

(1987) 12 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeals Nos. 3977-78 Of 1987 Arising Out Of Special Leave
Petitions (Civil) Nos. 14141-42 Of 1986

Krishnan Nadar Kunjan Nadar

APPELLANT

Vs

Lakshmanan Nadar Sukumaran Nadar and Others

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 4A(1)

Citation : AIR 1988 SC 515 : (1987) 4 JT 669 : (1987) 2 SCALE 1388 : (1988) 1 UJ 373

Hon'ble Judges : Ranganath Misra, J;G. L. Oza, J

Bench : Division Bench

Final Decision : dismissed

Judgement

1. Leave granted.

2. These appeals arise out of a judgment passed by the High Court, of Kerala in Second Appeal No. 720/80 and Civil Miscellaneous Appeal Nos. 203-04/80 which were heard together and disposed, of by a common judgment wherein the High Court set aside the judgment of the lower appellate court wherein the lower appellate court had directed, the remand of the matter to the trial court.

3. The facts necessary for disposal of these appeals are that Kochu Kunju Narayanan was the owner of the two items of property mentioned in Schedule A and B. He mortgaged all these properties. By Ext. D9 of the year 1082 which is an assignment of the mortgage right regarding a portion of the property namely properties mentioned in Schedule A, the predecessor-in-interest of the first defendant got assignment. The 1st defendant in Original Suit No. 412/65 inherited the mortgage right from his father Raman Nadar who was the assignee mortgagee. By Ext. P2 Sub-mortgage deed dated 17.1.1953 the plaintiff in Original Suit No. 404/65 came into possession of the said property. Thus the first defendant in Original Suit No. 404/65 is the mortgagee and the plaintiff therein is the sub-mortgagee, owner of the 2/3rd share of the equity of redemption. First

respondent in that case who is the 2nd defendant in Original Suit No. 412/65 is the mortgagee. Second defendant in that case is the plaintiff in Original Suit No. 412/65 who is the owner of the 1/3rd of the equity of redemption as stated above. Original Suit No. 404/65 was also filed by him (1st defendant) in Original Suit No. 412/65. It was for redemption of Ext. P2 sub-mortgage in favour of the plaintiff in Original Suit No. 412/65. Plaintiff in Original Suit No. 412/65 is the sole defendant in that case.

4. All the three cases were tried together and Original Suit No. 412/65 was tried as the main case in which all the evidence was recorded. A common preliminary decree was passed in all the three cases on 28.9.1968. A and B schedule properties were allowed to be partitioned, plaintiff in Original Suit No. 412/65 getting 1/3rd share and the 1st defendant in that case getting 2/3rd share. Plaintiff was directed to pay 1/3rd of the mortgage amount and value of improvement from the year 1085 to 17.1.1953 which is the date of the sub-mortgage. First defendant was directed to pay Rs. 2,500/- which is the sub-mortgage amount plus value of improvements in respect of the 2/3rd share from 17.1.1953 to redemption. Regarding B schedule property the plaintiff was directed to pay 1/3rd of the mortgage amount and value of improvements regarding 1/3rd share to the second defendant in Original Suit No. 412/65 who is also the first defendant in Original Suit No. 403/65. Plaintiff and 1st defendant were found entitled to get damages regarding plaintiff B schedule property.

5. Second defendant in Original Suit No. 412/65 died and additional defendants 3 to 12 were impleaded as legal representatives. Additional 4th defendant in Original Suit No. 412/65 who is one of the legal representatives of the deceased second defendant filed A.S. Nos. 31 and 33 of 1969. He claimed fixity of tenure u/s 4A(i)(a) of the Kerala Land Reforms Act as amended by Act 35 of 1969. The appeal was allowed and the case was remanded with a direction to consider the claim of tenancy also. The only question that was directed to be considered was the claim of tenancy u/s 4A(i)(a). The preliminary decree was kept intact in other respects. In the final decree proceedings the trial court considered the claim of tenancy and found that legal representatives of the 2nd defendant in Original Suit No 412/65 are not entitled to the benefits of Section 4A(i)(a) and as such fixity of tenure. From that decision A.S. 68/78 was filed by the legal representatives of the 2nd defendant in Original Suit No. 412/65. A.S. Nos. 77 and 78 of 1978 were filed by the plaintiff in Original Suit No. 412/65 challenging the quantum of improvements awarded in Original Suit No. 412/65 and 404/65. A.S. No. 77 was directed against Original Suit No. 412/65 and A.S. No. 78 was against Original Suit No. 404/65. In A.S. 68/78 it was found basing on the decision in Chellappan Pillai v. Parameswaram Pillai ILR 1980 (1) Ker 26 that the legal representatives of the 2nd defendant are entitled to fixity of tenure u/s 4A(i)(a). Plaintiff in Original Suit No. 412/65 who was the appellant in A.S. Nos. 77 and 78 of 1978, just before these two appeals were disposed of, filed I.A. 151/80 claiming that he is also entitled to fixity of tenure in his capacity as a tenant under the provision contained in Section 4A(i)(a). That claim was accepted by

the appellate court and both the cases were remanded for consideration of the claim u/s 4A(i)(a).

6. Second Appeal No. 720/80 was filed against the decision in A.S. No. 68/78. In the common final decree in the three cases the finding is that Ext. D1 is only a sub-mortgage and the junction of the husband of the mortgage who is also owner of the equity of redemption will not change the character of the document. The main contention raised by the appellant in the second appeal is that on the ground of res judicata as it is clear that the three suits involving the same properties having common issues were tried and decided by a common judgment with specific findings on issues involved in all the three cases. The appeal was only filed against the decision in Original Suit No. 412/65 and the decision in the other two cases were not appealed against and it was on this basis that before the High Court the question of res judicata was raised and it was accepted. The other question raised was the fixity of tenure u/s 4A(i)(a) of the Kerala Land Reform Act.

7. The High Court apart from the question of res judicata also held that the question of remand is of no consequence as on the facts as stated on the basis of sub-mortgage no advantage could be derived u/s 4A(i)(a) and even by applying the principles decided in the case referred to above.

8. Before us these two questions only were raised. As regards the question of fixity of tenure on the basis of Section 4A(i)(a) is concerned the High Court came to the conclusion that the plaintiff in Original Suit No. 412/65 is only a sub-mortgagee and the sub-mortgage deed in his favour is Ext. P2 dated 17.1.1953. He is therefore not a deemed tenant under the provisions of Section 4A(i)(a) of the Kerala Land Reforms Act as amended. Section 4A(i)(a) reads as under:

4A. Certain mortgagees and lessees of mortgagees to be deemed tenants?(1) 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, a mortgagee with possession of land, other than land principally planted with rubber, coffee, tea or cardamom, or the lessee of a mortgagee of such land shall be deemed to be tenant if?

(a) the mortgagee or lessee was holding the land comprised in the mortgage for a continuous period of not less than fifty years immediately proceeding the commencement of the Kerala Land Reforms (Amendment) Act, 1969; or

In view of this provision it appears that the High Court was right in coming to the conclusion that as the sub-mortgage itself is Ext. P2; dated 17.1.1953 he can not be treated to be a deemed tenant under this provision and in this view of the matter the High Court came to the conclusion that no useful purpose will be served by remanding the matter as had been by the appellate court and therefore the High Court set aside that judgment of the appellate court. In our opinion, the High Court was right in doing so as in view of the facts found by the High Court stated above the question does not arise.

9. In this view of the matter therefore it is not necessary for us to go into the question of res judicata also. These appeals are therefore dismissed. In the circumstances of the case parties are directed to bear their own costs.