

(1974) 03 KL CK 0004
In the High Court Of Kerala
Case No : S.A. No. 792 of 1970

Velayudhan Thampi Madhavan Thampi APPELLANT
Vs
Thankamma Padmavathi and others RESPONDENT

Date of Decision : 18-03-1974

Acts Referred:

Constitution of India, 1950 — Article 31A(2)(a)(iii)
Kerala Land Reforms Act, 1963 — Section 4A

Citation : (1974) 03 KL CK 0004

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P. Sukumaran Nair, for the Appellant; V. Ramakrishnan and Thomas John, for the Respondent

Final Decision : Dismissed

Judgement

Justice G. Viswanatha Iyer

1. Plaintiff is the appellant. His suit for redemption was dismissed by the lower appellate court on the ground that as the mortgage sought to be redeemed is more than 50 years old the property could not be recovered as per as new Land Reforms Act. Ext. P1 mortgage is of the year 1086. It is in renewal of an earlier mortgage and prima facie S. 4A of Act 1 of 1964, as amended by Act 33 of 1969 is applicable to it. By virtue of that provision the respondents become deemed tenants. But, the plaintiff's counsel contended that the property 17 cents in extent is situate within the Corporation limits of Trivandrum and is a non-agricultural land and therefore Act 1 of 1964 is not applicable to this property. In support of his contention that the Act does not apply to non-agricultural lands be relied on the Full Bench decision of this Court in Narayanan Nair v. State of Kerala (1970 KLT. 659) and Sankaran Nambissan v Sarvotham Rao (1972 KLT. 891). Reference is also made to the decision of the Supreme Court in Malankara Rubber & Broduce Co. v. State of Kerala (1972 KLT. 411) In these cases it was held that Act 1 of 1964 being a measure of agrarian reform, would apply to

agricultural land in the sense of Art. 31-A (2) (a) (iii) of the Constitution in the Full Bench decision and the Supreme Court decision referred to earlier, Act 1 of 1964 was sought to be sustained only as a measure of agrarian reform. That being so, the grant of fixity of tenure and creation of deemed tenants can only be with reference to agricultural lands. So, if the appellant is able to show that the property is non-agricultural in character, in the light of the decision referred to above, it is open to him to contend that the respondents are not deemed tenants. So, the only question that has to be considered is whether the plaint property is a non-agricultural land. No doubt, the property is situate within the Corporation limits of Trivandrum. There are agricultural and non-agricultural properties within Trivandrum Corporation limits. The limits of the Corporation are frequently extended and it is not correct to say that all properties in the city limits are non-agricultural. In this case Ext. P1 mortgage of the year 1086 gives particulars of the trees standing in the property. On that day the property was bounded on two sides by paddy fields. Nearly 20 coconut trees (yielding and young plants), six or seven jack trees and a number of other trees like areca, tamarind, mango were in it. As per the Commissioner's report prepared in this case the property contains number of trees and a building. The income from the property will be more than the rent that may be got if the building is let out. That shows that the property is agricultural in character both at the time of the mortgage and on 111970. That being so, it is an agricultural land. S. 4A will apply to this property. In this view the appellant's contention that Act 1 of 1964 will not apply to this property must fail. This is the only point in the appeal.

2. In the result, the second appeal falls and it is dismissed. But, in the circumstances, I make no order as to costs.