

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

CRP.No.891 of 2007 (C)

AGAINST THE ORDER IN AA 9/2003 of APPELLATE AUTHORITY (LR),
THRISSUR DATED 06-08-2007

OA 1112(A)/1975 OF LAND TRIBUNAL, MANJERI

REVISION PETITIONERS/RESPONDENTS/RESPONDENTS:

1. MANOJ LAKKAYIL, PRESENT MANAGING TRUSTEE, KALIKAVU BHAGAVATHY DEVASWOM, MANJERI MALAPPURAM DISTRICT.
2. MADHU C.MENON, PRESENT TRUSTEE, KALIKAVU BHAGAVATHY DEVASWOM, MANJERI MALAPPURAM DISTRICT.
3. THE EXECUTIVE OFFICER, PRESENT TRUSTEE, KALIKAVU BHAGAVATHY DEVASWOM, MANJERI MALAPPURAM DISTRICT.

BY ADV. SRI.MOHAN C.MENON

RESPONDENTS/PETITIONERS/PETITIONERS:

1. K.GOPALAKRISHNAN NAIR,
S/O.ACHUTHAN NAIR, MELAKAM, MANJERI,
MALAPPURAM DISTRICT.
2. M.C.NAGAN NAMBOODIRI,
MOORKAT CHEMMARASSERI ILLOM, ARIYIL, TALIPARAMBA.
3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE).
R1 BY ADV. SRI.S.A. SAJU.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.891 OF 2007

Dated this the 10th day of July, 2015.

O R D E R

This Civil Revision Petition arises out of OA.1112(A)/1975 filed by the 1st respondent herein for assignment of 16 cents of property under Section 72B of the Kerala Land Reforms Act. The Land Tribunal dismissed the petition holding that the applicant was not able to establish his right. The appellate authority, in appeal i.e. A.A.No.9/2003 reversed the finding of the Land Tribunal and ordered assignment.

2. The claim of the revision petitioners is that the property is a portion of temple property and temple ceremonies are conducted therein and that property is not liable for assignment. It is pointed out that in fact O.A.No.1112(A)/1975 was filed by the 1st respondent herein with respect to two items of properties; one comprised in survey No.255/4 having an extent of 38 cents and another in survey No.269/3 having an extent of 16 cents.

After adjudication, according to the revision petitioners, assignment was allowed in respect of item No.1. It was held by the Land Tribunal that item No.1 exclusively belongs to one Nagan Namboodiri and thus allowed the claim with regard to that item of property. The petitioners would say that item No.2 was found to belong to Devaswom and therefore relief in respect of item No.2 was declined. No sooner than the relief in respect of item No.2 was rejected, according to the revision petitioners, on 20.05.1976 another O.A by the same person with respect to item No.2 in O.A.No.1112(A)/1975 was filed showing the survey number as 269/2A2 and the extent as 15 cents. Initially Land Tribunal allowed the application filed by the 1st respondent. Devaswom was not a party to the same.

3. The matter was carried in appeal and the appeal was allowed and the matter was remanded to the Land Tribunal by order dated 31.01.1987 for making Devaswom a party to the proceedings. Subsequently, in 1994, the Executive Officer got himself impleaded in the proceedings. The revision petitioners would point out that by order dated 29.02.2000, Land Tribunal

dismissed the application finding that the applicant had not been able to establish his right to item No.2 property and in fact according to the revision petitioners, Land Tribunal found that there was no such property in existence. The revision petitioners point out that without adverting to any of the relevant aspects, the appellate authority simply allowed the appeal.

4. It is true that the order of the appellate authority gives a very unsatisfactory picture and is found to be totally deficient in character and content. All that the appellate authority had done is to narrate the rival contentions and in one paragraph arrive at a conclusion that the appellant is entitled to succeed without considering the relevant aspects.

5. Before going into the merits and demerits of the conclusion drawn by the appellate authority, certain facts may be noticed. The 1st respondent herein relies on Ext.A1 document of 1908 whereby Nagan Namboodiri assigned his rights over the property in favour of Velu and Ravunni. Their kanam right came to be sold in court auction and it was purchased by one Padmanabhan. By Ext.A2 document, Padmanabhan sold the

property to Ravunni Nair who is the uncle of the applicant before the Land Tribunal. In the application for assignment, the applicant claimed that he had obtained an oral lease in the year 1962 from Ravunni Nair and thus he has been in possession and occupation of the property since 1962. It is also pointed out that a portion of the property obtained by Ravunni Nair under Ext.A2 was sold to a third person who obtained assignment of the property from the Land Tribunal concerned. He therefore contended that the applicant in O.A. was entitled to assignment.

6. The claim was resisted by Devaswom by pointing out that the applicant had no right over the property and the property belongs to Devaswom. In fact, the specific contention appears to have been that the property in question is a portion of Devaswom properties and if that be so, it is exempted under Section 3 of Kerala Land Reforms Act.

7. On the above pleadings, parties went to trial and evidence was adduced. The Land Tribunal came to the conclusion that the applicant had miserably failed to establish his claim. In appeal, the finding of the Land Tribunal was reversed.

8. It is true that the applicant has produced Exts.A1, A2 and A3 documents in support of his claim. Ext.A1 is kanam assignment deed in favour of Velu and Ravunni by Nagan Namboodiri in 1908. Thereafter the tenancy right over the property was brought to sale and in the court sale, one Padmanabhan purchased the rights of the tenants. Subsequently, by Ext.A2 of 1944, Padmanabhan assigned the rights over a portion of property which he obtained under court sale in favour of Ravunni Nair who is none other than the uncle of the applicant in the O.A. A portion of the property thus obtained by Ravunni Nair by Ext.A2 was sold by him to a stranger.

9. It is true that the claim put forward by the applicant was on the basis of an oral lease of Ravunni Nair in the year 1962. The applicant was not able to prove the oral lease but he could certainly raise a claim on the basis that he was acting for and on behalf of Ravunni Nair or his legal heirs. Anyhow that was not done. He claimed in his own right. The Land Tribunal, on the basis of various documents produced before it, found that there is no such property as claimed by the claimant.

10. The above finding of the Land Tribunal does not appear to be quite correct for the reason that Devaswom had no case that there was no such property as shown in the application. Their definite case was that the property is a temple property and therefore it is exempted under Section 3 of the Kerala Land Reforms Act.

11. Therefore the conclusion drawn by the Land Tribunal that there was no such property as detailed in the application may not be quite justified and correct. But the matter does not end there. The Revenue Inspector's report shows that there were no improvements in the property and it was lying fenced. It is seen from the records that after evidence was adduced, a commission was taken out and the Commissioner filed a report and sketch. A reading of the Commissioner's report and Revenue inspector's report shows that there is no similarity in the details of the properties. It appears as if that the reports dealt with two different properties. It is no doubt true that Commissioner has pointed out three documents namely, Exts.A1 to A3. While the Revenue Inspector would say that in the property there was no

improvements at all, the Commissioner says otherwise.

12. Learned counsel appearing for the revision petitioners then pointed out that initially the claim of the applicant was rejected by the Land Tribunal and there was no jurisdiction for the Land Tribunal to entertain a second application.

13. The contention taken as such is much formidable. But the learned counsel for the respondents pointed out that the things are not as is sought to be made out by the learned counsel for the revision petitioners. At the relevant time, there was special Tribunal to deal with properties of Devaswom. Therefore the Land Tribunal did not decide on the application as it could not deal with tenancy rights relating to Devaswom properties and dismissed the application.

14. In appeal, the appellate authority found that Devaswom is not impleaded as a party to the proceedings and the appeal was allowed. The matter was sent back to Land Tribunal for fresh disposal after making Devaswom a party to the proceedings. By the time the matter went back the special Tribunal constituted for dealing with Devaswom properties was

abolished and thereafter ordinary Tribunals were to deal with those applications also. That is how the application came to be tried by the same Tribunal. It is not as if on the first occasion the claim of the 1st respondent had been rejected.

15. The contention appears to be correct. The Land Tribunal did not decide the tenancy in respect of the property involved in these proceedings because it was claimed to be Devaswom property. It was observed in the order that since there was a Tribunal constituted for dealing with claim of Devaswom properties, that Tribunal was not dealing with the application. Therefore, it could not be said that there was rejection of the claim of the applicant by the Tribunal on the earlier occasion.

16. As already noticed, the finding of the appellate authority is thoroughly unsatisfactory. The Land Tribunal has given several reasons as to why it could not accept the claim of the 1st respondent. None of the reasons given by the Land Tribunal is found to be erroneous by the appellate authority. The appellate authority has simply narrated the rival contentions and

in one paragraph has found that in the light of Exts.A1 to A3 the findings go in favour of the applicant. It does not refer to other items of evidence in the case.

17. It needs to be remembered that the appellate authority is the final authority on facts and unless question of law is involved, revision may not be maintainable. It was incumbent on the appellate authority to consider the evidence in detail and to show that the finding arrived at by the Land Tribunal is erroneous and cannot be sustained. There is no such exercise undertaken by the appellate authority which has simply allowed the appeal.

18. It is also pointed out by the learned counsel appearing for the revision petitioners that the applicant had filed a suit in respect of the very same property for injunction against Devaswom and that suit happened to be dismissed and appeal is pending. For the reasons best known to the petitioners, those documents are not seen produced before this Court. Whatever that be, the decision taken by the appellate authority is unsustainable and it does not show that for any particular reason the findings arrived at by the Land Tribunal is erroneous.

19. In the light of such unsatisfactory state of affairs, it is only proper that the appellate authority is directed to reconsider the matter afresh.

For the above reasons, this Civil Revision Petition is allowed. The impugned order passed by the appellate authority is set aside and the matter is remanded to the appellate authority for fresh consideration in accordance with law and in the light of what has been stated above. The parties shall appear before the appellate authority on 07.08.2015 and the appellate authority shall dispose of the matter within a period of three months thereto.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.