Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6147 OF 2019

THANKAMONY AMMA & ORS. …Appellants

VERSUS

OMANA AMMA N. & ORS. …Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal challenges the final judgment and order dated 09.08.2018 passed by the High Court of Kerala in RCR No.172 of 2017.

2. One Sankara Kurup, owner of a piece of land admeasuring 27 cents erected a Theatre named "Manorama Theatre" thereon ("suit Property", for short). The management of the Theatre was being conducted by his son-in-law named Kumara Kurup (predecessor of the respondents herein). After the death of Sankara Kurup, a claim was raised by his son Viswanatha Kurup that he was entitled to the rights and interests in said Theatre by virtue of a Will executed by his father.

Soon thereafter, proceedings were initiated by Kumara Kurup before the Land Tribunal Alappuzha being OA No.3233 of 1975 submitting, *inter alia* that he was a cultivating tenant and as such entitled to protection under the Kerala Land Reforms Act, 1963. Viswanatha Kurup was arrayed as respondent in the proceedings. The application preferred by Kumara Kurup was rejected by the Land Tribunal, Alappuzha on 17.03.1976. The finding rendered by the Land Tribunal was to the following effect:-

> "The oral evidence adduced by respondent shows that the scheduled property and cinema theatre belongs to the respondent's father and after his death the property passed to him. Ext.B1 accounts maintained in the hand-writing of the father of the respondent shows that the applicant is only the manager of the cinema theatre in the property. I therefore find that the application is not bona fide and it is not maintainable. In the result this O.A. dismissed under Rule 9.1 (a) of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970."

3. Kumara Kurup died in the year 1982 and the respondents succeeded to his interest. In the year 2009, the appellants herein filed Rent Control Petition No.5 of 2009 before the Rent Control Court, Alappuzha, seeking eviction of the respondents from the suit property. It was submitted that the respondents who were initially paying rent had stopped paying rent and the suit property was required for personal requirement of the appellants. The respondents denied the title of the appellants. By its

order dated 08.04.2014 the Rent Control Court allowed the eviction petition. The order passed by the Land Tribunal (Ext A5 in Rent Control proceedings) was relied upon and it was observed:-

> "Admittedly the scheduled building is situating in 27 cents of property comprised in Sy. No.147/9 B of Mararikkulam South Village and the Land Tribunal found that the property and cinema theatre absolutely belongs to the predecessor of Narayana Kuruppu Viswanadha Kuruppu. It is admitted by the respondents 5 to 7 that Narayana Kuruppu Viswanadha Kuruppu is the only legal heir of Sankara Kuruppu. From Ext. A5, it can be seen that the title of Sankara Kuruppu and his son Viswanadha Kuruppu over the property and building was admitted by Kumara Kuruppu and he filed O.A. No.3233/75 for getting assignment of the property in his favour from the Land Tribunal. So it can be seen that the predecessor of respondents 5 to 7. Sri Kumara Kuruppu admitted the title of Viswanadha Kuruppu and finding in O.A. No.3233/75 is binding on the respondents 5 to 7. Apart from that there is absolutely no pleadings with respect to right of respondents 5 to 7 or their predecessors over the plaint scheduled property. Hence I find that the denial of title raised in the objection by the respondents 5 to 7 is not bona fide."

4. The Rent Control Court also accepted the plea that the appellants *bona fide* required the suit property for conducting Cinema Theatre. The operative direction issued in the order dated 05.04.2014 was as under:

> "An order or eviction is passed under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act directing the respondents to put the petitioners in possession of the petition scheduled building within one month from today."

5. The respondent being aggrieved, filed Rent Control Appeal No.17 of 2014 before the Rent Control Appellate Authority, Alappuzha, which by its order dated 21.02.2017 dismissed said appeal. While dismissing the appeal, it was stated:-

> "So Exbt.A8 would cut the very root of the case advanced by the respondents. Firstly Exbt.A8 would show that the said Sankara Kurup has constructed the Cinema Theatre and he was keeping books of accounts showing it. Secondly the said Kumara Kurup was only a manager of the theatre. Thirdly the said Kumara Kurup has accepted the said Viswanatha Kurup as his landlord. So the respondents who are claiming under the said Kumara Kurup can't claim any more right over the scheduled property."

6. The respondents carried the matter further by filing Rent Control Revision No.172 of 2017 in the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 ("the Act" for short) which came to be allowed vide judgment and order dated 09.08.2018 presently under appeal. The High Court found that there was no material to arrive at a finding that there was any landlord-tenant relationship between the parties. The conclusion of the High Court was as under:

> "Having gone through the respective contentions urged by the parties, it is rather clear that there is no material to arrive at a conclusion that there was a landlord-tenant relationship between the parties. Of course, what stands in the way of revision petitioners is the finding by the Land Tribunal when a claim for tenancy was made. But it could be seen that the claim for tenancy was on the allegation that the petitioner

> was a cultivating tenant. Apparently the claim was not genuine and was not maintainable. That apart the finding is that the claimant was the Manager of the theatre. That is not the situation as far as the property is concerned. The property consists of 27 cents of land and a theatre building. The theatre was constructed well before the Kerala Land Reforms Act coming into force. There is substantial material to indicate that the theatre was being run by the revision petitioners and their predecessor. But there is no material to indicate that it was on a tenancy arrangement. In the absence of any material to arrive at a conclusion that there was landlord-tenant relationship, the Rent Control Court has no jurisdiction to entertain the petition for eviction."

7. In this appeal, we heard Mr. Kaleeswaram Raj, learned Advocate for the appellants and Mr. P.B. Suresh, learned Advocate for the respondents.

8. It is a matter of record that in proceedings initiated before the Land Tribunal, Kumara Kurup (predecessor of the respondents) had taken the plea that he was a tenant in respect of the suit property. The proceedings were filed against Viswanatha Kurup (predecessor of the appellants). While rejecting the plea taken by Kumara Kurup, the Land Tribunal relied upon the accounts maintained by Sankara Kurup in his own hand writing which showed that Kumara Kurup was only a manager. The plea of agricultural tenancy was rejected.

9 In the present proceedings accounts maintained by Sankara Kurup, namely Ext.A8 were produced on record. Considering the entirety of the circumstances and the fact that Kumara Kurup had accepted Viswanatha Kurup to be his landlord, the matter was decided in favour of the appellants by both the courts below.

10. The scope of revisional powers under Section 20 of the Act came up for consideration in ***Rukmini Amma Saradamma*** v. ***Kallyani Sulochana and others***[1]**.** While considering whether the High Court could have reappreciated entire evidence, it was laid down:

> "**20.** We are afraid this approach of the High Court is wrong. Even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report (Exts. C-1 and C-2 mahazar). In our considered view, the High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word "propriety" it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it. Therefore, we are unable to agree with the reasoning of the High Court with reference to the exercise of revisional jurisdiction."

1 (1993) 1 SCC 499

11. In ***Ubaiba*** v. ***Damodaran***[2] exercise of revisional power was considered in the context of an issue whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional fact. This Court dealt with the matter as under:-

> **"3.** Mr K. Sukumaran, the learned Senior Counsel appearing for the appellant contended that however wide the jurisdiction of the revisional court under the Act in question may be, but it cannot have jurisdiction to reappreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority and therefore the impugned order of the High Court is unsustainable in law. In support of this contention reliance has been placed on a decision of this Court in the case of *Rukmini Amma Saradamma* v. *Kallyani Sulochana*[1] whereunder the selfsame provision of the Kerala Act was under consideration. This Court after noticing the word "propriety" used in Section 20 came to the conclusion that the approach of the High Court was totally wrong and even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise the distinction between appellate and revisional jurisdiction will get obliterated. The Court also further observed "even by the presence of the word 'propriety' it cannot mean that there could be any reappreciation of evidence". The learned counsel for the respondent on the other hand contended that the aforesaid decision will have no application to the case in hand where the dispute involved relates to a jurisdictional fact and according to the learned counsel where the dispute is in relation to a jurisdictional fact there should not be any fetter on the power of the revisional court even to reappreciate the evidence and come to its own conclusion. On being asked to support the aforesaid proposition no authority could be placed though on first principle learned counsel for the respondent argued as aforesaid. Having examined the rival submission and having gone through the decision of

2 (1999) 5 SCC 645

> this Court referred to earlier we are of the considered opinion that though the revisional power under the Rent Act may be wider than Section 115 of the Code of Civil Procedure it cannot be equated even with the second appellate power conferred on the civil court under the Code of Civil Procedure. Notwithstanding the use of the expression "propriety" in Section 20, the revisional court therefore will not be entitled to reappreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court in the light of the aforesaid ratio of this Court it is crystal clear that the High Court exceeded its jurisdiction by reappreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist. In the circumstances, the impugned revisional order of the High Court is wholly unsustainable and we set aside the same and the order of the appellate authority is affirmed.

12. A Constitution Bench of this Court considered the revisional powers of the High Court under Rent Acts operating in different States in ***Hindustan Petroleum Corporation Limited*** v. ***Dilbahar Singh***[3]. The decision in ***Rukmini Amma Saradamma*** v. ***Kallyani Sulochana and others***[1] was again referred to in para 16. In para 38 it was observed:

> **"38.** *Rukmini*[1] holds, and in our view, rightly that even the wider language of Section 20 of the Kerala Rent Control Act does not enable the High Court to act as a first or a second court of appeal. We are in full agreement with the view of the three-Judge Bench in *Rukmini*[1] that the word "propriety" does not confer power upon the High Court to reappreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity

3 (2014) 9 SCC 78

> and propriety of the order impugned[4] before it. We approve the view of this Court in *Rukmini*[1].”

13. Considering the instant matter in the backdrop of law laid down by this Court it must be stated that the findings rendered by the courts below were well supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re-appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

14. We, therefore, allow this appeal, set aside the judgment and order dated 09.08.2018 passed by the High Court and restore the Decree for eviction as passed by the Rent Control Court and confirmed by the Rent Control Appellate Authority, Alappuzha. No order as to costs.

……..J.
[Uday Umesh Lalit]

……..J.
[Vineet Saran]

New Delhi;
August 13, 2019.

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4 Kalyani Sulochana v. Saradamma, 1991 SCC OnLine Ker 213 : (1991) 2 KLJ 105