Kerala High Court
Nabeessa vs Abdul Majeed on 5 July, 2006
Equivalent citations: AIR 2006 Ker 381, 2006 (3) KLT 966
Author: M Ramachandran
Bench: M Ramachandran
JUDGMENT M. Ramachandran, J.

1. The question of law that is raised in this Second Appeal has no comparison with the 'sala' involved in the lis. But, it may have to be frequently confronted in daily life. The relevant facts which ultimately led to filing of this appeal could be briefly sketched.

2. O.S.No. 174 of 1983 filed before the Munsiff's Court, Tirur was principally a suit for injunction. Plaintiffs alleged tortious conduct on the part of the defendant and also claimed compensation for loss sustained by them. The suit had been decreed. The defendant was restrained from trespassing into the plaint schedule property. Plaintiffs were also declared as entitled to get Rs. 1000/- as damages. Munsiff further directed that the building materials forcibly taken away were to be restored to the plaintiffs.

3. The Appellate Court (Subordinate Judge's Court), Tirur by judgment in A.S.No. 87/1987 had however held that although order of permanent prohibitory injunction was warranted, plaintiffs were not entitled to get damages from the defendant.

The direction of the lower court permitting realisation of damages was thereby set aside. Plaintiffs were also not entitled to get the articles seized by the Amin from the defendant, and they were to be returned to the defendant. The plaintiff's present appeal challenges that part of the direction which had gone adverse to them.

4. The plaint schedule property was initially in the possession of one Attakoya Thangal on kanam arrangements. He had mortgaged the property to one Cheriyath Veeran in the year 1931. Veeran had constructed a shop building in the property. It had been leased out to one Kalarikkal Mohammed. On the death of the original kanam tenant Sri.Attakoya Thangal, his rights had devolved on his son Imbichikoya Thangal. Kanam rights had thereafter been transferred over to Kalarikkal Mohammed, the lessee in occupation as per a registered document. Such rights had thereafter been assigned to Mohammed @ Bava Kurikkal.

5. The first plaintiff is the wife of Bava Kurikkal and the second plaintiff is a close relative of theirs. Plaintiffs thus claimed possession of the shop building. The defendant, grandson of Veeran, apparently was in occupation of adjacent parcel of land. Plaintiffs alleged that he had trespassed into the property on 31.10.1983 and had demolished structures there. Police did not intervene in spite of complaint and plaintiffs had filed a suit. The prayer was for a permanent prohibitory injunction as well as for recovery of loss sustained.

6. The defendant contended that Veeran had taken over the properties on lease from Attakoya Thangal and on the death of Veeran, his legal heirs were in possession of the property. They had

obtained janmam rights over it and he was in exclusive possession. According to him, though the building had been entrusted to Kalarikkal Mohammed, shortly thereafter it was surrendered back. Taking advantage that there was no registered deed, documents were got created by the predecessor in interest of the plaintiffs. If at all Kalarikkal Mohammed had any right, it was lost by adverse possession and limitation. Defendant further pleaded that he had not demolished the building as alleged, and was not answerable for loss or the damages claimed.

7. The learned Munsiff held that the plaintiffs were in possession of the scheduled property, and the trespass made by the defendant resulting in demolition of structures was illegal. Reliefs including damages were given in the said circumstances. The appellate court upheld the order partially, but claims for damages were not sustainable for two reasons.(1) The plaintiffs were not owners of the properties, but only occupiers (2) Nothing was made available by them to show that proceedings were initiated as authorised by the owner of the property. Therefore, damages were a claim inadmissible in nature.

8. Sri.Manhu appearing for the appellant submits that the appellate authority had committed a patent mistake in holding that plaintiffs were not entitled to damages.

When it had been found that they were in lawful possession and enjoyment of the properties, the normal reliefs ought not have been denied to them when there was satisfactory evidence of trespass. Owner of the property was none other than the husband of the first plaintiff and therefore, the court was not expected to go into any other question, viz., whether or not they were competent to represent him. Principally, the issue was whether they were in possession and after entering a finding, court permitted itself to stray to fields of absurdity. A theory that title holder alone exclusively had right to claim damages was not legally tenable. The judgment of the lower appellate authority therefore suffered from errors apparent. Plaintiffs were entitled to damages as also the remanents of the properties which had been attempted to be appropriated by the defendant.

9. Mr.Rajagopal for the respondents submits that the plea as above is thoroughly unsustainable. The appeal itself is not maintainable. This is for the reason that valuation for the purpose of jurisdiction is shown as Rs. 1,000/- and under Section 102 of the Code of Civil Procedure, no second appeal could have been filed in the context.

10. But, the preliminary objection as above does not appear to be sustainable for more than one reason. The first is that the second appeal has been filed in 1993; it has been on files from 4.8.1993. Restriction brought by Section 102 is only from 1.7.2002.

11. Still further, counsel points out that the amendment was that "no second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed three thousand rupees". What is postulated by the section is that subject matter of the original suit should be one for recovery of money. In such cases alone, the bar applies. Going by the nature of pleadings, it cannot be presumed that O.S.No. 174 of 1983 was a suit filed for recovery or money. It was one for injunction, coupled with a claim for recovery of articles as well as for recouping loss suffered. The preliminary objection is found untenable.

12. According to Mr.Rajagopal, the legal position as spoken to by the Appellate Court is unexceptionable. The plaintiffs are not owners of the plaint schedule property. If this position is admitted, they are disabled from urging claims for damages/ compensation, since such rights can be considered as purely personal. A third person cannot abrogate to himself any such rights independently, unless specifically authorised to resort to such proceedings. The appellate judgment therefore deserves to be left intact.

13. The matter in examination exclusively is in respect of property damage, damages and nothing else. For examining the rival contentions, the question of law raised in the appeal could be rephrased as following:

Whether on the facts and circumstances of the case, the learned Subordinate Judge is legally right in setting aside the decree for damages and return of the materials after upholding the decree of the trial court as to trespass and illegal demolition solely on the ground that the owner of the building alone has right to demand the same?

14. Damages can normally be defined as compensation to which a person becomes entitled if it is proved that he has been subjected to loss/inconvenience or prejudice. It is to be realised from the wrong doer, or person vicariously becoming liable therefor. The issue which has come up for decision is as to whether a person who is subject to the prejudice should be always the owner of the property.

15. The answer can only be in the negative. Take for instance, a case where a person has in his possession a borrowed car. While it is parked, a miscreant deflates tyres. Though monitory loss as such is minimal, he is disabled from keeping his appointment and thereby faces substantial prejudice. The owner of the car may or may not proceed against the miscreant. But, it will be against common sense that the borrower will have no cause of action for claiming damages from the miscreant. It may be possible to cite several instances of this nature. This is because the law recognises possession as conferring valuable rights, the extent of which may vary from case to case. Again, we may consider a circumstance, where a person is entrusted with valuable papers for delivering it to a third party. It is intercepted by a stranger, copies are taken by him, and it is given back to the carrier. Though there might not be loss of property as such, injury is inflicted. The principal will have a cause of action against the carrier as well as the interceptor. It should be deemed that the carrier too will have an independent right as against the miscreant, as his credibility stands to lose, as directly arising from the tortious act. Thus the conclusion possible is that the rights of a person in possession cannot totally be foreclosed even if it be the position that the owner may have the prime right for compensation.

16. In the present case, the owner of the properties had given possession of the building to the plaintiffs for the purpose of occupation. When a third person commits waste, he may not be able to escape from liability, towards the owner. It will not also be possible to contend that tenants have no rights whatever to claim damages under separate heads for loss/inconvenience which was personal to them.

17. The right of dominion over a property generally can be the concept of possession. In common parlour, it can be understood as control over the visible rights. Possession need not always be married to ownership. Defendant in the present suit was unable to establish rights asserted by him over the property. That was the position of the plaintiffs as well. But, would it not have been possible for the plaintiffs to claim damages in respect of the special loss suffered by them?

18. By the intervention of the defendant, property belonging to the original owner stands destroyed. I am of the opinion that it may be possible for a person in possession to bring in claim for damage/loss inflicted on the property, but it should be on condition that it is referable to his loss alone.

19. In the present appeal, the argument is that the owner alone is the person to decide as to the damages he has suffered, and a stranger, be it a tenant or an occupier cannot claim any such rights unless he is appropriately authorised. This argument appears to be legally sustainable, especially in respect of the issue of damage to property. The owner of the property alone will have the right and authority to put up claims. More than actual pecuniary loss, sentiments will have play and he may be desirous of claiming damages as it comes to his mind. This position is scrupulously to be recognised, as it may happen that there can be collusion between a person in possession and a wrong doer. The damages claimed can be ludicrously low so as to defeat the possible claim of the original owner. Adjudication and decision by the court may constructively bind the hands of the owner from bringing in an action, for full extent of loss. Therefore, in so far as there is nothing to indicate that the claim for loss/damages had been instituted on behalf of the owner, or was at least on an authorisation by him, the argument raised by the respondent requires to be accepted, in principle. Duty of the possessor perhaps ends when the loss is reported to the principal. In this background, the finding of the appellate court viz., that in so far as there is nothing on record to indicate that the claims for damages had been presented on behalf of the owner, the claim will have no legs of its own to stand, could be considered as acceptable, legalistic view.

20. But, that is no reason at least in this case to hold that the plaintiff is not entitled to damages which have been awarded by the Munsiff. This is because the plaint claim could be construed as one to recover damages for interfering with their peaceful possession of the building occupied by them. As gatherable from the pleadings and evidences, the demolition had brought inconvenience to them. This can definitely operate as a separate head for claiming damages, leaving intact the rights of the property owner to claim damages on his own if he chooses. Foregoing discussions can lead to a position that plaintiffs in any case and the principal if he chooses so, may be able to sue for damages in respect of inconvenience/loss they feel they had suffered or undergone, but coming under different heads. Claim of one nature may not technically block or interfere presentation of another claim although the defendant may be one and the same.

21. Defendant had unsettled the peaceful enjoyment and occupation of the plaintiffs. They would therefore be entitled to press claims for damages, for unsettling them. This is independent of the claims of the owner of the properties, for property destruction. Pleadings are sufficiently present, although it is evident that the fine distinction as now drawn might not have been in their minds. The learned Munsiff was therefore substantially justified in awarding damages.

22. In respect of the direction for returning of the building materials, again, the view of the appellate court may be correct. The plaintiffs have no claim that they own them. Though the defendant can have no manner of right or claim over the items, nevertheless in civil proceedings, ordinarily a person having a third party status may not be able to demand for possession over properties which admittedly do not belong to him.

23. In the result, the judgment and decree of the lower court is restored in part, viz., with reference to the claim in respect of damages awarded as well. Parties to suffer costs.