

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN

TUESDAY, THE 5TH DAY OF MARCH 2013/14TH PHALGUNA 1934

CRP.No. 726 of 2002 (H)

I.A. NO.688/1997 IN OS.575/1981 OF PRINCIPAL SUB COURT, THRISSUR.

REVISION PETITIONER/2ND DEFENDANT:

*1. BALAN, S/O. KALATHUPARAKKAL AYYAPPAN @
KUTTAPPU, KARIYANNUR DESOM, KANDANISSERY VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT. * (DIED)

* ADDL. PETITIONERS 2 TO 6 IMPEADED

2. P.V. SAROJINI, W/O.BALAN,
KALATHIPURAKKAL, KARIYANNOOR DESOM,
KANDANASSERY VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.

3. JAYALATHA, D/O.BALAN, -DO-.

4. K.B. JAYARAJAN, S/O.BALAN, -DO-.

5. K.B. BEENA, D/O.BALAN, -DO-.

6. K.B. JOSHY, S/O.BALAN, -DO-.

* IT IS RECORDED THAT 1ST PETITIONER IS DEAD,
ADDL. PETITIONERS 2 TO 6 ARE IMPEADED AS THE
LRS OF THE DECEASED 1ST PETITIONER, VIDE ORDER
DATED 29/01/2003 IN CMP.640/2003.

BY ADV. SRI.K.K.MOHAMED RAVUF.

RESPONDENTS/PLAINTIFF & DEFENDANTS 3 & 4:

1. SMT.RADHA @ THANKAMANI,
W/O. KATTAMBIL BALAN, CHEMMANUR DESOM,
ARTHATTU VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.

****2. AMMU, W/O. VELIYATHIL SANKARAN,
KATTUKAMBAL DESOM, PAZHANHI VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.**

**** THE CAUSE TITLE IS AMENDED BY SUBSTITUTING THE
SECOND RESPONDENT AS**

**" SIDHARTHAN V.S., S/O.SANKARAN,
VALIAKKIL HOUSE, ARUVAI DESOM,
KATTUKAMBAL VILLAGE, P.O. PAZHANHI,
THRISSUR DISTRICT. IN THE PLACE OF
" AMMU, W/O.VELIYATHIL SANKARAN,
KATTUKAMBAL DESOM, PAZHANHI VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.
IN THE CRP VIDE ORDER DATED 20/06/2008 IN CMP.5177/2002.**

**3. JANAKY, W/O. MUTHIRAPARAMBATH BALAN,
PAZHANHI VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.**

**R1 BY SRI.P.VIJAYA BHANU, SENIOR ADVOCATE.
ADV. SRI.M.GEORGE THOMAS.**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05-03-2013, ALONG WITH CRP NO.138 OF 2002 AND CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

A.HARIPRASAD, J.

C.R.P.No.726 of 2002

Dated this the 14th day of January, 2015

O R D E R

Petitioners are the legal heirs of deceased second defendant in O.S.No.575 of 1981 on the file of the Principal Sub Judge, Thrissur. The suit originally filed was one for partition. Pending suit, the plaint was amended incorporating a relief of declaration and recovery of possession of the property. The suit was decreed by the trial court and a preliminary decree was passed. That was challenged in appeal before this Court. As per judgment dated 25.07.1995, this Court jointly disposed of A.S.No.674 of 1992 and A.S.No.169 of 1994. As per the common judgment the decree of the court below was modified. It is seen from the records that deceased second defendant had set up tenancy in respect of plaint schedule property. It is seen that parallel proceedings were initiated before the Land Tribunal in respect of the tenancy claim raised by the deceased second defendant.

This Court as per order dated 14.10.2014 in C.R.P.No.138 of 2002 allowed the revision petition filed by the legal heirs of the deceased second defendant against the order passed by the Appellate Authority (Land Reforms) and remanded the matter to the Land Tribunal to decide the question of tenancy on the basis of evidence available in the record.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the plaintiff/contesting respondent.

3. Learned counsel for the revision petitioner submitted that as per the order passed by this Court in C.R.P.No.2134 of 1999 the appointment of a commissioner in final decree proceedings for effecting partition was set aside by this Court directing the court below to consider the final decree application, including the question of its maintainability and to pass appropriate orders regarding issuance of a commission for division of the property. It is the submission of the learned counsel for the petitioners that the lower court did not comply

with the directions of this Court and no consideration was made in respect of partibility of the property, in spite of the observation made by this Court in the decree in the above mentioned appeals that the rights of plaintiff shall be subject to the final decision of the tenancy claim put forwarded by the deceased second defendant.

4. Per contra, the learned counsel for the plaintiff/respondent submitted that the court below appointed another commissioner and he has inspected the property and submitted an accountant and report in the matter. None of the records would show that the court below complied with the directions of this Court and considered whether a commission can be issued in view of the tenancy claim raised by the deceased second defendant. It is now clear from the order passed by this Court in C.R.P.No.138 of 2002 mentioned above that the Land Tribunal is in seisin of the matter where the question of tenancy is directly raised. If tenancy is found in favour of the revision petitioners, the estate becomes unavailable for partition. Therefore, the exercise in the

entire matter will become futile. The submission of the learned counsel for the plaintiff that entire steps in final decree can be completed before adjudication of the tenancy claim cannot be sustained for the reason that the question of allocation, value of improvements etc may vary as time passes. Therefore, I find it is always better that the final decree proceeding is not proceeded with until a definite finding is made by the land tribunal in the matter which has been remitted by this court to it.

5. Learned counsel for the respondent/plaintiff submitted that the defendants are attempting to commit waste in the property by cutting and removing trees. That is not a matter to be decided in this revision. The respondent can approach the court below with appropriate petition and in that event the court will consider the same in accordance with the provisions of law.

In the result the revision petition is allowed. The order passed by the lower appellate court on 20.12.2001 in I.A.No.688 of 1997 in O.S.No.575 of 1981 on the file of

the Sub Court, Thrissur is hereby set aside. It is made clear that the plaintiff will be at liberty to move for passing final decree after the finalisation of the land tribunal proceedings.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge