

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

SA.No. 481 of 1994 ()

AGAINST THE JUDGMENT AND DECREE IN A.S.NO. 63/1985 of SUB
COURT,KOTTARAKKARA DATED 21-02-1994

AGAINST THE JUDGMENT AND DECREE IN O.S. NO. 103/1981 of MUNSIF COURT,
PUNALUR DATED 22-12-1984

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

- *1. PARAMESWARAN PILLAI SUKUMARA PILLAI
CHARUVILA PUTHEN VEEDU, NELLIMOODU,
KULATHUPUZHA MURI AND VILLAGE (DIED. LRS IMPEADED)
- **2. PARAMESWARAN PILLAI KRISHNA PILLAI -DO- -DO- (DIED. LRS
IMPEADED)
- ***3. JANAKI AMMA SUMATHYKUTTY AMMA -DO- -DO- (DELETED)
- 4. JANAKI AMMA OMANA AMMA -DO- -DO-

LRS OF DECEASED A2 IMPEADED:

- ADDL.A5. KAMALAMMA, KRISHNA BUILDING, SHASTRI NAGAR,
PARBHANI DISTRICT, MAHARASHTRA.
- ADDL.A6. SEEMA, -DO- -DO-
- ADDL.A7. LEENA, -DO- -DO-
- ADDL.A8. MANOJ, -DO- -DO-
- ADDL.A9. SWAPNIL KUMAR, -DO- -DO-

ADDL.APPELLANT:

- ADDL.A10. SEEMA S.PILLAI, VAISHNAVAM, MANNU MUKU P.O.,
VALIYAVAYAL, THIRUVANANTHAPURAM DISTRICT.

**LRS OF DECEASED A2 IMPEADED AS ADDL.A5 TO A9 AS PER ORDER DATED 8/4/13 IN
IA 1184/13

***THE NAME OF THE DECEASED THIRD APPELLANT SUMATHYKUTTY AMMA IS
DELETED FROM THE ARRAY OF PARTIES AS PER ORDER DATED 8/4/13 IN IA 1183/13.

ADV. SRI.G.UNNIKRISHNAN FOR ADDL.A5 TO A9 & A10

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. STATE OF KRALA, REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM.
2. THE TAHSILDAR, PATHANAPURAM
- ****3. THANKAMMA VARGHESE, ANANDAVILASOM BUNGLOW,
KULATHUPUZHA MURI AND VILLAGE. (DIED)

ADDL.RESPONDENTS:

4. S.RAJASEKHARAN PILLAI, MAKAYIRAM, BLOCK NO.81,
VALLIKARIKAKAM, ELAVUPALAM, EX.SERVICE MEN'S COLONY P.O.,
THIRUVANANTHAPURAM DISTRICT - 695562.
5. S.VIJAYA KUMAR, RAJ BHAVAN, BLOCK NO.991,
MADHAVAM KARIKAKAM, PACHA PALADOE, THIRUVANANTHAPURAM
-695 562.
6. S.ANIL KUMAR, AMBIKA VILASAM, BLOCK NO.81,
VALLIKARIKAKAM, EX.SERVICE MEN'S COLONY P.O.,
THIRUVANANTHAPURAM DISTRICT - 695562.

*LHRS. OF DECEASED 1ST APPELLANT ARE IMPEADED AS ADDL.APPELLANT NO.10
AND ADDL.RESPONDENT NOS.4 TO 6 AS PER THE ORDER DATED 10/3/2015 IN IA
NO.2464/2014.

****THE PETITIONERS ARE EXEMPTED FROM SUBSTITUTION/IMPLEADING THE LRS OF
DECEASED THIRD RESPONDENT IN THE SECOND APPEAL AT THE RISK OF THE
APPELLANTS AS PER ORDER DATED 8/4/13 IN IA 1181/13.

R1 & R2 BY GOVERNMENT PLEADER SHRIK.K.SAIDALAVI
R3 BY ADV. SHRI P.C.JOSEPH PAZHEPARAMBIL

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 10-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

S.A. No.481 of 1994

Dated this the 10th day of March, 2015

JUDGMENT

Heard the learned counsel for the appellants and the learned Government Pleader.

2. Learned counsel appearing for the appellants relying on the judgment of this Court in this matter rendered on 07.08.2007 contended that the matter has to go back to the trial court for a fresh consideration in the light of the observations in the above mentioned judgment.

3. Short facts are as follows: Appellants are the plaintiffs in O.S.No.103 of 1981 on the file of Munsiff Court, Punalur. Defendants are the respondents. The appellants instituted the suit for a declaration of title and possession of the properties and also sought to set aside Ext.B3 order passed by the Taluk Land Board in respect of the plaint schedule properties. Consequential injunction reliefs are also claimed in the suit. Plaint schedule properties belonged to N.J.Varghese. 3rd respondent is his widow. Sosamma was the daughter of N.J.Varghese. According to the appellants, the plaint schedule properties have been in the possession of Parameswara Pilla, their father, for 35 years prior to 1973. He was working under N.J.Varghese. It is the case of the appellants that under Ext.A1 sale

deed, Sosamma assigned the properties in favour of the appellants and others. Thereafter, as per Ext.A2 partition deed, plaint schedule properties are allotted to the appellants and they are in possession and enjoyment of the same. Contention of the appellants is that the property was wrongly included in a ceiling case initiated against the 3rd respondent and Ext.B3 order happened to be passed by the Taluk Land Board without any legal basis.

4. The respondents contended that the land in dispute is the excess land under the Kerala Land Reforms Act, 1963 (in short, “the Act”) and it is liable to be surrendered. After recording evidence and receiving documents, learned Munsiff dismissed the suit filed by the appellants finding that the suit was barred under Section 125(1) of the Act. That finding was confirmed in appeal by the lower appellate court.

5. Learned counsel for the appellants relying on the decision of Full Bench of this Court in **Muhammad Haji v. Kunhunni Nair (1993 (1) KLT 227)** contended that the proceedings before the Taluk Land Board is null and void for the reason that no notice was issued to the appellants in the ceiling case and therefore, Ext.B3 order is not binding on them. Learned Single Judge, while disposing of the appeal as per the above mentioned judgment, has extracted the relevant portion of the decision in

Muhammad Haji's case in extenso. Therefore, I am not repeating the ratio in the above decision. It is suffice to say that there is no bar for the suit in the factual settings of this case. Learned Single Judge therefore remanded the matter to the trial court for fresh disposal after giving guidelines in the matter.

6. Appellants 2 and 3 and the 3rd respondent died pending the second appeal. Since the 3rd respondent was ex parte through out, learned counsel for the appellants filed an application under Order 22 Rule 4(2) CPC seeking exemption from impleading the legal representatives of 3rd respondent. That application was allowed. Likewise, the applications filed for impleadment of the legal representatives of deceased 2nd appellant and for deletion of the deceased 3rd appellant were also allowed. Now this Court as per order on I.A.No.2464 of 2014 impleaded the legal heirs of 1st appellant, who died pending the proceedings. Since the entire steps have been taken, the only course open to this Court is to send back the case as directed by the learned Single Judge vide judgment dated 07.08.2007 to the trial court for fresh disposal.

In the result, the appeal is allowed. The judgment and decree passed by the courts below are set aside. O.S.No.103 of 1981 is remanded to the trial court for fresh disposal in accordance with the guidelines issued

by this Court vide judgment dated 07.08.2007. The trial court shall dispose of the matter as expeditiously as possible, at any rate, within a period of six months from the date of receipt of the records. Parties shall appear before the trial court on 25.05.2015.

Registry is directed to send back the records urgently.

All pending interlocutory applications will stand closed.

A. HARIPRASAD, JUDGE.

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A.HARIPRASAD, J.

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JUDGMENT

10th March, 2015