

(1973) 10 KL CK 0006

In the High Court Of Kerala

Case No : Civil Revision Petition No. 644 of 1973

Maravakulath Alavi

APPELLANT

Vs

Palarakkat Kallingal Mohammedkutty Haji and Others

RESPONDENT

Date of Decision : 01-10-1973

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 125(3)
Specific Relief Act, 1877 — Section 54

Citation : AIR 1974 Ker 100

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Advocate : V. Bhaskaran Nambiar, C.R. Natarajan, M.K. Ananthakrishnan, R. Bhaskaran and H. Sivaraman, for the Appellant; T.R. Govinda Warriar, K. Ramakumar and A.G., for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, J.—The plaintiff-revision petitioner filed O. S. 7 of 1972. Munsiffs Court, Tirur for an injunction against the respondent herein alleging that he was a tenant under the third respondent. An ex parte ad interim injunction was passed on 7-1-1972, The Munsiff thereafter held that the suit was liable to be stayed u/s 125 (3) of the Kerala Land Reforms Act (Act I of 1964) as a question of tenancy was in-volved in the suit. He stayed proceedings by order dated 31-10-1972 and referred the question of tenancy for determination to the Land Tribunal. Consequent on this order, by a further order dated 14-11-1972 the Munsiff cancelled the order of interim injunction u/s 125 (7). Against this order vacating the interim injunction, the plaintiff-revision petitioner filed an appeal to the Sub-Court which was dismissed. It is against this order that this revision has been filed.

2. Counsel for the revision-petitioner relied upon our recent judgment in C. R. P. Nos. 1510 and 1511 of 1972 and 27 of 1973 (Ker.) in which we considered the scope of Section 125 (3) of the Kerala Land Reforms Act. We have ruled in those

revision petitions that Section 125 (3) is not attracted to suits for injunctions simpliciter. even where the plaintiff claims possession on the ground that he is a tenant. That is because, suits for injunction are merely concerned with the fact of possession, and not with the nature or the character of the possession or the capacity of the possessor. If the plaintiff is found to be in possession, no matter whether in his capacity as a tenant or not, he is entitled to the injunction. If he is not in possession, he is not entitled to the injunction, and it is unnecessary to consider whether the defendant is in possession whether as a tenant or not. In the light of this principle, counsel for the revision petitioner contended that the order dated 31-10-1972 staying the proceedings, and referring the question of tenancy for determination by the Land Tribunal should be vacated suo motu under our powers u/s 115 of the C.P.C. Counsel for the respondents contended that the principle of the Division Bench ruling in C R. P. Nos. 1510 and 1511 of 1972 and 27 of 1973 would not be attracted to a case such as this, where, a person wrongly in possession is seeking to obtain an injunction against the true owner. In support of the proposition he cited to us the decisions of the Supreme Court in Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, and in Somanath Berman v. Dr. S. P. Raju. AIR 1970 SC 848 and in M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, . We find nothing in these decisions to support the broad principle contended for by the counsel for the respondents that a person in possession, even if it be wrongful. Is not entitled to an injunction against the true owner till his possession is lawfully terminated by due process of law. Indeed, the authority of a decision of this Court (Raman Nayar J.) in Vasudeva Kurup v. Ammini Amma 1964 Ker LT 468 is to the effect that a person in possession is entitled to remain In possession even as against the true owner, unless he is thrown out by due process of law, We have referred to this decision in C. B. P. 1510 of 1972 and 27 of 19T3 (Ker).

3. Counsel for the respondent relied on the ruling of a learned Judge of the Madras High Court in Alagi Alamelu Achi Vs. Ponniah Mudaliar, . We see that the learned Judge has broadly stated that a person in wrongful possession of the property is not entitled to be protected against the lawful owner by order of injunction; and that a court should not lend its assistance for protecting the wrongful possession of such a person. No authorities are referred to in support of this broad proposition," and we regret we are un-able to accept the same as correct.

4. The principle of a Division Bench ruling of this Court, of Velu Pillai and Krishnamoorthy Iyer. JJ. in Kuttan Narayanan Vs. Thomman Mathayi, also seems to support the view we take, namely that a person in possession--even if wrongful--is entitled to maintain his possession even against the true owner, till evicted by due process of law. We are therefore of the opinion that the order of the Munsiff staying the suit and referring the issue of tenancy for determination by the Land Tribunal was unsustainable in law. We set aside the same u/s 115 of the C.P.C,

5. The order of the Munsiff vacating the interim injunction was purely consequential on the order staying the suit and referring the proceedings to the Land Tribunal. The interim injunction was not vacated on the merits. The Munsiff took the view that as the proceedings were liable to be staved u/s 125 (3), the injunction had to be cancelled u/s 125 (7) of the Act. The premise on which the Munsiff proceeded being found to be wrong and unsustainable, it follows that the consequential order has to be set aside, and we do so,

6. Counsel for the respondents contended that there was no injunction to force against them from 14-11-1972 till this date, when, by reason of oar vacating the order cancelling the injunction, the interim injunction will stand revised or reimposed. He submitted that this would work hardship and entail serious consequence on his clients, who, in the interregnum, had dealt with the property as persons in possession. We think these are matters which can well be taken into account and duly provided for by the Munsiff's Court, That court has only passed an order of interim in-junction and vacated it, not on the merits, but u/s 125 (7) of the Land Reforms Act. It would be open to the parties to approach that court for a speedy determination of the question as to whether interim injunction should be made absolute, or should be vacated. In such proceedings it would be open to that court to give appropriate directions and to make such suitable orders as it may deem fit,

7. Subject as above, we allow this revision petition, No order as to costs.