

A MATHEVAN PADMANABHAN @ PONNAN
(DEAD) THROUGH L.R.S.

v.
PARMESHWARAN THAMPI AND ORS.

NOVEMBER 30, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Kerala Land Reforms Act, 1964:

C Sections 72-B, 125—*Tenant—Who is—Jurisdiction to decide—Whether vests with Tribunal or Civil Court—High Court remanding the matter to Civil Court—Remand order set aside—Matter remanded to Tribunal for submitting its report to the Civil Court.*

D The respondents filed a suit for possession of certain land on the ground that the appellant had surrendered his tenancy rights and thereafter trespassed into the land and was in illegal possession. The appellant contested the suit. In view of the controversy regarding tenancy, the Civil Court, by operation of Section 125 of the Kerala Land Reforms Act, 1964, referred the matter to the Land Tribunal.

E Before the reference was made, appellant filed an application under section 72-B of the Act for permission to purchase the respondents' interest in the land as occupancy tenant. Tribunal granted the permission. Since the reference was made, the finding was returned to the Civil Court and it dismissed the suit. Respondents preferred an appeal and the Division Bench held that the dispute as to tenancy was pending adjudication, the Tribunal could not have granted permission to the appellant to purchase the land. It remanded the case to the Civil Court. Hence this appeal.

G On behalf of the appellant, it was *inter alia* contended that the Tribunal had the jurisdiction to decide the dispute regarding tenancy and that the High Court could not have conferred that jurisdiction on the Civil court.

Allowing the appeal, this Court

H HELD : 1. The very dispute whether the appellant is a tenant and is entitled to purchase the property by virtue of that capacity, hinges

upon the determination of the question whether he is a tenant. When that dispute is pending adjudication, the Tribunal was not right in directing the appellant to purchase the property. Ultimately, if the High Court on appeal, finds that the appellant is not a tenant, his entitlement to purchase the property also is lost. Under those circumstances, the appropriate course for the Tribunal would have been to keep the application filed under section 72-B of the Kerala Land Reforms act pending till the dispute is resolved by the Court. Therefore, the High Court was right in recording a finding in this behalf. [212 D]

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2. A reading of Section 125 of the Act clearly indicates that if in any suit or other proceeding, any question regarding right of a tenant etc. arises, the Civil Court should stay the suit or other proceeding and refer such dispute to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situated together with the relevant records for the decision of that dispute in question. Sub-section (1) in that behalf creates a total bar on the jurisdiction of the civil court enjoining that the civil court "shall have no jurisdiction" to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. On receipt of the decision of the Land Tribunal referred to by the civil court for the purpose of appeal, it must be deemed that the decision of the Land Tribunal be part of the finding of the civil court. Thereby, the Civil Court, is enjoined to accept the finding recorded by the Tribunal and dispose of the suit in the light of the finding recorded. In case the Tribunal records the finding positively in favour of the tenant then the suit is required to be dismissed. But the finding recorded by the Tribunal would form part of the record of the trial court. As a consequence the appellate court gets power to go into that question, the High Court itself can decide that question or remit it for fresh decision. Thus the High Court is clearly in grave error in divesting the jurisdiction of the land tribunal to determine the dispute of tenancy etc. as engrafted in sub-section (1) of section 125 of the Act and confer jurisdiction on the civil court which is inherently lacks and any decision by the civil court by itself is a nullity. The interpretation given by the High Court is in the teeth of the peremptory language used by section 125 (1) of the Act and so is clearly unsustainable. [213 D to G]

3. The direction issued by the High Court in remand order conferring jurisdiction on the civil court is set aside. However, the observations made by the High Court in the ultimate paragraph of its

A remand order are upheld. The dispute is remitted to the Land Tribunal, Trivandrum, which would determine the matter in the light of the observations now made and submit its report to the Civil Court for decision according to law. [214 B]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2357 of 1984.

From the Judgment and Order dated 1.2.84 of the Kerala High Court in A.S. No. 45 of 1978.

C G. Viswanatha Iyer, P. Kesava Pillai and Dileep Pillai, for the Appellant.

N. Sudhakaran for the Respondents.

The following Order of the Court was delivered :—

D This appeal by special leave arises from the judgment of the Division Bench of the Kerala High Court in A.S. No. 45 of 1975, dated February 1, 1984.

E The respondents laid the suit before the Principal Sub-ordinate Judge, Trivandrum for possession on the ground that the appellant had surrendered his tenancy rights and, thereafter, trespassed into the land, thereby he is in illegal possession. It is the case of the appellant that he never surrendered the land and he continued to be the tenant and that therefore, the respondents are not entitled to the possession of the land. Since there was a controversy as regards the tenancy, by operation of section 125 of the Kerala Land Reforms Act 1 of 1964 (for short 'the Act'), the Civil Court referred the matter to the Land Tribunal. After the filing of the suit but, before the reference was made, the appellant filed an application under section 72-B of the Act for permission to purchase the respondent's interest in the land as an occupancy tenant. The Tribunal held that the appellant was a tenant and consequently permission was granted to him to purchase the land. Since the reference was made, the finding was returned to the Civil Court that the appellant is the tenant. Acting upon that finding, by operation of sub-section (6) of section 125 of the Act, the Civil Court dismissed the suit. The respondents carried the matter in appeal. While disposing of the appeal, the Division Bench held that since the dispute as to whether the appellant is a tenant, is pending adjudication, the Tribunal could not have granted permission to the appellant to purchase the land. It also held that since on reference, the land Tribunal had recorded the finding, on tenancy,

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it is not necessary for the Civil Court to make further reference but, it itself can dispose of the suit by recording a finding on tenancy. Accordingly remitted the case as under : A

“We have no doubt that this court has got the power to set aside the finding of the trial court on the question of lease and send the matter back to that court for a fresh finding and there is no necessity thereafter for the trial court to make another reference to the Land Tribunal. The trial court was initially bound by the finding of the Land Tribunal and that is a statutory trust. The trial court subsequently is bound by the remand order and when the remand order directs a fresh finding, that finding has to be given by the trial court and not by the Land Tribunal. A second reference to the Land Tribunal under the circumstances is thus not contemplated under section 125 of the Act.” B

In the light of that finding, a direction was given that “the trial court shall dispose of the suit without any reference to the Land Tribunal and based on the evidence already on record and also any additional evidence which it may allow the parties to adduce, including the cross examination of PW-1.” The appeal was accordingly allowed and matter was remitted to the trial court for determination of the question of tenancy raised by the appellant. Thus, this appeal by special leave. C D E

It is contended by Shri G. Viswanatha Iyer, the learned Senior counsel for the appellant that both the findings recorded by the High Court are clearly wrong. On the question of right of the tenant to purchase the land, it is stated that independent of the suit an application under section 72-B was filed before the Land Tribunal and the Land Tribunal has jurisdiction to decide the question of dispute as regards the tenancy as well. He further contends that having decided that the appellant is a tenant and was entitled to purchase the land, the need to await the decision does not arise. The respondents had carried the matter in appeal against that order which is pending decision, the High Court was not justified in interfering with that order and remitting the suit to the Civil Court to decide that question. It is further contended that section 125 (1) of the Act creates a total embargo on the jurisdiction of the Civil Court to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. The High Court cannot confer jurisdiction on the Civil Court to decide the dispute of tenancy. The High Court being an appellate court is entitled only G H

- A to consider whether the Tribunal was right in its finding or had committed any error in determining the question. When the High Court comes to the positive conclusion that any error had been crept in either on fact or in law in determining the issue, the appropriate course open to the High Court would be to direct the Civil Court to remit the dispute to the Tribunal for fresh determination and seen a reference in that behalf and then the Civil Court will have to decide the suit in accordance with the findings recorded by the Land Tribunal.

The first question is whether the High Court was justified in holding that the Land Tribunal would have kept the application filed under section 72-B pending till the dispute of the tenancy is finally determined. On a

- C conspectus of the relevant provisions, the scheme of the Act and on the facts and circumstances of the case, we consider that the High Court is right in its approach. The very dispute whether the appellant is a tenant and is entitled to purchase the property by virtue of that capacity, hinges upon the determination of the question whether he is a tenant. When that dispute is pending adjudication, the Tribunal was not right in directing the appellant to purchase the property. Ultimately, if the High Court on appeal, finds that the appellant is not a tenant, his entitlement to purchase the property also is lost. Under those circumstances, the appropriate course for the Tribunal would have been to keep the application filed under section 72-B pending till the dispute is resolved in the Court. Therefore, the High Court is right in recording a finding in this behalf.

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The crucial question is whether, the High Court, while remitting the suit to the trial court for fresh decision, could confer jurisdiction on the trial court to decide the dispute on tenancy by itself.

- F Sub-sections (1), (3) and (6) of section 125 of the Act are relevant which read thus:

"125. BAR OF JURISDICTION OF CIVIL COURTS –

- G (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land Tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government.
- H (3) If in any suit or other proceeding any question regarding rights of a tenant or of a kudikidappukaran (including a

question as to whether a person is a tenant or a kudikidappukaran) arises, the Civil Court shall stay the suit or other proceeding and refer such question to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situate together with the relevant records for the decision of that question only.

- (6) The decision of the Land Tribunal on the question referred to it shall, for the purposes of appeal, be deemed to be part of the finding of the Civil Court."

Sub-sections (4) and (5) of section 125 are not material for the purpose of this case, hence omitted.

A reading thereof clearly indicates that if in any suit or other proceeding, any question regarding right of a tenant etc. arises, the Civil Court should stay the suit or other proceeding and refer such dispute to the Land Tribunal having jurisdiction over the area in which the land or part thereof is situated together with the relevant records for the decision of that dispute in question. Sub-section (1) in that behalf creates a total bar on the jurisdiction of the Civil Court enjoining that the civil court "shall have no jurisdiction" to settle, decide or deal with any question or to determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. On receipt of the decision of the Land Tribunal referred to by the civil court for the purpose of appeal, it must be deemed that the decision of the Land Tribunal be part of the finding of the Civil Court. Thereby, the Civil Court, is enjoined to accept the findings recorded by the Tribunal and dispose of the suit in the light of the finding recorded. In case the Tribunal records the findings positively in favour of the tenant or kudikidappukaran, then the suit is required to be dismissed. But the finding recorded by the Tribunal form part of the record of the trial court. As a consequence the appellate court gets power to go into that question, the High Court itself can decide that question or remit it for fresh decision. In that view of the scheme of the Act the High Court is clearly in grave error in divesting the jurisdiction of the land tribunal to determine the dispute of tenancy etc. as engrafted in sub-section (1) of section 125 of the Act and confer jurisdiction on the civil court which is inherently lacks and any decision by the civil court by itself is a nullity. The interpretation given by the High Court is in the teeth of the peremptory language used by section 125 (1) of the Act and so is clearly unsustainable. The High Court, therefore, was clearly in grave error in divesting the jurisdiction of the Tribunal and conferring the same on the civil court to

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- A settle, decide or deal with any question or determine any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the land tribunal.

The direction issued by the High Court in remand order conferring jurisdiction of the civil court is set aside. However, the observations made by the High Court in the ultimate paragraph of its remand order, extracted hereinbefore, are upheld. The dispute is remitted to the Land Tribunal, Trivandrum, which would determine the matter in the light of these observations and submit its report to the Civil Court for decision according to law. The appeal is, accordingly, allowed. No costs.

C G.N.

Appeal allowed.