

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

RSA.No. 578 of 2005 (B)

AGAINST THE JUDGMENT IN AS 97/2002 of SUB COURT,THODUPUZZHA
DATED 28-02-2005
OS 250/2000 of MUNSIFF COURT, DEVIKULAM

APPELLANT (DEFENDANT IN O.S.250/2000 AND APPELLANT IN A.S.97/2002)

P.I. ABRAHAM, S/O. P.M. ITTY,
39-MUNNAR MEDICALS, MUNNAR P.O., K.D.H. VILLAGE
DEVIKULAM TALUK.

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENTS/PLAINTIFF AND DEFENDANTS IN THE SUIT:

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1. TATA TEA LTD., REPRESENTED BY PRATHAP
RAMADAS, DEPUTY MANAGER, SOUTH INDIA ESTATE
DEPARTMENT, REGIONAL OFFICE, MUNNAR,
K.D.H. VILLAGE, DEVIKULAM TALUK.
 2. K.M. ABDUL JABBAR, BISMIL TEA STALL,
BLDG.NO.IX/2224, NEAR MUNNAR POST OFFICE, MUNNAR P.O.
K.D.H. VILLAGE.
 3. V.V. GEORGE, S/O. VARKEY,
T.V. HOUSE, BUILDING No.IX/2225, NEAR MUNNAR
POST OFFICE, MUNNAR P.O., K.D.H. VILLAGE.

R1 BY ADV. SRI.JOSEPH KODIANTHARA
R1 BY ADV. SRI.MITHUN MARKOS
R3 BY ADV. SRI.SATHISH NINAN
R3 BY ADV. SRI.SANTHOSH MATHEW

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.BHAVADASAN, J.

Regular Second Appeal No.578 OF 2005

Dated this the 1st day of July, 2015.

J U D G M E N T

In a suit for recovery of possession on the strength of title filed as O.S.No.250/2000 by the Tata Tea Ltd. represented by the Deputy Manager, the defendants suffered a decree.

2. The allegation in the plaint showed that the plaintiff was the successor in interest of M/s.Kannan Devan Hills Produce Company Ltd. The plaintiff-Company alleged that the property scheduled as plaint schedule property is one among the buildings given on licence to the 1st defendant to use the same as a shop room for himself. The plaintiff narrated the details of the licence arrangement between the Company and the 1st defendant in the suit. They say that without the sanction, permission or knowledge of the Company, the 1st defendant inducted the defendants 2 and 3 into the premises. The induction of defendants 2 and 3 into the building was in total violation of conditions in the licence agreement and according to the plaintiff,

the defendants 2 and 3 have no manner of right over the building. Based on the possessory title, the plaintiff filed a suit for recovery of possession of property from the defendants.

3. The defendants entered appearance and as per the averments in the written statement, they did not dispute the possessory right over the land where building was situated. But they denied the ownership and title of the plaintiff to the plaint schedule building. They contended that the building was neither constructed nor owned by the Company in question. The building was owned by M/s.K.D.H Company and the Company had leased out the premises to one K.C.Thomas and the 1st defendant claims to have derived right. He claims to have made improvements in the property to the tune of Rs.1,17,250/- and it is that property, according to him, which has been scheduled to the plaint. It is claimed that the Company which is in possession of the building now is receiving a monthly rent of Rs.100/-. The 1st defendant denied of having executed any licence agreement as claimed by the Company and he claimed independent right over the building in the property. It is stated that the Company was in the habit of

obtaining signed blank papers and they have used the same for the above purposes. Even assuming that the plaintiff is the owner of the building, the terms and conditions in the agreement is not binding on the defendants and they therefore contended that the plaintiff is not entitled to the relief sought for in the plaint.

4. On the above pleadings, issues were raised and the parties went to trial. The evidence consists of the testimony of PWs 1 and 2 and the documents marked as Exts.A1 to A11 on the side of the plaintiff. The defendants had DW1 examined and Exts.B1 to B7 marked.

5. On appreciation of the materials before it, the trial court came to the conclusion that the 1st defendant is not more than a licensee under the Company and the licence was properly terminated and he had no right over the property and the suit was accordingly decreed.

6. Disappointed defendant carried the matter in appeal as A.S.No.97/2002. One of the main contentions before the lower appellate court was that there was no licence agreement between

the plaintiff and the defendants and the story put forward to recover possession is false. They disputed that the Company had put up the structure in question. The lower appellate court, after considering the document in question, came to identical conclusion as that of the trial court and dismissed the appeal.

7. Notice was issued on the following questions of law:

1. Is it not that the judgments and decrees passed by the courts below are against the law and facts on record?
2. Was it not illegal for the trial court and the lower appellate court to decree the suit for declaration of title and recovery of possession at the instances of the plaintiff producing no documents to prove their title to the plaint schedule property?
3. Was it proper for the courts below to totally discard Kannan Devan Hills (Resumption of Land) Act and the provisions thereunder which govern the plaint schedule property and the rights of parties having possession over it?
4. Was the finding by the trial court that the defendant has no claim other than the claim stipulated in Exhibit A1 rent agreement and that the said fact shows that the plaintiff had

title and ownership over the plaint schedule property legally sustainable, especially in the circumstances wherein the bonafide of the licence agreement and its veracity are questioned by the appellant defendant?

5. Was it proper for the trial court to find that the plaintiff had title over the plaint schedule property as the defendant failed to prove his title?
6. Is it not that the plaintiff is to prove his contentions and pleadings by producing documentary evidence as regards title to the property for the purpose of seeking declaratory reliefs?"

8. At the time of argument, learned counsel appearing for the appellant raised a totally new contention that by virtue of Kannan Devan Hills (Resumption of Land) Act, 1971 provisions of which are extensively quoted in the appeal, the Company has no manner of right over the property and if that be so, the suit has to fail. It is also pointed out that even otherwise the Company is not entitled to succeed because they have not produced any document in support of their claim to recover possession.

9. Learned counsel appearing for the respondents, on the other hand, pointed out that first of all, the above contention has come at the first time and that an identical contention was raised in R.S.A.No.321/2008 and it was repelled by this Court and the same situation is available in the case on hand. It is also pointed out that both the courts below have considered the matter and found that the building belonged to the Company and the appellant was holding the property only on licence arrangement which is properly terminated. Being concurrent findings on facts, no substantial question of law arises for consideration in this appeal and it is only to be dismissed.

10. After having heard the learned counsel on both sides, it is felt that there is considerable force in the submission made by the learned counsel for the respondents. Apart from the fact that the contention based on Act 5 of 1971 has not been raised before the court below, as rightly pointed out by the counsel for the respondents, in R.S.A.No.321/2008, an identical question was considered. It was found therein that the person involved therein was inducted to possession in 1995. In the case on hand it is

submitted that the person concerned was entitled to possession from 1979. Whatever that be, since that issue has not been raised so far, being a question on fact, that does not merit consideration. Equally without force is the contention regarding title. Both the courts have found that the appellant has been put in occupation on licence agreement. Being concurrent findings of fact regarding that aspect and since it is not shown that the findings are perverse and contrary to the evidence on record, no interference is called for.

Result is that the second appeal is without merits and it is liable to be dismissed. I do so.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A. to Judge.