

A PUTHIYA PURAYIL KANNAN'S WIDOW KOZIPURATH
CHEMMARATHI BY L.R. KOZHIPURATHU KANARAN

v.

PATINHARE KOYYATTAN BALAN AND ORS.

B MARCH 21, 1997

[K. RAMASWAMY AND K.T. THOMAS, JJ.]

Kerala Land Reforms Act, 1964 :

C S.7-B—Defective lease deed—Tenant in possession of land on basis of
lease deed, over 20 years—Held, though there is defect in conferment of right
to possession under the registered lease deed, the tenant having remained in
possession is entitled to occupancy right—High Court has found as a fact that
the respondent having come into lawful possession of the land by virtue of
defective lease deed his possession is protected u/S. 7-8—There is no merit in
D the case warranting interference.

Limitation Act, 1963 :

E Articles 120 and 121 to the Schedule—Application for setting aside
abatement—Limitation—Held, application is required to be filed within 60
days from date of abatement—Though the action had abated, but since the
application was filed within 60 days from the date of abatement and for the
reasons stated in the application, the abatement stands set aside—Application
allowed.

F CIVIL APPELLATE JURISDICTION : Review Petition No. 198 of
1996.

In

Special Leave Petition (C) No. 17908 of 1993.

G From the Judgment and Order dated 29.8.90 of the Kerala High
Court in C.R.P. No. 1171 of 1975.

T.T. Kunhikannan for the Petitioner.

H K.M.K. Nair for the Respondents.

The following Order of the Court was delivered :

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This Court by order dated November 16, 1995 dismissed the special leave petition on the ground that the original petitioner had died on September 1, 1993 and the application to bring the legal representatives on record was filed on January 27, 1994 and, therefore, the application stood abated. It is not in dispute that the original petitioner died on September 1, 1993. By operation of Article 120 of the Schedule to the Limitation Act, 1963, the application to bring on record the legal representatives of the deceased plaintiff or defendant, should be filed within 90 days from the date of the death of the plaintiff/defendant. If the application is not filed within the date, the abatement takes place. As contemplated in Article 121 of the Schedule which envisages that for seeking an order to set aside the abatement, the application need to be filed within 60 days from the date of the abatement. In this case, since the original petitioner died on September 1, 1993, the application was required to be filed within 90 days from that date which, no doubt, was not filed. So, abatement took place. Thereafter, the application to set aside the abatement was filed on January 27, 1994 which is within 60 days. Though at that stage the action had abated, for the reasons stated in the application, the abatement stands set aside. The petition for setting aside the abatement is accordingly allowed.

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We have heard the case on merits. The case of the respondent is that he has come into possession by virtue of lease granted by the landlord and he has been in possession for well over 20 year. In paragraph 7 of the Judgment of the Division Bench of the High Court dated August 29, 1990 made in CRP No. 4171/75, it has pointed out that the respondent came into lawful possession of the property under a lease deed though the same was found to be defective. Section 7-B of the Kerala Land Reforms Act postulates Thus :

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"Notwithstanding anything to the contrary contained in any law or in any contrary, contract, custom or usage, or in any judgment, decree or order of Court, any person in occupation of the land of another at the commencement of the Kerala Land Reforms (Amendment) Act, 1969 on the basis of a registered deed purporting to be a lease deed shall be deemed to be a tenant if he or his predecessor-in-interest was in occupation of such land on the 11th

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A day of April, 1957 on the basis of that deed, notwithstanding the fact that the lease was granted by a person who had no right over the land or who was no competent to lease the land."

B A reading thereof clearly envisages that notwithstanding anything to the contrary contained in any law or in any contract, custom or usage, or in any judgment, decree or order of the Court, any person in occupation of the land.... on the basis of a registered deed purporting to be a lease deed, shall be deemed to be a tenant if he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957 on the basis of that deed, notwithstanding the fact that the lease was granted by the person who had no title over the land or who was not competent to lease the land. Thus, it would be seen that, though there is a defect in the conferment of right to possession under the registered lease deed and in such a defect a person who remained in lawful possession is entitled to occupancy right, the High Court has found, as a fact, that the respondent having come into lawful possession of the land by virtue of defective lease deed his possession is protected under Section 7-B of the Kerala Land Reforms Act. Therefore, we do not find any merit warranting interference.

D The special leave petition is accordingly dismissed. The Review Petition is allowed accordingly.

, R.P.

Petition dismissed.