

(1991) 04 KL CK 0006
In the High Court Of Kerala
Case No : C.R.P. 226 of 1991

V.P. Anandavally Amma

APPELLANT

Vs

V.P. Premalatha Kurup and Another

RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Citation : (1991) 1 KLJ 790

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : P.V. Madhavan Nambiar, for the Appellant; T. Karunakaran Nambiar, for the Respondent

Final Decision : Allowed

Judgement

M.M. Pareed Pillay, J.—Revision petitioner refuted (he claim of tenancy by the applicant (1st respondent herein). Land Tribunal rejected that contention and the Appellate Authority (LR) affirmed the decision of the Land Tribunal. The case of the applicant is that she obtained the property on oral lease from the karnavan of the tavazhi in 1955 and in 1961 the oral lease was confirmed by a kushikauam document. Revision petitioner contended inter alia that the leases granted by karnavan is not valid as consent of the majority of the major members of the tharawad was not obtained by him.

2. The question that arises for consideration is as to whether consent of the majority of the major members of the tharawad is necessary for a lease granted by the karnavan coming within the purview of Malabar Tenancy Act. Revision petitioner contended that even if the oral lease of 1955 is assumed to be true it cannot be held to be valid as the written consent of the majority of the major members of the tharawad was not obtained. Applicant contended that such consent is not necessary as the lease in her favour, is not one coming under any of the categories mentioned u/s 33 (1) of the Madras Marumakkattayam Act prior to its amendment in 1956. She contended that in view of Section 33 (1) of the Madras Marumakkattayam Act as it stood prior to the amendment by

Amendment Act 26 of 1958 consent of the majority of the major members of the tharawad was really necessary only for the lease of any property with premium returnable wholly or in part or for a period exceeding 12 years and as the lease set up by the applicant does not fall within that category and as it is only a mere oral lease n6 such- written consent is contemplated.

3. To appreciate the position better it is useful to quote Section 33 as it stood prior to amendment and thereafter.

Before amendment Section 33 (1) and (2) reads as follows:

33(1). No sale or mortgage of any immovable property and no lease of any such property either for a premium returnable wholly or in part or for a period exceeding 12 years shall be valid unless it is executed by the Karnavan for consideration, for Tharawad necessity or benefit and with the written consent of the majority of the major members of the Tharawad;

(2) No lease of any immovable property of a Tharawad in cases not referred to in sub section (1) shall be valid unless it is executed by the Karnavan and where the Malabar Tenancy Act. 1929, confers fixity of tenure on the lessee, unless also the written consent of the majority of the major members of the Tharawad has been obtained to the lease.

After amendment Section 33 (1) and (2) reads as follows.

33 (1) No sale or mortgage of any immovable property of a Tharawad and no lease of any such property shall be valid, unless it is executed by the Karnavan for consideration, for Tarawad necessity or benefit, and with the written consent of the majority of the major members of the Tharawad.

(2) Nothing contained in sub-section (1) shall be deemed to affect the validity of any mortgage or lease executed before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958 in accordance with the law in force at the time of such execution.

4. Section 33 (2) prior to the amendment makes the position clear that no lease of any immovable property of a tharawad in cases not referred to in sub-section (1) shall be valid unless it is executed by the karnavan and where the Malabar Tenancy Act, 1929 confers fixity of tenure on the lessee, unless also the written consent of the majority of the major members of the tharawad has been obtained to the lease. Thus, in a case where Malabar Tenancy Act applies, lease granted by the karnavan must be ratified in writing by the majority of the major members of the tharawad. This was the position even before the amendment. As a verumpatlamdar the applicant would be entitled to fixity of tenure under the Malabar Tenancy Act if she could establish the oral lease of 1955. As any lease conferring fixity of tenure under the Malabar Tenancy Act cannot be granted by the karnavan only with the written consent of the majority of the major members of the tharawad, the oral lease of 1955 claimed-by the applicant would certainly be bit by Section 33 (2) of the Madras Maruma-kkattayam Act as it stood prior to

the amendment. Though present Section 33 (2) states that nothing contained in, sub section (1) shall be deemed to affect the validity of any lease-executed before the commencement of Madras Maruma-kkattayam (Amendment) Act, 1958 in accordance with the Jaw in force at the time of such execution, the position will not be different so far as the claim of the applicant is concerned in view of Section 33(2) as it stood prior to the amendment. Thus for any lease having fixity of tenure under Malabar Tenancy Act consent of majority of the major members of the Tharawad is the sine qua non. As there is total dearth of evidence of any such consent, the lease let up by the applicant is invalid.

5. Applicant examined as P, W. I. stated that the lease granted in her favour was in 1955 and in 1961 kuzhikanam document was executed. In the Kuzhikanam deed of 1961 there is no reference as to the date of commencement of the oral lease. Only for the first time in the evidence P.W, I. stated that she obtained the property in 1955. P. W. 1, admitted that there is no document to prove the oral lease. There is no cogent evidence in support of the applicant's case that she obtained oral lease of the property from the Karnavan in 1955. As it is the definite. case of the applicant that she obtained the property on oral lease in 1955 the burden is entirely upon her to establish it. Appellate Authority has wrongly cast the burden on the revision petitioner and affirmed the finding of the Land Tribunal that the applicant has lease-hold light. That approach is basically wrong and legally not sustainable.

6. Applicant being member of tharawad is not entitled (o claim deemed tenancy under Kerala Land Reforms Act. It is apposite to refer to Paryathi Amma v. Parvathi Amma (1983 K. L. T. 71) where a Division Bench of this Court held thus:

One more concept of the Malabar Law has to be borne in mind. The concept is that the properties belong to all the members of the tarwad and that apart from the right of management the karnavan has no larger right or interest than the other members. It is therefore clear that a member of a tharawad in possession of tharawad property cannot be considered to be a person in occupation of "the land of another", and be is not entitled to claim the benefits of Section 7 and 7-B of Act 1 of 1964 as amended by Act 35 of 1969.

7. Still on another ground the applicant cannot claim deemed tenancy. Having claimed a specific lease and failed to establish it she cannot turn round and put forward a plea that she should be treated as a deemed tenant under the Land Reforms Act. For the foregoing reasons i hold that the authorities below have erroneously upheld the tenancy claim of the applicant. The judgment of the Appellate Authority and the order of the Land Tribunal are set aside. The; Original Application stands dismissed.

The Civil Revision Petition is allowed. No order as to costs.