counsel for the petitioner and Sri. N. Viswanatha Iyer counsel for the contesting respondents. Sri. Sukumaran Nayar contended that since the suit was pending on 1-1-1970 only the Civil Court has jurisdiction to decide the question of tenancy. He further argued that the document in question is not a lease and that the applicants in the O.A. are deemed tenants under Sec. 4A(1)(c) of the Kerala Land Reforms Act. Sri. Viswanatha Iyer contended that the authorities under the Act have held that the mortgage is a tenancy under the Kerala Land Reforms Act. He further contended that in the final decree proceedings the applicants raised the question that the mortgage was a tenancy. The Civil Court originally referred the question of tenancy to the Land Tribunal. But thereafter recalled the reference on the ground that it itself can decide the question of tenancy. According to him, since the question was referred to the Land Tribunal, the Civil Court cannot recall the reference. In view of the fact that I am taking the view that the Land Tribunal and the Appellate Authority had no jurisdiction to decide the question of tenancy I am not considering the question whether the mortgage is a tenancy or deemed tenancy. In paras.4 and 5 of the objection filed by the petitioner in the revision petition in O.A.2741/76 it is stated as follows:--

Thus the petitioner had raised the question that the Land Tribunal has no Jurisdiction to decide the question of tenancy since the matter was pending before the Civil Court. The Supreme Court in the decision in Sankaranarayanan Potti (Dead) By L.R.S. Vs. K. Sreedevi and Others, considered the various aspects under Sec. 125 of the Kerala Land Reforms Act. In that case a preliminary decree for partition under redemption was passed before 1-1-70. Thus the suit was pending on 1-1-70 for passing a final decree. Then one of the parties approached the Land Tribunal and filed an application under Sec. 72B of the Kerala Land Reforms Act. The original application was allowed and purchase certificate was issued. Before the final decree court the tenant filed an application to dismiss the final decree proceedings against him on the ground that he had obtained the purchase certificate under the Kerala Land Reforms Act. Dealing with this question as point No. 1, the Supreme Court observed as

follows:--

On a conjoint reading of proviso to Sec. 125(1) of the principal Act and Sec. 108(3) of the Amending Act it must, therefore, be held that the question of status of defendant No. 2 under the Amending Act 35 of 1969 could have been decided only by the Civil Court in the pending suit and not by the Land Tribunal under the Amending Act. Consequently, the direct approach made by him to the Land Tribunal under the Amending Act must be held to be premature and incompetent and it must also be further held that consequently the orders obtained by him from the Land Tribunal were rendered by a Tribunal which had no jurisdiction to pass such orders and they were nullities. Hence, no question of res judicata would arise in connection with such orders of an incompetent authority. Learned senior counsel for the appellant was right when he contended that the Kerala Land Reforms Act, as amended, is a complete code in itself and it is only the Land Tribunal which can issue purchase certificate under Sec. 72-K and the Civil Court cannot give such a purchase certificate. That may be so. However, such certificate cannot be granted to all and sundry. The claimant must prove that he is a cultivating tenant under the Act. That would be a condition precedent to be established by the claimant before he could get such purchase certificate. The fulfilment of such a condition precedent would require decision on the basic question whether he is a cultivating tenant under the Amending Act or not. If the suit was not pending before the civil court and if defendant No. 2 being an otti-holder had gone to the Land Tribunal after the Amending Act came into force he would have been justified in invoking the jurisdiction of the Land Tribunal and if the tribunal after hearing the parties had granted such a purchase certificate it would have remained conclusive and binding between the parties, but such is not the fact situation in the present case. In the present case, as seen above, the suit was already pending between the parties. Not only that, defendant No. 2 had suffered the preliminary decree for redemption of suit mortgage by the time Amending Act came into force. Consequently, proviso to Sec. 125(1) squarely got attracted and did not prevent the Civil Court from deciding such a contention as canvassed by defendant No. 2 regarding his alleged rights flowing from the Amending Act as a protected tenant entitled to purchase the land."

Thus on the basis of the above decision, the orders passed by the Land Tribunal and the Appellate Authority are without jurisdiction. The orders are set aside. The purchase certificate if issued is also set aside. I make it clear that I have not decided the question whether the applicants in the O.A. are tenants. That is a question to be decided in the final decree proceedings in O.S. 254/65 pending before the Munsiff's Court, Alleppey where the respondents have raised the question of tenancy. I am told that the final decree proceedings were stayed because of the pendency of this revision petition. The Munsiff's Court, Alleppey shall proceed with the final decree proceedings and pass appropriate orders without delay. The question of tenancy raised by the present respondents will be considered in the final decree proceedings and appropriate orders passed.

Civil Revision Petition is allowed.