

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

MFA.No. 469 of 2001 ()

AGAINST THE JUDGMENT IN OA 5/1999 of FOREST TRIBUNAL, KOZHIKODE
DATED 03-10-2000

APPELLANT/APPELLANT

1. SKARIAA FRANCIS, S/O SKARIAA
PLAMOOTIL, KANDAKKAMALA
KOTTIYODE, VIYYAKURUSSI
MANNARKKAD TALUK (DIED)

ADDITIONAL APPELLANTS

2. ROSAMMA FRANCIS, W/O LATE SKARIA FRANCIS
PLAMOOTIL, KANDAKKAMALA
KOTTIYODE, VIYYAKURUSSI
MANNARKKAD TALUK
3. GEORGE KUTTY FRANCIS
S/O -DO -DO-
4. DEVASSIA FRANCIS
--DO - DO-
5. BABU FRANCIS - DO-
- DO-
6. SIBY FRANCIS - DO-
- DO-
7. RANI JOSEPH, D/O - DO-
- DO-
8. MINI SUNNICHEN - DO-
-DO-
9. BIDU, - DO-
- DO-

* LEGAL HEIRS OF FIRST APPELLANT IMPEADED AS ADDITIONAL APPELLANTS
2 TO 9 AS PER ORDER DATED 11.11.2011 IN I.A.NO.1598/2011.

BY ADVS.SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.JOJI VARGHESE
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SRI.P.R.VENKETESH

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REP. BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA
THIRUVANANTHAPURAM
2. THE CUSTODIAN OF VESTED FORESTS
ARANYA BHAVAN
FOREST COMPLEX, OLAVAKKODE
PALAKKAD

R1&2 BY SPL.GOV.T.PLEADER SRI.MADHAVANKUTTY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

M.F.A.No.469 OF 2001

Dated this the 13th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

It is a case where the sole appellant died and the earlier judgment of this Court, is dated 18.9.2007. Later on, additional appellants filed petitions as I.A.Nos.1597/2011, C.M.Appln.No.1263/2011, I.A.No.1599/2011 as well as I.A.No.1598/2011 for impleading them, to set aside abatement, to condone the delay and to re-open the judgment and restore the appeal.

2. It is seen from the affidavit that the sole appellant late Sri.Skaria Francis died on 19.12.2005. All these applications were heard and disposed of by a Division Bench of this Court on 11.11.2011 and those applications were allowed and the appeal itself was ordered to be posted for disposal.

3. We heard both sides.

4. The original appellant filed an application before the Forest

Tribunal when the forest officials took steps to take possession of 3 acres and 30 cents of land. He had raised a contention that the property in question is not a forest land and therefore it is not vested under Sections 3(1) of the Kerala Private Forest (Vesting and Assignment) Act. Alternatively, it was contended that even if it is forest, he is entitled to exemption under Sections 3(2) and 3(3) of the Act. It was also contended that purchase certificate - Ext.A1 was one issued by a competent Tribunal and therefore he was a cultivating tenant also. The Tribunal found that the land is not covered by the MPPF Act, even though the property was situated in the erstwhile Malabar District. It is seen that the property is cultivated with rubber going by the report of the Commissioner and the age of the rubber trees is 20 years and there is a well laid plantation also. But the Tribunal found that, the crucial date being 10.5.1971, evidence is not satisfactory. The judgment of the Apex Court in **Joseph v. State of Kerala (2007(3) KLT 144 (SC)** is relied upon by the appellant to contend for the position that intention of cultivation has to be gathered from the entire surrounding circumstances. The said judgment is after the impugned judgment. The

learned counsel for the appellant had therefore sought for a remand of the matter to the Forest Tribunal.

5. We find from the judgment dated 18.9.2007 that this Court remanded the matter to consider the question by the Tribunal afresh as to whether the land in question is a private forest as defined under the Act. The matter will stand remanded to the Forest Tribunal and the Forest Tribunal will consider the matter afresh after giving opportunity to both sides to adduce evidence and address arguments. The parties will appear before the Tribunal on 26.05.2015. Since it is an old matter, the Tribunal will take appropriate steps to dispose of the matter expeditiously.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.