
(1963) 08 KL CK 0035
In the High Court Of Kerala
Case No : S.A. No. 905 of 1961

Narayanan Nair and Another

APPELLANT

Vs

Kamalakshi Amma and Others

RESPONDENT

Date of Decision : 06-08-1963

Acts Referred:

Kerala Compensation for Tenants Improvements Act, 1958 — Section 4, 5(3)

Citation : (1963) KLJ 1131

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : V.S. Moothath, K.J. Joseph and M.C. Sen, for the Appellant; G. Raghava Panicker, N. Sudhakaran and C.K. Narayanan Nair, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—The preliminary decree for partition made on 15-6-1951 set aside the sale under which the appellants (defendants 3 and 6) claim, so far as the respondent plaintiffs were concerned, and declared the share to which the plaintiffs were entitled. That decree was affirmed in appeal and in second appeal. From 15-6-1951, at any rate, the appellants cannot, as against the respondents, claim to be "tenants" within the meaning of Kerala Act 29 of 1958, taking shelter u/s 2(d) (iii) thereof—the only provision of law under which they can put forward such claim—since, after the passing of the preliminary decree, they could not have entertained a bona fide belief that they were entitled to make improvements. And, so far as improvements effected before 15-6-1951 are concerned, the final decree made on 20-8-1954 expressly disallowed any compensation for improvements. That decree has become final, and, as I shall presently show, is not liable to be reopened u/s 5(3) of the Act, the only provision under which a defendant in a decree for eviction can get compensation in execution in variation of the decree. As observed by me in *Velukutty v Simson* ((1961) II K. L. R. 238) and by Velu Pillai J. in *Yohannan v Geevarughese* (1962 K. L. J. 1272) and in S. A. 1241 of 1959, section 4 of the Act confers a

substantive right to compensation on the tenant; but it entitles him to remain in possession only until eviction in execution of a decree or order of court. The compensation has to be adjudged and provision made for its payment in the decree or order for eviction, whether that decree or order be before or after the passing of the Act. But the decree may be varied u/s 5(3) and a revaluation made if the conditions required by that sub-section are satisfied-and as I have already said that is the only provision by which the decree can be reopened. Now the very first condition is that compensation must have been adjudged in the decree; or else there would be no date in relation to which any improvement can be said to be subsequent so as to entitle him to a revaluation on account of any change in condition. I do not think that it would be right to say that, when compensation has been declined by the decree, the decree adjudges the compensation as "nil". It would be a case where no compensation has been adjudged by the decree-obviously the legislature thought that a person who had been found by the decree to be disentitled to compensation for improvements, in fact, effected, or a "tenant" who for the first time sets about effecting improvements after suffering a decree for eviction, should be precluded from claiming compensation in execution-so that section 5(3) does not come into play at all.

2. In my view the appellants were not entitled to any compensation at all and must consider themselves fortunate that the courts below have awarded them compensation for improvements effected subsequent to the final decree.

3. The view I am taking is, I believe, in accord with the view expressed by Velu Pillai J. in S. A. No. 1241 of 1959. I dismiss the appeal with costs.