
(1989) 11 KL CK 0011

In the High Court Of Kerala

Case No : A.S. No. 188 of 1979 and C.R.P. No's. 1996 and 2019 of 1980

Seetha @ Seethalakshmy Ammal

APPELLANT

Vs

P.P. Chembakammal and others

RESPONDENT

Date of Decision : 07-11-1989

Acts Referred:

Citation : (1990) 1 KLJ 159

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : M.B. Kurup, P. Velayudhan Jose, K. Kochupappu and T.M. Chandran, for the Appellant; T.S. Vetikiteswara Iyer and P.K. Balasubramonyan, for the Respondent

Final Decision : Allowed

Judgement

S. Padmanabhan, J.—The suit properties and other items belonged to deceased Padmanabha-Iyer. He executed Ext. A1 will bequeathing life estate to his wife and reversion to his two daughters. Respondent-plaintiff is one of the daughters and Parvathi Ammal is the other. Padmanabha Iyer died in 1955 and his widow in 1962. Daughters settled their claims by two release deeds of 1963 executed between them. When Padmanabha Iyer died in 1955, Krishnan and Chami were in possession As tenants. They surrendered to the widow in 1957. Plaint schedule items are the properties obtained by the plaintiff, who is one of the daughters, and the other items were obtained by Parvathi Ammal after the death of the widow on the basis of the release deeds. So much facts are not in dispute. O.S. No. 114 of 1974, which gave rise to VS. No. 188 of 1979, was filed for recovery of possession on the strength of title. Sole defendant, deceased Natesa Iyer was the father of the appellants, who were impleaded as additional defendants after his death. Natesa Iyer and DW 2 Kalyana Sundara Iyer are the brothers of plaintiff and Parvathi Ammal. Case of the plaintiff is that from 1957, DW 2 was managing the properties till 1964 under a power of attorney jointly executed by the father and mother and after he surrendered in 1964, she was in direct

possession and Natesa Iyer was assisting her. Her further case is that she executed a power of attorney in favour of the defendant in 1971 when she went to Benarus and on her return, the defendant refused to surrender the properties even though the power of attorney was cancelled. But the case of the defendant is that DW 2 himself was cultivating as tenant of the mother after the previous tenants surrendered in 1957 for an annual rent of 500 paras of paddy and he surrendered in 1960. The mother then entrusted him on oral lease for the same rent. After her death, he attorned to the plaintiff and is even now continuing as tenant. Management under the power of attorney was denied by him.

2. On the same allegations, he filed an O.A. before the Land Tribunal for purchase of the rights of the plaintiff in 1972. In 1976 plaintiff also filed an O.A to purchase the rights of the ultimate jenmi. Reference to the Land Tribunal from the civil suit was decided against the defendant on the basis of the evidence in the O.A. Accepting that finding, the suit was decreed. A.S. No. 188 of 1979 is against that decision. C.R.P. No. 2019 of 1980 is by the appellants against the dismissal of O.A. No. 4370 of 1972 confirmed by the Appellate Authority. C.R.P. No. 1996 of 1980 is also by them against the order of the Appellate Authority confirming the order allowing O.A. No. 3136 of 1976 filed by the plaintiff. They were heard together.

3 Land, Tribunal and the trial Court seem to have overlooked material items of evidence and circumstances, including clear admissions of the plaintiff and her sister. Trial court was bound to accept the finding of the Land Tribunal. Deposition of the original defendant before the Land Tribunal is Ext. B6 and that of the plaintiff is Ext. B10. She was not examined before the Civil Court where she did not let, in any other oral evidence. Defendant died before the suit came up for trial. One of the appellants was examined as DW 1 and the prior lessee as DW 2. DW 3 is not of much use. DWs 1 and 2 and Ext. B6 proved the lease transactions even though Ext. B6 and the evidence of DW 1 could be said to be interested. That stigma cannot be attached to DW 2 who is equally related to both though he was also branded as an interested witness. The oral evidence Was amply supported by the admissions in Ext. B10 and other admissions of the plaintiff and her sister in various documents.

4. There was Ext. P8 power of attorney jointly executed by the father and mother in favour of DW 2 providing that even on the death of one of them it will continue. But the contention and evidence is that after the death of the father, nobody treated Ext. P8 as in force. The evidence is that from 1957, when the tenants surrendered, DW 2 was cultivating as the tenant of the mother and on his surrender in 1960, defendant was put in possession as lessee and he subsequently attorned to the plaintiff after the death of the mother after execution of Ext. A2 release by the sister in favour of the plaintiff and Ext. B4 release by plaintiff in favour of the sister on 26-2-1963. Ext. A3 power of attorney by the plaintiff in favour of the defendant in 1971 when she went to Benarus seems to have been treated by all concerned only subject to the lease-

hold right of the defendant. That is so even though the plea of ignorance of Ext. A3 in the written statement was relaxed to a certain extent in Ext. B6

5. Though in this part of the country the word "pattom" is ordinarily understood to mean rent payable by a tenant to the landlord, it is having other connotations also depending on facts and circumstances. Burden of proof is one of the factors to be taken into account in considering the connotation. When the owner of the land seeks possession on the strength of title alleging that the possessor has no title and his title is proved or admitted, he can claim a decree unless the defendant proves the existence of a tenancy which entitled him to retain possession (*Marimuthu Goundan v. Thambi*- 1960 K.L.J. 1304 - followed in *Kochu Ouseph v. Joseph and others*-1976 KLT 512 FB). The word "pattom" may sometimes be used as a substitute for "mesne profits" never intending to admit a landlord and tenant relationship (*Hussain Thangal v. Ali* - 1961 KLT 1033). The word "rent" is not always indicative of a lease. In the context in which it is used it can also mean the rental estimate of the property (*Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*,) and *Balakrishnan and others v. Parameswar in Namboodiri alias P.N. Kakkas* - 1968 KLT 128). The word "rent" or "pattom" may be loosely used for "fee" also. That does not mean that the word "pattom" or "rent" cannot by itself be considered as indicating a landlord - tenant relationship. It has to be understood and interpreted in a reasonable manner in the background of other statements, evidence and surrounding circumstances.

6. A reading of Ext. B10 as a whole indicates that the plaintiff herself was admitting some sort of entrustment and cultivation by the defendant. Her case that she was in possession from 1964 to 1971 and defendant was only assisting her in cultivation is not proved. DWs 1 and 2 and Ext. B6 proved the fact that from 1957, DW 2 and from 1960 the defendant were in possession and cultivation as tenants on payment of rent of 500 paras of paddy. These are periods during which no tenancy arrangement is admitted and plaintiff was pleading that DW 2 was managing as power holder till 1964 and thereafter defendant was assisting her. But in Ext. B11 rent receipt issued by the ultimate jenmi defendant is shown as "nadappu kudiyan", which means cultivating tenant. In Ext. A2 release deed executed by the sister to the plaintiff and Ext. B4 release by plaintiff to her sister in 1963, specific reference is there not only to pattom, but they refer to arrears of pattom received by the mother from the tenant also. Directions are there to attorn to the tenant in possession, collect rent from him after adjusting the rent received from her by the mother and evict him. When all the recitals in Exts. A2 and B4 are taken together, "pattom" could only be rent from the cultivating tenant in possession and cannot be something else. In coming to that conclusion, reliance could be placed on Exts. B2 and B3 also. They relate to a portion of one of the suit properties which was acquired by the State, for which there was a reference to court for apportionment. Ext. B2 is a joint statement filed by plaintiff and defendant admitting the defendant to be the cultivating tenant and agreeing that after giving the share of the ultimate

jenmi the balance may be given to them jointly by payment to the defendant. That was allowed by Ext. B3 award. Plaintiff has no explanation to this.

7. Though plaintiff executed Ext. A3 power of attorney in favour of the defendant in 1971 when she went to Banarus, she admitted that defendant was not present when it was executed and registered and it was intended as a power to sell properties. Though she said she has accounts, none was produced. It is true that Exts. A7 to A10 letters and Ext. B6 deposition of the defendant may show that Ext. A3 was handed over to him subsequently by somebody and he was writing to the plaintiff regarding properties and rendering accounts in some connection. But none of his statements or admissions will go against his tenancy claim. Though plaintiff said in Ext. B10 that Ext. A3 was executed as directed by defendant, he did not admit so. He only said that he directed some documents to be executed before going. He never admitted that he accepted or acted upon Ext. A3 though he admitted having received it. Even the conduct of the plaintiff shows that even after Ext. A3 she was treating the tenancy of the defendant as subsisting. Anyhow in view of the provisions of the Kerala Land Reforms Act, In November 1971 defendant could not have surrendered the lease to the plaintiff even if a surrender could be inferred from Ext. A3. Ext. B12 is a letter admittedly written by the plaintiff to the defendant from Banarus in 1972. In it she made specific reference to the amount received from the defendant being adjusted towards arrears of rent and balance rent for the current year. That cannot be accounting claimed from a power of attorney holder. Plaintiff had no explanation to this also. That may be why she did not enter the box when trial started. It is clear that cultivation was only through tenants and the mother and plaintiff were only receiving rent.

8. It is true that while construing deeds and other records, which speak for themselves in a manner affecting the rights of parties, the court should take precaution in seeing that they are not only technically proved, but the recitals are proved to be true. If there is some genuine doubt on the truth of recitals by reason of circumstances and evidence courts should insist on better standard of proof (*Manickathammal and others v. Nallasami Pillai and others* AIR 1977 Mad. 83) So also, before rights of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive. There should be no doubt or ambiguity about the alleged admission (*Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others*,). At the same time, an admission by a party is substantive evidence of the fact admitted, and admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with these statements in case it made a statement contrary to those admissions (*Union of India (UOI) Vs. Moksh Builders and Financiers Ltd. and Others*,). Here, the plaintiff was confronted with the statements and she had no acceptable explanation which could go against a lease arrangement. In fact, her evidence only confirms the lease borne out by the admissions in these documents. As held

in Kesavan Namboothiri Krishnar v. Padmanabhan Velayudhan and others - AIR 1971 Kerala 234), a compromise decree like Ext. B3 creates an estoppel by judgment and a judgment by consent is as effective an estoppel between the parties as a judgment in a contested case.

9. Loan on the security of the property, evidenced by Exts. B14 and B. 15, cannot improve the case of the plaintiff especially in view of her statement in the box that she does not know the society and she has not availed any loan. Levy in her name also cannot improve her case in view of her admission that in spite of the records the defendant was the person responsible for payment of levy, water tax and land tax and he was paying. That evidence probabilises the case of the defendant that levy records, etc. were made in the name of the plaintiff with a view to lessen his burden of tax and facilitate transport of paddy to the plaintiff.

10. It is thus clear that defendant was in possession as lessee and the attempt of the plaintiff was only to see whether the tenancy could be avoided on the strength of Ext. A3 which was executed with ulterior purpose. A.S. No 188 of 1979 is allowed and in reversal of the decree of the trial court, the suit is dismissed. Both the civil revision petitions are also allowed and the judgments of the Appellate Authority, confirming the orders of the Land Tribunal, are set aside. O.A. No. 4370 of 1972 filed by the revision petitioner is allowed and O.A. No. 1136 of 1976 filed by the respondent is dismissed. No costs. Land Tribunal will pass appropriate orders.