

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

R.P.No.127 of 2015 IN C.R.P.728/2005

AGAINST THE ORDER IN C.R.P.No.728/2005 DATED 11-12-2012
OF HIGH COURT OF KERALA.

REVIEW PETITIONER/ RESPONDENT NO.5:-

AMBUJAKSHY PRABHAKARAN, AGED 64, D/O.KUNJAPPU,
CHULLIPARAMBIL HOUSE, KANJANI.

BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM.

RESPONDENTS/ REVISION PETITIONERS, RESPONDENTS 1 TO 4 & 6 TO 17:-

1. CHANDRA GOPI, S/O.ALUPARAMBIL RAMAN,
KUZHIKKATTUSSERI DESOM, THAZHEKAD, MUKUNDAPURAM,
PIN - 691 585.
2. OMANA RAMAKRISHNAN, EZHUVATHARAVEETIL,
MANAKULANGARA P.O., KODAKARA, PIN - 680 684.
3. RAJESWARI CHANDRA GOPI,
ALUPARAMBIL HOUSE, THAZHEKAD, PIN - 680 697.
4. E.R. MURALEEDHARAN, EZHUVATHARAVEETIL,
MANAKULANGARA P.O., KODAKARA, PIN - 680 684.
5. E.R. SHEELA, EZHUVATHARA VEETIL,
MANAKULANGARA P.O., KODAKARA, PIN - 680 684.
6. E.R. SHEEJA, EZHUVATHARA VEETIL,
MANAKULANGARA P.O., KODAKARA, PIN - 680 684.

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7. U.K.GOPALAKRISHNAN, S/O.KUNJAPPU,
URUNDOLIL HOUSE, KODAKARA, PIN - 680 684,
PROPRIETOR, NEO SURGICAL, COMBATORE ROAD, PALAKKAD.
8. U.K. KARUNAKARAN, S/O. KUNJAPPU,
URUNDOLIL HOUSE, MANAKULANGARA P.O.,
KODAKARA, PIN - 680 684.
9. U.K. VIJAYAN, S/O. KUNJAPPU,
URUNDOLIL HOUSE, MANAKULANGARA P.O. PIN - 680 684,
KODAKARA (DIED - LRs RECORDED).
10. THANKAMANI KUMARAN,
D/O. KUNJAPPU, CHINNATH HOUSE, P.V.VARAKKARA,
MANNAMPETTA, PIN - 679 517.
11. LALITHA CHANDRAN, D/O. KUNJAPPU,
CHULLIPARAMBIL HOUSE, KANJANI PIN - 680 612.
12. GANGADHARAN, S/O. KOCHUKUTTAN,
CHERAMPARAMBIL HOUSE, P.O. MANAKULANGARA,
KODAKARA, PIN - 680 684.
13. VILASINI, D/O. KOCHUKUTTAN AND W/O. NARAYANAN,
ANAKKATTIL HOUSE, P.O. EDATHIRINJI,
VIA. IRINJALAKUDA, PIN - 680 122.
14. AMMINI, W/O. VIJAYAN, URUNDOLIL HOUSE,
MANNAMPETTA, P.O. VARAKKARA, ALAGAPPANAGAR,
PIN - 679 517.
15. JAYA, D/O. AMMINI, URUNDILIL HOUSE,
MANNAMPETTA, P.O. VARAKKARA,
ALAGAPPANAGAR, PIN - 679 517.
16. JISHA, D/O.AMMINI AND VIJAYAN,
URUNDOLIL HOUSE, MANNAMPETTA, P.O. VARAKKARA
ALAGAPPANAGAR, PIN - 679 517.
17. JYOTHISH, S/O. AMMINI AND VIJAYAN,
URUNDOLIL HOUSE, MANNAMPETTA, P.O. VARAKKARA,
ALAGAPPANAGAR, PIN - 679 517.
18. RAJESH, S/O. AMMINI AND VIJAYAN,
URUNDOLIL HOUSE, MANNAMPETTA, P.O. VARAKKARA,
ALAGAPPANAGAR, PIN - 679 517.

19. VENUGOPALAN A.K., S/O. KUMARAN AND SAROJINI,
 AYYANCHIRA HOUSE, P.O. CHENGALLUR
 VIA. PUDUKKAD, PIN - 680 312.
20. ANIYAN. A.K., S/O. KUMARAN AND SAROJINI,
 AYYANCHIRA HOUSE, P.O. CHENGALLOOR,
 VIA. PUDUKAD, PIN - 680 312.
21. VALSALAN. A.K., S/O. KUMARAN AND SAROJINI,
 AYYANACHIRA HOUSE, P.O. CHENGALLOOR
 VIA PUDUKAD, PIN - 680 312.
22. E.R. MADHUSOODHANAN, S/O. RAMAKRISHNAN,
 EZHUVATHARA VEETIL, MANAKULANGARA, P.O. KODAKARA,
 THRISSUR DISTRICT, PIN - 680 684.

R1 TO R6 BY ADV.SRI.P.GOPAL
 R7 BY ADV.SRI.G.UNNIKRISHNAN.
 R8 , R10, R11, R14 TO 18 BY SRI.MOHAN IDICULLA ABRAHAM.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
 30-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Vinod Chandran, J.

R.P.No.127 of 2015 in C.R.P.No.728 of 2005 &
C.M.Appln.No.63 of 2015 in R.P.No.127 of 2015

Dated this the 30th day of July, 2015

ORDER

The 5th respondent in the Civil Revision Petition [for brevity "CRP"] is in review here and the parties are referred to as per their status in the CRP.

2. The issue raised and decided in the CRP was as to whether there was a joint-tenancy as decided by the lower authorities constituted under the Kerala Land Reforms Act, 1963 [for brevity "the Act"]. The tenancy initially, crystallised into a Purchase Certificate in favour of one Kunjappu. The landlord originally was one Kandukandu, who leased out the land to his sister Kunhipennu. Kunhipennu sold her leasehold rights to her daughter Kochuparu and her son-in-law Kunjappu. Kunhappu later on executed a fresh lease with the landlord Kandukandu. Kandukandu sold his jenm rights to one Kochukuttan and Kunjappu filed application before the Land Tribunal, with the said Kochukuttan as landlord, seeking a Purchase Certificate on the strength of the lease executed with Kandukandu.

3. The revision petitioners were assignees of Kunjappu and the respondents were the legal heirs of Kunjappu and Kochuparu, who claimed that Kunjappu did not have any exclusive right over the property and though the Purchase Certificate was issued in favour of Kunjappu alone, the same has its origin in the joint leasehold rights of Kunjappu and Kochuparu.

4. The proceedings with respect to issuance of the Purchase Certificate to Kunjappu was challenged before the Appellate Authority with a delay of nine years, in which there was a remand. There were parallel proceedings also insofar as a suit for partition filed by the 7th respondent herein, wherein there was also a prayer for cancellation of the lease deed executed by Kunjappu with the landlord Kandukandu and the sale deeds executed by Kunjappu in favour of the revision petitioners. The suit for partition was decreed, which stood affirmed in appeal; however, the question of joint-tenancy was left to be decided by the Land Tribunal.

5. This Court, in the order under review, expressed its foreboding as to the question of implied surrender of lease being left to the Land Tribunal while appropriately it could have been

dealt with by the Civil Court itself. The sustainability of the claim of Kochuparu having impliedly surrendered the lease, when Kunjappu is said to have obtained a fresh lease from Kandur, was hence looked into, following the decision in ***Balakrishnan Nair v. Radha Amma and Others* [1987 (1) KLT 195]**. This Court proceeded, despite the reservation expressed, to consider as to whether the findings of the Land Tribunal, as affirmed by the Appellate Authority, negating the contention of implied surrender was correct or not. Based on the discussions in the order under review, the order of the Land Tribunal, as affirmed by the Appellate Authority, was set aside. The Purchase Certificate issued in the name of Kunjappu was found to be sustainable in law and on facts. As a consequence, the sale deed executed in favour of the revision petitioners also stood sustained.

6. The review petitioner/5th respondent seeks for a re-hearing in the matter on the ground that “certain aspects which ought to have been highlighted during the argument could not be done” (Ground-A). It is also to be noticed that the review petitioner herein has approached this Court through another lawyer who had not argued the case on behalf of the 5th respondent when the

CRP was heard.

7. In Ground-B, the review petitioner relies on certain findings in the judgment in A.S.No.168 of 1989 to contend that since no appeal was filed from the above judgment, nothing remains to be adjudicated insofar as the rights of the parties. However, this Court had specifically noticed that the Civil Appellate Court had left the matter of implied surrender of lease to be considered by the Land Tribunal and the partition was made specifically subject to the finding of the Land Tribunal. Hence, no sustainable ground can be raised on any of the findings in the judgment in appeal from that suit. Further the review petitioner was a party in the suit and appeal and did not pursue the matter with a Second Appeal.

8. As to Ground-C that the Land Tribunal, being the Appellate Authority, has no jurisdiction to consider the issue of sustainability of the sale deeds, it is to be specifically found that the sustainability of the sale deeds has been affirmed as a consequence of the finding of this Court that the tenancy is that of Kunjappu alone and the Purchase Certificate issued by the Land Tribunal in favour of Kunjappu in the earlier proceedings was not

one which could be claimed as a joint-tenancy. The appellate Court, considering *inter alia* the issue of partition clearly left the issue of joint-tenancy to be decided by the Land Tribunal. The decree passed in the suit for partition assigned 8/14 share to the assignees of Kunjappu (the revision petitioner) and 6/14 share to the legal heir of Kunjappu and Kuchuparu. This was on the claim of the plaintiff that the tenancy of the lands in question was a joint one; enuring to both Kunhappu and Kochuparu. Kochuparu who had $\frac{1}{2}$ share pre-deceased Kunjappu and also the assignment made by Kunjappu. Hence Kunjappu could have assigned only his $\frac{1}{2}$ share and the share that devolved on him on the death of Kochuparu; if the joint-tenancy claim was upheld. The said issue was specifically left to be decided by the Land Tribunal in O.A.No.754/70 and the decree of partition was made subject to such decision and it was also directed that even execution would be taken up after 'the ultimate decision of the question of tenancy in O.A.754/70'. It would be futile to rely on the findings in the suit and appeal at this stage.

9. Ground-D is that the review petitioner is entitled to an opportunity to explain the decisions relied on by this Court

could not be raised in the review, since such an opportunity was available when those decisions were cited before this Court at the time of hearing of the CRP.

10. The ground that the findings in the order under review would be a bar to a further suit for declaration is a necessary consequence, which cannot be avoided by a review. The finding in the suit, as affirmed in appeal, that the 5th respondent is entitled to a share in the property was, however, subject to the question of joint-tenancy being decided by the Land Tribunal. The suit for partition was filed by the 7th respondent and the review petitioner (5th respondent in the CRP) were parties therein. The review petitioner did not file any appeal from the judgment and decree of the appellate Court.

11. The scope of the revisional powers exercised under Section 103 of the Act has also been elaborately discussed by this Court in the order under review before setting aside the orders of the lower authorities. This Court does not find any reason to review the aforesaid order, going by the principles enunciated in ***Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715]** and ***State of W.B. v. Kemal Sengupta* [(2008) 8 SCC 612]**.

12. As to the delay also, this Court finds that there is no proper explanation for the long delay of 712 days. The order was delivered on 11.12.2012 and the certified copy was not applied for, for almost two years. The certified copy produced along with the review petition shows the application to have been made on 21.11.2014. The reason for the delay, stated, is injury sustained by the daughter of the review petitioner, that too an Advocate, on 02.10.2012, long prior to the order under review was delivered. The documents produced also shows that the daughter of the review petitioner was discharged on 13.10.2012, again prior to the order under review. That cannot be a satisfactory explanation for the delay. The other grounds stated in the affidavit accompanying the delay petition are not substantiated.

13. Further, it is to be noticed that one of the respondents in the CRP, being the 1st respondent, who is the brother of the review petitioner, had filed Petition for Special Leave to Appeal (C).No.14363 of 2013 before the Supreme Court, which was dismissed on 26.04.2013. A Review Petition filed, bearing R.P.No.1545 of 2013, was also dismissed on 31.07.2013.

For all the aforesaid reasons, the review petition is found to be grossly delayed without any satisfactory explanation and on merits too, is found to be unsustainable and not coming within the contours of a review. The, delay condonation application and the review petition, hence, would stand dismissed.

Sd/-

K.Vinod Chandran,
Judge

vku.

[true copy]