

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

RSA.No. 35 of 2012 ()

**AS 117/1998 of ADDL.DISTRICT COURT - I(ADHOC), KASARAGOD
OS 141/1994 of SUB COURT, HOSDRUG**

APPELLANT/APPELLANT/PLAINTIFF :

**K.G RAMANKUTTY
S/O. GOVINDAN, RESIDING AT EDATHODU, PARAPPA VILLAGE,
P.O.PARAPPA, HOSDURG TALUK, KASARAGOD DISTRICT.**

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS/LRS OF RESPONDENT/LRS OF DEFENDANT :

- 1. K.G.GOPALAN(DEAD)**
- 2. KOMALAVALLY, W/O. LATE K.GOPALAN,
RESIDING AT KANNOTH HOUSE, MADHUKKOTH, ECHUR P.O.
VALIYANNUR VILLAGE, KANNUR DISTRICT-670 591.**
- 3. BINSY
D/O. LATE K.GOPALAN, RESIDING AT KANNOTH HOUSE,
MADHUKKOTH, ECHUR P.O., VALIYANNUR VILLAGE,
KANNUR DISTRICT-670 591.**
- 4. BINDU,
D/O. LATE K.GOPALAN, RESIDING AT KANNOTH HOUSE,
MADHUKKOTH, ECHUR P.O., VALIYANNUR VILLAGE,
KANNUR DISTRICT-670 591.**

**R2 TO R4 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

RSA.No. 35 of 2012 ()

APPENDIX

PETITIONER'S ANNEXURES :

**ANNEXURE 1: CERTIFICATE IS RSA.No. 35 of 2012 () SUED BY DR. DILEEP KUMAR
DT 16/11/2011.**

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.B.SURESH KUMAR, J.

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R.S.A.No.35 of 2012.

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Dated this the 25th day of September, 2015.

J U D G M E N T

The plaintiff in a suit for recovery of possession is the appellant in this Second Appeal.

2. The case of the plaintiff is that the plaint schedule property belonged to Cheripady tharwad and he obtained a tenancy right over the same in the year 1962. According to the plaintiff, when the properties of the tharwad were partitioned, the plaint schedule property was allotted to the share of one Retnakaran Nair. It is the case of the plaintiff that when the Kerala Land Reforms Act came into force, he obtained Ext.A2 purchase certificate and thus acquired title to the plaint schedule property. According to the plaintiff, Retnakaran Nair surrendered some extent of

land in the very same survey sub division in furtherance to the land ceiling proceedings initiated against him under the said Act and the said property has been assigned to various persons. It is alleged by the plaintiff that on the strength of the assignments made by the Government in respect of the surrendered land, the defendant has trespassed into the plaint schedule property. The defendant contested the suit contending that he is in possession of the suit property based on the assignment made by the Government from out of the property surrendered by Retnakaran Nair. According to the defendant, the plaintiff has no right in the property. The trial court dismissed the suit and the decision of the trial court has been confirmed in appeal. The plaintiff is aggrieved by the concurrent decisions of the courts below.

3. Heard the learned counsel for the appellant.

4. The fact that the plaint schedule property is a portion of the property originally held by Cheripady tharwad and the fact that it was allotted to Retnakaran Nair when the tharwad properties were partitioned are not in

dispute. According to the defendant, the plaint schedule property is part of the property surrendered by Retnakaran Nair to the Government pursuant to the land ceiling proceedings initiated against him. According to the plaintiff, the plaint schedule property is not part of the property surrendered by Retnakaran Nair to the Government and that the plaintiff has acquired title over the property by virtue of Ext.A2 purchase certificate. It is seen that the plaintiff has filed a claim petition before the Taluk Land Board alleging that the plaint schedule property is part of the property surrendered by Retnakaran Nair and that he has independent right over the same by virtue of Ext.A2 purchase certificate. The said claim petition was filed by the plaintiff invoking Section 85(8) of the Kerala Land Reforms Act. Ext.B7 is the order passed by the Taluk Land Board in the claim petition filed by the plaintiff. Ext.B7 indicates that the claim petition preferred by the plaintiff was opposed by Retnakaran Nair contending that the plaintiff has no tenancy right over the property and that

Ext.A2 purchase certificate has been obtained fraudulently. In Ext.B7, the Taluk Land Board found that the plaintiff has not established any tenancy right over the property and thus accepted the plea of Retnakaran Nair that Ext.A2 is not a genuine document. Ext.B7 order has become final. The plaintiff, in the circumstances, cannot be heard to contend that he has any right in the suit property. There is no question of law, much less any substantial question of law involved in this Second Appeal. The Second Appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed *in limine*. All the interlocutory applications in the appeal are closed.

Sd/-

**P.B.SURESH KUMAR,
(JUDGE)**

kvs

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PA TO JUDGE.