

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

CRP.No. 697 of 2007 ()

AGAINST THE JUDGMENT & DECREE IN AS 18/1994 (WITH CROSS
APPEAL) of SUB COURT, VADAKARA.

AGAINST THE JUDGMENT & DECREE IN OS 5/1992 of MUNSIF
COURT, NADAPURAM.

REVISION PETITIONER(S)/APPELLANTS/DEFENDANTS:

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1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR.
 2. THE TALUK TAHSILDAR, VADAKARA.
 3. THE CHAIRMAN, TALUK LAND BOARD,
VADAKARA.

BY SPL. GOVERNMENT PLEADER SMT. SUSHEELA BHAT.

RESPONDENT(S)/RESPONDENTS/PLAINTIFF:

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1. MOTTENTHERA CHATHU (DIED),
KULANGARA HOUSE, VADAKARA.
 2. SUPPLE. KULANGARA KALLIANI,
W/O. CHATHU, KULANGARA HOUSE, VADAKARA.
 3. BALAN, S/O. CHATHU, KULANGARA HOUSE,
VADAKARA.
 4. LAKSHMIKUTTY, D/O. CHATHU,
KULANGARA HOUSE, VADAKARA.
 5. CHANDRI, D/O. CHATHU,
KULANGARA HOUSE, VADAKARA.
 6. DAMODARAN, S/O. CHATHU,
KULANGARA HOUSE, VADAKARA.
 7. PAVITHRAN, S/O. CHATHU,
KULANGARA HOUSE, VADAKARA.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 29-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

P. BHAVADASAN, J.

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C.R.P. No. 697 of 2007
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Dated this the 29th day of May, 2015.

ORDER

This Civil Revision Petition is against the order in A.S. 18 of 1994 by which the lower appellate court confirmed the decree in O.S. 5 of 1992 of Munsiff's Court, Nadapuram. The appellants are the defendants in the suit. The facts absolutely necessary for the disposal of this appeal are as follows:

The Taluk Land Bord concerned had initiated ceiling proceedings against the plaintiff's family and it was found that they were liable to surrender 76 ½ cents of land, possession of which was taken over by the Taluk Land Board concerned. Aggrieved by the said order, the plaintiff filed Civil Revision Petition before this Court. The plaintiff partially succeeded in his attempt and 30 cents of land was directed to be reconveyed to the plaintiff and the third defendant passed a revised order finding that out of 76 ½

cents of land 30 cents have to be reconveyed. The plaintiff again challenged that order before this Court and the order of the Taluk Land Board was set aside. By virtue of the order of this Court, the entire 76 $\frac{1}{2}$ cents was reconveyed to the plaintiff. The grievance of the plaintiff was that during the time when the property was in the possession of the third defendant, the income derived from the property was not returned to the plaintiff on reconveyance of the property. He therefore laid the suit.

2. The defendants filed a joint written statement contending that they are not liable to return the amount and if at all any proceedings are to be taken, it will have to be under the Kerala Land Reforms Act. There is no provision in the Land Reforms Act for repayment of the amount and they cannot be made liable to pay any amount to the plaintiff.

3. On the above pleadings, issues were raised and evidence was adduced. The evidence

consists of the testimony of P.W.1 and documents marked as Exts. A1 to A6. Ext.B1 is the document produced by the defendants.

4. On an appreciation of the evidence in the case, both the courts below came to the conclusion that the amount mentioned in the plaint was infact received by the defendants as income derived from the property while it was in their possession. The courts below also found that even assuming that there is no provision in the Land Reforms Act to return the amount, the defendants are not entitled to retain the profits in view of Section 70 of the Contract Act. The trial court decreed the suit which was confirmed in appeal.

5. Learned Special Government Pleader contended that the courts below have erred both on facts and in law in decreeing the suit. There is no provision in the Kerala Land Reforms Act for return of the income collected from the land, possession of which was taken in accordance with law. It is also pointed out that if at all there

is any remedy available to the plaintiff, it is under Section 85(8) of the Act and he has to approach the authority under the Land Reforms Act.

6. There is no merit in the above contention. Both the courts below have considered this contention in considerable detail and held that there is nothing in the Land Reforms Act which prevents the person concerned from claiming income from the property which is illegally taken possession of and which is later on reconveyed by the authority concerned. None of the provisions under the Land Reforms Act enable the plaintiffs to claim income and therefore, the only remedy available to him was to institute a suit. Both the courts below have negatived the claim put forward by the State that the remedy is only under Section 103 of the Act and a suit was not available to the plaintiff.

7. The lower appellate court has relied on the decision reported in **Mrs. Kavita Trehan v.**

Balara Hygiene Products Ltd. (AIR 1995 SC 441). The courts below have invoked the equitable principles of restitution and undue enrichment and found that the plaintiff is entitled to get the profit collected by the defendants during the period during which they get the property which later on was found to be not liable to be surrendered to the State.

8. There is no illegality, irregularity or impropriety made out with the finding of the courts below and no question of law arises for consideration in this revision petition. If that be so, no interference is called for with the judgments and decrees of the courts below.

This Civil Revision Petition is without merits and it is dismissed.

sb.

P. BHAVADASAN,
JUDGE