

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

CRP.No. 1393 of 2002 ()

**AGAINST THE ORDER/JUDGMENT IN AA 119/1993 of APPELLATE AUTHORITY,
KANNUR DATED 13-12-2000**

**AGAINST THE ORDER IN SM 430/1976 of LAND TRIBUNAL-II,PAYYANNUR
DATED 08-02-1993**

REVISION PETITIONER(S)/PETITIONER/APPELLANT/PETITIONER::

**KOTTAKKATTU KIZHAKKE MADATHIL GOVINDAN NAMBISAN,
KOROME AMSOM DESOM.**

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS::

- 1. KUNHIKANDDEERAKATH YUSUF,
VAYAKKARA AMSOM, NARAMBA DESOM, KANNUR.**
- 2. KUNHIKANDDEERAKATH AVULLA,
VAYAKKARA AMSOM, NARAMBA DESOM.**
- * 3. THEKKEMADATHIL KUNHIKRISHNAN NAMBISSAN,
KURUVELI, P.O. MATHIL.(DELETED)**
- 4. THEKKEMADATHIL SARASWATHI AMMA,
KURUVELI, P.O. MATHIL.**
- * 5. THEKKEMAADATHIL NARAYANAN NAMBISSAN,
KURUVELI, P.O. MATHIL. (DELETED)**
- 6. THEKKEMADATHIL PADMAVATHI AMMA,
VADAVANTHUR, NEAR NAMBIATRA, KOVVAL
P.O. PAYYANNUR.**
- 7. THEKKEMADATHIL PARVATHI AMMA,
VADAVANTHUR, P.O. MATHIL.**
- 8. THEKKEMADATHIL DAMODARAN NAMBISSAN,
INSTRUCTOR, TELECOMMUNICATION TRAINING CENTRE,
SANTHI NAGAR, THIRUVANANTHAPURAM.**
- 9. THEKKEMADATHIL RADHAKRISHNAN,
PALLIKKARA TEMPLE, NILESHWAR.**

10. THEKKEMADATHIL KALLIYANI AMMA,
ARATHIL P.O., NAREEKKAMVALLY.
11. THEKKEMADATHIL VISHNU NAMBISSAN,
VELLORA TAGORE MEMORIAL HIGH SCHOOL, P.O. VELLORA.
12. LEGAL REPRESENTATIVES OF THE DECEASED
3RD RESPONDENT IN A.A. 119/93. CHILDREN
T.M. GOVINDAN NAMBEESAN, POTHANKANDAM
P.O. PERINGOME.
- * 13. T.M. SREEDHARA NAMBISSAN, MASTER,
ALAPADAMBA, P.O. ETTUKKUDUKKA. (DELETED)
14. T.M. KALLIANIKUTTY AMMA,
C/O. T.G. VAIDEESWARAN, M/S. GANNON DUNKERLY & CO.
LTD., M/S. RIDDLI, SIDDHI GLUEO PVT.LTD.
P.B.NO.9 FALLS ROAD, GOKALA, BELGAUM DIST.
KARNATAKA.
15. T.M. DEVIKUTTY, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA.KARIVELLOOR, KANNUR DISTRICT.
16. T.M. DROUPATHI, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA. KARIVELLOOR, KANNUR DISTRICT.
17. T.M. SARASWATHI, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA.KARIVELLOR, KANNUR DISTRICT.
18. T.M. SAVITHRI, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA. KARIVELLOOR, KANNUR DISTRICT.
19. T.M. PADMAVATHI, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA. KARIVELLOOR, KANNUR DISTRICT.
- * 20. T.M. SATHYAMBAMA, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA.KARIVELLOOR, KANNUR DISTRICT. (DELETED)
21. T.M. AMBIKA, ALAPPADAMBA,
P.O. ETTUKUDUKKA, VIA. KARIVELLOOR, KANNUR DISTRICT.
22. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT
THIRUVANANTHAPURAM.

*(RESPONDENTS 3, 5, 13 AND 20 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DT. .9.2012 IN I.A. 794/12 IN CRP 1393/02)

R22 BY GOVERNMENT PLEADER SMT. LILLY LESLIE
R2 BY ADV. SRI.O.V.MANIPRASAD

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

C.R.P. No. 1393 of 2002

Dated this the 01st day of June, 2015

ORDER

Drawing inspiration and strength from the cryptic judgment of the appellate authority, the petitioner seeks interference of this Court with the order of the Land Tribunal whereby, the claim put forward by the petitioner was negatived. He had filed I.A. 7/1988 in S.M. 430/1976 whereby, two acres were assigned to the first and the second respondents. The grievance of the petitioner was that, the property so assigned overlaps into his property over which he had right and in respect of which he had obtained purchase certificate.

2. The essential facts absolute necessary for the disposal of this revision petition are as follows:

It is not in dispute that the petitioner before this Court had filed O.S.No. 58/1974 wherein, the petitioner was the plaintiff and respondents were also parties to the suit as

defendants 1 and 3. The suit was one for injunction. The petitioner claimed that he is the absolute owner in possession of plaint A schedule property and plaint B schedule property is a portion of plaint A schedule property and that the defendants had trespassed into the same reducing a portion into their possession. The suit was dismissed for want of identification of the property and other reasons. An appeal preferred was also dismissed.

3. In the meanwhile, it appears that respondents herein, had invoked Section 72 MM of the Kerala Land Reforms Act and filed a joint application along with the landlord as S.M. 430/76. That was allowed by the Land Tribunal concerned. On the basis of the revenue authority's report, holding that the claim of respondents herein is justified, purchase certificate was granted to them.

4. The petitioner in turn moved O.A.No. 25563/1976 for assignment of 8.25 acres of land over which he claimed to be the cultivating tenant. After scrutiny of the materials,

purchase certificate was granted to him also.

5. The grievance voiced by the petitioner was that the property obtained by the respondents as per the S.M. proceedings takes in a portion of the property assigned to him under the purchase certificate. Or in other words, the case is that there is overlapping of property. He in fact, filed an appeal from the order in S.M.No. 430/1976 which was held not maintainable in view of the fact that no appeal lies from 72MM proceedings. That compelled the petitioner to file I.A. No.7/1988 in S.M.No. 430/1976 attempting to have it re-opened and seeking to have the issue agitated before the said authority.

6. Before the Land Tribunal concerned, parties adduced evidence. The evidence consists of Exts. A1 to A57 produced by the petitioner before the authority below. After elaborate consideration of materials before it, the Land Tribunal concerned came to the conclusion that neither the documents produced by the petitioner nor the evidence

tendered by him is sufficient to show that there is any overlapping and that there was no attempt from the side of the petitioner in the I.A. to have the property which he claims to have obtained as per the purchase certificate. The Land Tribunal also took aid of the judgment in O.S.No. 58/1974 and the Tribunal declined relief to the petitioner.

7. Aggrieved by the non acceptance of the claim by the Land Tribunal, the petitioner preferred A.A.No. 119/1993 before the Appellate Authority (Land Reforms), Kannur, who disposed of the appeal by order dated 13.12.2000. It is the said order that is assailed before this Court.

8. The learned counsel appearing for the petitioner pointed out that the order of the appellate authority is an apology for an order to be passed by an appellate authority and does not discuss any of the contentions raised by the petitioner. It simply observes that all the aspects have been considered by the Land Tribunal and on perusal of the judgment, the appellate authority is convinced that no error

has been committed by the Land Tribunal and therefore no interference is required.

9. The learned counsel appearing for the petitioner very vehemently contended that the appellate authority has abdicated its function and simply narrated that the Land Tribunal has not committed any error. That is not the function of the appellate authority which under law is bound to reconsider the entire evidence independently and impartially and to come to its own conclusion. This statutory duty has not been performed by the appellate authority and that vitiates the order.

10. Sri.O.V. Maniprasad. the learned counsel appearing for the respondents fairly concede that the appellate authority's order may not be acceptable. But the learned counsel pointed out that the proceedings have started in 1974 and 40 years have elapsed and if as a matter of fact, this Court is satisfied from the order of the Land Tribunal that there is no reason to interfere, the mere fact

that the order of the appellate authority is laconic or cryptic, may not be taken as a ground to interfere with the order of the appellate authority. If no reasons are found by this Court to upset the findings of the Land Tribunal merely to remand the case to the appellate court to reiterate the same finding after appreciating the evidence would be an exercise in futility. The issue of remand will arise only if this Court is satisfied that the discussion made by the land tribunal and consideration of materials by the Land Tribunal is not proper and injustice has been done to the parties. If there is no such error in the order of the Land Tribunal, a remand is uncalled for.

11. Well, looking at the appellate authority's order, the contention raised by the learned counsel for the petitioner is formidable. It contains no discussion about the evidence at all. But one cannot shut his eyes to the fact that the proceedings started in the year 1974 and we are in 2015. Nearly half a century has elapsed. To be more precise, the

fight started in 1974 and the petitioner filed O.S.No. 58/1974 raising the very same claim in the form of a suit for injunction. Parties are the same. In the suit, the petitioner claimed to be the absolute owner in possession of the plaint A schedule property and he claimed that the plaint B schedule property is a portion of plaint A schedule property and that the defendants in the suit are trying to trespass into the property.

12. True, in the said suit, the defendants were not able to prove their title. But that is immaterial. The suit was one for injunction and the burden is always on the plaintiff to show that he is in actual physical possession of the property as on the date of the suit. The judgment in the suit reflects that the plaintiff miserably failed to have his property identified and there was nothing to show that he had established his rights as claimed by him. The suit was accordingly dismissed. It is not disputed before this Court that an appeal preferred in the said judgment and decree

also met with the same fate.

13. It is significant to notice that S.M. proceedings in the O.A. filed by the petitioner herein, were after the suit was instituted, but obviously, before the judgment and decree in the O.S. S.M.No. 430/1976 arose out of joint application filed by respondents herein and the landlord and the statutory authority who conducted inspection of the property found that the claim of respondents to be true and that they were entitled to assignment of the property. Accordingly, the property was assigned.

14. One may pause here for a moment and note certain facts. It is not in dispute that the petitioner claims 8.25 acres as follows:

Survey No.20/10	- 1.65 acres
Survey No.31/pt	- 1.90 acres
Survey No.29/1A3	- 3.20 acres
Survey No.12/1A7	- 1.50 acres

Total	8.25 acres

It is not much in dispute that the property of 2 acres claimed by the respondents herein is comprised in Sy.No. 12/1A7 and

29/1A.

15. The grievance of the petitioner is that even though the survey sub divisions are different, the property overlaps and a portion of the property has been clandestinely obtained assignment of by the respondents. Here, one may at once notice that there is no case for the petitioner that the survey sub divisions shown either do not exist or that the extent of property shown in the respective sub divisions also do not exist.

16. The petitioner has a definite contention that the respondent is not a cultivating tenant and he was not in possession of the property. The answer to the above contention is very simple. The burden of proof is on the petitioner. Even assuming that all the infirmities pointed out by the petitioner exist, that cannot give any advantage to the petitioner unless he establishes his case by independent, cogent and convincing reason. It is trite that it is for the person who asserts right to to establish his right to

succeed in the proceeding.

17. Apart from the above fact, the Land Tribunal has discussed the various documents produced by the petitioner before it. It is found that there is want of material to show that the documents produced by the petitioner relate to the property in question and there was no attempt from the side of the petitioner before it to get the property claimed by the petitioner properly identified.

18. The above finding of the Land Tribunal assumes significance when viewed in the light of the judgment and decree in O.S.No.58/1974. As early as in 1977, the judgment and decree was passed in O.S.No. 58/1974. There was a definite finding that the plaintiff has to fail because for want of proper identification of the property. Therefore, the petitioner was fully aware of the weakness of his case and he had necessarily to establish before the Land Tribunal that the property covered by the purchase certificate in his favour is a portion of the property involved in

S.M.No.430/1976. There was no such attempt from the side of the petitioner at all.

19. It is also significant to notice that the western boundary of the property assigned to the petitioner is shown as the property of the respondents. No objection is taken to this boundary. If that be so, it becomes more difficult to accept the version of the petitioner that there is overlapping of property. Further, to crown it all, in evidence, the petitioner admitted that he has sold portion of his property. Unfortunately for the petitioner, the defendants were able to produce documents to show that the petitioner had executed 12 documents for assigning portion of his property. Even after assignment, he seems to lay claim over 8.25 acres of land which is untenable. The basic tax receipt produced by the petitioner as noticed by the Land Tribunal covers only 5 acres of land.

20. One cannot omit to note that the purchase certificate in O.A.No. 25563/1976 was issued to the

petitioner after the revenue inspector had visited the property. He, in his report, has categorically mentioned that the western boundary of the property that is sought to be assigned to the petitioner, belongs to the respondents. It was the above factors which had persuaded the Land Tribunal to come to the conclusion that the claim made by the petitioner that there is overlapping of the property, cannot be countenanced in the light of want of adequate proof of evidence.

21. Of course, as already noticed, the appellate authority could have done better or should have done better. It ought to have independently considered the evidence and came to its own conclusion and findings.

22. But the question that arises for consideration whether abdication of duty by the appellate authority has caused any prejudice to the petitioner. This Court, after having gone through the records and after having heard the learned counsel on both sides, feels that there is no injustice

done to the petitioner by the laconic order passed by the appellate authority. The Land Tribunal has elaborately considered the materials on record and this Court too went through the entire records produced before this Court and is satisfied that the finding of the Land Tribunal does not suffer from any illegality, irregularity or impropriety.

23. For the above reasons, even though this Court is totally dissatisfied with the order of the appellate authority, it finds no reason to interfere with the same, since the Land Tribunal has considered the entire materials and so also this Court, after perusing the entire records is satisfied that there is no justification to interfere with the order of the Land Tribunal.

This revision petition is without any merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge