

Narayani Vs. Ramani

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Court : Kerala

Decided On : Aug-22-2003

Reported in : 2004(1)KLT615

Judge : A. Lekshmikutty, J.

Acts : Kerala Land Reforms Act, 1964 - Sections 80B

Appeal No. : S.A. No. 962 of 1991

Appellant : Narayani

Respondent : Ramani

Advocate for Def. : Sajan Mannali, Adv.

Advocate for Pet/Ap. : Stanley Fernandez and; Pearson S. Fernandez, Adv.

Disposition : Appeal allowed

Judgement :

A. Lekshmikutty, J.

1. The defendants in O.S.No. 895/1987 of the Munsiff Court, Kochi are the appellants. The suit is filed by the plaintiff for recovery of possession of plaint B schedule property with damages at the rate of Rs. 20/- per mensum for use and occupation of the plaint schedule property. The case of the plaintiff is that plaint A

schedule property was obtained by him as per document No. 2155/65 of the Cochin Sub Registry office. Plaintiff B schedule property is the residential house situated in A schedule property. Eversince the sale deed, the plaintiff was in possession and enjoyment of the property. B schedule building originally belonged to one Ammu, who died on 11.1.1974 without leaving any heirs. The husband of the first defendant deceased Balan started residence in B Schedule house with his family, a few days prior to the death of the aforesaid Ammu without the knowledge and consent of the plaintiff. Since Ammu died without leaving any legal heirs, neither the deceased husband of the first defendant Balan or any of the defendants has got any right over B schedule property. The plaintiff had expressed her protest to Ammu and Balan regarding their residence. Deceased Balan, the husband of the first defendant, had filed O.A. No. 1159/1972 before the Land Tribunal, Vypin claiming kudikidappu right and the same was dismissed. When deceased Balan attempted to renovate and repair B schedule house, the plaintiff filed O.S.No. 5907/76 for a decree of permanent injunction restraining him from renovating the building. The said suit was decreed but the defendants were allowed to thatch the house till they are evicted under due process of law. Subsequently deceased Balan and his brother Gopi jointly filed O.S. No.634/76 before the Munsiff Court for a permanent prohibitory injunction against the plaintiff herein and her husband alleging that they are the heirs of the kudikidappukari deceased Ammu. The question of kudikidappu was referred to the Land Tribunal, Vypin and the Land Tribunal negatived the right claimed by Balan and Gopi. But they were allowed to thatch B schedule house unless and until they are evicted under due process of law. Against the said judgment and decree, Balan and his brother preferred an appeal as A.S.No. 120/79 before the Sub Court, Cochin and the appellate court dismissed the appeal. The second appeal filed from the judgment and decree as S.A. No.745/85 was also dismissed. Since the defendants are not kudikidappukars in B schedule property, they have no manner of right or title or interest over A schedule property and they are liable to be evicted from B schedule with damages at the rate of 20/- per mensem for unauthorised use and occupation. Even after repeated requests, they did not surrender possession of the building. The first defendant filed O.S. No. 767/87 against the plaintiff and her husband Karunakaran. Further the first defendant filed O.A. No.

217/87 before the Land Tribunal, Vypin for purchase of kudikidappu. The said application also was dismissed. Hence the suit filed for recovery of possession of B schedule property with damages for use and occupation at the rate of Rs. 20/- per mensem.

2. The first defendant alone has filed written statement. When the plaintiff tried to evict the defendants unlawfully from plaint B schedule house, the first defendant filed O.S. No. 767/87 against the plaintiff and the present suit was filed as a counter blast of the suit O.S. No. 767/87. The first defendant is residing in B schedule house for the last 30 years. Defendants 1, 3 and 4 were not parties to the earlier proceedings. Deceased Ammu was the sister of the mother-in-law of the 1st defendant. Husband of the first defendant, 2nd defendant and 2nd defendant's father were living together along with Ammu for the late kudikidappukari. The kudikidappu right of the above said Balan and Viswambaran devolved upon the defendants and accordingly they are residing in the B schedule property as kudikidappukars. The allegation that the defendants and deceased Balan resided in plaint B schedule property a few days prior to the death of Ammu is denied. Long before the death of Ammu, Balan and Viswambaran along with their mother were residing in the plaint schedule property and the plaintiff has not expressed any objection regarding their residence. Ammu died issueless. But Balan and Viswambaran are the children of Ammu's sister. With regard to the O.A. filed by Balan and Gopi, these defendants have no knowledge. The plaintiff has no right to evict the defendants from B schedule property. They have no other homestead or hut to reside. They are not liable to surrender B schedule property. The plaintiff is not entitled to get damages as claimed in the plaint.

3. On the basis of the pleadings, the trial court framed four issues. The trial court passed a decree to evict the defendants from B schedule house and recover possession of the same. The claim for damages for use and occupation of B schedule house by the defendants is disallowed. Against the said judgment and decree, the defendants filed A.S. No. 32/1990 before the first appellate Court. The first appellate court dismissed the appeal. Against which this Second Appeal is preferred by the defendants.

4. The question of law formulated in this appeal are:

i) Whether the plaintiff is entitled to recover possession of plaintiff schedule building when it was admittedly a kudikidappu of Ammu even if it is presumed that Ammu died without legal heirs?

ii) Whether the Court below were right in holding that the defendants are not the relatives of Ammu in the absence of any evidence to rebut the assertion made by the defendants.

Points :

5. The case of the plaintiff is that the plaintiff schedule property was obtained by her as per Ext. P9 sale deed. Ever since the sale deed, the plaintiff is in possession and enjoyment of the property. Plaintiff B schedule property is a residential building situated in A schedule property. It is admitted by the plaintiff that the building belonged to late Ammu, who died on 11.1.1974 without any legal heirs. It is admitted that Ammu was a kudikidappukari. A few days prior to the death of Ammu, the husband of the first defendant, deceased Balan, started residence in B schedule with his family without the knowledge and consent of the plaintiff alleging to be a tenant of Ammu. As per the plaintiff, since Ammu died without leaving any legal heirs, the said right reverted back to the plaintiff. Neither deceased Balan nor any of the defendants has got any right over the residential house.

6. The suit is filed for recovery of the building. It has come out in evidence that there are several Original applications and suits between the plaintiff, deceased Balan and others with regard to B schedule property. All along the defendants and their predecessors claimed kudikidappu right which were found against them. Admittedly the defendants are now in possession of B schedule property. Ext. P9 is the title deed of the plaintiff. There is no dispute with regard to the fact that deceased Ammu was a kudikidappukari of B schedule building. It is admitted by the plaintiff that Ammu filed an application under Section 80 B of the Land Reforms Act and the kudikidappu right has been declared by the Land Tribunal. The recital in Ext. P9 would show that deceased Ammu was residing in the property as a kudikidappukari. It is true that there were litigations between the predecessors in

interest of the defendants and the plaintiff in respect of kudikidappu right. But those applications were filed by deceased Balan claiming independent kudikidappu right as legal heirs of deceased Ammu which were dismissed by the Land Tribunal. The suit filed by the defendant's predecessors were also dismissed on the ground that they could not prove that they are the legal heirs of deceased Ammu. Ammu died in 1974 and the defendants and deceased Balan were residing in B schedule even prior to the death of Ammu is an admitted fact. According to the plaintiff, on the death of Ammu the right reverted back to the plaintiff. This argument of the learned counsel for the plaintiff cannot be accepted. Even if Ammu died without any legal heirs, it will not devolve upon the plaintiff, who is an utter stranger. On the other hand, it would become an escheat property. Once the kudikidappu right is developed in favour of Ammu, it would not revert back to the jenmi.

It is submitted by learned counsel for the plaintiff that Ammu would get right and interest over the property only after issuance of the purchase certificate under Section 80C. But even if purchase certificate was not issued, the kudikidappu right would not be lost. Once the kudikidappu right has been declared by a competent authority even if the kudikidappukari dies without leaving any legal heirs, it will not revert back to the jenmi, it would become an escheat property. The jenmi would not get any right over the same. Even if it is presumed that defendants and their predecessors are trespassers, they are answerable only to the State. So the plaintiff is not entitled to take recovery of B schedule property and recover any amount for use and occupation of the said building. So the plaintiff is not entitled to recover any relief. In such circumstances, the judgment and decree of the courts below are set aside and this Second Appeal is allowed. The points are answered accordingly.