
(1995) 07 KL CK 0018
In the High Court Of Kerala
Case No : S.A. No. 35 of 1986-D

Venkitarama Iyer

APPELLANT

Vs

Vesu Amma and Others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 125, 125(3), 72, 72B
Transfer of Property Act, 1882 — Section 52

Citation : (1995) 07 KL CK 0018

Hon'ble Judges : M.M. Pareed Pillay, C.J.; P.A. Mohammed, J; P. Shanmugam, J

Bench : Full Bench

Advocate : P.N.K. Achan, for the Appellant; T.R.G. Warriar and P.V.R. Warriar, for the Respondent

Final Decision : Allowed

Judgement

M.M. Pareed Pillay, C.J.—Plaintiff in O.S. No. 231 of 1976 is the Appellant. He filed the suit for recovery of possession of the plaint schedule property on the strength of his title. His case is that he obtained the property in partition as per Ext. A-1 dated 5th June 1946. Originally the plaint schedule property was described as 40 cents in R.S.1/B2 and 3 cents in R.S. 1D/38 of Ayakad Amsom Alathur Taluk. By amendment of the plaint as per I.A. No. 708 of 1982 the description of the property was corrected as R.S. 1E/1A1 having an extent of 20 and 1/8 cents. First Defendant filed written statement contending that her husband and father of the 2nd Defendant obtained the plaint schedule property on lease 35 years prior to the institution of the suit from Plaintiff's brother Subramanya Iyer.

2. Contention of the Plaintiff is that the courts below wrongly relied on Exts. B-6 and B-7 to uphold the tenancy claim set up by the Defendants. It is contended that the courts below obviously overlooked the fact that Ext. B-6 order was passed during the pendency of the suit. On the basis of Ext. B-6 the Land Tribunal held that second Defendant is entitled to tenancy right in the property.

That finding was accepted by the Munsiff and accordingly the suit was dismissed. The Sub Judge held that notice was served on the Plaintiff in the suo motu proceedings before the Land Tribunal and as there is no rule preventing the Land Tribunal from making an order during the pendency of the suit and as Ext. B-6 order has become final Plaintiff is not entitled to the decree sought for.

3. The main contention of the Appellant is that no significance can be attached to Ext. B-6 order of the Tribunal as it is hit by the doctrine of lis pendens. Counsel relied on Parameswaran Thampi v. Thomas Podiyani 1984 KLT 397 decision of a Division Bench of this Court for the proposition that the decision in suo motu proceedings (Ext. B-6) is hit by the doctrine of lis pendens. Counsel for the Defendants on the other hand contended that Ext. B-6 would operate as res judicata and merely because the suit happened to be filed earlier the significance and importance of Ext. B-6 cannot be whittled down. In other words it is contended that the order of the Land Tribunal would operate as. res judicata even though it was obtained pending the civil suit.

4. The crucial point for determination is whether the order of the Land Tribunal (Ext. B-6) obtained during the pendency of the civil suit can be relied on by the Defendants to uphold their claim of tenancy. Contention of the Plaintiff is that it is for the civil court to have referred the question of tenancy set up by the Defendants u/s 125(3) of the Kerala Land Reforms Act and obtained the findings of the Tribunal which itself would be open to challenge before the appellate court and should not have relied on the Tribunal's finding in suo motu proceedings initiated after the initiation of suit.

5. The settled legal position is that the doctrine as expounded in Section 52 of the Transfer of Property Act applies not merely to actual transfers of rights which are subject-matter of litigation but to other dealings with it by any party to the suit or proceeding, so as to affect the right of any other party thereto. Thus when a civil suit is pending before a court where the crucial matter to be decided is regarding the tenancy set up by the Defendant the decision of the Land Tribunal in suo mou proceedings initiated long after the suit cannot affect the right of the Plaintiff. Section 52 has been enacted with a definite purpose. The purpose is that when any right to immovable property is directly and specifically in question, the properly cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of the opposite party. Ext. B-6 order of the Land Tribunal which is admittedly obtained during the pendency of the civil suit goes to the extent of extinguishing Plaintiff's rights in the property. As Plaintiff's right is thwarted when the entire dispute was before the civil court it cannot be held that doctrine of lis pendens has no application.

6. Section 52 enacts the principle that during the pendency of litigation nothing new should be introduced. The section cannot be confined to transfer of immovable property alone. It interdicts other sorts of dealings with property affecting the rights of the adversary in the suit or other proceeding. In other words, creation of any right in immovable property during pendency of a suit or

proceeding adverse to the interests of the opposite party is also hit by the rule. As the very purpose of the doctrine of lis pendens is to subject the litigating parties and others who seek to acquire rights in immovable property pending litigation to the power and jurisdiction of the court where the dispute is pending for decision, one of the parties cannot be allowed to scuttle the final result of the pending action before the civil court. The extinguishment of the title of the Plaintiff as a result of the Tribunal's order in the suo motu proceedings would definitely be hit by the doctrine of lis pendens. Otherwise the order of the Land Tribunal obtained pending suit would extinguish Plaintiff's right in the property enabling the Defendant to become the title holder. In view of the pendency of the civil suit such a situation cannot be legally allowed.

7. Contention of the Defendant that he has not done anything illegally and that he obtained the landlord's rights from the Land Tribunal on the basis of a legal order and so the doctrine of lis pendens would not apply is not tenable. As the effect of the doctrine is not to annul the order of the Land Tribunal but only to render it subservient to the rights of the parties to the litigation Defendant cannot lay any claim on the basis of Ext. B-6. As the entire controversy between the parties was pending adjudication in the civil court and as tenancy has been claimed by the Defendant, naturally the matter was referred to the Land Tribunal u/s 125(3) of the Kerala Land Reforms Act. Though the trial court is bound by the finding of the Land Tribunal, the appellate courts are not bound by it. As the entire controversy was before the civil court with the appellate courts not bound by the decision of the Land Tribunal on a matter referred to it u/s 125(3) of the Kerala Land Reforms Act it was not open to the Defendants to circumvent the decision of the civil court by initiating suo motu proceedings before the Land Tribunal. Even if suo motu proceeding was not initiated at the instance of the Defendants they should have apprised the Tribunal of the pendency of the civil suit and avoided parallel proceedings.

8. As the question of tenancy is in issue before the civil court and as the Plaintiff and Defendants knew of the dispute full well Defendants cannot steal a march over the Plaintiff by brandishing the order of the Land Tribunal. As has been held in *Parameswaran Thampi v. Thomas* 1984 KLT 397 an attempt made to invite a decision on the question of tenancy by the Tribunal during the pendency of the suit cannot be encouraged or supported. In the aforesaid decision it was held that the Land Tribunal should have waited till the civil court rendered its decision and that if the Tribunal proceeded to enter any finding on the tenancy it can only be a tentative decision subject to the final decision of the civil court.

9. In 1984 KLT 397 also tenancy question was in issue in the civil court and it was then that the person who set up tenancy approached the Land Tribunal by filing a petition u/s 72 of the Kerala Land Reforms Act. It is in that context that the Division Bench of this Court held that the Tribunal should have either waited till the civil court rendered its decision or if the Tribunal proceeded to enter a finding on the tenancy it can only be a tentative decision subject to the final

decision of the civil court. The position continues to be so even in a case where the Land Tribunal passed order in suo motu proceedings.

10. The Bench decision of this Court 1984 KLT 397 was confirmed by the Supreme Court in Mathevan Padmanabhan alias Ponnann (Dead) through Lrs. Vs. Parmeshwaran Thampi and Others, The Supreme Court held thus:

The very dispute whether the Appellant is a tenant and is entitled to purchase the property by virtue of that capacity, hinges upon the determination of the question whether he is a tenant. When that dispute is pending adjudication, the Tribunal was not right in directing the Appellant to purchase the property. Ultimately, if the High Court on appeal, finds that the Appellant is not a tenant, his entitlement to purchase the property also is lost. Order those circumstances, the appropriate course would have been to keep the application u/s 72-B pending till the dispute as to the tenancy of the applicant was resolved.

As the decision of the Land Tribunal (Ext. B-6) was rendered When the question of disputed tenancy was pending before the civil court, attempt to circumvent it cannot be allowed.

11. The learned Munsiff upheld the tenancy setup by the Defendants only on the basis of the decision of the Land Tribunal in S.M. 1559 of 1979. As the decision in the suo motu proceedings cannot be given any effect, in view of the fact that it has been obtained during the pendency of the civil suit, and as that has been relied by the courts below the judgment and decree of the court below cannot be sustained.

12. In A. Sundaran v. P.V. Mohammed Koya 1995 (2) K.L.J. 60 Division Bench of this Court held:

It is now well nigh settled that unless the question I legally arises there is no obligation for the civil court to make a reference of it. But merely because a person raised a claim without any bona fides can it be said that the said question would arise in the case. If the motive of the party who raised the plea is only to procrastinate the proceedings it is the duty of the civil court to decide first whether the question genuinely arises in the case. The amplitude of the expression "arises" must be constricted to what genuinely arises in a case in view of the very unsatisfactory function of the "present Land Tribunal system in Kerala. In the light of the above situation, the courts have to give a useful and practical interpretation to. I and set the. abuse of the legal requirement envisaged in Section 125 of the K.L.R. Act. The civil court can consider whether the plea raised by/ the Defendant or the Respondent in the case is bona fide or genuine. If there is no reasonable prospect of the plea being upheld by a Land Tribunal, the civil court can justifiably take the view that the question does not reasonably arise in the case. If the question does not reasonably arise in the case the civil court need not make the reference, u/s 125(3) of the K.L.R. Act.

The judgment and decree of the trial court which have been confirmed by the

Sub Judge are set aside. The appeal stands allowed and the case is remanded to the trial court for consideration of the Defendants' claim of tenancy afresh. Whether reference to the Land Tribunal is necessary in the circumstances of the case also will have to be considered by the Munsiff in the light of the above decision. There will be no order as to costs. Court fee paid shall be refunded to the Appellant.