

(1953) 03 KL CK 0011

In the High Court Of Kerala

Case No : Second Appeal No's. 206, 207, 212 and 213 of 1124

Narayana Kaimal Padmanabha Kaimal

APPELLANT

Vs

Sanku Kesavan and Others

RESPONDENT

Date of Decision : 19-03-1953

Acts Referred:

Cochin Tenancy Act, 1113 — Section 25(1)

Cochin Verumpattomdars Act, 1118 — Section 8(1)

Citation : AIR 1954 Ker 313

Hon'ble Judges : G. Kumara Pillai, J

Bench : Single Bench

Advocate : T.K. Sankara Menon, for the Appellant; P. Raman Menon and T.K. Govindankutty Menon, for the Respondent

Final Decision : Dismissed

Judgement

Kumara Pillai, J.—These four second appeals arise out of three connected suits and were heard together. S.A. Nos. 206 and 212 of 1124 arise out of O.S. Nos. 68 and 107 of 1121 respectively of the Ernakulam District Munsif's Court and S.A. Nos. 207 and 213 of 1124 arise out of O.S. No. 527 of 1120 of the same Court.

2. The plaint property in O.S. No. 527 of 1120 belonged originally to the Ollarikkat family and was demised on kanom by the said family in 1058 to Sanku, the karnavan of the Plaintiffs in that suit. Ex. 8 is a copy of the kanapattom deed. In 1076 Sanku executed a usufructuary mortgage deed in respect of this property in favour of one Chandy. Ex. D is a copy of the usufructuary mortgage deed executed by him. Subsequently Chandy assigned the mortgage right to Kesava Kaimal, who was a member of the Ollarikkat family, and Kesava Kaimal in his turn assigned it to his son, Raghava Panicker, in 1113. Ex. II is the assignment deed executed by Kesava Kaimal in favour of Raghava Panicker.

By Ex. I partition deed executed by the members of the Ollarikkat family in

1115, the Southern half of the property was allotted to the share of Padmanabha Kaimal, who is the Plaintiff in O.S. No. 68 of 1121 and the second Defendant in O.S. No 527 of 1120; and the Northern half was allotted to the share of Gopala Kaimal, who is the Plaintiff in O.S. No. 107 of 1121 and the first, Defendant in O.S. 527 of 1120. After the partition Gopala Kaimal obtained an assignment of the usufructuary mortgagee right in respect of the Northern half of the plaint property from Raghava Panicker. Ex. X is the assignment deed which Raghava Panicker executed in his favour. For the Southern half of the property Padmanabha Kaimal also obtained a lease from Raghava Panicker. Thus the members of Sanku's family are the kanomdars of the plaint property, Gopala Kaimal is the mortgagee and also the jenmi of the Northern half of the plaint property, and Padmanabha Kaimal is the lessee of the mortgagee and also the jenmi in respect of the Southern half. O.S. No. 527 of 1120 was filed by the members of Sanku's family for redemption of Ex. D mortgage; and O.S. Nos. 68 and 107 of 1121 were filed by Padmanabha Kaimal and Gopala Kaimal respectively for redemption of Ex. 8 kanom which the Ollarikkat family had given to Sanku in 1058.

3. As only two points were pressed at the time of the hearing of these second appeals, it is unnecessary to refer in this judgment to all the contentions of the parties in the three suits. In O.S. Nos. 68 and 107 of 1121, filed by the jenmies for redemption of the kanom, the kanomdars contended that they were not liable to be evicted, and the ienmies, i.e., Plaintiffs in those suits, contended that they had the right to evict the tenants u/s 25(1)(a), Cochin Tenancy Act, 15 of 1113. The Courts below concurrently held that the jenmies had not made out a case for evicting the kanom tenants u/s 25(1)(a) of the Tenancy Act, and dismissed O.S. Nos. 68 and 107 of 1121 without costs. In S.A. No. 20S of 1124 and S.A. No. 212 of 1124 the Plaintiffs in O.S. Nos. 68 and 107 of 1121 contended that Section 25(1)(a) applies to these cases and that they are therefore entitled to get a decree for eviction.

4. Section 25(1)(a) reads:

25(1). On the expiry of the demise, the kanom tenant shall be liable to eviction from the whole or a portion of his holding as the case may be, for any of the following causes-

(a) If the holding or a portion thereof is required by the landlord for the bona fide purposes of extending his own residential house or building a new house for his residence;

Provided that, if the landlord fails to extend his residence or build a new house for his residence within a period of three years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

It is urged by the Appellants that if as a matter of fact the jenmi requires the property for the purpose of extending his own residential house or building a new house for his residence, the requirement must be deemed to be a "bona fide"

one and that he should in such a case be allowed to recover possession of the property from the kanom tenant. It is also urged that the Plaintiff in O.S. No. 68 of 1121 has in fact constructed an "arappura" and also collected materials to construct residential quarters in the property.

In Section 8(1)(f), Cochin Verumpattomdars Act, 8 of 1118, also a provision similar to that in 25(1)(a), Cochin Tenancy Act is found. Section 8(1)(f) of Act 8 of 1118 reads:

8. (1) No suit for eviction of a verumpattomdar from his holding or any portion thereof shall lie except on the following grounds

X X X

(f) that at the end of the agricultural year, the "jenmi" or any intermediate landlord requires the holding or part thereof, except the "Kudiyiruppu, bona fide" for building residential quarters for the use of himself or for any, member of his family or "tarwad" or "thavazhi" who has a beneficial or proprietary interest therein.

The test as to whether the requirement of the landlord was "bona fide" or not in a case to which the Cochin Verumpattomdars Act applied came up for consideration before a Full Bench of the Cochin High Court in "Chacko v. Kutton" 38 KER L.R. 233 (F.B.)(A). In that case Krishnaswami Iyengar C.J., said:

What the Statute lays down as a condition of the landlord having the power to evict is that he must require the holding "bona fide". The use of the word "bona fide" which qualifies the verb "requires" means that the state or attitude of the landlord's mind when he seeks to evict the tenant is to be the subject-matter of the investigation. Does he genuinely, that is truly and honestly want the property or does he while really not wanting the property pretend that he wants it?

The Chief Justice of this Court, who was also a party to the decision in- " 38 KER L.R. 233 (F.B) (A)", said in that case:

The Court has, therefore, before decreeing eviction to be satisfied that the demand is honestly made and not designed to defeat the provisions of the Verumpattomdars Act or to deprive the tenant of the right to fixity of tenure he obtained thereunder. No doubt, the attempt to avail of any of the grounds for eviction can in a sense be said to be an attempt to defeat the object of the Act. "The question in each case would be whether the exceptions are sought to be abused. An appreciation of the circumstances which induce or influence a landlord to seek eviction of the tenant would therefore, be necessary to ascertain whether the demand is made bona fide.

On a consideration of Section 25(1)(a), Cochin Tenancy Act, I am of the opinion that the same has to be applied when eviction is sought under that section. The Jenmi's statement that he requires the property for the purposes mentioned in Section 25(1)(a) is not the last word, and it is the duty of the Court to apply

the test formulated in- " 38 KER L.R. 233 (F.B.)(A)", referred to above and find out whether the demand is for the "bona fide" purposes mentioned in the section. As pointed out by Koshi, J., in -" 38 KER L.R. 233 (F.B.)(A)", the Court must ascertain whether the landlord requires the land for the "bona fide" purpose mentioned in the section or not on a proper appreciation of the circumstances which induced or influenced him to seek eviction.

On the evidence in the present cases, the Courts below have concurrently found that the landlords did not require the land for "bona fide" purposes mentioned in the section and that their demand for the surrender was in the nature of retaliation for the suit filed by the Kanomdars to redeem Ex. D mortgage. It is significant to not in this connection that they filed the suits for redemption of the kanom only long after kanomdars filed their suit for redemption of mortgage. No ground has been made out by Appellant's Counsel for interfering with the current finding of the Courts below that the requirements of the jenmies were not "bona fide" and were mere cloaks of their intention to retain possession of the property which they had obtained under the mortgage and lease. S.A. No. 206 of 1124 and S.A. No. 212 of 1124, therefore, fail and have to be dismissed with costs.

5. The only ground urged in S.A. Nos. 207 and 213 of 1124, is that Defendants 1 and 2 in O.S. 527 of 1120, are entitled to get their costs in that suit and that the Courts below were wrong in ordering the parties to suffer their costs. It is true that in a mortgage suit, the mortgagee is ordinarily entitled to get his costs. But the Judgments of the Courts below show that it was because the mortgagees had put forward untenable contentions that costs were not awarded to them. The lower appellate Court considered the question of costs in para. 12 of the judgment, and has given proper reasons for ordering the parties to suffer their costs. I agree with the reasons stated in that paragraph.

6. In the result, all the four second appeals fail and are dismissed with costs.