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**(2008) 09 KL CK 0035**

**In the High Court Of Kerala**

**Case No : Regular Second Appeal No. 56 of 2005**

N.P. Balakrishnan

APPELLANT

Vs

The Secretary (Executive Officer) and P.M.R. Mariyumma

RESPONDENT

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**Date of Decision : 03-09-2008**

**Acts Referred:**

**Citation : (2008) 09 KL CK 0035**

**Hon'ble Judges : K.P. Balachandran, J**

**Bench : Single Bench**

**Advocate : B. Krishnan, for the Appellant; No Appearance, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

K.P. Balachandran, J.—This is appeal filed by the plaintiff in O.S.265/95 of Munsiff's Court, Kannur assailing the concurrent dismissal of the suit by the courts below. Appellant filed O.S. 265/95 aforesaid inter alia on the allegation that the scheduled properties were owned and possessed by Arukandi Anandan who assigned the same to Neendan Narayanan as per Ext.A1 assignment deed dt.24/05/65; that the said Narayanan in turn executed a registered release under Ext.A2 in favour of the plaintiff on 02/06/1965 and ever thereafter the scheduled property is in his possession and enjoyment and he has put up sheds and lime kiln in the said property and is conducting business of stocking and sale of cement and conducting lime kiln under licence obtained from the Government and the Panchayath; that the second defendant is the neighbour of the plaintiff who is trying to encroach upon the scheduled property; that she has filed R.C.P. against the plaintiff contending that she is the landlady of the building in the scheduled property and it is reliably learnt by the plaintiff that for creating evidence the second defendant has applied for licence for construction of a building in the scheduled property at the place occupied by the plaintiff's building and premises; that immediately on coming to know about her intention, plaintiff issued notice to the defendants to refrain from the said illegal acts and the plaintiff suspects the bona fides of the defendants and apprehends that the

defendants are colluding together illegally to create plan and licence and such other documents in favour of the second defendant.

On the above allegations, the plaintiffs prayed for a decree of permanent prohibitory injunction restraining the defendants from creating any licence, plan or other documents so as to enable the second defendant to put up any construction in the scheduled properties.

2. The first defendant filed a written statement stating that it is true that the second defendant has applied for licence for construction of a building though however, the allegation of collusion between the first and second defendant is absolutely false and baseless; that on getting the application the first defendant has taken necessary steps required in the matter that in the meanwhile, plaintiff has issued lawyer's notice which also is under scrutiny; that a notice was issued to the plaintiff to substantiate his objections to the application of the second defendant and that the first defendant will issue licence only under the relevant rules and regulations uninfluenced by anyone and only in case it is found that the licence applied for is proper and genuine, permission will be granted; that however, there is no justification to resort to remedy through Civil Court in the matter of granting licence even while the application is under consideration and the Civil Court has no jurisdiction to try the suit and the suit has only to be dismissed.

3. The second defendant filed written statement resisting the suit contending that she is the absolute owner of the scheduled property and the plaintiff is only a tenant under her in respect of the building situated in the property and therefore, the suit is not maintainable; that the suit is filed with malafide intention of grabbing the property of the defendant; that Nadukandi Narayani Amma and her sister's children namely Subadramma, Leela Amma and Lakshmanan were joint owners of the scheduled properties as per Kanam Kuzhikanam right under Uppottu tharwad; that they later sold the property to the defendant as per Ext.B1 sale deed; that Arukandi Anandan was only a tenant under the said Narayani Amma in respect of one shop room, three lime kilns, one room, a water tank and two sheds as per registered lease deed No. 1437/1966 of Sub Registry office, Kannur; that Arukandi Anandan was only a tenant of the above said Narayani Amma as per registered lease deed No. 249/1945 of Sub registry Office, Kannur and later he surrendered the Shop room to Narayani Amma as per registered deed No. 1328/1951 and continued as a tenant in respect of the building in plaint schedule properties on a monthly rent of Rs. 5/-; that thereafter as per Ext.A1 registered document dt.24/05/1965 the tenancy right was assigned by Arukandi Anandan to Neendan Narayanan and it is incorrect to say that it is assignment of ownership and it is only a tenancy right that was so assigned that on the same day under Ext.A2 the tenancy right was assigned in favour of the plaintiff by Neendan Narayanan and the plaintiff consequently, executed Ext.B2 lease deed in favour of Narayani Amma enhancing rent to Rs. 25/- that to Ext.B2 Neendan Narayanan is also a witness; that as per

the tenancy created after 1964, plaintiff is only a tenant coming under the purview of the Rent Control Act; that the defendant purchased the scheduled property under Ext.B1 in 1966 and subsequently, she along with Narayani Amma issued Ext.B3 notice dt.28/07/66 to the plaintiff informing him about the assignment and consequently, he attorned to the defendant and continued as a tenant under her by paying rent; that ever after 1966 the defendant has been paying land tax at the Village Office and building tax to the Panchayath in respect of the scheduled properties and the building therein; that the second defendant filed R.C.P.111/95 before the Rent Controller, Kannur seeking eviction of the plaintiff from the scheduled building even before institution of the present suit and the present suit is only a counter blast to the above said R.C.P filed by the second defendant; that it is incorrect to say that defendants 1 and 2 colluded and are creating plan and licenses to put up constructions in the scheduled property; that eviction of the plaintiff was for reason of bonafide need of the son of the second defendant to start an independent timber business in the building converting the scheduled building into an office building renovating the same and utilising the remaining land portion for the purpose of conducting saw mill and for storing timber and it was for that purpose that plan of the proposed building was submitted for approval to the first defendant; that the second defendant is entitled to renovate the present building and make any construction after evicting the plaintiff from the scheduled building through due process of law and the suit has therefore, to be dismissed.

4. On the above pleadings the trial court raised necessary issues for trial and considering the pleadings of the parties in the light of the evidence adduced at trial which consisted of oral evidence of DW1 and documentary evidence Exts.A1 to A12 and B1 to B10 dismissed the suit with costs. The plaintiff thereupon filed A.S.137/97 before the first appellate court and the first appellate court dismissed the appeal concurring with the findings of the trial court. Hence, this R.S.A by the defeated plaintiff.

5. This R.S.A was admitted on the following substantial question of law:

Were the courts below justified in thinking that injunction is sought in respect of B2 property while in fact the plaintiff had sought for injunction in respect of A1 and A2 properties.

6. It is vehemently argued before me by the learned Counsel for the appellant that Ext.B2 is a rental deed executed in relation to the structures in the scheduled property whereas the claim advanced by the plaintiff is to the land appurtenant thereto on the basis of Exts.A1 and A2 documents and that though delivery of building has been taken by the second defendant in execution of the order in R.C.P.111/95 by reason of Exts.A1 and A2 documents the plaintiff is entitled to remain in possession of the property which is the premises of the structures covered by Ext.B2. Ext.A1 though has nomenclature of a sale deed the recitals therein show that Arukandi Anandan was assigning to Neendan Narayanan the leasehold right he was having in relation to the building and

premises wherein lime kiln had been installed and trade in lime was being conducted. It is that right that had been assigned by Neendan Narayanan in favour of the plaintiff. It is also recited in Ext.A2 that Neendan Narayanan is assigning to the plaintiff only the right under the rental arrangement ( ) and not any other right and Neendan Narayanan could assign to the plaintiff only that right which he obtained under Ext.A1 which also is only right to enjoy the structures and the premises wherein lime kiln is installed. In R.C.P. 111/1995 the plaintiff who was the respondent therein had raised contentions similar to that he has advanced in the present plaint and has lost his contentions and finally he was evicted in execution of the order in R.C.P. 111/1995. The eviction no doubt was from the buildings, sheds and other structures which were scheduled in R.C.P. 111/1995. It is futile to contend for the appellant that despite eviction effected from the building, structures etc. which takes in the sheds, lime kilns etc. in the scheduled property which he held under Ext.B2 rental deed, he is continuing in occupation of the premises and that he has possession thereof despite eviction effected in execution of the order in R.C.P. 111/95. The suit is only for a decree of permanent prohibitory injunction. When it is found that he had been evicted in execution of the order in R.C.P. 111/95 he is not at all in possession of the building, sheds or other structures or the premises thereof and he has been rightly found concurrently by the courts below as having absolutely no possession over the property scheduled to the plaint. The dismissal of the suit by the courts below cannot be faulted in the facts and circumstances of this case and it is not a case where the courts below were refusing injunction in respect of the property covered by Exts.A1 and A2 thinking that injunction is sought in respect of Ext.B2 property. In fact, the courts below have concluded on the evidence adduced in the case that what plaintiff got as per Ext.A2 is only the assignment of tenancy right and by Ext.B2 he has attorned to the predecessor of the second defendant who along with the second defendant had issued notice also intimating the transfer in favour of the second defendant and R.C.P. 111/95 was also filed on the basis thereof by the second defendant and that also was decreed. Thus, there is absolutely no merit in the R.S.A and it is dismissed confirming the dismissal of the suit concurrently by the courts below.