

(1968) 02 KL CK 0007
In the High Court Of Kerala
Case No : S.A. No. 1452 of 1963

Kattil Raman Kunhi's sons Chatu and Others	APPELLANT
Vs	
Vadakke Poduvath Devaki Amma's daughter Janaki Amma	RESPONDENT

Date of Decision : 07-02-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36, 47
Kerala Land Reforms Act, 1963 — Section 13, 7
Limitation (Amendment) Act, 1963 — Article 65
Limitation Act, 1908 — Article 138

Citation : AIR 1969 Ker 121

Hon'ble Judges : M.S. Menon, C.J; P. Govindan Nair, J

Bench : Division Bench

Advocate : V.R. Krishna Iyer and K. Raghavan Nair, for the Appellant; K.P. Ramunni Menon, K. Ramakumar and P. Ramaranjan, for the Respondent

Final Decision : Dismissed

Judgement

1. Defendants 10, 12 and 13 are the appellants. The suit was for recovery of possession of the properties scheduled to the plaint. The only questions arising in this appeal are whether the three appellants are entitled to the protection conferred by Sections 7 and 13 of the Kerala Land Reforms Act, 1963, Act 1 of 1964, and whether the suit is barred by limitation as against any of these appellants. We shall deal with these questions.

2. The suit was instituted on 15-9-1954. On that day only the 10th defendant was on the party array. Defendants 12 and 13 were impleaded in the suit in the year 1959. The suit has been filed on the basis of an execution sale held In O. S. 306 of 1942 of the Chowghat Mun-siff's Court. That sale was on 1-7-1942 and was confirmed on 17-8-1942. The decree holder took what is called symbolical delivery of the properties on the 14th and 15th of September, 1942.

3. A question has been raised as to, whether a suit would lie in view of Section 47 of the Code of Civil Procedure. This question has been found against the

defendants by the trial Court relying on the rulings of this Court in People's Co-operative Bank Ltd. Vs. Parvathy Ayyana Pillai, and in State of Travancore-Cochin Vs. Lekshmi Ammal Meenakshi Ammal and Others, . We are of the view that this conclusion is correct and the appellants' contention that the suit as such is not maintainable and the suit is barred by limitation under Article 138 of the Limitation Act cannot stand for the suit has been filed within 12 years of the date on which symbolical delivery was given. It has been held that that date will give a fresh cause of action for a suit for recovery of possession.

4. The further question regarding limitation that arises relates only to defendants 12 and 13. This is based on Section 22 of the Limitation Act. It is not disputed before us that the suit as against these defendants can be taken to have been instituted only in the year 1959. This is clearly beyond 12 years of the date of symbolical delivery, namely, 16-9-1942. Prima facie therefore the suit as against these defendants is not maintainable. Counsel for the respondents has not been able to make out any special circumstances which will entitle him to contend that the suit instituted beyond 12 years of the date of symbolical delivery is maintainable. It was faintly suggested that the 12th defendant came, into possession only in 1948 and that the suit was instituted in 1959 within 12 years as against him. He had not perfected his title By adverse possession at that time and therefore the suit is maintainable against him. We do not think this contention is entitled to any weight. The plaintiff must prove subsisting title or possession within 12 years of suit. The last date on which he can be said to be in possession is only 15-9-1942 and the suit instituted only in 1959, is clearly barred by limitation. We have accordingly to hold that the suit as against defendants 12 and 13 is not maintainable and the suit as against them will have to be dismissed.

5. As far as the 10th defendant is concerned, the suit is not barred by limitation as the 10th Defendant was on the party array when the suit was instituted in 1954. The only question as far as this defendant is concerned, is whether he is entitled to protection conferred by Sections 7 and 13 of the Land Reforms Act, 1 of 1964. We shall read these sections:

"7. Certain persona occupying land honestly believing to be tenants, to be deemed tenants.-- Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of Court, any person who, on the 11th day of April, 1957, was continuously in occupation of the land of another situate in Malabar, for not less than two years, honestly believing himself to be a tenant and continued to be his occupation of such land at the commencement of this Act, shall be deemed to be a tenant.

13. Right of tenants to fixity of tenure, --(1) Notwithstanding anything to the contrary contained in any law, custom, usage or contract, or in any decree or order of Court, every tenant shall have fixity of tenure in respect of his holding, and no land from the holding shall be resumed except as provided in Sections 14 to 22.

(2) Nothing in Sub-section (1) shall confer fixity of tenure on a tenant hold-ing under a landlord-

(i) who is a member of the Armed Forces or is a seaman, if the tenancy was created by such landlord within a period of three months before he became a member of the Armed Forces or a seaman or while he was serving as such member or seaman; or

(ii) who is the legal representative of the landlord referred to in Clause (1);

Provided that no such landlord shall resume any land from his tenant, if he is already in possession of an extent of land not less than the ceiling area: and, where he is in possession of an extent of land less than the ceiling area, the extent of land that may be resumed shall not, together with the land in his possession, exceed the ceiling area;

Provided further that such tenant shall be deemed to have fixity of tenure in respect of his holding if-

(a) the landlord referred to in Clause (i) has not claimed resumption of the land comprised in the holding within one year from the date on which he ceased to be a member of the Armed Forces or a seaman, or within one year from the commencement of this Act, or within one year from the expiry of tenancy, whichever period expires last;

(b) the landlord referred to in Clause (ii) has not claimed resumption of the land comprised in the holding within one year from the date on which he received intimation of the death of the member of the Armed Forces or a seaman, or within one year from the commencement of this Act, or within one year from the expiry of the period of tenancy, whichever period expires last;

Provided also that the provisions of this sub-section shall not apply to tenants who were entitled to fixity of tenure immediately before the 21st January 1961, under any law then in force."

6. It is urged that the conditions imposed by Section 7 about the commencement of the possession have been satisfied. It is further urged that the 10th defendant was honestly under the belief that he is a tenant and that he held the property under that belief. It is therefore urged that the 10th defendant must be deemed to be a tenant entitled to the benefits conferred by the Act regarding the fixity of tenure u/s 13. The arguments turned on the questions as to whether the 10th defendant can be said to have had the honest belief that he was a tenant and various aspects have been referred to by counsel for the appellant as well as by the respondent. It is unnecessary to deal with these aspects for we will assume for the purpose of discussion without deciding the question that the 10th defendant is a person who would normally be entitled to the benefit of Section 7. We said normally because there is a further contention raised on behalf of the respondent that the 10th defendant cannot be heard to say that he is a tenant by virtue of the rule of *lis pendens* enunciated in Section 52 of the Transfer of

Property Act. This is met by counsel for the appellant by urging that the provisions in Sections 7 and 13 would include the law enunciated in Section 52 of the Transfer of Property Act and notwithstanding therefore the rule of lis pendens there should be a fixity of tenure in favour of the 10th defendant. We are unable to accept this contention. This court has consistently taken the view that the provisions contained in a statute where similar wording is used, will not have the effect of abrogating the rule of lis pendens. The earliest decision of this court is in *Sankaran Nambiar v. Pilliathiri Amma* 1961 Ker LT 639 where Mr. Justice Madhavan Nair has expressed this view. A Division Bench of this Court in *Kochappu v. Mani and Company Ltd.* 1963 Ker LT 709 has accepted this decision and has ruled that the provision in Section 64 of the CPC is not abrogated by the provision in the Kerala Agrarian Relations Act, Recently Justice Raman Nayar has taken the same view in *P.I. Idicula v. Padmanabhan Nair* 1967 Ker LT 1060 with reference to Section 106 of Act 1 of 1964. The wording in Section 106 is very similar, if not identical, to that contained in Section 13. Our attention has not been invited to any decision wherein it has been held that the rule of lis pendens is abrogated by the provisions in Sections 7 and 13. The rule of lis pendens is based on public policy. It is difficult to accept the argument that that rule is entirely wiped out by the provisions of the Act which deals with fixity of tenure.

7. In the result, we reject this contention. We dismiss this appeal but direct the parties to bear their costs.