

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

LA.App..No. 164 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN LAR 35/2008 of SUB COURT,
PATHANAMTHITTA DATED 31-10-2011

APPELLANTS/CLAIMANTS/SUPPLEMENTARY APPELLANTS:

1. ANI CHERIAN, AGED 38 YEARS,
D/O. LATE SAMUEL CHERIAN,
OTTUKALLIL VEETIL,
VETTIPURAM MURI, PATHANAMTHITTA DISTRICT.
2. SANU CHERIAN, AGED 36 YEARS, S/O. LATE SAMUEL CHERIAN,
OTTUKALLIL VEETIL, VETTIPURAM MURI,
PATHANAMTHITTA DISTRICT.
REPRESENTED THROUGH HIS DULY CONSTITUTED POWER OF ATTORNEY
HOLDER, ANI CHERIAN, D/O. LATE SAMUEL CHERIAN,
OTTUKALLIL VEETIL, VETTIPURAM MURI,
PATHANAMTHITTA DISTRICT, THE 1ST APPELLANT.
(THE APPELLANTS ARE THE LEGAL REPRESENTATIVES OF THE
CLAIMANTS IN LAR No. 35/2008)

BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA.
2. PATHANAMTHITTA MUNICIPALITY,
REPRESENTED BY ITS SECRETARY

R1 BY GOVERNMENT PLEADER SMT.P.A.RAZIYA.
R2 BY SRI. V.K.SUNIL.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
AL/-

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

L.A.A. No.164 of 2015

Dated this the 1st day of April 2015

JUDGMENT

Ramachandran Nair , J.,

This appeal is filed by the supplementary appellants 1 & 2. The original claimants one Sri. Cherian and Smt. Leelamma are no more. This is stated in paragraph 1 of the appeal memorandum itself. Smt. Leelamma expired on 15.8.2011 before the pronouncement of the judgment in L.A.R. No. 35/2008. Sri. Cherian expired on 14.2.2014 after the judgment was pronounced on 31.10.2011. The appeals have been filed as the legal representative of deceased claimants.

2. The Registry has noted an objection that since the death occurred before the pronouncement of the judgment, as far as the 2nd claimant is concerned, the appellants may have to take proper steps in the trial court itself.

3. We heard the learned counsel for the appellant, learned Government Pleader and learned Standing counsel for the

Municipality.

4. Evidently, one of the claimant's death is before the pronouncement of the judgment. We are of the view that it is not a case where the death occurred after the date of hearing of the reference and before the pronouncement of the judgment. Therefore, appropriate steps will have to be taken by the present appellants before the reference court itself, for which learned counsel for the appellants seeks permission. The decree itself is a nullity. In the light of the above position, the appeal has to be dismissed as the proper remedy is to approach the court below to re-open the whole matter.

5. We notice that in the judgment of this Court reported in ***Paru v. Devaki Varassiar [1992(2) K. L.T 687]*** a like situation was considered by this Court. There also the appellant died prior to the passing of the decree by the lower appellate court. A Second Appeal was attempted to be filed by the legal representatives. This court found that the proper course will be to the trial court to consider the application for impleading. In view of the above dictum, we allow the appellants to file

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appropriate applications before the reference court and the applications will be considered subject to the objections if any to be raised by the respondents in the matter. The court fee paid on the memorandum of appeal will be refunded to the appellant, as the appeal is dismissed without any adjudication.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge