

(1988) 02 KL CK 0009

In the High Court Of Kerala

Case No : C.R. P. 2137 and 3219 of 1982

Krishnan Narayanan Nair and Others

APPELLANT

Vs

Sankaran Namboodiri and Others

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Specific Relief Act, 1963 — Section 9

Citation : (1988) 1 KLJ 353

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : C.D. Jose, for the Appellant; N. Viswanatha Iyer, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—I thought, at the first blush, that the question raised in these revision petitions is free from difficulty to answer. But after hearing the arguments of the learned counsel on both sides, I feel that the question requires deeper consideration. The court below adopted the strategy of subterfuge and advised the parties to file a fresh suit. The broad question is this; who is to be preferred (or any one of them to be preferred at all) among the rival claimants for returning the property from the receiver, one, the defendants who were found to be in possession of it on the date of suit and the other, the plaintiff who has title thereto? The trial court preferred neither of them, and hence advised them to seek appropriate remedy in a separate suit. So both of them have come in revision. For the sake of convenience, the first claimants will be described as the defendants and the other as the plaintiff, as they figured in the suit Facts, relevant for these revisions, are the following: Plaintiff filed a suit for a perpetual injunction restraining the defendants from trespassing upon the suit properties. (Though there are more than two items of properties described in the schedule to the plaint, the defendants claimed right only in respect of two items and hence those two items are referred to hereinafter as the suit properties). Defendants contended that the suit properties are in their possession as the same were

outstanding on lease with them, the lessor being the plaintiff himself. He also claimed fixity of tenure as per the provisions, of the Kerala Land. Reforms Act. Plaintiff filed an application for a temporary injunction restraining the defendants from trespassing upon the suit properties. Defendants filed another application for a temporary injunction restraining the plaintiff from entering upon the suit properties. While disposing of the said applications, the trial court found it difficult to decide" upon the possession of either of the parties and hence appointed a receiver for the suit properties, and the receiver so appointed took possession of them. Eventually the suit was dismissed after taking evidence, holding that the suit properties were in the possession of the defendants on the date of suit. The dismissal of the suit was confirmed in appeal and second appeal also. However, no direction was passed regarding return of the suit properties to either of the parties. In the meanwhile the Land Tribunal, before which defendants filed an application claiming tenancy right under the plaintiff, as per the provisions of the Kerala Land Reforms Act, dismissed the application holding that the defendants have no such tenancy right. Counsel said that the order of the Land Tribunal was confirmed in appeal and an application for revision was also dismissed. It was in the aforesaid background that the two interlocutory applications were filed before the lower court for getting possession of the suit properties returned from the receiver. I. A. 604/82 is the application filed by the defendants and I. A. 608/82 is the application filed by the plaintiff. The application of the plaintiff was dismissed on the strength of the finding in the judgment that the plaintiff was not in possession of the suit properties. The application of the defendants was dismissed as the lower court felt it not safe to handover possession of the suit properties to the defendants since the Land Tribunal and the Appellate Authority have found that the defendants have no tenancy right.

2. Three points are not disputed and cannot be disputed in view of the earlier findings. The first is that the defendants were in possession of the suit properties on the date of suit. The second is that the plaintiff has title over the suit properties. The third is that the defendants have no valid tenancy right which they claimed as against the plaintiff.

3. Learned counsel for the plaintiff contended that a receiver holds, the suit properties on behalf of the rightful owner and hence it is the duty of the court to direct the receiver to return the property to the possession of its rightful owner. Learned counsel referred me to a passage from "KERR" on RECEIVERS (at page 130 of the 15th edition) where it is stated thus: "The court takes possession by its receiver, and his possession is that of all parties to the action according to their titles. In some cases after the right has been determined, a receiver will be considered as receiver for the person entitled". Reference was made to a decision of the Division Bench of this Court in Joseph Abraham Vs. Ouseph Eapen and Others, . Muttusami Ayyar, J. in Orr v. Muthia Chetti (1894) ILR 17 Mad 501) was quoted with approval by the Division Bench as follows:

The appointment is the act of the Court and once made-in the interests of justice

or ex debito justitiae, he is an officer or representative of the Court, and subject to its orders. His possession is the possession of the Court by its receiver, and the tenants in possession when he is appointed to receive rents and profits of immovable property, become virtually tenants pro hac vice of the Court, their landlord. His possession is the possession of all the parties to the proceeding according to their titles. For, it has been held in England in similar cases that a receiver appointed by the Courts appointed on behalf and for the benefit of all persons interested, parties to the suit or proceeding

The decisions in *P. Lakshmi Reddy Vs. L. Lakshmi Reddy*, and *Kanhaiyalal Vs. D.R. Banaji and Others*, were also cited to support the contention that the possession of the receiver is on behalf of the rightful owner.

4. The contention based on the authorities cited above is not easy for acceptance, especially since those decisions are distinguishable on facts of this case. In a case where the title of the property is in dispute, a finding regarding title will certainly help the court in deciding as to the rightful owner to whom the property shall be returned by the receiver. But in a case where there is no dispute regarding title, but the dispute is only regarding possession of the property, it is doubtful whether the aforesaid authorities can be of assistance in deciding as to the party entitled to return of such property. To circumvent the hurdle, learned counsel contended that possession of immovable property cannot be used as a shield against its true owner although such possession is a shield as against all others. According to the learned counsel, defendants' possession of the suit properties is "wrongful since the competent Land Tribunal has repelled his contention based on a claim of tenancy under the plaintiff, for, no one can take profit out of his own wrong is the maxim on which such possession cannot be protected as against the true owner. To support the contention learned counsel relied on the following observations of Viswanatha Iyer J. in *Damayanthi v. Theyyan* (1979 KLT 85.) "By committing a wrong one shall not take a profit out of it. He should restore that which he has thereby acquired. Otherwise it will be an inducement to commit a wrong again. It is now well settled that a suit for possession on the basis of prior possession is perfectly maintainable against all except, the true owners. Why is it that an exception is made in the case of a true owner? The principle seems to be this; In the case of true owner he does not acquire any advantage or profit by doing this wrong. As owner he is entitled to exercise his pre existing right to possess and the fact that he exercises that right by himself without resort to a court of law will not disentitle him to retain possession."

5. A distinction is seen drawn between a case for recovery of possession from a true owner based on earlier possession and a case for retaining the present possession as against the true owner. The preponderant view seems to be that the court would not lead its assistance to a person to recover possession from a true owner based on prior possession, whereas courts would lean in favour of helping a person to retain possession even as against the true owner. The mode

of helping such person is by granting prohibitory injunction order against those who make attempts to wrest possession from him. In *Janaki Amma v. Madhava Kurup* (1961 KLT 697) Madhavan Nair, J, has held that it is an erroneous view of law that a person in peaceable possession but having no title thereto is not entitled to an injunction to restrain others from disturbing his possession, "S. 9 of the Specific Relief Act clearly recognises a right of suit in a person in possession of immovable property to maintain his possession. If he is dispossessed without his consent otherwise than in due course of law, he can recover possession thereof by a suit brought within six" months of his dispossession even though he may not be able to prove any title to the property". Raman Nayar, J. (as he then was) has gone a step further in *Vasudeva Kurup v. Ammini Amma* (1964 KLT 468) when His Lordship observed thus: "It seems to be policy of the Indian Law that a person in possession, albeit without title, is entitled to remain in possession even as against the lawful owner until evicted in due course of law. The lawful owner is not entitled to take the law into his own hands and throw out the person in possession. Under S. 54 of the Specific Relief Act, an injunction may be granted not merely to protect a plaintiff's right to property but also to protect his enjoyment thereof. True, the grant of an injunction is discretionary, but the discretion must be exercised in accordance with the policy of the law which is that a person in peaceful possession should be maintained in possession until evicted in due course of law". A later Division Bench in *Alavi v. Mahammedkutty Haji* (1973 KLT 937) has referred to the aforesaid decision of Raman Nayar, J, and approved the ratio therein. *Karthiayani Amma v. Govindan* (1980 ILR (2) Ker 369) Khalid, J. (as he then was) made survey of a number of decisions on the point and restated the aforesaid principle. The head note in the reported decision shows the ratio thus:

A person in possession can be evicted only in due process of law. Even the rightful owner cannot eject him with force. If he cannot be evicted with force, he continues to be in possession and he can resist invasion of his possession by everyone including the rightful owner.

6. The position emerges out of the above discussion is thus: Receiver possesses the property for the parties in the litigation. Normally the receiver shall return the property to the party who is entitled to it. In deciding as to who is the party so entitled the court may have to adopt different standards in different situations. If the suit is fought over the dispute of title to the property, the receiver can be directed to return the property to the party whose title is found by the court. But when the suit is fought, not on title, but over the dispute of possession of the property, there is no such rule that the property shall be returned only to the title holder. In such cases court can direct the receiver to return the property to the one who is found to be in possession on the date of suit, unless there are other reasons to take a different stand. If possession found with a person is so wrongful that even in equity the court would not help him with discretionary remedies like injunction etc., there would be justification in denying such a direction. As the title of the plaintiff was not disputed in this case,

the court went into the question of possession alone and the defendants were found to be in possession of the property, and the suit for injunction was dismissed. In those circumstances the receiver must be deemed to have taken custody of the property from the possession of the defendants. As such, it is only just and proper that the receiver restores possession of the property to the defendants. If the said course is not adopted in this case, the consequence would be that the defendants despite their success in the suit will be compelled to suffer dispossession. It is axiomatic that the act of court shall not prejudice any party. Hence any direction to deliver possession of the property to the plaintiff, though his title to the property is not disputed, would amount to conferring a success in the litigation on a defeated party which has no justification on the facts of this case. The course adopted by the trial court cannot be supported in any view of the matter. The party who succeeded in the suit need not be deprived of its fruit.

In the result, I allow C.R.P. 2137/82 and set aside the impugned order in so far as it went against the defendants. LA. 604/82 stands allowed and the receiver shall restore possession of the property as prayed for in the application. C.R.P. 3219/82 is dismissed. In the circumstances, I make no order as to costs.