
(2016) 03 KL CK 0156
In the High Court Of Kerala
Case No : R.S.A. No. 1304 of 2015

Puthiyaveettil Rohini and Others

APPELLANT

Vs

T.V. Gangadharan and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 106

Citation : (2016) 03 KL CK 0156

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : K.V. Pavithran, Jayanandan Madayi Puthiyaveettil, P. Saju, Nias Moopan and E.M. Unnikrishnan, Advocates, for the Appellant;

Final Decision : Dismissed

Judgement

P.B. Suresh Kumar, J.—1. The defendants in a suit for recovery of possession are the appellants in this second appeal.

2. The suit property measuring 2.5 cents belonged to Kunnummal Ummayya Umma. One Namath Govindan executed a marupat in favour of Kunnummal Ummayya Umma and thereby took the suit property on lease on 7.11.1953. Thereafter, the lessee has constructed a building in the suit property and was conducting business therein. While so, Kunnummal Ummayya Umma assigned the suit property to Omban Ayishumma. While Omban Ayishumma was holding the property, Namath Govindan executed Ext. A1 marupat in favour of Omban Ayishumma on 15.5.1956 and thus became the tenant under the assignee of the landlord. Thereupon, Omban Ayishumma had assigned the suit property along with other properties to the plaintiff. In the meanwhile, Namath Govindan assigned the leasehold interest in the property to Kanniyeri Raman Nambiar and Kanniyeri Raman Nambiar in turn assigned the leasehold interest in the property to M.C. Kuhiraman Nambiar. The legal representatives of M.C. Kuhiraman Nambiar are the defendants in the suit. The case of the plaintiff is that though the tenancy in respect of the land and building was terminated, the defendants

have not surrendered vacant possession of the suit property. The defendants contested the suit by filing a written statement. Though there is no pleading in the written statement filed by the defendants that they are entitled to the protection of Section 106 of the Kerala Land Reforms Act ("the Act" for short), on the basis of the materials on record, the trial court found that the defendants are entitled to the protection of Section 106 of the Act. Consequently the suit was dismissed.

3. The plaintiff took up the matter in appeal. One of the contentions raised by the plaintiff in the appeal was that in the absence of any pleading in the written statement that the defendants are entitled to the protection of Section 106 of the Act, the trial court should not have decided the said issue in their favour. The appellate court found that though the defendants have not specifically claimed the protection of Section 106 of the Act in the written statement filed by them, the trial court cannot be faulted for having decided the said question in the suit as the defendants have claimed that they are entitled to fixity of tenure. Thereupon, the appellate court proceeded to decide the correctness of the finding rendered by the trial court as to the entitlement of the defendants to the protection of Section 106 of the Act. On a meticulous examination of the facts and circumstances of the case as also the provisions of the Act, the appellate court found that the defendants are not entitled to the protection of Section 106 of the Act. According to the appellate court, the protection envisaged under Section 106 of the Act is not a protection given over the land taken on lease for industrial or commercial purposes, but a protection given for the land where the tenant had constructed a building for such commercial or industrial purposes and that therefore, the benefit of the protection can be claimed only as long as the building constructed by the tenant exists in the land. Admittedly, the building originally constructed by the lessee Namath Govindan was not in existence on the date of institution of the suit. Consequently, it was held by the appellate court that the defendants are not entitled to the protection of Section 106 of the Act. Further, as noted above, the defendants are not the assignees or the legal representatives of the tenant of the land who has constructed the building in the suit property. They are only the legal representatives of the assignee of the tenant who has constructed the building in the suit property. According to the appellate court, going by the object of Section 106 of the Act, the protection of the said provision can be claimed only by the lessee or his legal representatives or assignees of the land who have constructed the building in the leasehold. In other words, according to the appellate court, the legal representatives of the assignees of the lessee who has already constructed the building are not entitled to the protection of the said provision. In so far as the defendants are not the lessees or the assignees or the legal representatives of the lessees who have constructed the building in the property, it was held by the appellate court that they are not entitled to the protection of Section 106 of the Act on that ground also. Further, since Namath Govindan had executed Ext. A1 lease after the construction of the building in the property, according to the appellate court,

though there was no physical surrender of the leasehold to the lessor, there was an implied surrender of the leasehold by the lessee to the lessor. It was held by the appellate court that protection of Section 106 of the Act can be claimed only by the tenant who has constructed a building in the leasehold and since the defendants have no case that any building has been constructed after Ext. A1, they cannot claim the protection of Section 106 of the Act on that ground also. Consequent on the said findings, the appellate court reversed the decision of the trial court and decreed the suit as prayed for. Hence this second appeal by the defendants.

4. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

5. As noted above, Ext. A1 is a marupat executed by Namath Govindan, the original lessee in favour of the assignee of the original landlord, namely, Omban Ayishumma. The defendants have no case that any building has been constructed by them or their predecessor in the suit property after Ext. A1 marupat. The view taken by the appellate court is that though Ext. A1 marupat is in the nature of renewal of the lease created as early as on 7.11.1953, by virtue of the said marupat, there has been a surrender of the lease created on 7.11.1953. According to the appellate court, if there has been a surrender of the original lease created on 7.11.1953, Ext. A1 is a fresh lease as far as the suit property is concerned and in the absence of any case for the defendants that they have constructed any building in the suit property pursuant to Ext. A1, they are not entitled to the protection of Section 106 of the Act. An identical situation arose for consideration before a bench of this Court in *Sulaikha Beevi v. Mathew* (, 2001 KHC 109). In the said case, this Court found that the tenant is not entitled to the protection of Section 106 of the Act. The contention advanced by the tenant in the said case was that he continued to occupy the leasehold despite the execution of the renewal lease and in the absence of any physical surrender of the suit property to the lessor, he is entitled to the protection of Section 106 of the Act. This Court repelled the said contention, relying on the decision of the Apex Court in *Smt. Kamlabhai and others v. Mangilal Dulichand Mantri* (, AIR 1988 SC 375). The impugned decision of the lower appellate court has been rendered relying on the decision of this Court in *Sulaikha Beevi v. Mathew* (supra) also.

6. The learned counsel for the appellants, relying on the terms of Ext. A1, contended that there is no mention therein about the building in the suit property, whereas, the lease deed in *Sulaikha Beevi v. Mathew* (supra) refers to the building in the land as well. In other words, according to the learned counsel, there can never be an implied surrender of the building by virtue of Ext. A1 lease and therefore the decision in *Sulaikha Beevi v. Mathew* (supra) has no application to the facts of the present case. I do not find any merit in the said argument. Section 106 of the Act reads thus:

"106. Special provisions relating to leases for commercial or industrial purposes.--

(1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order or decree of Court, where on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.

Explanation -For the purposes of this section, -

(a)"lessee" includes a legal representative or an assignee of the lessee; and

(b) "building" means a permanent or a temporary building and includes a shed.

(1A) The lessor or the lessee may apply to such authority as may be prescribed for varying the rent referred to in sub-section(1), and thereupon such authority may, after taking into consideration such matters as may be prescribed and after giving the lessor and the lessee an opportunity of being heard, pass such orders on the application as it deems fit.

(2) If, between the 18th December, 1957 and the date of commencement of this Act, any decree or order of Court has been executed and any persons dispossessed by delivery, such person shall, on application before the Land Tribunal, be entitled to restoration of possession:

Provided that, before restoration, such person shall be liable to pay--

(i) the compensation paid by the landlord for any improvements in the land and, subsisting at the time of restoration;

(ii) the compensation for any improvements effected subsequent to the delivery:

Provided further that he shall not be entitled to restoration if the property has passed on to the possession of a bona fide transferee for value.

(3) Nothing contained in sub-section (1), sub-section (1A) and sub-section (2) shall apply to lands owned or held by the Government of Kerala or a local authority.

Explanation - For the purpose of this sub-section, "local authority" includes the Cochin Port Trust and any University established by an Act of the Kerala State Legislature."

A close reading of Section 106 of the Act would indicate beyond doubt that the intention of the legislature was to afford protection to lessees who have constructed buildings for commercial or industrial purpose in the lands leased for commercial or industrial purpose before 20th May, 1967. The learned counsel for the appellants has not disputed the fact that there was an implied surrender of the land leased out as per the terms of the earlier lease commenced on 7.11.1953. His contention is only that there was no express or implied surrender of the building. Since protection of Section 106 of the Act is confined only to those tenants who have constructed buildings in the lands leased for commercial

or industrial purpose and since the defendants have no case that they have constructed any building in the suit property pursuant to Ext. A1 lease, the issue whether there has been an express or implied surrender of the building does not in any way help the appellants. As it is found that one of the grounds on which the appellate court declined protection of Section 106 of the Act to the defendants is sustainable in law, I am not considering the correctness of the remaining grounds on which the appellate court found that the defendants are not entitled to the protection of the said provision.

In the result, the second appeal is devoid of merits and the same is accordingly dismissed in limine. All the interlocutory applications in the appeal are closed.