

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

RSA.No. 1293 of 2010

AGAINST THE JUDGMENT IN AS 39/2006 OF SUB COURT, MANJERI DATED 24-03-2010

**AGAINST THE JUDGMENT IN OS 280/2003 OF MUNSIFF COURT, MANJERI
DATED 17-06-2006.**

.....

APPELLANT(S)/APPELLANTS/DEFENDANTS:

- 1. ELIYAPPADAM SIVARAJAN,
EDAKKARA AMSOM DESOM, KARUNECHI,
NILAMBUR TALUK.**
- 2. ELIYAPPADAM DAMODARAN, S/O. KOMAN,
ELIYAPPADAM, EDAKKARA AMSOM DESOM,
KARUNECHI, NILAMBUR TALUK.**

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT/RESPONDENT/PLAINTIFF:

**PRABHAKARAN,
S/O.POONUR NARAYANA PILLAI,
POONUR HOUSE, EDAKKARA AMSOM DESOM,
EDAKKARA.P.O., NILAMBUR TALUK,
MALAPPURAM - 679 331.**

**BY SRI.M.M.ABDUL AZIZ (SENIOR ADVOCATE)
BY ADV. SRI.M.A.ABDUL HAKHIM**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

C.R.

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.1293 of 2010.

= = = = =

Dated this the 18th day of December, 2015.

J U D G M E N T

The defeated defendants in a suit for recovery of possession are the appellants.

2. The suit property measuring 30 cents belonged to one Chathunni Panicker. According to the plaintiff, on the death of Chathunni Panicker, the suit property devolved on his wife Neetti and the plaintiff obtained the same from Neetti in the year 1997 as per Ext.A1 sale deed. It is alleged by the plaintiff that defendants 1 and 2 trespassed into the suit property on 30.11.2002. Chathunni Panicker had two brothers and one sister. Defendants 1 and 2 are the children of the brothers of Chathunni Panicker. They resisted the suit contending that

Chathunni Panicker died unmarried and consequently on his death the suit property devolved on his brothers and sister. According to them, on the death of the brothers of Chathunni Panicker, the first defendant and the sister of Chathunni Panicker namely Ammini had released their rights over 10 cents out of the suit property in favour of the second defendant and the second defendant and Ammini had released their rights over the remaining 20 cents in favour of the first defendant. Thus, according to the defendants, the first defendant has become the absolute owner of 20 cents out of the suit property and the second defendant has become the absolute owner of the remaining 10 cents.

3. The trial court found that Neetti was the wife of Chathunni Panicker and consequently decreed the suit, holding that the suit property devolved on Neetti on the death of Chathunni Panicker and being the assignee of the suit property from Neetti, the plaintiff has title to the same.

Defendants 1 and 2 challenged the decision of the trial court in appeal. In the appeal, the defendants have also contended that the assignor of the plaintiff, namely, Neetti belongs to the Scheduled Tribe "Mala Panicker" and therefore, the alienation of the suit property by Neetti in favour of the plaintiff is hit by Section 5 of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975. The appellate court confirmed the decision of the trial court, rejecting the contentions raised by the defendants including the contention referred to above. Defendants 1 and 2 who are aggrieved by the decisions against them have thus come up in this second appeal.

4. The following are the questions of law formulated for decision at the time of admission of the second appeal:

- (i) Whether the finding of the courts below that 'Mala Panicker' community was included in the Scheduled Tribe as per Scheduled Caste and Scheduled Tribe Orders (Amendment) Act 2002 and

hence Mala Panicker community did not belong to Scheduled Tribe prior to 2002 is correct?

- (ii) Whether the Scheduled Caste and Scheduled Tribe Orders (Amendment) Act 2002 and the inclusion of 'Mala Panicker' community as a Scheduled Tribe will have retrospective effect and if so, is not Ext.A1 transaction illegal and liable to be ignored by the court?

5. Heard the learned counsel for the appellants as also the learned counsel for the respondent.

6.The learned counsel for the appellants reiterated the contention raised by the defendants before the appellate court, namely, that the assignor of the plaintiff Neetti belongs to the Scheduled Tribe "Mala Panicker" and therefore, the alienation of the suit property by Neetti in favour of the plaintiff in the year 1997 was hit by section 5 of the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975. Though the learned counsel for the appellants conceded that "Mala Panicker" was included in the list of Scheduled Tribes only by virtue of the Scheduled Caste and Scheduled

Tribe Orders (Amendment) Act 2002, relying on the decision of the Orissa High Court in **Bijay Kumar Jally v. Member, Board of Revenue & others** (CDJ 2011 Orissa HC 120), it was contended that when the aforesaid Tribe was included in the list of Schedule Tribes, the transactions involving the members of the said tribe also get automatically nullified with effect from 1.1.1960 as provided for under Section 5 of the 1975 Act.

7. The contention raised by the learned counsel for the appellants/defendants is not a contention raised in the written statement filed by them. There is also no pleading in the written statement filed by the defendants that the parties, especially the wife of Chathunni Panicker who executed Ext.A1 sale deed belongs to the tribe "Mala Panicker". Even if it is admitted that the vendor of the plaintiff belonged to the said tribe, according to me, the same does not affect the validity of Ext.A1 sale deed. The 1975 Act which invalidates the transfers effected

on or after 1.1.1960 by persons belonging to Scheduled Tribes to others who do not belong to any Scheduled Tribe has been repealed and replaced by the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Act, 1999 with effect from 24.1.1986. True, Section 5(1) of the 1999 Act also invalidates the transfers effected on or after 1.1.1960 by the persons belonging to Scheduled Tribes to others who do not belong to any Scheduled Tribe. But the proviso to section 5(1) of the 1999 Act, however, clarifies that Section 5(1) shall not apply to transfers effected in respect of properties, the extent of which do not exceed two hectares. In other words, the 1999 Act which was deemed to be in force at the time of execution of Ext.A1 sale deed does not invalidate the said document as the extent of the property involved therein is only 30 cents. Further, the 1975 Act confers on persons who are deprived of lands the right to approach the competent authority for restoration of the same. The said statute also confers

power on the Government to suo moto restore lands to persons who are deprived of the same. Section 22 of the 1999 Act provides that only orders issued by the competent authorities under the 1975 Act, so far as they are not inconsistent with the provisions of the 1999 Act, are saved by the the said statute. The defendants have no case that orders have been issued in favour of the vendor of the plaintiff under the 1975 Act for restoration of the land. As such, even assuming that the 1975 Act was in force at the time execution of Ext.A1 sale deed and that orders were issued for restoration of the suit property, in so far as the 1975 Act has been repealed and Section 22 of the 1999 Act do not save orders issued by the competent authorities under the 1975 Act which are inconsistent with the provisions of the 1999 Act, Ext.A1 sale deed will continue to be valid. The substantial questions formulated for decision in the second appeal, in the circumstances, do not arise for consideration. The second appeal, in the facts and

RSA.No.1293/2010.

8

circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

// true copy //

PA TO JUDGE.