Supreme Court of India
K. Sankaran Nair vs Devaki Amma Malathy Amma & Ors on 25 September, 1996
Author: M S.B.
Bench: Majmudar S.B. (J)

PETITIONER:
K. SANKARAN NAIR

Vs.

RESPONDENT:
DEVAKI AMMA MALATHY AMMA & ORS.

DATE OF JUDGMENT: 25/09/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
SINGH N.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N I S.B. Majmudar. J.

The appellants who are the heirs of deceased defendant no.2, have challenged the judgment and order passed by learned Single Judge of the Kerala High Court in Civil Revision Petition No.682 of 1980 . The High Court rejected the contention of the original appellant defendant no. 2, in Original Suit No.241 of 1974 by which he claimed status of a deemed tenant as per the provisions of Section 6C of the Kerala Land Reforms Act, 1963 as brought on the statute Book by the Kerala Land Reforms (Amendment) Act. 1979 (hereinafter referred to as `the Act'). Having obtained special leave to appeal under Article 136 of the Constitution of India the present appeal has been filed by the original defendant no.2. The respondents herein are the original plaintiffs in the suit.

A few relevant facts leading to these proceedings may be noted at the outset. The respondents-plaintiffs filed Original Suit No.241 of 1974 in the Court of Subordinate Judge at Trivandrum for partition of respondents, 5/6th share in the plaint schedule properties and for recovering the same from original appellant-defendant no.2 and his wife original appellant-defendant no. 1 with past and future mesne profits.

The respondent-plaintiffs' case in short was that the suit properties originally belonged to one Krishna Pillai Madhavan Pillai. Said Madhavan Pillai by a settlement Deed of 1945 (1120 M.P.) decided that plaint properties A, B, C Schedule were to remain in possession and enjoyment of Shri Madhavan Pillai, his wife parvathi Amma and for the benefit of their children and said Parvathi Amma had to remain in possession as life estate holder. That said Madhavan Pillai died in 1955 and his widow parvathi Amma and his son Krishnan Nair succeeded to his properties. That Kerala Agrarian Reforms Act, Act I of 1964 was brought on the Statute Book on 1st April 1964. Said Krishnan Nair died on 4th January 1968. Said Parvathi Amma by a registered deed is said to have leased out her properties on 10th January 1969 to her son-in-law, deceased appellant original defendant no.2. Widow of Shri Krishnan Nair and her children filed the aforesaid suit as plaintiffs nos.1 and 2 to 5 respectively in the Trial Court for partition and separate possession of their 5/6th share in the plaint schedule properties which were then in possession of original defendant no.2 In the said suit original defendant no.2 took up the contention that he was a tenant under the Kerala Agrarian Reforms Act. That question was referred to the Tenancy Tribunal under Section 125(3) of the Kerala Land Reforms Act for decision. The Tribunal held that original appellant-defendant no.2 was not a tenant under the Act and the Lease Deed in his favour was hit by Section 74 of the Kerala Land Reforms Act which totally barred creation of leases after 1.4.1964. The case of oral lease in his favour prior to 1.4.1964. was also found to be not established. The Tribunal's decision was confirmed by the High Court on 31st March 1978. Appellant carried the matter to this Court. Special Leave Petition against the High Court's judgment was also dismissed by this Court on 28th August 1978. Thus the question of alleged tenancy of the appellant under the Lease Deed of 10th January 1969 finally got concluded against the appellant. In the meantime the Trial Court passed preliminary decree on 30th March 1976 and a receiver was appointed who took possession of the suit land from the appellant. Final decree was passed on 27th September 1978. Pursuant thereto the respondents obtained possession from the appellant through the receiver. Consequently final decree remained to be executed only for mesne profits and for that purpose the respondent filed Execution Petition against the appellant on 5th July 1979. Pending these execution proceedings for mesne profits Kerala Land Reforms (Amendment) Act, 1979 was brought on the Statute Book. As per Section 1 sub-section (2) thereof the said Amendment Act was deemed to have come into force on 7th July 1979. By the said Amendment Act Section 6C was inserted in the Kerala Land Reforms Act, 1963. The said provision reads as under :

> "6C. Certain lessees who have made substantial improvements, etc, to be deemed tenants.-
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> Notwithstanding anything contained in section 74 or in any contract, or in any judgment, decree or order of any court or other authority, any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another person on the basis of a lease deed executed after the 1st day of April, 1964, shall be deemed to be a tenant if-
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> (a) he (including any member of his family) did not own or hold land in excess of four acres in extent on the date of execution of the lease deed: and

(b) he or any member of his family has made substantial improvements on the land.

Explanation.- For the purpose of this section improvements shall be deemed to be substantial improvements if the value of such improvements is more than fifty per cent of the value of the land on the date of execution of the lease deed."

The original judgment-debtor defendant no.2, that is, is original appellant herein, applied on 8th January 1980 in execution proceedings to get a fresh reference to the Land Tribunal for deciding his deemed tenancy status under Section 6C of the aforesaid Amending Act. The respondents- decree holders objected to the said application. By an order dated 29th January 1980 the Executing Court rejected the claim of the appellant for a fresh reference to the Tribunal about his status of deemed tenancy under Section 6C of the Act on the ground that this contention was barred by principles of res judicata. The appellant carried the matter in revision before the High Court. As noted earlier a learned Single judge of the High Court by her decision dated 7th April 1980 rejected the said revision application taking the view that though the contention of the appellant was not barred by res judicata because of the coming into force of a new provision by way of Section 6C of the Act, the Lease Deed in favour of the appellant dated 7th July 1969 was inoperative in law as Parvathi Amma who was a life estate holder had no authority to create such a lease and Chapter II of the Kerala Land Reforms Act, 1963 did not apply to the facts of the present case in view of Section 3(1)(vi) which stated that tenancies in respect of land or of buildings or of both created by persons having only life interest or other limited interest in the land or in the buildings or in both, were not covered by Chapter II of the Act which included Section 6C. It is the aforesaid order of the learned Single Judge of the Kerala High Court that is brought in challenge by the original appellant by way of present proceedings. Pending this appeal original appellant died and his heirs have pursued this appeal.

A short question with which we are concerned in these proceedings is as to whether original appellant defendant no.2 was entitled to again claim the benefit of deemed tenancy as per Section 6C of the Act. Even though the learned Single Judge of the Kerala High Court in the impugned judgement has taken the view that this contention is not barred by res judicial learned senior counsel for the respondents vehemently contended that the decision of the learned single judge deserves to be confirmed on the plea of res judicata though even on merits, according to his, the said decision is well sustained. In view of the aforesaid contention of learned senior counsel for the respondents, learned senior counsel for appellant Shri Sukumaran was called upon by us to point out as to how the contention of the appellant for getting benefit of Section 6C cannot be said to be barred by res judicata in view of the earlier claim of his tenancy rights qua the very same land had stood finally rejected by this Court on 28th August 1978. Learned senior Counsel for the appellant in this connection submitted that when earlier proceedings got terminated before this Court Section 6C was not on the Statute Book. That it was brought on the statute book subsequently with effect from 7th July 1979. Consequently the principles of res judicata would not apply so far as this new provision is concerned which gave a fresh right to the appellant to contend that he was entitled to get the benefit of the aforesaid rival contention. In the light of the aforesaid rival contentions we proceed to resolve this controversy.

It must at once be stated that if the contention of the appellant for getting benefit of Section 6C of the Act is found to be barred by principles of res judicata nothing further would survive in these proceedings and the judgment of the High Court will have to be confirmed on this ground alone. In order to resolve this controversy between the parties it is necessary to note the background facts leading to the enactment and introduction of Section 6C in the parent Act. Relevant recitals in the Statement of Objects and Reason for bringing on the Statute Book the aforesaid provision read as under:

> "Difficulty was experienced by the Government in implementing certain important provisions of the Kerala Land Reforms Act, 1963 in accordance with their true spirit and the intention of the Lagislature, because of certain decisions of the Kerala High Court, Government have also received representations from a large number of tenants and other persons pointing out the hardship caused to them by the impact of the above judgments. In order to overcome such difficulties and hardship it was considered necessary to amend the Kerala Land Reforms Act suitably. It was also proposed to vail of this opportunity to make certain other amendments which were found necessary for the smooth and speedy implementation of the provision of the Act. The succeeding paragraphs briefly explain the scope of the more important amendments.
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> 2. It was brought to the notice of the Government that inspite of the provisions contained in section 74 of the Act, prohibiting the creation of tenancies after the 1st April 1964, some persons have obtained leases of lands after that date and have effected substantial improvement on such lands. It was considered that it would be very hard if such lessees are evicted from their holdings. It was therefore necessary to incorporate a provision to give protection to such persons."

The aforesaid Statement clearly shows that as per the provisions of Section 74 of the Act no tenancies could be created after 1st April 1964 and thus there was total bar to creation of such tenancies. Consequently the appellant's claim to be a tenant of the land as per the registered Lease Deed dated 10th January 1969 had stood replied upto this Court. There cannot be any dispute about the same. In order to infuse life in such void leases Section 6C was brought on the Statute Book by the Legislature. It is of course true that Section 6C starts with a non obstante clause and recites that notwithstanding anything contained in section 74, or in any contract, or in any judgment, decree or order of any court or other authority, any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969 of the land of another person on the basis of a lease deed executed after the 1st day of April, 1964 shall be deemed to ba a tenant if he satisfies conditions (a) and (b) mentioned in the said Section. It is also true that for applicability of this Section the concerned person who claim deed tenancy statues must be in occupation at the commencement of the Kerala Land Reforms Act, 1969, that is , on 1.1.1970 when that Act came into force and such a person mist have ben inducted as a lessee under a lease Deed executed by the lessor after 1st April 1964. But the said non obstante clause in Section 6C can at all have an effect of displacing any final judgments or decree against such persons if the substratum of such judgments was removed by retrospective amendment of the Act by insertion of Section 6C. It is now well settled that Legislature

cannot overrule any judicial decision without removing the substratum or the foundation of that judgment by a retrospective Amendment of the concerned legal provision. Section 6C as we have noted above, starts with a non obstante clause and seeks to remove the prohibitive effect of Section 74. If that legislative exercise is to succeed effectively then Section 74 should have been either deleted form the Statute Book with retrospective effect from 1st April 1964 when the Kerala Land Reforms Act, the parent Act, came into force or at least from 1.1.1970 when the Amendment Act, 1969 came on the Statute Book and on which date the concerned person who claimed deemed tenancy under Section 6C was required to be in possession of the land. However the Legislature in its wisdom did not think it for, while bringing on the Statute Book Section 6C form 7th July 1979, to either five to retrospective effect form 1.1.1970, or to delete Section 74 retrospectively at least from 1.1.1970 if not from an earlier date of 1st April 1964 when the parent Act itself was brought on the Statute Book. Consequently the non obstante clause introduced in Section 6C for bypassing the final judgments, decree or orders of any court against any person remained in the reals of an abortive or an incompetent exercise on the part of the Legislature. To recapitulate the earlier decision rendered against the appellant could have been effectively displaced by the Legislature by enacting Section 6C if the very foundation or substratum of those earlier judgments was knocked off by the Legislature by enacting a competent piece of legislation undertaking any of the following exercises:

1. By retrospectively deleting Section 74 of the Act from 1.4.1964 or at least from 1.1.1970.

2 Or alternatively by making Section 6C retrospective from 1.4.1964 or at least form 1.1.1970.

If any of the aforesaid legislative exercises which would have remained within the competence of Kerala State Legislature was actually undertaken then only the non obstinate clause under Section 6C would have effectively and legally operated for bypassing the final judgments against such a person who was to be given benefit of Section 6C. In the absence of any of these eventualities it must be held that by enacting Section 6C the Legislature tried to legislatively overrule binding judgments, against parties, which might have become final prior to 7th July 1979. As Section 6C was expressly made operative only from that date with the result the legal foundation of adverse judgment against the appellant rendered prior to 7th July 1979 could not be effectively whittled down by a sweep of section 6C. It is now well settled by a catena of decisions of this Court that unless the Legislature by enacting a competent legislative provision retrospectively removes the substratum or foundation of any judgment of a competent court the said judgment would remain binding and operative and in the absence of such a legislative exercise by a competent legislature the attempt to upset the binding effect of such judgments rendered against the parties would remain an incompetent and forbidden exercise which could be dubbed as an abortive attempt to legislatively overrule binding decisions of courts. A Constitution Bench of this Court in the case of Shri Prithvi Cotton Mills Ltd, and Anr, v. Broach Borough Municipality and Ors. (1970) I SCR 388 speaking through Hidayatullah, CJ., made the following pertinent observations in this connection :

> ""When a legislature sets out to validate a tax declared by a court to be illegal collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course is that the legislature must possess the power to

> impose the tax for if it does not the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision in exercise of judicial power or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

Another Constitution Bench of this Court in Madan Mohan Pathak and another etc etc. v. Union of India and others (1978) 2 SCC 50 speaking through Bhagwati,J. for himself and Krishan Iyer and Desai, JJ., in para 8 of the Report considered the incompetent attempt made by the Parliament in enacting Life Insurance Corporation (Modification of Settlement) Act, 1976 by which a binding decision of the Calcutta High Court issuing writ of mandamus of bonus for the year April 1 1975 to March 31, 1976 was sought to be nullified. It was held that such an exercise was incompetent.

In the case of A.V. Nachane and Anr. etc etc. v. Union of India and Anr, (1982) 1 SCC 205 a three judge Bench of this Court referred the aforesaid decision of the Constitution Bench speaking through Bhagwati.J.. in para 12 of the Report.

This very question was once again examined by a three member Bench of this Court to which one of us N.P. Singh, J. was a party and who spoke for the Bench in the case of Bhubaneshwar Singh and Anr. v. Union of India and Ors. (1994) 6 SCC 77. In para 11 of the Report the following pertinent observations were made:

> " From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statue retrospectively because of which the statue or the part of it had ben declared ultra vires Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly legislation.
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> This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a validating Act by merely saying so unless the defect is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored."

The same view was once again reiterated by this Court in the case of Comorin Match Industries (p) Ltd. v. state of Tamil Nadu (1996) 4 SCC 281. In S.R. Bhagwat and Ors. v. State of Mysore (1995) 6 SCC 16, a three judge Bench speaking through one of us, S.B. Majmudar, J., made the following observations in para 12 of the Report:

> "It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect."

In view of this settled legal position, therefore, it must be held that Section 6C could not be pressed in service by the original appellant for displacing the binding judgments rendered by the Tribunal the High Court and this Court in the earlier tenancy proceedings wherein his claim for tenancy of the suit land cane to be repelled and those judgments have become final and binding and were no in any way legally displaced by any competent piece of legislation by the Kerala Legislature: Those judgments remained fully operative against the appellant and consequently on the principle of res judicata the appellant could not once again re-agitate the question about his tenancy.

However learned senior counsel Shri Sukumaran, for the appellant tried to get over this difficulty in the way of the appellant by placing reliance on two decision of this Court. In Mathura Prasad Bajoo Daiswal and Ors.v. Dossibai N.B. Jeejeebhoy 1970 (1) SCC 613 a three judge Bench of this Court speaking through J.C. Shah.J.. took the view that the doctrine of res judicata belongs to the domain of procedure. And that a decision on an issue of law will be res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the provisions proceeding, but not when cause of action is different. He invited our attention specially to para 7 of the report where in it is observed that where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties and it was obvious that the matter in issue in a subsequent proceeding was not the same as in the previous proceeding, because the law interpreted is different. These observations will have to be appreciated in the light of the controversy which came up for consideration of this Court. In the aforesaid case the tenant of an open land had tried to get standard rent fixed under the Bombay Rent Act. At that time the land in question was within the territorial jurisdiction of Civil Court, Borivli, Greater Bombay. The learned Civil judge took the view that Rent Act was not applicable to open lands which were let for construction of residential and business premises. Therefore, the court had no jurisdiction under Section 8 of the Bombay Rent Act to entertain standard rent application. Subsequently the Bombay High Court took a contrary view and held on the proper construction of Section 6 of the Bombay Rent Act that open lands let for construction of buildings for residential and business purpose also were covered by the sweep of Section 6 and the Bombay Rent Act applied to such lands. Taking clue from the said decision the tenant once again applied for fixation of standard tent before the Court of Small Causes, Bombay as the land by that time had come within the territorial jurisdiction of the Small Causes Court exercising jurisdiction over the Greater Bombay area. Question was whether

such an application for fixation of standard rent was barred by res judicata. This Court, disagreeing with the view taken by the High Court that there was such a bar, held that when question of jurisdiction independent of the rights of parties was on the anvil the earlier decision would not be res judicata. It becomes obvious that the plea for fixation of standard rent would furnish a recurring cause of action and though earlier the Court might not have jurisdiction under the Bombay Rent Act to fix standard rent, if by a subsequent decision of a competent court the Rent Act was found applicable the subsequent application for fixation of standard rent could not be said to be barred by res judicata as the cause of action itself would be different in that case being a subsequent and recurring cause of action. The tenant could effectively contend that even though earlier the standard rent could not have ben fixed by the Court which held that it had no inherent jurisdiction if subsequently the Court was found to be having such jurisdiction it could fix the standard rent oat least prospectively from the date of such fresh application. We fall to appreciate how that decision can be of any avail to the learned senior counsel for the appellant in the facts of the present case. There is no question of lack of jurisdiction with the competent court which earlier decided the plea of tenancy under the very Act as raised by the appellant. Not only the decision was rendered on merits by competent court but it was confirmed by this Court. The cause of action remained the same, namely status of tenancy of the appellant qua the land and against the plaintiffs. If support of the same cause of action the appellant now wanted to take advantage of Section 6C which unfortunately for him was having no retrospective effect so as to knock off the substratum of the decisions rendered by the competent courts earlier. Consequently the ratio of the decision of this Court in Mathura Prasad's case (supra) cannot be of any avail to the appellant on the facts of the present case. Reliance was then placed by learned senior counsel for the appellant on the decision of this Court in the case of Nand Kishore v. State of Punjab (1995) 6 SCC 614. In that case the provision under which earlier the appellant was compulsorily retired from service was subsequently found to be unconstitutional. Question was whether thereafter the challenge to compulsory retirement could be effectively levelled by the appellant or not and whether such a challenge was barred by the principles of res judicata. Punchhi, J., speaking for a two member Bench of this Court held that once the constitutionality of the provision was gone into by the Supreme Court and once the provision was struck down the hurdle in the way of the appellant vanished and consequently the suit filled by the appellant challenging the compulsory retirement could not be said to be barred by the principles of res judicata. It becomes at once clear that once this Court struck down the concerned rule permitting compulsory retirement of a Government servant the very basis of the earlier judgment upholding such an exercise got knocked off and was totally obliterated from the Statute Book. Consequently the very foundation of the judgment vanished. Such a judgment would obviously become baseless lacking the very foundation on which it could operate. The very foundation of an earlier judgment can be displaced by either competent legislature enacting a retrospective provision for that purpose or by a competent court deciding the concerned legal provision on which such judgment is based as ultra vires and void. In either case the very foundation and legal substitution of such judgment will vanish retrospectively. In such an eventuality the law could be said to have been totally displaced form the very inception of enactment of such a law and consequently any judgment based on such a non-existing law as found in retrospect could obviously lack efficacy and consequential force of res judicata. Learned senior counsel for the appellant could have got effective help from the aforesaid ratio of this judgment if any competent court had struck down Section 74 of the Kerala Land Reforms Act as unconstitutional and had not resorted to the process of prospective

overruling if such competent court could otherwise do so. But such are not the facts of the present case. Section 74 has operated untouched form the very inception when it saw the light of the day along with other provisions of the Act on 1st April 1964. Therefore, it effectively supplied a valid legal foundation for the earlier judgments rendered before 1.1.1970 to operate. That foundation has remained untouched and Section 6C has not tinkered with it. It must therefore be held that earlier judgment as confirmed by this Court against the appellant negativing his plea under the Tenancy Act have remained fully operative and will constitute a valid bar of res judicata against the present plea of the appellant centering round Section 6C. The High Court with respect was in error in taking the view that because of Section 6C the earlier judgment would not operate as res judicata. Once that conclusion is reached the decision of the High Court will have to be confirmed on this ground alone. Consequently on entirely a different line of reasoning we confirm the judgment of the learned Single Judge of the High Court. In that view of the matter we do not deem it fit to consider the further question whether even if Section 6C operated in favour of the appellant on merits he would have no case as the lease was created in his favor by a life interest holder. Learned senior counsel for the appellant had a serious grievance about the reasoning adopted by the High Court on this aspect. It is not necessary for us to rest our judgment on consideration of this aspect as no further enquiry in the matter survives for consideration in favour of the original appellant once the earlier judgments are found to operate as res judicata debarring his from raising such a contention during execution proceedings taken out by the respondents for fixation of mesne profits.

In the result this appeal fails and will stand dismissed in view of our aforesaid findings. In the facts and circumstances of the case there will be no order as to costs.