

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

CRP.No.827 of 2003

(SM 38/1991 of LAND TRIBUNAL (LR), KASARAGOD
A.A 169/1992 of APPELLATE AUTHORITY (LAND REFORMS), KANNUR

REVISION PETITIONERS:APPELLANT & 2ND RESPONDENT B PARTY Nos.2
AND 3:

1. C.H. PARAMESHWARA HEBBAR (DIED, LRs IMPEADED)
2. K.P. KAVERI AMMA.
BOTH ARE CHILDREN OF CHOWKAR SHAMBU HEBBAR,
RESIDING AT KUDROPPADA IN PATLA VILLAGE, KASARAGOD
TALUK, P.O. PATLA.

ADDL.P3. KAVERI AMMA.
ADDL.P4. C.H. MOHAN RAO.
ADDL.P5. C.H. JAYARAMA.
ADDL.P6. C.H. SADANANDA.
ADDL.P7. C.H. NARAYANA.
ADDL.P8. C.H. SUBRAMANYA.
ADDL.P9. C.H. VASUDEVA.
ADDL.P10. C.H. VENKATESH.

(No.3 is the widow and Nos.4 to 10 are children of
C.H.Parameshwara Hebbar and No.3 Kaveri Amma. All are
Hindus, residing at Kudrappadi in Patla village and Post,
Kasaragod Taluk).

(Addl.P3 to P10 are impleaded as the legal representatives of
the deceased 1st petitioner vide order dtd.15.10.2012 in
I.A.3088/2004).

BY ADV. SRI.K.G.GOWRI SHANKAR RAI

RESPONDENTS: LEGAL REPRESENTATIVES OF 1ST RESPONDENT & STATE:
LEGAL REPRESENTATIVES OF A PARTY & STATE.

1. SEETHU (DIED. LRs IMPEADED)
2. GOPI
3. SUBBAMA

4. MALINGA PATALI

(Nos. 1 TO 4 ARE CHILDREN OF PONNUNHI, RESIDING AT KUDROPPADI IN PATLA VILLAGE, KASARAGOD TALUK, P.O. PATLA.

5. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

ADDL.R6. K. RAMA PATALI, S/O. LATE PAKEERA PATALI, SREE DURGA ENTERPRISES, NEAR POLICE STATION, RASCO BUILDING, BADIADUKKA, P.O. PERADALA, KASARAGOD DISTRICT - 671 551. IS IMPEADED AS ADDL. 6TH RESPONDENT VIDE ORDER DTD.11.04.2011 IN I.A.466/2011 IN CRP.827/2003.

ADDL.R7. BALAKRISHNA.

ADDL.R8. BHUVANESHWARA.

ADDL.R9. PRAMODINI.

(No.7 is the son-in-law of 1st respondent-Seethu Nos.8 and 9 are the children of No.7. No.7 is Proprietor, 'Adarsha Tailors'. Nos.8 and 9 are C/o.No.7, Kelugudde, Kasaragod village and Post, Kasaragod Taluk).

(ADDL.R7 TO R9 ARE IMPEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 1ST RESPONDENT VIDE ORDER DTD.22.09.2014 IN I.A.1596/2013).

ADDL.R6 BY ADV. SRI.MILLU DANDAPANI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Since there is no representation for the petitioners or their counsel, this CRP is dismissed for default.

Sd/-

P. Bhavadasan,

Judge.

20.05.2015

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

C.R.P. No. 827 of 2003

Dated this the 23rd day of June, 2015

ORDER

Aggrieved by the order of the Land Tribunal in S.M. No. 38/1991, whereby, an extent of 1.24 acres of land comprised in Sy. No.24/1C, 24/1C and 24/1A were assigned to the A party before the Land Tribunal which was confirmed in appeal, the B party has come up in revision.

2. In the suo motu proceedings initiated as S.M.No.38/1991, Ponnuhni, the mother of the first respondent before this Court was the A party and the father of the revision petitioner was the B party.

3. It is not in dispute that long before the suo motu proceedings were initiated, Seetha (who is no more), the first respondent before this Court had filed O.A.No.3233/1972 before the same Tribunal claiming assignment of 25 cents of land comprised in Sy.No. 24/1. The application was laid on the basis that she and her

mother, Ponnunhi were in joint possession of the property. That was dismissed. Ponnunhi filed A.A.No. 564/1982 with I.A.No. 708/1982 to condone the delay. The appellate authority dismissed the petition to condone the delay and consequently the appeal also. That forced Ponnunhi to approach this Court by way of C.R.P.No.1610/1983. This Court, by order dated 19.09.1987, allowed the C.R.P. observing that the petitioner before this Court had no notice of proceedings before the Land Tribunal and since her rights were vitally affected by the order dismissing the application, she ought to be given an opportunity to agitate her claim. The C.R.P. was disposed of and the operative portion of which reads as follows:

“That the order of the Land Tribunal was passed without notice to the petitioner is beyond challenge. The petitioner therefore had no opportunity to agitate her rights in the property before the Tribunal. In the peculiar circumstances, I am of the view that instead of

sending the matter back to the Land Tribunal for a de novo consideration, it is better if the petitioner is given liberty to agitate her rights, if any, by initiating fresh proceedings under Section 72(B)."

4. It appears that instead of preferring an application under Section 72(B) of the K.L.R. Act as observed by this Court, the Land Tribunal concerned initiated suo motu proceedings in respect of 1.24 acres. Accepting the Revenue Inspector's report, the Land Tribunal ordered assignment of 1.24 acres. An appeal filed by the landlord as A.A.No. 169/1992 failed. Thus the C.R.P.

5. Sri.K.G. Gowri Shankar Rai, the learned counsel appearing for the revision petitioners contended that in the earlier proceedings, namely, O.A.No.3233/1972, which was preferred by the daughter of Ponnunhi on behalf of herself and her mother, the claim was only in respect of 25 cents and that was what was considered by this Court. It was in

respect of that 25 cents, the revision petitioner before this Court in C.R.P.No.1610/1983 was given liberty to file an application under Section 72(B) afresh and to seek appropriate remedies. The learned counsel went on to point out that strangely enough, instead of complying with the order of this Court, the applicant managed to have the suo motu proceedings initiated before the Land Tribunal and after obtaining a report of the Revenue Inspector got assignment of 1.24 acres of land.

6. There is absolutely no material to show that the A party before the land Tribunal in the suo motu proceedings was in occupation and possession of 1.24 acres of land. Referring to the evidence, the learned counsel pointed out that PWs 1 and 2 pointed out that the house compound and property over which they laid claim is separated by compound wall on all sides and the evidence of PW2 is very clear to the effect that the property that lies outside the compound wall belongs to the landlord. It is inconceivable,

according to the learned counsel, that after this Court had directed proceedings could be taken afresh in respect of property involved in C.R.P.1610/1983, suo motu proceedings have been initiated for a larger extent, thereby, flouting the order of this Court. The learned counsel pointed out that the Land Tribunal erred in passing the impugned order and the appellate authority, without considering the merits and demerits of the case, has simply adopted the order of the Land Tribunal. The order accordingly is unsustainable in law.

7. The learned senior counsel appearing for the respondents on the other hand contended that there is no fetter imposed by the order of this Court in C.R.P.1610/1983 on the extent of land in relation to which relief could be sought for. All that this Court had observed was that there was no notice to the revision petitioner in the C.R.P. before this Court regarding the proceedings and that affected her rights vitally. She was therefore given an opportunity to re-agitate the claim. There is no embargo in the Land Tribunal

initiating suo motu proceedings and on finding that A party before it was in actual cultivation and possession of 1.24 acres, ordered assignment of the same. It was based on the Revenue Inspector's report that the said order was passed. It was also pointed out that the objection filed by the B party and the prayer to seek revenue report set aside were rejected by the Land Tribunal. Both the authorities below have considered the matter extensively and have found that the A party is in possession of 1.24 acres of land. Accordingly, it is contended that there is no ground to interfere with the order of the authorities below.

8. In spite of best efforts made, this Court is unable to accept the contentions raised by the learned senior counsel for the respondent. In the earlier proceedings, namely O.A.No.3233/1972, which was filed by the Seetha, the daughter of Ponnunhi, she had claimed joint possession along with her mother in respect of only 25 cents of land comprised in Survey No. 24/1. If as a matter of fact, there

was a larger extent of property in respect of which they had rights, it is inconceivable that the same would not have been agitated at that point of time. O.A.No. 3233/1972 was dismissed by the Land Tribunal. Then, Ponnunhi, claiming that she had no notice of the proceedings, filed an appeal before the appellate authority as A.A.No. 564/1982 with a petition to condone the delay in filing the appeal. The delay condonation petition was dismissed and so also the appeal. This Court, observing that petitioner before this Court had no notice of proceedings, permitted the petitioner before this Court to re-agitate the issue by filing a fresh application under Section 72(B).

9. Instead of doing so, somehow suo motu proceedings were managed to be got initiated by the land Tribunal and after obtaining Revenue Inspector's report, property having an extent of 1.24 acres of land has been assigned in favour of the A party. It is difficult to accept the finding of the Land Tribunal. After having agitated the claim

in respect of 25 cents in the previous proceedings, how the claim of extent of 1.24 acres of land could be agitated now is not discernible. There was no whisper in the earlier proceedings that O.A.No. 3233/1972 was in relation to only a portion of the property over which the mother and the daughter had tenancy rights. Their whole claim was in respect of 25 cents. It was that claim which was left open to be agitated afresh by this Court while disposing of the C.R.P.

10. It is not possible to understand on what basis the suo motu proceedings were initiated by the Land Tribunal when the order of this Court in C.R.P. was specific that the petitioner before this Court could file a fresh application under Section 72(B).

11. Technically speaking, the learned senior counsel for the respondents may be justified in her submission that there was no extent mentioned in the order of this Court while disposing of the C.R.P. But, one cannot forget that the claim was confined to 25 cents.

12. Though the Land Tribunal has referred to the evidence of PWs 1 and 2 and said that they corroborate the version given by the Revenue Inspector, the learned counsel appearing for the petitioners before this Court pointed out that both PWs 1 and 2 have categorically stated that the property over which the claim is laid is within a compound wall and PW2 is more specific that property lying outside the compound wall is the property of the landlord. Except the Revenue Inspector's report, there is no other documents produced by the A party before the Land Tribunal to show that they had right over 1.24 acres of land.

13. True, the records indicate that there was an attempt from the side of the revision petitioners to have the Revenue Inspector's report set aside. That did not succeed. But that does not mean that the Revenue Inspector's report can be blindly accepted and assignment could be ordered solely on that basis.

14. Even though all these grounds were urged before the appellate authority, the appellate authority simply adopted order of the Land Tribunal and disposed of the appeal.

15. The circumstances under which the suo motu proceedings were initiated for an extent of 1.24 acres of land is not discernible from the records. Especially, when in the previous proceedings, the claim was confined to 25 cents. It is not possible therefore to accept the findings of the Land Tribunal as confirmed by the appellate authority. The matter requires re-consideration, especially, in view of the observation made by this Court while disposing of the earlier C.R.P.

For the above reasons, this revision petition is allowed and impugned order is set aside and the matter is remanded to the Land Tribunal for fresh consideration in the light of what has been stated above and in accordance with law. The parties shall appear before the Land Tribunal on

28.07.2015.

Both sides will be at liberty to adduce further evidence in the case if they so chose.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge