

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

CRP.No. 351 of 2009 (B)

AGAINST THE JUDGMENT IN AA 110/2000 of APPELLATE AUTHORITY
(LR), ALAPPUZHA.

PETITIONER(S):

1. JOSEPH ALIAS THIRUVIYAM,
S/O.ARUNACHALAM, GLENMARY ESTATE,
ELAPPARA VILLAGE.
2. THANKAYYA, S/O.ARUNACHALAM, TAILOR,
GLENMARY ESTATE, ELAPPARA.
3. ADAM, S/O.MANUEL, GLENMARY ESTATE,
ELAPPARA.
4. DAS, S/O.MANUEL, GLENMARY ESTATE,
ELAPPARA.
5. PONNU, S/O.ISRAEL, TAILOR,
GLENMARY ESTATE, ELAPPARA.

BY ADVS.SRI.C.K.VIDYASAGAR
SRI.P.CHANDY JOSEPH

RESPONDENT(S)/ADDL.RESPONDENTS:

1. K.CHELLAMMAL (DIED), W/O.KOVIL PILLAI,
GLENMARY ESTATE, ELAPPARA VILLAGE, PEERUMEDU.
2. M/S.HOPE PLANTATIONS LTD., P.B.NO.1,
COONOR.

3. KOVIL PILLAI, S/O.YAKOOB,
GLENMARY ESTATE, ELAPPARA, PEERUMEDE.
4. PREMA (DAUGHTER), W/O.K.P. DAS,
WOODLAND ESTATE, FIELD OFFICER, PALLIKUNNU P.O.
PEERUMEDE.
5. BALA, D/O.KOVILPILLAI, GLENMARY ESTATE,
ELAPPARA, PEERUMEDU.
6. KALA, D/O.KOVILPILLAI, GELNMARY ESTATE,
ELAPPARA, PEERUMEDU.
7. RAJA SULOCHANA, D/O.KOVILPILLAI,
BLOCK MEMBER, PEERUMEDU.
8. SELVI, D/O.KOVILPILLAI, GELNMARY ESTATE,
ELAPPARA, PEERUMEDU.
9. RAJKUMAR, S/O.KOVILPILLAI,
GLENMARY ESTATE, ELAPPARA, PEERUMEDU.

ADDL. R10 IMPEADED.

ADDL. R10 : ANAND DEV,
S/O. LATE CHANDRAN,
GLENMARY ESTATE, ELAPPARA,
PEERUMEDU.

ADDL. R10 IS IMPEADED VIDE ORDER DT. 26.8.2014 IN
I.A. NO. 2051/2014.

R3 TO 9 BY ADV. SRI.V.G.ARUN
ADV. SRI.T.R.HARIKUMAR
R2 BY ADV. SRI.JOSEPH KODIANTHARA
ADV. SRI.MATHEWS K.UTHUPPACHAN
ADV. SRI.TERRY.V.JAMES

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 18-09-2015, ALONG WITH C.R.P. 371/2009, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

P. BHAVADASAN, J.

C.R.P. Nos. 351 & 371 of 2009

Dated this the 18th day of September, 2015.

ORDER

C.R.P. 351 of 2009 arises out of A.A. No. 110 of 2000 which arises from S.M. Case No. 29 of 1996 originally numbered as S.M. No. 19 of 1985. C.R.P. 371 of 2009 arises out of A.A. 111 of 2000 which arises from S.M. Case No.30 of 1996 which was initially numbered as S.M. 20 of 1985.

2. According to the petitioners before this Court, 6 ½ acres of land in Sy. No. 71/1 of Elappara Village was in the possession and enjoyment of Arunachalam and Chellayya who are the predecessors-in-interest of the petitioners. They were workers of M/s. Hope Plantations Ltd. They were allowed to occupy the said extent of land and cultivate the same. After the death of Arunachalam in 1964, Chellaya left for Nagercoil and therefore the petitioners have come into possession. Managing to get possession certificate from

Tahsildar of Peerumedu, the first respondent and her brother Anandan in respect of the very same property, i.e. 6 ½ acres of land, laid two suits, namely, O.S. 70 of 1979 and O.S. 71 of 1979, before the Munsiff's Court, Thodupuzha for injunction restraining the petitioners herein from trespassing into the plaint schedule property. In the said suits, they had contended that 4 ½ acres was occupied by Chellamma, the first respondent, and 2 acres of land was possessed by her brother Anandan.

3. Coming to know about the procurement of false possession certificate, certain persons approached the District Collector. The District Collector, after due enquiry, directed the Tahsildar to cancel the possession certificate. By proceedings dated 16.7.1981 the certificates given to the first respondent and Anandan were cancelled.

4. In the two suits made mention of, the Court found that the attempt of the plaintiffs was to take forcible

possession under the cover of the possession certificates. Finding that the plaintiffs had no possession, both the suits were dismissed. Two appeals filed as A.S. 9 of 1983 and 10 of 1983 met with the same fate. That order has become final.

5. Later the Tahsildar, who had occasion to issue the possession certificate, became the Presiding Officer of the Land Tribunal. He initiated suo motu proceedings in respect of 6 ½ acres in favour of late Chellamma and Anandan. He managed to get a favourable report and initiated S.M. 19 of 1985 and S.M. 20 of 1985. In the applications filed by the respondents herein they had shown Hope Plantation Ltd as the only respondent in S.M.proceedings and that the respondents herein claimed that they were occupying the plaint schedule property. When the S.M. Proceedings came up for consideration, the petitioners herein pointed out the findings by the civil court. Before the Court, the Tahsildar concerned was examined as P.W.7. In the suits, the plaintiffs had pleaded

ignorance of cancellation of the certificates. Without adverting to the relevant facts, purchase certificates had been issued and the petitioners herein assailed the two orders in A.A. 161 of 1986 and A.A. 162 of 1986. The appellate authority dismissed the appeals. Two C.R.Ps were filed as C.R.P. 1021 of 1987 and 1025 of 1987. Those revision petitions before this Court were allowed and the matter was remanded to the Land Tribunal with a direction to give both sides opportunity to adduce further evidence.

6. The complaint is that without following the specific directions and ignoring the relevant documents, the Land Tribunal allowed S.M.29 of 1996 and dismissed S.M.30 of 1996. The appeal filed as A.A. 110 of 2000 and A.A. 111 of 2000 were dismissed.

7. Assailing the finding of the Land Tribunal and Appellate Authority, learned counsel appearing for the revision petitioners contended that the authorities have not adverted to

the relevant aspects. The revision petitioners were able to show how they came into possession of the property and their right over the same. The persons who were treated as applicants in the suo motu proceedings did not produce any document to show how they came into occupation of the property. There was absolutely no evidence to show how Chellamma and Anandan had come into possession of the property. The authorities below found that most of the documents produced by the respondents in the suo motu proceedings were for a period after the disputes have begun between the parties and therefore they need not be looked into. The lower appellate court found that the parties were able to show that the predecessor-in-interest were in occupation of the property and a tea shop was being run there. Evidence regarding the existence of tea shop is significant. The respondents had no explanation to offer for the running of the tea shop in the property.

8. As on the date of initiation of proceedings, there is nothing to show that the applicants in S.M. proceedings were in possession of the property. There was no attempt from the side of the Land Tribunal or Appellate Authority to ascertain how the respondents came into possession of the property when they had not produced any document to establish the said fact. They heavily relied on possession certificate issued by the Tahsildar and the purchase certificate obtained thereafter for their claim. One must remember that possession certificate was cancelled and the purchase certificate was obtained without making the petitioners as parties to the proceedings.

9. When the appeals were filed before the Appellate Authority, a document was produced from the side of the applicants to show that they had lawfully come into possession of the suit property. The Appellate Authority

considered the document in detail and came to the conclusion that in all probability it is a concocted document.

10. It was contended that the authorities below held that in the suit it was not found that either party was in possession of the property.

11. The counsel pointed out that in a suit for injunction, the burden was on the plaintiff to show his exclusive possession. Even assuming that the defendant does not prove his possession, that does not automatically lead to a decree in favour of the plaintiff. The learned counsel pointed out that when the suit is dismissed, it means that the plaintiff failed to prove his possession as on date of suit.

12. Learned counsel appearing for the respondents contended that the Land Tribunal and the Appellate Authority had considered the matter in considerable detail and had considered all the contentions. There was nothing to show that the revision petitioners before this Court were in

possession of the property earlier. The appellants herein produced documents to show that the respondents are not residing in the property and they are residing in the layam. It is also found that if as a matter of fact the revision petitioners before this Court had any right over the property, they would have taken some steps to show their possession under the Kerala Land Reforms Act. That was also not done.

13. It is not correct to say as observed by the Appellate Authority that in the suit filed by the respondents herein, O.S. 70 of 1979 and O.S. 71 of 1979 were dismissed on the ground that both sides were unable to establish their possession. The finding in those suits was that the petitioners failed to prove their possession and the court felt that the possession certificates were fraudulently procured and using those possession certificates attempt was being made to usurp the properties of the petitioners herein.

14. There is no dispute that there is a tea shop run by Chellayya, the predecessor-in-interest of the revision petitioners herein. No satisfactory explanation is offered by the respondents regarding this aspect. They had no case that the documents and evidence produced by the petitioners do not show that a tea shop was being run or that they are not genuine documents.

15. The definite and categoric finding in O.S. 70 of 1979 and O.S. 71 of 1979 was that there was absolutely no evidence to show that the plaintiffs were ever in possession of the property and that it was clear that they were trying to grab the property on the strength of Exts. A2 and A3 certificates in those cases.

16. One cannot omit to note that the details regarding the manner in which the respondents came to occupy the property, the nature of right to do so and such

other details are conspicuously absent. In the appeal before the appellate authority, the appellants sought to produce the documents to support their claim, but the Appellate Authority refused to accept it in evidence as it was found to be suspicious. The result is that there is no evidence regarding the origin of possession of property by the respondents.

17. The mere fact that at some point of time the respondents might have been in possession of the property is not sufficient. Only a cultivating tenant is entitled to assignment. The respondents have not produced any document to show that they were cultivating the property. The details regarding the nature of cultivation etc have not been pleaded by the respondents. Before the tribunal also, in the claim filed by the respondents, no documents have been produced to show how they came into possession and the details regarding the lease to respondents. They cannot succeed on the weakness of the other side's case. The

respondents have to adduce independent evidence to show and establish their claim.

18. Learned counsel for the petitioners is right in his submission that even if the defendants in the suit are unable to show possession, that does not absolve the plaintiff in the suit of their burden of proof.

19. The point formulated by the Land Tribunal to come to the conclusion that the respondents are in actual possession do not appear to be proper and convincing. Reliance placed on the documents to show the same cannot be of any help to the respondents.

20. The mere fact that the appellants have not taken steps to get the property assigned does not mean that they admitted possession of the respondents. So also the fact that the voters list produced to show that appellants are residing in layam cannot advance the case of the respondents and cannot lead to the conclusion that the respondents are

lessees of the property.

21. In the absence of convincing evidence to show the actual possession of the property and the actual right enjoyed over the property and the manner by which they came into possession of the property can be of no help to the respondents.

The result is that, this Court is unable to accept the finding of the authorities below that the respondents before this Court have been successful in establishing their right to the property in question. Hence, these revision petitions are allowed, the impugned orders are set aside and the suo motu proceedings shall stand dropped.

sb.

P. BHAVADASAN,
JUDGE