

(1962) 02 KL CK 0037

High Court Of Kerala

Case No: S.A. No. 420 of 1958

Narasimha Shenoy

APPELLANT

Vs

Souri Iyyo and Another

RESPONDENT

Date of Decision: Feb. 2, 1962

Citation: (1962) KLJ 808

Hon'ble Judges: M.S. Menon, C.J; T.K. Joseph, J; P. Govindan Nair, J

Bench: Full Bench

Advocate: T.S. Krishnamoorthi Iyer, for the Appellant; K.K. Mathew and George Vadakkal, for the Respondent

Final Decision: Dismissed

Judgement

T.K. Joseph, J.

This second appeal which arises out of a suit for redemption of a mortgage was referred to a Division Bench by the following order :

It seems to me that the observations in ILR 1959 Ker 1203 go against the appellant. My attention was also drawn, to C.R.P. 342/58 in which a Full Bench of this Court allowed the claim for improvement to be tried though the decree for redemption was treated as final. I therefore refer this case to a D.B. for disposal.

The Division Bench which heard the case considered it a fit case for reference to a Full Bench, and it has accordingly come before us.

The controversy to the suit related to the price of redemption. The first defendant-appellant claimed, in addition to; the mortgage money, compensation for improvements and re-imbursement of amounts expended by him for protection and preservation of the property including a sum of Rs. 75-10-7 paid towards jenmikaram. The trial court decreed redemption on payment of the mortgage money and a sum of Rs. 1,106-9-4 on account of compensation for improvements. The plaintiff preferred an appeal to the District Court claiming reduction of the sum awarded as compensation and the first defendant preferred a memorandum of

cross-objections which was originally confined to the claim for jenmikaram disallowed by the trial court. During the pendency of the appeal in the District Court the Travancore-Cochin Compensation for Tenants Improvements Act X of 1956, was passed and the defendant obtained an order for amendment of the memorandum of cross-objections so as to include a prayer for reassessment of the improvements. The District Court reduced the sum awarded as compensation for improvements by Rs. 87-7-6 and awarded Rs. 75-10-7 to the first defendant towards jenmikaram paid by him. The claim for reassessment of improvements was disallowed on the ground that the first defendant had surrendered possession of the property before Act X of 1956 was passed and that he was not, therefore, a "tenant" as defined in the Act. The first defendant has preferred this second appeal from this decree and the plaintiff-respondent has filed a memorandum of cross-objections regarding the sum of Rs. 75-10-7 awarded to the first defendant.

2. The point for decision is whether the first defendant is entitled to claim reassessment of improvements under Act X of 1956. The decision of our learned brother Vaidialingam J. in *Kadambalithaya v. Beepathumma* (I.L.R. 1959 Ker 1203 = 1959 K.L.J. 1202) supports the decision of the court below. It was urged that the view taken in the above case is too wide and is not in conformity with the decision of a Full Bench of this Court in C.R.P. No. 342 of 1958. The contention of the appellant is that at least in those cases where the mortgagee would be entitled to redelivery of property taken delivery of in execution of the decree of the trial court which is varied or reversed in appeal, the view taken in *Kadambalithaya v. Beepathumma* (I.L.R. 1959 Ker 1203 = 1959 K.L.J. 1202) cannot apply. On the facts of this case it is unnecessary to examine this question as the first defendant would not have been entitled to redelivery of property even if the decree of the trial court had been modified in the appeal. The decree of the trial court was passed on 7th January 1956, and when the first defendant received notice of the decree-holder's application for delivery of possession, he filed C.M.P. 2574 of 1956 in the execution court stating that he was surrendering possession of the property, that he had claimed in appeal an additional sum on account of jenmikaram paid by him and that in case the said claim was upheld, he would be satisfied with a decree for recovery of the same from the plaintiff. It is therefore clear that he had voluntarily surrendered possession of the property although he had claimed an additional amount in appeal. This was before the commencement of Act X of 1956. Having thus surrendered possession, the first defendant cannot be brought within the definition of "tenant" in the Act. It is therefore unnecessary to consider the question whether the decision in *Kadambalithaya v. Beepathamma* (1959 KLT 1089 = 1959 K.L.J. 1202) would apply to all cases pending in appeal when Act X of 1956 became law. There remains the memorandum of cross-objections filed by the plaintiff respondent regarding the decree awarding Rs. 75-10-7 to the first defendant. As observed by the lower appellate court the mortgagee was not bound to pay jenmikaram under the deed of mortgage and he is entitled to reimbursement of the same. The

memorandum of cross objections must therefore be dismissed.

In the result the appeal and the memorandum of cross-objections are both dismissed, but in the circumstances without costs.