

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

RSA.No. 305 of 2007 (C)

AGAINST THE JUDGMENT IN AS 51/2003 of SUB COURT, KASARAGOD
DATED 26-02-2007

OS 64/2001 of ADDL.MUNSIFF COURT, KASARAGOD

APPELLANTS/APPELLANTS 2 AND 4 TO 9/LEGAL REPRESENTATIVES OF
DEFENDANT:

1. RATHNAVATHI

2. VARIJA

3. SARASWATHI

4. RAMESH NAYAK

5. YASHODA

6. RAMYA

7. RAGHAVENDRA, (NO.1 IS THE WIFE & NO.2 TO 4
ARE THE CHILDREN OF BALAPPA NAIK. NO.5 IS THE WIFE
AND NOS.6 & 7 ARE THE CHILDREN OF MUKUNDA NAYAK.
NOS.6&7 ARE MINORS, REP.BY GUARDIAN MOTHER YASHODA
-NO.5. ALL ARE RESIDING AT KURIYATHADKA OF KATUKUKKE
VILLAGE, KASARAGOD TALUK, P.O.BALLAMOOLE.

BY ADV. SRI.K.G.GOURI SANKAR RAI

RESPONDENT/RESPONDENT/PLAINTIFF:

K.PARAMESWARA BHAT, S/O. ISHWARA BHAT,
RESIDING AT KURIYATHADKA OF KATUKUKKE VILLAGE
KASARAGOD TALUK, P.O.BALLAMOOLE.

BY ADV. SRI.T.K.VIPINDAS

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Regular Second Appeal No.305 OF 2007

Dated this the 22nd day of June, 2015.

J U D G M E N T

The legal representatives of the original defendant in O.S.No.64/2001 of Munsiff Court, Kasaragod are the appellants. The facts absolutely necessary for the disposal of this appeal are as follows:

2. The plaintiff in the suit claimed rights over the suit property by virtue of Ext.A1 partition deed of the year 1963. The plaintiff pointed out that he was a minor at the time of execution of Ext.A1 and he was represented by his father. His further contention was that in the suo moto proceedings initiated against his father, the property which actually belonged to the plaintiff has been assigned in favour of one Padmavathy Amma and on coming to know about the same, the plaintiff preferred an appeal and that is pending consideration. The plaintiff claimed that he is in possession of the house in the property and he repaired the

house in 1977. Pointing out that the defendant is a trespasser, suit was laid.

3. The defendant resisted the suit. He disputed the title of the plaintiff. According to him, A schedule property originally belonged to the father of the plaintiff and in 1934 one Ishwara Prabhu obtained the said property on oral lease on an annual rent of 25 paise for a period of one year. He was a chalagany tenant in respect of the property and after the expiry of the period of lease, he continued to be a tenant. He put up a residential building and effected valuable improvements in that property. By Ext.B1 dated 20.04.1959, Iswara Prabhu assigned his tenancy right in favour of one Bappukunhi Beary and by Ext.B2 dated 10.01.1961 the said Bappukunhi Beary assigned the tenancy right which he had to Padmavathi Amma. As per Ext.B9 dated 14.11.1998 Padmavathi Amma bequeathed the property to the defendant in the suit and therefore he has absolute right over the same. Since Padmavathi Amma had obtained a purchase certificate, he became the absolute owner in possession of the A schedule property. He therefore prayed for dismissal of the suit.

4. Issues were raised and the parties went to trial. The evidence consists of the testimony of PWs 1 to 3 and documents marked as Ext.A1 to A14 on the side of the plaintiff. The defendant examined DWs 1 to 3 and had Exts.B1 to B11 marked. Exts.C1 and C2 are the commission report and plan.

5. Both the courts below found that as per Ext.A1 partition deed, the plaintiff obtained 25 cents in survey No.294/1A1B2 and 20 cents in survey No.294/1A1C2. Both the courts were of the opinion that the tenancy is confined to the property comprised in survey No.294/1A1B2. Finding that the suo moto proceedings in S.M.No.763/1975 is not binding on the plaintiff as he was not a party to the same, the suit was decreed which was confirmed in appeal.

6. Notice has been issued on the following questions of law:

- 1) Whether on the evidence plaintiff has established his title to plaint schedule property and if not, whether decree for recovery of possession granted in his favour by courts below is sustainable.

- 2) Whether courts below were correct in granting a decree for recovery of possession on the strength of title without deciding the question whether Padmavathy was entitled to the benefit of Kerala Land Reforms Act, especially when Land Tribunal has granted purchase certificate under Section 72(k) of Kerala Land Reforms Act.
- 3) Whether courts below committed error in granting a decree for recovery of possession without setting aside the order in S.M.763/1975 or without a prayer for declaration that the order is not valid and binding against plaintiff".

7. Learned counsel appearing for the appellants pointed out that both the courts below have erred both on facts and in law in decreeing the suit. According to the learned counsel, the lease which the defendant claimed originated in 1934, much before the partition deed namely, Ext.A1 and even assuming that the property is set apart to the plaintiff as per Ext.A1 he could get only reversionary right and there is nothing to show that the lease which was originated in 1934 had ever been surrendered and the lease of the property had reverted back from the persons

who have taken the property on lease. Learned counsel then went on to point out that even assuming that an appeal is pending against the suo moto proceedings in which purchase certificate was issued to Padmavathi Amma, that does not mean that the defendant has no right. Both the courts below were not justified in holding that the Will is genuine and whatever rights Padmavathi Amma had had devolved on the plaintiff, it is contended.

8. Drawing attention to the written statement, learned counsel appearing for the appellants pointed out that the defendant had taken a definite stand that he is a cultivating tenant and is entitled to fixity of tenure. Under such circumstances even assuming that the courts below were inclined to hold that the order in the suo moto proceedings was not binding on the plaintiff, that does not mean that leasehold right is not available to the plaintiff. The courts below ought to have raised an issue regarding tenancy right and have referred the matter to Land Tribunal for a decision in this regard. According to the learned counsel, the decree now passed cannot be

sustained.

9. Learned counsel appearing for the respondent, on the other hand, contended that even assuming that there is tenancy right, that is only in respect of the property in survey No.294/1A1B2 and not in respect of the property in survey No.294/1A1C2. According to the learned counsel, the suo moto proceedings cannot be taken aid of by the defendant as the plaintiff was not a party to the same and it was without making him as a party that purchase certificate was issued and it is trite that such a purchase certificate cannot give any benefit to the tenant. Even assuming that the suo moto proceedings in S.M.No.763/1975 which is pending in appeal is binding on the plaintiff, that does not mean that the defendant in the suit is to be treated as a cultivating tenant. Even assuming that the said proceedings are not dropped, that still does not mean that the defendant is a cultivating tenant and that does not affect the right claimed by the plaintiff.

10. It is significant to notice that the tenancy right is claimed to have originated in 1934 and the assignments are

evidenced by Exts.B1 and B2. As rightly pointed out by the learned counsel for the appellants, the partition deed of the year 1963 is evidenced by Ext.A1 and at that time the family had only reversionary right to partition and they did not have possession of the suit property. As rightly pointed out by the learned counsel for the appellants, even assuming that the purchase certificate has not become final, that does not mean that the defendant is not entitled to the benefit under the Kerala Land Reforms Act. He has definitely raised a contention that he is a cultivating tenant. If the courts below were of the opinion that the purchase certificate in the suo moto proceedings in S.M.No.763/1975 was not available to the defendant, the court ought to have raised a question as to whether the tenancy right claimed by the defendant is true or not and should have referred the matter to Land Tribunal for proper decision in that regard. The decision now taken cannot have support in law.

For the above reasons, this appeal is allowed and the impugned order is set aside and the matter is remanded to the trial court with a direction to raise an issue regarding tenancy

and to refer the matter to Land Tribunal. Appropriate decision may be taken in accordance with law. The parties will appear before the trial court on 20.07.2015. Registry to send back the records forthwith.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.