

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1548 of 2015 (O)

O.S.NO.29/1995 OF MUNSIFF'S MAGISTRATE COURT, PATTAMBI

R.C.CASE NO.1/2002 of LAND TRIBUNAL, OTTAPALAM

PETITIONER(S)/ADDITIONAL DEFENDANTS 5 TO 9 :

1. KUNHAMI UMMA, AGED 36 YEARS,
W/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O- 679 336.
2. AMINA, AGED 36 YEARS,
D/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O- 679 336.
3. MOIDEEN, AGED 34 YEARS,
S/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O- 679 336.
4. HAMSA, AGED 32 YEARS,
S/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O- 679 336.
5. FAUZIYA, AGED 60 YEARS,
D/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O- 679 336.

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA**

RESPONDENT(S) :

1. KHADEEJA, AGED 72 YEARS,
W/O.ALI POOVATHINGAL, KALADIPATTA AMSOM,
MULLOORKARA DESOM, OTTAPALAM TALUK-679 335.
2. AISHA, AGED 60 YEARS,
D/O.PUTHENPEEDIKAYIL VAPPUTTY,
EZHUMTHALA AMSOM DESOM, OTTAPALAM TALUK-679 335.

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**3. NABEESA, AGED 58 YEARS,
D/O.PUTHENPEEDIKAYIL VAPPUTTY,
EZHUMTHALA AMSOM DESOM, OTTAPALAM TALUK-679 335.**

**4. AMIR, AGED 27 YEARS,
S/O.ASSAINAR, PUTHENPEEDIKAKKAL HOUSE,
VALLAPUZHA P.O-679 336.**

R1 TO R3 BY ADV. SRI.A.HAROON RASHEED

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

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APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1:** TRUE COPY OF THE PURCHASE CERTIFICATE NO.405/1975
ISSUED BY THE LAND TRIBUNAL , PATTAMBI DATED 17/06/1976.
- EXT.P2:** TRUE COPY OF THE PURCHASE CERTIFICATE NO.357/1978
ISSUED BY THE LAND TRIBUNAL , PATTAMBI DATED 26/08/1978.
- EXT.P3:** TRUE COPY OF THE REPORT SUBMITTED BY THE REVENUE
INSPECTOR TO THE LAND TRIBUNAL , DATED 25/09/2013.
- EXT.P4:** TRUE COPY OF THE ORDER OF THE LAND TRIBUNAL,
OTTAPALAM IN R.C. CASE NO. 1/2002 DATED 18/04/2015.
- EXT.P5:** TRUE COPY OF THE REPLY GIVEN BY THE PUBLIC INFORMATION
OFFICER, OFFICE OF THE SPECIAL TAHSILDAR LAND REFORMS
DATED 23/06/2015.
- EXT.P5(A):** TRUE COPY OF THE PROCEEDING SHEET OF R.C. NO. 1/2002 OF
THE LAND TRIBUNAL, OTTAPALAM OF DIFFERENT DATES TILL
10/04/2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1548 of 2015
.....

Dated this the 18th day of August, 2015

J U D G M E N T

Petitioners are additional defendants 5 to 9 in O.S.No.29 of 1995 of the Munsiff's Court, Pattambi. It is a suit for partition. According to the court below, a question had arisen with regard to the tenancy right and consequently the matter was referred to the Land Tribunal under Section 125(3) of the Land Reforms Act.

2. According to the petitioners, the matter came up before the Land Tribunal on 30.03.2013 for the last time. On that date, the Revenue Inspector was directed to file a report after conducting a fresh site inspection. According to the petitioners, thereafter, there was no other posting for the case. It is alleged that subsequently the matter was taken

up on 07.03.2015, 21.03.2015, 30.03.2015 and 10.04.2015. According to the petitioners, there was no such information with regard to the said posting dates and by falsely recording that the learned counsel for the petitioners was also present on such posting dates, the matter was allegedly taken up for orders on 10.04.2015. Thereafter, order dated 18.04.2015 was passed by the concerned officer.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

4. The records have been perused. On hearing the submissions of the learned counsel for the petitioners and on perusing Ext.P5 copy of the proceedings sheet, it seems that there is substance in the submissions made by the learned counsel for the petitioners. Even though the learned counsel for the respondents has produced a copy of notice dated 7.2.2015 allegedly issued by the Land Tribunal to all the counsel for the parties, there is nothing to show that

such a notice was actually served on the parties or the learned counsel for the parties. It is evident that there was no posting for the case after 30.03.2013. The case was not posted to a specified date, on 30.03.2013. Therefore, proper notice ought to have been issued to the parties and the learned counsel appearing for the parties, for noting down the postings in the case.

5. The copy of the notice dated 07.02.2015, produced by the learned counsel for the respondents show that the parties were called upon to appear in the case on 28.02.2015 through the said notice. In fact, there is no such posting of the case in Ext.P5.

6. According to the learned counsel for the respondent, there was no sitting on 28.02.2015 and therefore, the matter was adjourned to 07.03.2015. The proceeding sheet does not show any such posting also. Matters being so, it has to be considered that there was no notice to the learned counsel for the respondents or to the

learned counsel for the petitioners regarding the posting dates. Therefore, Ext.P4 order is bad in law, and the matter requires reconsideration.

In the result, this Original Petition stands allowed. Ext.P4 order is set aside. The matter is remitted to the Land Tribunal for fresh disposal, in accordance with law, after hearing both sides. Being an old matter, the Land Tribunal shall dispose of the matter, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. The parties shall appear before the Land Tribunal on 01.09.2015.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge