
(1951) 08 KL CK 0002
In the High Court Of Kerala
Case No : Second Appeal No. 476 of 1951

Velayudhan Narayana Pillai	Vs	APPELLANT
Parameswaran Sankaran Nambooripad		RESPONDENT

Date of Decision : 27-08-1951

Acts Referred:

Citation : AIR 1954 Ker 163

Hon'ble Judges : Joseph Vithayathil, J;Gangadhara Menon, J

Bench : Division Bench

Advocate : P. Govinda Menon, for the Appellant; T.S. Venkiteswara Iyer, for the Respondent

Final Decision : Allowed

Judgement

1. Defendant 2 is the Appellant. In execution of the decree passed in the case the decree-holder applied for delivery of possession the decree-schedule properties. Defendant 2 of the application on the ground that the delivery of possession is to be stayed by virtue the provisions of Act 8 of 1950. The execution Court upheld the contention and ordered of the delivery. In appeal the lower appellate court reversed the order of the learned Munsiff and directed delivery of possession of the proxies.

2. The lower appellate Court was of the view that the provisions of Act 8 of 1950 did not apply to this case since the lease deed sued upon was one executed by the mortgagee at the time When the properties were outstanding on mortgage. The suit properties belong to the Plaintiff's family. They were outstanding on lease with the Defendants. While so the Plaintiff's family executed a mortgage of the properties to one Bhadrakali Mattappalli Illom. After the mortgage the lessees attorned to the mortgagees and executed a lease in their favour on 25-8-1105. While the properties were thus continuing in the possession of the Defendants on lease, the plaintiff's family obtained a release of the mortgage right. The lessees thereafter attorned to the Plaintiff's family and paid rent to them.

After some time the Plaintiff as karnavan of the family brought the suit on the footing of the lease deed dated 25-8-1105 for eviction and recovery of possession of the properties. These facts are clearly borne out⁴ by the averments in the plaint in this case. A decree as prayed for followed. It was on the basis of this decree that delivery of possession of the properties was sought for in execution.

The learned advocate for the Respondent argues that when the lessee from the Plaintiff's family executed a new lease in favour of the mortgagees the prior lease in their favour terminated and a surrender of their possession under the original lease was implied and the possession of the lessees thereafter could be deemed only as one under the lease executed by the mortgagees. It is therefore contended that the possession of the Defendants is under the mortgagees and they could not be deemed to be holding under a single transaction as contemplated in the definition of the term "holding" in the Act.

This argument overlooks one important aspect that after the mortgagees released the properties to the Plaintiff's family the lessees attorned to them and paid rent to them which was accepted. In this case, by virtue of the release of the mortgage whatever interest the mortgagee lessor had over the properties was surrendered in favour of the Plaintiff's family and they obtained all the interests of the lessor and possessed all lessor's rights. Consequently the lessees attorned to them and paid the rent to them which was accepted. This is clearly an acknowledgment of the tenancy by the Plaintiff's family. The Plaintiff's suit for eviction was based on the very lease transaction acknowledged by his family. As between the mortgagees and their lessees the Defendants, it cannot be said that the Defendants were not holding the immovable property in question under a single transaction by which a leasehold right in the property was created and possession of the property was transferred by one person in favour of Anr. , and that it does not constitute a holding as defined in Section 2 of the Act.

It was this identical lease that was acknowledged by the Plaintiff's family after the release of the mortgage in their favour and on the basis of which the Plaintiff as karnavan of the family sued for the recovery of the properties with future rent. The suit was therefore one for the recovery of possession of a holding and proceedings in execution of the decree passed in such a suit for recovery of possession of the holding, so far as they relate to delivery of possession of the holding has therefore to be stayed as enjoined u/s 4 of the Act unless there is a bar to the application of the section, on account of the limitation imposed "by the proviso (a) to that section. We are therefore unable to agree with the view of the lower Court that Act 8 of 1950 is not applicable.

3. Our attention has been drawn to the decision of this Court in-Krishna Madhava v. Nambiathu Narayana A.S. No. 879 of 1950, D/- 9-3-1951 (TC) (A). That was a case in which a decree for redemption was passed with the lessees of the mortgagees also on the party array. The suit was for redemption of the property on the basis of a mortgage and not for recovery of possession of a "holding" as

defined in Act 8 of 1950. It was held that Act 8 of 1950 was not intended, to be applied to redemption decrees like the one passed in that case. Here however the facts are quite different. The suit was on the basis of a lease and clearly one for recovery of possession of a holding as defined under the Act, and the decree is one for recovery of that holding, The decision relied on does not therefore apply to the facts of the present case.

4. Next the question whether there was a failure to pay the rent as indicated in proviso (a) to Section 4 has to be considered. The learned Judge was of the view that there was a default in the payment of the rent. The proviso to Section 4 says that nothing contained in Section 4 shall preclude the Court from ordering delivery of possession of the holding to the decree-holder if the Court is satisfied that the lessee has failed to pay the rent of the holding which has accrued due after the commencement of the Act. The Act came into force on 12-8-1125. The decree in the case was passed on 16-11-1125. It is admitted that there was no default in the payment of the rent till the date of the decree.

The Respondent's contention is that as per the stipulation in the lease deed the rent is payable in two instalments one before 30th of Kanni and the other before 30 of Makarom every year, that the rent due on 30th Kanni 1126 has not been paid and that consequently there is a failure to pay the rent. It is, however, admitted that the entire rent due has been deposited in Court by 13-4-1126. Though the lease deed provides for payment of rent in two instalments the Plaintiff claimed in the plaint only payment of 90 paras and 6 edangalies of paddy and 12 annas annually in a lump towards future rent. The decree in the case provides for the payment of 90 paras and 6 edangalies of paddy and 12 annas annually towards future rent. As per the provisions of the decree there is no default in the payment as the entire rent due for one year has been paid by the deposit of 13-4-1126.

It is, however, argued for the Respondent that-what is contemplated in the proviso is payment of the rent in strict accord with the provisions of the lease deed in spite of the decree passed in the case and that consequently there is a default in the payment of the rent since the rent due on 30-2-1126 as per the stipulation in the lease deed has not been paid on that date. We are unable to agree with the learned advocate for the Respondent. It is clear law that every contractual right upon which a judgment is based merges thenceforth in the judgment:

"When judgment has been given in an action the cause of action in respect of which the judgment is given is merged in the judgment "transit in rem judicatam" and its place is taken by the rights created by the judgment." Vide Halsbury's Laws of England, second edition, Vol. 19, p. 250.

Therefore after the decree the liability is to pay the rent within the time provided in the decree and not to pay it as per the terms of the document on which the suit was based. We are therefore of the view that the deposit made by the

Appellant is within time and that there is no failure to pay the rent.

5. It follows that Appellant is entitled to a stay of the proceedings in execution in respect of the delivery of possession of the decree schedule properties for a period of two years from 12-8-1125 as provided u/s 4 of Act 8 of 1950 as amended by Act 1 of 1951. We order accordingly and in reversal of the order of the lower appellate Court we allow the appeal as indicated above with costs in all the Courts.

We are told that in pursuance of the order of the lower appellate Court vacating the order of the execution Court the properties were delivered over to the decree-holder with the standing crops thereon raised by the Appellant and that the crops have not yet been harvested. The execution" will forthwith deliver the properties back with standing crops thereon to the Defendants fro whom they were delivered over to the decrees-holder and thus maintain "status quo ante.