
(1991) 04 KL CK 0037

In the High Court Of Kerala

Case No : C. R P. No. 2571 of 1988

Velumpan Nanu and others

APPELLANT

Vs

Kurumba Thevi and others

RESPONDENT

Date of Decision : 11-04-1991

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 125, 125(1), 125(3), 13, 4A

Citation : (1991) 2 KLJ 224

Hon'ble Judges : G. H. Guttal, J

Bench : Single Bench

Advocate : George C. Varghese, for the Appellant; S. Sankara Subban, For 108th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—Defendants 2,5 and 15 in OS. No. 305/66 of the Munsiff's Court, Mavelikkara, impugn the validity of the order dated 30-5-1988 in I. A. No. 1721/73 made by the plaintiffs. The I. A. 1721/73 was for making of a final decree for redemption of mortgage, partition and possession. The petitioners are aggrieved by the order because the trial court held that the petitioners are not tenants within the meaning of section 4A of the Kerala Land Reform Act (hereinafter referred to as the Act) and are not, therefore, entitled to the right of fixity of tenure created by section 13 of the Act. The petition arises out of the following facts :

Petitioners were defendants 2, 5 and 15 in the suit for redemption of the mortgage partition and possession. A preliminary decree was (passed, inter alia, against the. petitioners on. 15-10-1969 in suit No. O. S. 305/1966. In a previous suit No. O. S. 3 of 1947 (1122) filed by a member of the family, Ommini Govindan, decree for redemption of the mortgage of the same property was made. The plaintiff in suit No. 3/J947 executed fresh mortgage in respect of the properties redeemed by him, plaintiffs were allowed to redeem the mortgage after depositing the mortgage amount and the value of the improvements. This

happened in 1947 or soon thereafter.

2. There were certain other proceedings between the parties. The application by plaintiff No. 119 for making of a final decree in this very suit was dismissed on 27-10-1975. The Sub Judge, Mavelikara, in appeal, set aside the order dismissing the application for making of a final decree. Defendants 2, 5 and 15 came to this court in C. M. A, No. 132/79 and urged that they were protected by the Kerala Land Reforms Act. A Division Bench of this court made this order.

If there are other contentions such as the availability of the plea of fixity of tenure it must necessarily be considered afresh by the court, below pursuant to the remand.

In the result, the proceedings were remanded to the trial court with a direction to consider afresh the petitioners' claim for fixity of tenure.

3. After remand, the trial court made the impugned order without making a reference to the Land Tribunal as required by section 125(3) of the Act.

4. The petitioners have urged two points.

(i) The learned trial judge sitting as a civil court for the purpose of making of final decree had no jurisdiction to decide whether the petitioners were tenants as defined u/s 4A of the Act. According to them, the only course open to the court was to make a reference to the Land Tribunal.

(ii) On the merits also the learned trial judge was in error in holding that the petitioners could not have been tenants u/s 4A of the Act.

5. Learned counsel for respondents, on the other hand, urged that the bar of jurisdiction of civil courts created by sub section (1) of section 125 does not apply "to proceedings pending in any court at the commencement of the Kerala Land Reforms (Amendment) Act 1969". He drew my attention to the fact (that the suit for redemption and partition was filed in 1966. The preliminary decree was made on 15-10-1969. The Kerala Land Reforms (Amendment) Act 1969 came into force on 1-1-1970. Since the application for final decree was pending and final decree had yet to be made, the suit was pending on 1-1-1970. Since the suit is a proceeding pending on 1-1-1970 and having regard to the proviso to sub section (1) of section 125 of the Act, the bar of jurisdiction is not attracted in this case and therefore, it was open to the learned trial judge to deal with the merits of the case.

6. Section 125(1) of the Act excludes the jurisdiction of civil courts to settle, decide or deal with any question or to determine any matter which is, by, or under the Act, required to be settled, decided or dealt with or to be determined by the Authorities created by the Act. It is undisputed that the petitioners status as tenant is a question required to be decided by the Authorities created by the Act.

7. However, the principal question is whether on the date on which the Kerala

Land Reforms (Amendment) Act 1969 came into force, any "proceedings" were pending. If the application for final decree is a "proceeding", the exception created by the proviso to sub section (1) of section 125 of the Act comes into play. In that event, the trial court possessed jurisdiction to determine the question failing within section 4A of the Act.

8. The word "proceeding" is used in different senses in different enactments. The substance of the meaning of the word "proceeding" need to be understood. For instance When the Companies Act says that "proceeding should not be proceeded with or commenced against the Company except with the leave of the court", it means that a creditor cannot proceed to execute the decree against the Company. Thus the "execution proceedings" fall within the meaning of "proceeding" Where it is said that the court shall have power to grant certain reliefs "in any proceeding", the words "in any proceeding" are meant to recover every step in an action and and is equivalent to the word "action - lathe context of. actions under Public Health Acts it had been held, in England, that even the summons for abatement of nuisance is "proceeding" Where law declares that "no proceeding should be continued of commenced after passing of the Act without the leave of the court" it was held that the action of taking the costs after the termination of the suit, was a step in the "proceeding". The word "proceeding" is a general word meant to cover every step in an action, including summons, notices, evidence, taxing of costs and so on. Generally speaking anything that precedes the final judgement or order is a proceeding.

9. To sum up:- the word "proceeding" relates to form of law and to the modes in which judicial transactions are conducted. The term is no doubt very comprehensive and, generally speaking, means a prescribed course of action for enforcing a legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked and terminated, Reba Sircar was a case of application for a final decree which is a legal right of the plaintiff who holds the preliminary decree. The words construed were "all further proceedings in the suit". It was held that the application for passing of a final decree was "proceeding" in the suit.

10. The construction of the word "proceeding" has not arisen for the first time in first time in this case. In George vs. Vareed, the question was whether the proceedings for execution were "proceeding" within the meaning of sub section (1) of section 125 of the Act. After holding that execution proceedings were such "proceeding", this court explained that the word should be understood in relation to the application or action to

1. Words and Phrases Judicially Defined Vol. 4 page 351
- 2 Words and Phrases Judicially Defifled Vol. 4 page 352
3. Words and Phrases Judicially Defined Vol. 4 (1944) page-353.
4. Words and Phrases Judicially Defined Vol. 4 (1944) page - 354.

5. Words and phrases Legally Defined Vol. 4 (1969) page 182

6. Raba Slicar & others vs. Biseswar Lal Sharma A. I. R. 1980 Calcutta 328.

7. George vs. Vareed 1978 K L. T. 691 (F. B)

which the applicability of section 125 relates. In other words, it is the context and nature of the "proceeding" that would determine the status of such "proceeding" in relation to sub section (1) of section 125 of the Act.

11. In order, to understand fully the status of the application for final decree, it should be remembered that the CPC permits the making of two decrees - a preliminary decree and a final decree. The preliminary decree is not a tentative decree. It is, no doubt, final and conclusive between the parties so far as the matters dealt with by it are concerned. But the suit in which the preliminary decree was made continues to exist until it is terminated by a final decree. The preliminary and final decrees are stages in which the suit is terminated. Therefore, having regard to the meaning of the word "proceeding" and the nature of the suit for redemption and partition which necessarily requires preliminary and final stages of making decree, I have no doubt that (a) the application for making of a final decree is a proceeding within the meaning of the proviso to sub section (1) of section 125 of the Act and (b) the proceeding which consisted of the application for making the preliminary decree final, was pending in the trial court on the date of commencement of the Kerala Land Reforms (Amendment) Act 1969. It is clear, therefore, that the proviso to subsection (1) of section 125 immediately comes into play. The reason is this: A proceeding for making a final decree was pending. These proceedings related to the land in the occupation of the petitioners. The petitioners claimed the right u/s 4A of the Act in these proceedings. Therefore, in the words of the Full Bench of this court in George vs. Vareed "the proceedings were in relation" to a matter about which "the applicability of section 125 relates". Consequently, the bar of jurisdiction of civil courts created by sub section (1) of section 125 has no application to the present case. The learned trial judge was within his authority in dealing with the suit in the manner he has done.

12. Learned counsel for the petitioner urged that the finding of the trial judge on the merits of the case is untenable. In judging the validity of this submission certain facts must be borne in mind. The original mortgage which related to property in dispute was terminated by the decree In O. S. No. 3/1122 which means the suit No. 3 filed in 1947. This admitted fact immediately proves that the relationship of mortgagor and mortgagee between the plaintiffs and defendants or their respective predecessor-in-title, ceased to exist upon the making of the decree for redemption. Section 4A was introduced in the Act by the amending Act No. 35 of 1969 which came into force on-1-1-1970. The petitioners right springs from section 4A of the Act. u/s 4A, the mortgagee with possession of land, other than the land principally planted with rubber, coffee or cardamom or lessee of such mortgagee, is deemed to be a tenant upon the

fulfilment, of certain conditions. In the context of this case the mortgagee who claims the status of tenant u/s 4A must have held the land comprised in the mortgage, for a "continuous period of not less than fifty years immediately before the commencement of the Kerala Land Reforms (Amendment) Act 1969. The learned trial judge has found that with the decree in O. S. No. 4/47, the relationship between the mortgager and mortgagee came to an end Section 4A requires that the mortgagee must have been in possession from 1-1-1920 to 1-1-1970. If the relationship of mortgagor and mortgagee was snapped In 1947, the petitioners do not fall Within the category of sub-section (1) of section 4A of the Act. This is the only category to which the petitioners have attempted to relate their cases Tee learned judge was, therefore, right In concluding that the petitioners possession was not as mortgagees but as members of the family of the plaintiffs (tharavad). In my opinion the learned trial judge committed no error in his conclusions on the merits of the case. For all these reasons, the petition Is dismissed with costs.