

(1999) 09 KL CK 0058

High Court Of Kerala

Case No: C.R.P. No. 1860 of 1991

Chandramathi Amma

APPELLANT

Vs

Malanadu Co-operative Bank

RESPONDENT

Date of Decision: Sept. 15, 1999

Acts Referred:

- Kerala Co-operative Land Mortgage Banks Act, 1960 - Section 16, 17
- Limitation Act, 1963 - Article 134, 137

Citation: AIR 2000 Ker 69 : (2000) 1 ILR (Ker) 301

Hon'ble Judges: P.K. Balasubramanyan, J; K.A. Mohamed Shafi, J

Bench: Division Bench

Advocate: S.V.S. Iyer and Giri V, for the Appellant; C.J. Joy, for the Respondent

Final Decision: Dismissed

Judgement

Balasubramanyan, J.

The revision petitioner is the judgment debtor. The respondent, a land mortgage Bank purchased the property in enforcement of the right to recover the amounts due to the Bank. Section 18 of the Co-operative Land Mortgage Banks Act. 1960 enables the Bank itself to purchase the property by such a sale. The sale was held on 14-3-1984. The sale was confirmed on 22-8-1985. A certificate in terms of Section 16 of the Co-operative Land Mortgage Banks Act was issued to the respondent on 21-2-1986 (it is shown as 25-10-1985 in the order). u/s 17 of the Co-operative Land Mortgage Banks Act, 1960 the person to whom a certificate has been issued u/s 16 of the Act has to apply for delivery u/s 17 of the Act to the Court. Before the respondent Bank could apply for delivery in terms of Section 17 of the Act, the judgment debtor filed a suit O.S. 73 of 1986 before the Munsiffs Court Devicolum. That suit was filed on 19-3-1986. The same day, an interim injunction restraining the respondent Bank from taking possession of the property was also obtained. That suit was transferred to the Munsiffs Court, Idukki and tried as O.S. 435 of 1986. That suit was ultimately dismissed on 16-10-1989. The order of injunction restraining the

respondent Bank from taking delivery of the property also stood vacated that day. Thereafter on 7-6-1990, the respondent Bank filed a petition u/s 17 of the Act for delivery. The judgment debtor raised a contention that the application for delivery made on 7-6-1990 was barred by limitation. According to the judgment debtor, the application for delivery was governed by Article 134 of the Limitation Act and one year having elapsed from the date of confirmation of sale, no delivery could be ordered. The respondent Bank contended that the starting point of limitation for making an application for delivery u/s 17 of the Act was the date of issuance of the certificate-under Section 16 of the Act which was done in this case only on 21-2-1986 and that since there was an order of Injunction restraining the respondent Bank from obtaining delivery by applying u/s 17 of the Act from 19-3-1986 till 16-10-1989, the period during which the suit filed by the judgment debtor in that behalf was pending, the respondent Bank was entitled to exclusion of that period and on exclusion of that period, the petition for delivery filed on 7-6-1990 was in time. The executing Court relying on the decision in Joseph v. Cannanor Co-operative Land Mortgage Bank Ltd. (1989) 1 KLT 616 held that Article 134 of the Limitation Act would apply and delivery had to be sought within one year of the date of issuance of the certificate u/s 16 of the Act. The executing Court then found that since there was an order of injunction in O.S. 73 of 1986 in force from 19-3-1986 till 16-10-1989 which precluded the certificate holder from obtaining delivery the certificate holder was entitled to the exclusion of that period and the application for delivery made on 7-6-1990 was in time. The objection was thus overruled and delivery was ordered. It is this order that is challenged in this revision. The revision petitioner has raised the contention that the exclusion claimable by the respondent Bank because of the suit O.S. 73 of 1986, was only the period between 19-3-1986 and 16-10-1989 and the total period available would be three years six months and 27 days which could be added on to the normal period of limitation of one year. The decree holder was hence entitled to a total period of four years six months and 27 days from the date of confirmation of sale which was on 22-8-1985. The period of four years six months and 27 days expired on 19-3-1990. The execution petition was filed only on 7-6-1990, and therefore the execution petition was barred by limitation. The learned Judge before whom the matter came up initially; referred the revision to a Division Bench on the ground that a related question was pending in C.R.P. 627 of 1994. He may notice that by a separate order in C.R.P. 627 of 1994, we have upheld the view of this Court in Varghese v. Muthukulam Service Co-operative Society 1980 KLT 400 and have dismissed that revision.

2. It is argued before us that the decision in Joseph v. Cannanore Co-operative Land Mortgage Bank Ltd. (1989) 1 KLT 616 does not lay down the correct law and the said decision requires reconsideration. We find considerable force in this submission. In that decision it was held that an application u/s 17 of the Act for possession by a certificate holder, is governed by Article 134 of the Limitation Act. Article 134 of the Limitation Act provides that for delivery of possession by a purchaser of Immovable

property at a sale in execution of a decree the period is one year from the date of which the sale becomes absolute. But, what we have here is an application for delivery by a Land Mortgage Bank which is a purchaser of the property in enforcement of an award under that Act in terms of Section 17 of the Act. Section 17 of the Co-operative Land Mortgage Banks Act provides that a person to whom the certificate has been issued as a purchaser u/s 16 of the Act, has to apply u/s 17 of the Act for delivery of property to him. That application is to be made to a Court. That application on the terms of Section 17 of the Act, can be made only by a person to whom a certificate u/s 16 of the Co-operative Land Mortgage Banks Act has been issued. It is therefore clear that the date of confirmation of sale as such is not the relevant date. The relevant date would be the date on which the certificate is issued by the purchaser in terms of Section 16 of that Act.

3. Then the question is, what is the period governing the application made u/s 17 of the Co-operative Land Mortgage Banks Act. Article 134 of the Limitation Act can apply only when the purchaser of immovable property at a sale held in execution of a decree, applies for delivery of possession. A person who applies for delivery u/s 17 of the Co-operative Land Mortgage Banks Act, 1960 is not a purchaser of immovable property at a sale in execution of a decree. The right to apply for delivery in a person to whom the certificate has been issued u/s 16 of the Act is conferred by Section 17 of the Act. The application therefore is u/s 17 of the Act, to a Civil Court. There is no specific article in the Limitation Act which applies to such an application. But since the application is made to a Civil Court, it is clear from the decision of the Supreme Court in [The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma](#), that the residuary Article namely. Article 137 of the Limitation Act would apply to such an application. The period available under Article 137 of the Limitation Act is three years from the date when the right to apply accrues. The right to apply accrues u/s 17 of the Act, on the issuance of a certificate to the purchaser in terms of Section 16 of the Act. Since even going by the contention of the revision petitioner the application for delivery has been made within three years of the issuance of the certificate to the purchaser in terms of Section 16 of the Act, after the exclusion, the application for delivery is well within time.

4. In the light of the reasoning adopted by us as above, the decision in Joseph v. Cannanore Co-operative Land Mortgage Banks Ltd. (1989) 1 KLT 616 holding that Article 134 of the Limitation Act would apply, must be held not to lay down the correct law. Hence we overrule that decision. We hold that for filing an application u/s 17 of the Co-operative Land Mortgage Banks Act, 1960, the applicatory article is Article 137 of the Limitation Act.

In view of our conclusion as above, the order of the executing Court does not call for any interference. We therefore confirm that order and dismiss this revision.