Othayath Lekshmy And Anr vs Nellachinkuniyil Govindan Nair And Ors on 19 April, 1990

Equivalent citations: 1990 SCR (2) 539, 1990 SCC (3) 374, AIRONLINE 1990 SC 71, 1990 (3) SCC 374, (1990) 3 JT 230, (1990) 3 JT 230 (SC)

Author: S.R. Pandian

Bench: S.R. Pandian, B.C. Ray

PETITIONER:
OTHAYATH LEKSHMY AND ANR.

Vs.

RESPONDENT:
NELLACHINKUNIYIL GOVINDAN NAIR AND ORS.

DATE OF JUDGMENT19/04/1990

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
RAY, B.C. (J)

CITATION:
1990 SCR (2) 539 1990 SCC (3) 374
JT 1990 (3) 230 1990 SCALE (1)196

ACT:
Kerala Land Reforms Act--Amended by 9 of 1967 & 35 of 1969-Section 13(B)--When the tenant is entitled for restoration of possession or when the bona fide purchaser is entitled for protection.
Constitution of India, 1950. Article 136--Interference of Supreme Court--Where manifest injustice or grave miscarriage of Justice results.

HEADNOTE:
The appellants fried an Execution Application in 1970 in the Court of Munsiff under Section 13(B) of the Land Reforms Act 1969 for the restoration of the possession of the properties which were sold in Court auction in pursuance of a decree for arrears of rent. The decree holder and Court auction purchasers were close relatives. The sale took place

on 26.11. 1962 and was confirmed on 14.8.1964. It is the 3rd Respondent a stranger in the present appeal who purchased the property in the Court auction and got the possession of the same on 9.1.1965 from the appellants. The appellants trespassed into the suit property again and were ejected in 1966 pursuant to a decree in a suit. Thereafter the 3rd Respondent i.e. the auction purchaser assigned the property in favour of Respondents No. 1 & 2 who were the close relatives vide sale deeds dated 5.12.1966 (Exts A2 and A3). The appellants had already filed Execution Application, for restoration of possession after making necessary deposit for the purchase money under section 6 of Act 9 of 1967. The same was pending when Act 35 of 1969 came into force and so the appellants made an application with a prayer that the earlier deposit be treated as a deposit under section 13(B) of 1969 Act.

The Court auction purchaser i.e. 3rd Respondent and his assignees Respondents No. 1 & 2 strongly contended that appellants have no interest in the properties. The appellants attacked the validity of the sale deeds being made without consideration. The trial Court held that the appellants were tenants when they were dispossessed and also held that the deposit made by the appellants was sufficient for restoration of possession, and Respondents No. 1 & 2 are not bona fide purchasers for consideration, and hence set aside the sale.

The Respondents No. 1 & 2 made application before the sub-court

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and the court held the petitioners were competent to maintain the application and were bona fide purchasers as per records such as revenue and tax receipts plus the admission of the vendor and vendee as to the payment of consideration. As to the deposit made by the appellants it was considered to be sufficient in case they were found entitled for restoration of possession; set aside the Trial Court order and allowed the appeal.

The appellants therefore filed E.S.A. in the High Court and the High Court upheld that the decision and the decree of the lower Appellate Court as per evidence, and as circumstances of the case complied with public records establishing that Respondents 1 & 2 are the bona fide purchasers for consideration. But the first appellate court concurred with the Trial Court regarding the deposit already made to be sufficient and the interest accrued would be directed to be deposited if the appellants were found entitled to restoration of possession. The said finding has not been dislodged by the High Court.

Allowing the Special Leave Petition, this Court,

HELD: In the instant case, two substantial questions are involved i.e. (1) whether respondents 1 & 2 are bona fide purchasers of the scheduled land in dispute for adequate consideration and thereby entitled to the benefit of the

proviso inserted vide Act 35 of 1969 to sec. 13(B)(1). [547F]

(2) Whether the appellants are entitled to the benefit of subsection (1) of section 13(B) of the Act. [547F-G]

As per section 13(B)--where any holding has been sold in execution of any decree for arrears of rent and the tenant has been dispossessed of the holding after the 1st day of April 1964 and before the commencement of the Kerala Land Reforms (Amendment) Act 1969, such sale shall stand set aside and such tenant shall be entitled to restoration of possession of the holding subject to the provisions of this section. [558 B-C]

Provided that nothing in this sub-section shah apply in any case where the holding has been sold to a bona fide purchaser for consideration after the date of such dispos-session and before the date of the publication of Kerala Land Reforms (Amendment) Bill 1968 in the Gazettee. [554D-E] 541

The concurrent finding of facts by both the appellate courts that Respondents No. 1 & 2 are bona fide purchasers for consideration warrant interference because both the appellate courts have conveniently ignored and excluded from consideration even the relationship of the parties inter-se i.e. the decree bolder, court auction purchaser are close relatives and have assigned the property in favour of their close relatives and a stranger- This assumes much importance and significance in evaluating the evidence in the light of the facts and circumstances of the case for reaching satis-factory conclusion. The court has failed to render any finding on substantial question of Law. The lack of recitals with regard to the consideration has also been completely ignored- It seemed to have disposed of the case summarily. [553B-D]

It is not merely the inadequacy of consideration as pointed out by the lower appellate court but there is lack of evidence in substantiating the recitals of the documents that Respondents No. 1 & 2 are bona fide purchasers. The receipts for the payment of tax, rent or revenue are by themselves cannot dispel the claims of the appellants. [545C]

The conclusion arrived at by both the courts is only backed by assertions rather than by acceptable reasoning based on the proper evaluation of evidence. So the evidence and circumstances of the case coupled with the evidence on record do establish that the Respondents 1 & 2 are not bona fide purchasers for consideration. [553E-F]

Discretionary powers under Article 136 has to be exer-cised sparingly but when there are exceptional and special circumstances justifying the exercise of discretionary powers and where manifest injustice or grave miscarriage of justice has resulted by overlooking or ignoring or excluding material evidence resulting in undue hardships, this Court will be justified in stepping in and interfering with the

concurrent findings of facts in the interest of justice and it is also the duty of this Court to remedy the injustice so resulted. Dipak Baneriee v. Lilabatichakraborty, [1987] 4 SCC 161, relied on. [552H; 553A-B]

On the question whether the appellants are entitled to the benefit of section 13(B)(1) of the Act, it was held: [553G]

The Kerala Land Reforms Act of 1963 came into force on 1.4.1964, Act 9 of 1967 was a temporary Act and remained in force till 31.12.1969, Act 35 of 1969 came into force from 1.1.1970 and section 13(B) is substantially on the same terms as section 6 of 1967 Act with a

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proviso super-added. To invoke section 13(B) two conditions are sine qua non. (1) Any holding to which a tenant is entitled to restoration of possession should have been sold in execution of any decree for arrears of rent. (2) The tenant should have been dispossessed of the holding after 1.4.1964 and before the commencement of 1969 Act. [553H; 554A-C]

Thus the tenant shall be entitled to restoration of possession under section 13(B) provided the holding is not sold to a bona fide purchaser for consideration, after the date of dispossession and before the publication of the Kerala Land Reforms (Amendment) Bill 1968 in the Gazettee. The appellants are entitled to have the benefit of sub-section (1) of section 13(B) only if they have made the deposit of the purchase money together with interest at the rate of 6% Per Annum in the Court and applied to the Court for setting aside the sale and for restoration of the holding. The appellants in the instant case had already made deposit under 1967 Act and it was pending when Act 35 of 1969 came into force. So the appellants made an application with a prayer to treat the said deposites continuation unaffected by the provisions of 1969 Act. [554D-F]

The Language of section 13(B) is plain, clear and unambiguous and the very purpose of the section is to vest rights on the displaced tenants, which is the dominant purpose of the statute, which should be considered. [554G-H]

P. Rami Reddy & Ors. v. State of Andhra Pradesh & Ors., [1988] 3 SCC 433: Skandia Insurance Co. Ltd..v. Kokilaben Chandravadan & Ors., [1987] 2 SCC 654 and M/s. Doypack Systems Pvt. Ltd. v. Union of India & Ors., [1988] 2 SCC 299. relied on.

The sale of holdings of the appellants was in execution of the decree for arrears of rent in O.S. No. 817 of 1943, and appellants are tenants who were dispossessed of the holdings after 1.4.1964 and before the commencement of 1969 Act. They are therefore entitled to restoration of possession of the properties in dispute but without prejudice of the rights if any of the Respondents Nos. 7 to 10 who are the wife and children of Gopalan Nambiar. The amount under deposit made by the appellants is permitted to be withdrawn

by respondents 1 to 3. [558B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1924 of 1990.

From the Judgment and Order dated 6.8.1986 of the Kerala High Court in E.S.A. No. 15 of 1979.

K.K. Venugopa|, M.K. Sasidharan and P.K. Pillai for the Appellants.

T.S. Krishnamoorthy Iyer, P.S. Poti, S. Balakrishnan, Deepak Nargoalkar, E.M.S. Anam, R.M. Keshwani, M.K.D. Nam- boodiri and Irfan Ahmed for the Respondents. The Judgment of the Court was delivered by S. RATNAVEL PANDIAN, J. Special leave granted. The unsuccessful appellants herein have preferred this appeal against the judgment of the High Court of Kerala dated 6.8.1985 passed in E.S.A. (Execution Second Appeal) No. 15 of 1979 whereby the High Court dismissed the said appeal filed by the appellants. The relevant facts giving rise to this appeal are necessary to be recapitulated and they are as follows:

> Othayath Gopalan Nambiar (since dead) and Othayath Lekshmy Amma (who is the first appellant herein) filed an Execution Application No. 556 of 1970 in Original Suit No. 817 of 1943 in the court of the Munsiff of Badagara under Section 13(B) of the Land Reforms Act, as amended by the Amending Act 35 of 1969 (hereinafter referred to as the 'Act') for restoration of possession of the properties mentioned in the schedule of the application, which were sold in court auction for arrears of rent in pursuance of the decree made in O.S. No. 817 of 1943.1t seems that during the pendency of the proceedings before the Munsiff, Othayath Gopalan Nambiar died and thereafter the first appellant's son claiming to be the karnavan of the tavazhi got himself impleaded as the third petitioner in the said Execution Application, who is figuring as the second appellant herein.

In order to decide the questions that arise for consid- eration, certain salient and material facts may be recapitu- lated. The suit, O.S. 'No. 817 of 1943 was filed for recov- ery of arrears of rent of Rs.815 for the Malayalam years 1116 to 1118, corresponding to English era 1941 to 1943. There were 11 defendants of whom Othayath Gopalan Nambiar and the first appellant were the defendants 2 and 3. A preliminary decree was passed on 26.5.1944 followed by the final decree on 29.11. 1944. The decree-holder assigned the decree to another member of his family, who in turn assigned it to one Kunhikannan. The rights of Kunhikannan devolved on Respondents 2 to 4 in the Execution Application who are Respondents 4 to 6 in this appeal and who brought the property to sale. The sale took place on 26.11. 1962. One Thekkayil Kanaran who was the first Respondent in the Execu- tion Application, i.e. the third Respondent herein purchased the property in the Court auction held on 26.11.1962, which sale was confirmed on 14.8. 1964 and consequently obtained delivery of the disputed scheduled property extending to 8.70 acres of double crop wet land through court on 9.1. 1965 from the possession of the appellants. Ex. C 3 is the delivery account and report submitted by

the Amin. The remaining extent of the property was in the possession of the sub-tenants in respect of which there was resistence with which we are not concerned here.

After the delivery has been effected, Gopalan Nambiar and the first appellant herein trespassed into the suit property. Therefore, the Court auction purchaser filed O.S. 6 of 1966 in the court of the Subordinate Judge of Badagara for recovery of possession. The suit was decreed as per the judgment Ex. B 16 dated 27.7.1966. Ex. B 15 is the decree. Ex B 49 dated 25.8.1966 and Ex. B 50 dated 22.8.1966 are the respective certified copies of the delivery account submit- ted by the Amin and the delivery warrant issued to Amin in O.S. No. 6 of 1966. The auction purchaser, i.e. third re- spondent in this appeal assigned portions of the property under sale-deeds Exts. A2 and A3 dated 5.12.1966 to the 5th and 6th respondents in the Execution Application, who are the first and second respondent in this appeal. 1t is stated that while the first respondent is stranger, the second respondent is none other than the wife of the fourth re- spondent. As we have pointed out earlier, this fourth re- spondent is among the three respondents on whom the rights of Kunhikannan devolved.

While it is so, Act 9 of 1967 came into force. So Gopa- lan Nambiar and the first appellant filed Execution Applica- tion No. 1711 of 1967 for restoration of possession under the said amended Act after making the necessary deposit. While this E.A. was pending, Act 35 of 1969 tame into force (Kerala Land Reforms Amendment Act) repealing Act 9 of 1967. So the appellants filed E.A. 556/70 under Section 13 B of the Act for restoration of possession with a prayer that earlier deposit made under Act 9 of 1967 be treated as a deposit under Act 35 of 1969 and also under took to pay the balance, if any, as would be found by the Court. The third respondent (court auction purchaser) and his assignees Respondents 1 and 2 contended that the appellants have no interest in the properties and the delivery of the property had already been taken. The appellants attacked the validity of Ex. A2 and A3 contending that the assignments in favour of Respondents 1 and 2 were made without consideration and bona fides and that auction purchaser Thekkayil Kanaran, Respondent No. 3 was only a benamidar of the decree-holder in the matter of the Court auction purchase. This application (E.A. 556/70) was stoutly opposed by the respondents inter-alia contending that the properties did not belong to the Tavazhi of the appellants and the appellants have no right to the suit properties and are not entitled to apply for restoration of possession. According to the respondents, there is no valid deposit and after the delivery of the property has been effected, Gopa- lan Nambiar trespassed into the properties and he was eject- ed by recourse to a suit and thereafter the properties were assigned to Respondents 1 and 2 for proper consideration and bona fides and they are in possession of the properties on the strength of the said sale-deeds. The Trial Court held that the appellants were the tenants of the properties when they were dispossessed and the deposit made by the appel- lants was sufficient and the Respondents 1 and 2 are not bona fide purchasers for consideration. On the said finding it allowed E .A. 556/70 and set aside the sale. Aggrieved by the order of the Trial Court, the Respond- ents 1 and 2 filed A.S. 49/74 before the Sub Court, Badaga- ra, which for deciding the appeal posed the following four points for its consideration, namely:

1. Are the Petitioners entitled to maintain the application?

2. Is the deposit sufficient?

3. Are the appellants bona fide purchaser for consideration?

4. Whether the court sale is liable to be set aside and the restoration of possession claimed allowable? If so, are the petitioners liable to pay anything by way of value of improvements?

The learned Judge answered the first point--

"that the petitioners are competent to maintain the applica- tion,"

and the second point holding--

" ..... that the deposit when it was made is sufficient. However the interest accrued till date of the present appli- cation will be directed to be deposited in case the petitioners are found entitled to restoration of possession."

Coming to the third point it has been held thus--

"The first respondent (third respondent in S.L.P.) had absolutely no necessity to execute any sham documents. The fact that respondents 5 and 6 (Respondents 1 and 2 in the SLP) came into possession and exercised their rights under Exhibits A2 and A3 by payment of rent and revenue and pay-

ment of consideration spoken to by both the vendor and vendee are sufficient to hold that they are bona fide pur- chasers for consideration."

Under the fourth point, the relief claimed by the appellants was held to be rejected. In the result, the order of the Trial Court was set aside and the appeal was allowed dis- missing E.A. 556/70.

The learned Subordinate Judge has also expressed his opinion in his judgment that in summary proceedings under Section 13B of the Act, the plea of the appellants that the third respondent was a benamidar of the fourth respondent cannot be allowed to be raised in the light of Section 66 of the Civil Procedure Code.

On being dissatisfied with the judgment of the Subordi- nate Judge, the appellants preferred E.S.A. No. 15/79. The respondents filed their cross objections. Though the High Court admitted the appeal on being satisfied that the appeal involves as many as 11 substantial questions of law, it disposed the appeal on a short ground that the documents and the evidence adduced by the respondents 1 and 2 (Govindan Nair and Ambrolil Ammalu) clearly show that the respondents 1 and 2 are bona fide purchasers of the properties in ques- tion for consideration and the plea of benami put forth by the appellants has to be negatived. The contentions in the cross objections were that for filing an application under Section 13(B)(1) of the Act, a deposit of the purchase money together with the interest at the rate of 6 per cent per annum in the court is a condition precedent and that the finding of the lower Appellate Court that the earlier depos- it made under Act 9 of 1967 was sufficient and

the interest accrued till the date of the Execution Application under Act 35 of 1969 would be directed to be deposited in case the appellants were found entitled to restoration of possession of the property is erroneous. The High Court disposed the contentions in the main appeal observing thus:

> "It is not necessary for me to examine this question and finally adjudicate it, since I have upheld the decision of the lower appellate Court on other grounds. I only indicate that the respondents' counsel thought to sustain the conclusion of the lower appellate court on other grounds as well."

In the result, the High Court affirmed the decree of the lower Appellate Court and dismissed the second Appeal with costs.

So far as the cross-objections are concerned, the High Court passed the following order:

> "There is no need to dispose of the cross-objections on the merits. It is ordered accordingly."

Hence the appellants by this appeal are impunging the judg- ment of the High Court.

Mr. K.K. Venugopal, Sr. Counsel appearing on behalf of the appellants, Mr. T.S. Krishnamurthy lyer, Sr. Counsel and Mr. P.S. Poti, St. Counsel appearing on behalf of the first and second respondents respectively took us very meticulous- ly and scrupulously through the judgments of all the three courts and put forth the case of their respective parties. Having heard the learned counsel on either side for a considerable length of time, we are clearly of the view on a conspectus of the relevant Section 13(B) of the Act and on the factual matrix of the case that the result of the case would depend upon the decision of two substantial questions involved, they being--

> (1) Whether respondents 1 and 2 are bona fide purchasers of the scheduled land in dispute for adequate consideration entitling to the benefit of the proviso to Section 13(B)(1)? (2) Whether the appellants are entitled to the benefit of subSection (1) of Section 13(B) of the Act?

Before making a more detailed and searching analysis on different aspects of the case, it would be necessary for proper understanding of the issues involved to reproduce the relevant provisions of Section 13(B)(1) of the Act, on the pivotal of which both the questions revolve. Section 13B: There is no requirement in any of the clauses that an offer of readiness to comply with any order for deposit of costs must be expressed in any judgment, decree or order of court, where any holding has been sold in execu- tion of any decree for arrears of rent, and the tenant has been dispossessed of the holding after the 1st day of April, 1964 and before the commencement of the Kerala Land Reforms (Amendment) Act, 1969, such sale shall stand set aside and such tenant shall be entitled to restoration of possession of the holding, subject to the provisions of this Section; Provided that nothing in this sub-Section shall apply in any case where the holding has been sold to a bona fide purchas- er for Consideration after the date of such dispossession and before the date of publication of the Kerala Land Re- forms (Amendment) Bill, 1968 in the Gazette. If the answer to the first

question is in the affirma- tive, then there is no need to consider the second question as it would be only academic. We, therefore, shall now address ourselves in the first instance whether the concurrent finding of facts by both the Appellate Courts relating to the first question warrant interference. Before the Trial Court whilst the appellants examined PWs 1 to 4 and filed Exhibits A 1 to A22, the respondents examined RWs 1 to 4 and marked Exhibits B. 1 to B .58. Besides, Ex. X- 1, X-2, X-3, X-5 and X-6 and C. 1 to C.4 were also exhibited.

The Respondents 4 to 6 admittedly are brothers. Though at the initial stage, Mr. Krishnamurthy Iyer did not accept the relationship of the third Respondent with Respondents 4 to 6 on the ground of lack of evidence, subsequently no serious dispute was raised about the said relationship. The Trial Court has proceeded on the ground that the Respondents 3 to 6 are brothers being the sons of Kunhikannan in whose favour the decree had been assigned. However, it is admitted during the course of hearing of this appeal that the third Respondent is not a direct brother of Respondents 4 to 6, but son of the step-mother of Respondents 4 to 6. The second Respondent Ambrolil Ammalu is admittedly the wife of the fourth Respondent Krishnan. The first Respondent Govindan Nair is a stranger. The third Respondent, the Court auction purchaser sold the property extending 4.35 acres in favour of the first Respondent and the remaining half in favour of the second Respondent under sale-deeds Exts. A.2 and A.3 dated 5.12. 1966. Consideration mentioned in each of the sale- deeds Exts. A.2 and A.3 is Rs.3,000. Out of Rs.3,000 shown as consideration for A.2 a sum of Rs.2,500 is said to have been left with the first Respondent for payment of arrears of rent. In Ex. A.3, it is recited that the third respondent is said to have already received Rs.2,000 on a promissory note from the second Respondent for meeting the expenses incurred by him for conducting O.S. No. 6/66. The said sum of Rs.2,000 is stated to have been adjusted towards the consideration under Ex. A3.

The first Respondent has produced a receipt (Ex. B28) showing that out of the amount of Rs.2,500 left with him he had paid a sum of Rs. 100. There is no other document evi- dencing the discharge of the entire alleged arrears of rent out-of Rs.2,400. When the third Respondent was questioned about the promissory note on the strength of which he is stated to have borrowed a sum of Rs.2,000, he has stated that he had returned the promissory note. This evidence as rightly pointed out by Mr. Venugopal is highly unacceptable because in usual practice whenever a debt, borrowed on a promissory note is discharged that promissory note is re- turned to the borrower and never left with the lender. Moreover, the evidence of the third Respondent is contra- dicted by RW. 3, the son of the second Respondent. According to RW. 3, when Ex. A.3 was executed, the promissory note was returned to the third Respondent. According to Mr. Venugo- pal, this contradictory version betwixt the evidence of the first Respondent and RW. 3 clearly shows that the recital regarding payment of consideration to the extent of Rs.2,000 in Ex. A.3 is not genuine and acceptable and that Ex. A.3 is not fully supported by consideration. As per the recitals of consideration under Exhibits A.2 and A.3 the total cash consideration received by the third Respondent was only Rs. 1,500 i.e. Rs.500 from the first Respondent and Rs.1000 from the second Respondent. It is vehemently urged on behalf of the appellants that the third Respondent after purchasing the property for Rs.815 in 1962 would not have parted with it after fighting several litigations for a cash considera- tion of Rs.1,500 only. The evidence of the third Respondent that he left a sum of Rs.2,500 with the first Respondent for discharging arrears of rent and earlier received a sum of Rs.2,000 from the second Respondent on a

promissory note is not credit worthy in the absence of any supporting contempo- rary documentary evidence. His assertion that he paid the amount for the Court auction purchase in the year 1962 out of the money in his possession as well as from borrowings shows that he was a man of slender means. When he was con- fronted from whom he borrowed that amount, his answer was that he did not remember from whom and how much he borrowed. The Trial Court has rightly pointed out in paragraph 19 of its Order that the third Respondent did not leave any impression that he was conversant with the various pending litigations regarding the present property.

Mr. Venugopal drew out attention to another piece of evidence of RW3, deposing that his father was never consult- ed with regard to Ex. A3 and assailed his evidence as in- credible and bereft of truthfulness and trust worthiness. Coming to the sale-deed, Ex. A2 it is stated that the first Respondent is residing about 11 miles away from Palayed Amson where the property is situated. He has no other property in Amson. The reason given by him for purchasing this property which was already riddled with litigation is not at all convincing.

The first appellate Court while perfunctorily rejecting the reasoning of the Trial Court with regard to the consid- eration part of Ex. A2 and A3 disposed of that contention in a summary manner holding:

> "The apparent inadequacy is no ground to think that there is no consideration ..... I don't think that the recitals in Exhibits A2 and A3 can be overlooked for this or the other reasons stated by the learned Munsiff."

Then relying on Exhibits B 17, B28, B31, B41 and B45 and other documents it concluded:

> "that the Respondents 1 and 2 came into possession of the properties and exercised their rights under Exhibits A2 and A3 by payment of rent and revenue and payment of considera- tion spoken to by both the vendor and vendee and as such they are bona fide purchasers for consideration."

The High Court accepting the reasons given by the sub- Judge held thus:

> "Most of these documents are public records or registers kept in the respective village office and proceedings in courts. There is no more of law in placing reliance on such documents. The finding entered by the learned Subordinate Judge that respondents 5 and 6 are bona fide purchasers for consideration is based on substantial evidence. It cannot be said to be arbitrary or unreasonable or perverse. ' ' But both the Appellate Courts have conveniently ignored even the relationship of the parties which assumes much importance and significance in evaluating the evidence in the light of the facts and circumstances of the case for reaching a satisfactory conclusion and seem to have summari- ly disposed of the case of the appellants.
>
> The question is not the mere inadequacy of consideration as pointed by the lower appellate Court, but lack of evi- dence in substantiating the recitals of both the documents. The next contention advanced by Mr. Venugopal is that though the High

Court has formulated as many as 11 substantial questions of law. it has not dealt with any of them enumer- ated as (a) to (e) and examined the question No. (f) in the proper perspective. Further the important question No. (g) reading "rs not the admitted fact that the 6th respondent is the wife of the 2nd respondent prima facie proof that she is not a bona .fide purchaser for value" is not at all dealt with. It may be noted in this connection that the 6th re- spondent and the 2nd respondent referred to in that question are Ambrolil Ammalu (2nd respondent herein) and Krishnan (4th respondent herein). As pointed out supra the High Court itself has expressed that it was inclined to dispose of the appeal 'on a short ground'.

The bone of contention of Mr. Krishnamurthy Iyer and Mr. Poti is that it is not open to the appellants to reagitate the matter and request this Court to disturb the concurrent finding of facts arrived at by both the appellate Courts which had rendered their findings on the proper evaluation of the evidence and there can be no justification to review or re-appreciate the evidence to take a contrary view in the absence of any contemporaneous document in support of the plea of the appellants. In addition to the above, Mr. Poti urged that the appellants have not properly and satisfacto- rily discharged the onus of proof cast upon them and the concurrent findings based on voluminous documents, the copies of which are not annexed to the SLP for perusal of this Court, do not call for interference.

In reply to the above arguments, Mr. Venugopal has pointed out that none of the documents referred to in the judgments of the appellate Courts would either improve the case of the respondents or deny the claims of the appel- lants. Of the documents relied upon by the appellate Courts, Ex. B 17 and B31 are the true extracts showing payment of tax in the Village Officer Day Book. Ex. B28 is a rent receipt dated 23.2.1969 issued by the receiver appointed in O.S. 1/64 on the file of the Sub Court (lower appellate Court). B. 42 is a true extract from the Foodgrains Cultivation Register and B.46 is a true extract from the Peringathor Village Account. Ex.B.41 to B.45 are the levy notices and revenue receipts for the years 1967, 1968. 1969 and 1973. Exhibits B.55 to B.59 are copies of orders in M.C. No. 3/71. As rightly pointed out by Mr. Venugopal, it is but natural that the receipt for the pay-

ment of tax, rent receipt, revenue receipt etc., are in the names of the persons in whose names the properties stand and therefore those documents cannot by themselves dispel the claim of the appellants. Besides, urging with aH emphasis that Exhibits A2 and A3 are only sham and nominal documents, it has been incidentally urged by Mr. Venugopal that the transaction under these two sale-deeds is benami in nature. This argument was stoutly resisted by Mr. Krishnamurthy Iyer stating that in the teeth of Section 66 of the Code of Civil Procedure and in the absence of any proceedings to set aside the sale in favour of respondents 5 and 6 on the ground of fraud etc., the plea of benami transaction cannot be counte- nanced. He also cited the decision in Mithilesh Kutnari and Another v. Prem Behari Khare, [1989] 2 SCC 95. But Mr. Venugopal explained his argument that he has not advanced that argument to set aside the sale-deeds on the ground of benami transaction, but only for scrutinising the circum- stances of the transaction in examining the

validity of the sale-deeds. However, as the plea of benami transaction is not pressed into service, it need not detain us any more. We shah now examine whether this Court would be justi- fied in interfering with the concurrent finding of facts in exercise of its discretionary powers under Article 136 of the Constitution of India. In a recent decision in Dipak Banerjee v. Lilabati Chakraborty, [1987] 4 SCC 161 it has been observed thus:

> "That jurisdiction (under Article 136 of the Constitution of India) has to be exercised sparingly. But, that cannot mean thai injustice must be perpetuated because it has been done two or three times in a case. The burden of showing that a concurrent decision of two or more courts or tribunals is manifestly unjust lies on the appellant. But once that burden is discharged, it is not only the right but the duty of the Supreme Court to remedy the injustice."

No doubt, this discretionary power has to be exercised sparingly; Out when there are exceptional and special cir- cumstances justifying the exercise of the discretionary powers and where manifest injustice or grave miscarriage of justice has resulted by overlooking or ignoring or excluding material evidence resulting in unduly excessive hardships, this Court will be justified in stepping in and interfering with the concurrent finding of facts in the interest of justice and it is also the duty of this Court to remedy the injustice, so resulted. Vide Basudev Hazra v. Meutiar Rahaman Mandal, [1971] 3 SCR 378 and Bhanu Kumar Shastri v. Mohan Lal Sukhadia and Others, [1971] 1 SCC 370 at pages 385 and 386.

The present case, in our view, suffers from the infirmi- ty of excluding, ignoring and overlooking the abundant materials and the evidence, which if considered in the proper perspective would have led to a conclusion contrary to the one taken by both the appellate Courts. The relation- ship of the parties inter se has been completely and conven- iently ignored and excluded from consideration. In fact, the High Court has not rendered any finding on question No. (g) which is one of the eleven substantial questions of law formulated in paragraph 3 of its judgment. The lack of evidence in support of the recital in regard to the consid- eration is completely overlooked. Therefore, in view of the above exceptional and special circumstances appearing in this case, this Court will not be justified in refusing to exercise its discretionary powers merely on the ground that the conclusion of both the Courts is concurrent. For the discussions made above, we are of the view that the conclusion arrived at by both the appellate Courts is only backed by assertions rather than by acceptable reason- ing based on the proper evaluation of evidence and so we are unable to subscribe to the concurrent finding that the respondents 1 and 2 are bona fide purchasers of the proper- ties in dispute for consideration. On the other hand, we hold that the evidence and circumstances of the case coupled with the evidence on record do establish that the respond- ents 1 and 2 are not bona fide purchasers for consideration. In the result, we hold that the respondents 1 and 2 are not entitled to the benefit of the proviso to sub-Section (1) of Section 13(B) of the Act and answer the first ques- tion against the respondents and in favour of the appel- lants.

We shall now pass on to the next question whether the appellants are entitled to the benefit of Section 13(B)(1) of the Act.

The Kerala Land Reforms Act of 1963 came into force on 1.4.1964. Amended Act 9 of 1967 was a temporary enactment which remained in force till 31.12. 1969. Thereafter, Act 35 of 1969 came into force from, 1.1.1970 containing Section 13(B) which is substantially on the same terms as Section 6 of Act 9 of 1967 with a proviso superadded. To invoke this benevo- lent provision, the satisfaction of two primary conditions are sine qua non. Those conditions are:

(1) Any "holding" to which a tenant is entitled to resto-

ration of possession should have been sold in execution of any decree for arrears of rent.

(2) The tenant should have been dispossessed of the "holding" after the first day of April 1964 and before the commencement of the Kerala Land Reforms (Amendment) Act, 1969.

If these two essential conditions are fulfilled, then the sale in execution of any decree for arrears of rent shall stand set aside notwithstanding anything to the con- trary contained in any law or in any judgment, decree or order of court and the tenant shall be entitled to restora- tion of possession of such holding, but subject to the provisions of this Section 13B. The only bar for the resto- ration of possession under this Section 13(B)(1) is the sale of the holding to a bona fide purchaser for consideration after the date of such dispossession and before the date of publication of the Kerala Land Reforms (Amendment) Bill 1968 in the Gazette. For invoking the benefit of sub-Section (1) of section 13(B) the person entitled to restoration of possession of his holding should within a period of 6 months from the commencement of the Kerala Land Reforms (Amendment) Act, 1969 deposit the purchase money together with interest at the rate of 6 percent per annum in the court and apply to the court for setting aside the sale and for restoration of possession of his holding. Once these legal formalities are satisfactorily complied with then the Court by holding a summary enquiry shall set aside the sale and restore the applicant to possession of his holding. The explanation to that section says that the term 'holding' includes a part of holding. The expression "holding" is defined in Section 2(17) of the Act.

The language of Section 13(B) is plain, clear and unam- biguous representing the real intention of the legislature as reflected not only from the clear words deployed but also from the very purpose of the vesting of rights on the dis- placed tenants. To construe the provisions of a statute especially of a benevolent provision like the one in ques- tion, we have to take into consideration the dominant pur- pose of the statute, the intention of the legislature and the policy underlying. Vide P. Rami Reddy & Others v. State of Andhra Pradesh & Others, [1988] 3 SCC 433; Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Others, [1987] 2 SCC 654 and M/s Doypack Systems Pvt. Ltd. v. Union of India & Others, [1988] 2 SCC

299. Admittedly, the third respondent obtained delivery of the property in question through court on 29.1.1965 from the possession of the appellants, who were the tenants of the said property which was sold for arrears of rent and there- after the appellants preferred a petition for restoration of possession of their holdings in Execution Application No. 1711/67 under Section 6 of Act 9 of 1967 after depositing the sale amount of Rs.815 and the interest of Rs.255. Thus the appellants have satisfied the conditions for entitlement of the possession of the property. While this proceeding was

pending, Act 35 of 1969 came into force repealing Act 9 of 1967. Therefore, the appellants filed the Execution Applica- tion No. 566/70 in O.S. 817/43 praying that the present application should be treated as a proceeding in continua- tion of the earlier Execution Application and the amount deposited already in the previous Execution Application should be treated as deposit for the present application with an undertaking to deposit the balance, if any. Though it has been contended by the respondents that the appellants have failed to establish that they were tenants at the time of the dispossession, both the Trial Court as well as the first appellate Court have concurrently found that the appellants were holding the property as tenants and they were dispossessed. Before the High Court, it was contended that at the time of dispossession of the holding, the appel- lants were not tenants but only trespassers, that the dis- possesion was only pursuant to the decree in O.S. No. 6/66 and that both the lower Courts have not applied their minds to these salient and vital facts. The learned Judge of the High Court has answered this contention in the penultimate paragraph of his judgment observing thus:

> " This is a serious legal error. It is not necessary for me to examine this question and finally adjudicate it, since I have upheld the decision of the lower appellate court on other grounds."

Suffice to mention here that the High Court has not specifi- cally dislodged the findings of the lower Courts that the appellants were tenants at the time of the dispossession. However, we will deal with this question presently. The main thrust of the argument of Mr. Krishnamurthy Iyer is that the appellants are not entitled to restoration of the possession of their 'holding' because of an intervening cause, that being, that the third respondent, got the pos- session of the property which is now sought to be disturbed not in execution of the decree for arrears of rent, but by filing a suit subsequent to 'the court auction purchase. That intervening cause is explained by the learned counsel 'stating that after the property was delivered over to the third respondent on 29.1.1965, Gopalan Nambiar (since dead) and the first appellant trespassed into the land which necessitated the third respondent to institute a suit O.S. No. 6/66 in the Sub Court of Badagara which was decreed on 27.7. 1966 as evidenced by the judgment (Ex. B16). He con- tinues to state that the third respondent, only in pursuance of the execution of this decree in O.S. 6/66 obtained pos- session of the property on 23.8. 1966 and therefore Section 13(B)(1) in view of the said intervening cause cannot be availed of since the third respondent though 'got possession earlier by the auction purchase was dispossessed by the subsequent event of trespass by the appellants and got possession by instituting the suit O.S. 6/66. One other argument of the learned' counsel is that as the sales under Exhibits A2 and A3 are only subsequent to the decree in O.S. No. 6/66, these transactions cannot be brought into the dragnet of Section 13(B) and the said provision will have no application to the facts of the present case. We are afraid, we cannot permit this inconceivable argument to be advanced. Admittedly, the third respondent purchased the property in court auction sale in pursuance of the decree for arrears of rent in O.S. No. 817/43 and obtained the possession by dispossessing the tenants, namely, the appellants. It was only thereafter there was trespass by the appellants. There- fore, the subsequent event of obtaining possession of the property in pursuance of the decree in O.S. No. 6/66 will not in any way alter the position that the appellants had been dispossessed in pursuance of the decree for arrears of rent. The decree in O.S. No. 6/66 for obtaining possession from the trespassers does not confer any new right or title over the property in

favour of the third respondent. Mr. Venugopal countered this argument stating that this new plea should not be allowed to be raised because this plea was never taken both before the trial and the first appellate Courts. The reply given by Mr. Krishnamurthy Iyer is that since it is a question of law, it is permissible to raise this question even at this stage. As we have said earlier, even assuming that this plea could be raised, it has no substance in any way affecting the claim of the appellants for the reasons stated supra.

Mr. Poti after giving a brief note about the legislative history that Act 4 of 1961 was declared as void on 5.12. 1961 in respect of certain provisions and that thereafter Act 1 of 1964 was enacted which came into force on 1.4.1964 repealing earlier Act 4 of 1961 advanced a hesitant argument that the application is liable to be dismissed as the entire amount has not been deposited in compliance with sub-Section (2) of Section 13(B) which is a condition precedent to claim the restora- tion of the possession of the property. Admittedly the appellants filed an application in the year 1967 for resto- ration of the possession of the property under Section 6 of Act. 9 of 1967 and during the pendency of that application, Act 35 of 1969 came into force. The applicant who had al- ready deposited the purchase amount together with interest has made the request to treat that application as the one in continuation of the later proceeding and undertook to pay the deficiency of the amount, if any. The lower appellate Court in paragraph 6 of its judgment found that the deposit already made was sufficient and that the interest accrued thereafter would be directed to be deposited in case the appellants were found entitled to restoration of possession. This finding of the first appellate Court concurring with the Trial Court has not been dislodged by the High Court. It may not be out of place to mention that on account of cer- tain divergent views expressed by Judges of the Kerala High Court on this point the question was referred to a Division Bench of that Court which drawing strength on the ratio laid down by this Court in State of Punjab v. Mohar Singh, [1955] 1 SCR 893 :AIR 1955 SC 84 observing:

> "The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them."

and agreeing with the view expressed by Krishnamurthy Iyer, J (as he then was and who is now appearing before us for the first respondent in different capacity) in Civil Revision Petition Nos. 1090 and 109 1 of 1972 wherein this precise question came up for consideration held that the application filed under Section 6 of Act 9 of 1967 which was pending on the date of the commencement of the Act 35 of 1969 was liable to be continued and dealt with under the provisions of the earlier Act, untrammelled by the provisions of the later Act. We approve the view taken in the above Parameswa- ran Narnbudiri's case and hold that the deposit made in the earlier application under Section 6 of Act 9 of 1967 which was pending on the date of commencement of Act 35 of 1969 was liable to be continued uneffected by the provisions of the later Act.

In Summation:

> We, for the aforementioned discussion, disagree with the findings of the High Court, set aside the impugned judgment and restore the judgment of the Trial Court holding that the sale of the 'holdings' of the appellants was in execution of the decree in O.S.

No. 817/43 for arrears of rent and the appellants who are tenants were dispossessed of the holdings after 1.4.64 and before the commencement of the Kerala Land Reforms (Amendment) Act, 1969 and the respondents 1 and 2 are not bona fide purchasers for consideration. In view of our above conclusion the appellants are entitled to recover possession of the properties in dispute, but without preju- dice to the rights, if any, of the respondents 7 to 10 who are the wife and children of Gopalan Nambiar and who have got themselves impleaded as parties to the present proceedings. The amount under deposit made by the appellants is permitted to be withdrawn by the respondents 1 to 3. In the result, the appeal is allowed with costs.

S.B. Appeal al-
lowed.