

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

R.P.No. 712 of 2015 IN CRP.888/2004

AGAINST THE ORDER IN CRP 888/2004 of HIGH COURT OF KERALA .
A.A. 116/2003 OF APPELLATE AUTHORITY (LR), ALAPPUZHA.
O.A. 158/1999 OF LAND TRIBUNAL, ERNAKULAM.

REVIEW PETITIONER(S)/PETITIONERS IN C.R.P:

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1. VIRONI THOMAS,
AKKEYAZHATH HOUSE, MOOLAMKUZI MURI,
RAMESWARAM VILLAGE,
KOCHI-682 005.
 2. LILLY THOMAS, IN -DO- -DO-
 3. AUSTINE THOMAS @ OTTAN THOMAS,
IN -DO- -DO-
 4. JOSELY THOMAS, IN -DO- -DO-
 5. ANTONY THOMAS, IN -DO- -DO-
 6. MERCY THOMAS, IN -DO- -DO-
 7. XAVIER THOMAS, IN -DO- -DO-
 8. LINTO THOMAS, IN -DO- -DO-

BY ADV. SRI.P.B.KRISHNAN

RESPONDENT(S)/RESPONDENTS INC.R.P:

1. JOSEPH, S/O ANTHO, AKKAKKEYAZHATH HOUSE,
MOOLAMKUZI MURI,
RAMESWARAM VILLAGE, KOCHI-682 005.
2. ANTONY, S/O. ANTHO, IN -DO- -DO-
3. P.S. NAVIN CHANDRAN SHENOY,
8/955, ALATHUKUTTY ROAD, MATTANCHERY-682 002.
4. P.S. LEKSHMI BAI,
W/O. N.S. KAMATH, C-247,
GIRI NAGAR, ERNAKULAM.
5. P.S. SUSEELA BAI,
C/O RANGA R. SHENOY, PANDIKUDY ROAD,
KOCHI-682 002.
6. JAYALEKSHMI,
W/O P.S. NARAYANA SHENOY, THALIYADIPARAMBIL,
R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-682 002.
7. SREE RAM SHENOY,
S/O P.S. NARAYANA SHENOY, THALIYADIPARAMBIL,
R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-682 002.
8. JAYARAM SHENOY,
S/O P.S. NARAYANA SHENOY, THALIYADIPARAMBIL,
R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-682 002.
9. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNEMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
10. MATHEW THOMAS,
AKKEYAAZHATHUY HOUSE, MOOLANKUZHI MURI,
RAMESWARAM VILLAGE, KOCHI-682 005.
(PRESENT ADDRESS: A.T. MATHEW , P.B. NO. 42230,
SHUWAIKH-70653, KUWAIT)

R1 & R2 BY ADV. SMT. V.P. SEEMANDINI (SENIOR ADVOCATE)
BY SRI.M.R.ANISON
R9 BY GOVERNMENT PLEADER SMT. LILLY LESLIE
R10 BY ADV. SRI.G.SUBRAMANIAN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 20-11-2015, ALONG WITH RP. 714/2015, RP. 725/2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. BHAVADASAN, J.

R.P. No. 712 of 2015 in
C.R.P. No. 888 of 2004,
R.P. No. 714 of 2015 in
C.R.P. No. 905 of 2004 &
R.P. No. 725 of 2015 in
C.R.P. NO. 403 of 2004.

Dated this the 20th day of November, 2015.

ORDER

These review petitions are directed against the order dated 25.6.2015 in C.R.P. Nos. 403, 888 and 905 of 2004. By the said order, this Court came to the conclusion that the order of the Appellate Authority is unsustainable and therefore it was set aside and the order of the Land Tribunal was restored.

2. In these review petitions, Shri. P.B. Krishnan, learned counsel appearing for the review petitioners, points out that this Court was impressed by the fact that the respondents herein had mortgaged the property to the Co-operative Bank and the extent shown in one of the

transactions is 1.20 acres. Learned counsel emphasized that these transactions were post litigation transactions and therefore can be given little weight. It is also pointed out that this Court omitted to note that the revision petitioners had received a portion of the amount in the acquisition proceedings which indicates that they too had right over the property and if that be so, the finding of the court cannot be sustained. According to the learned counsel for the review petitioners, this Court while dealing with the matter took the view that the Apex Court by its judgment in Civil Appeal Nos. 8048 and 8049 of 1995 had restored the finding of the trial court and the appellate court by setting aside the judgment in Second Appeal by this Court. It is not so. The issue as to who is the tenant of the property involved was left open to be considered as would be clear from the operative portion of the order of the Apex Court. It could not be said that by virtue of the judgment and decree in O.S. 29 of 1977 which was

confirmed in appeal, the question of rival tenancy between the parties is not open for determination. If it was otherwise, according to the learned counsel, there was no necessity for the Apex Court to observe that one of the O.As. would be restored and the other O.A. pending would be taken up and both the O.As shall be disposed of after hearing the parties. The fact that this issue has been kept open since the question of tenancy has not been determined by any of the courts.

3. Learned counsel raised a plea that if it is taken as that in O.S. 29 of 1977 the question of tenancy was decided, then it was not with jurisdiction since there was no reference under Section 125 of the Kerala Land Reforms Act. Learned counsel went on to argue that even if the trial court had not referred the issue to the Land Tribunal to enter a finding in that regard, it may not be quite in tune with the statutory scheme of things by virtue of the fact that the appellate authority had considered the issue and found that the

requirements had been satisfied is sufficient. For the above proposition, learned counsel relied on the decision reported in *Mathevan Padmanabhan v. Parmeshwaran Thampi* (1995 Supp (1) SCC 479). For the proposition that rival tenancy had to be determined by the Land Tribunal itself, the learned counsel relied on the decision reported in *Balakrishnan Nair v. Radha Amma* (1987 (1) K.L.T. 195).

4. It was therefore contended that this Court was not justified in banking on the question of tenancy involved in O.S. 29 of 1977 and coming to the conclusion that the Land Tribunal was justified in adopting the finding therein and rejecting the O.A filed by the petitioners therein. Learned counsel went on to point out that the issue of tenancy was wide open for decision and the Land Tribunal should have independently considered the issue.

5. Learned Senior Counsel appearing for the respondents points out that there is absolutely no merit in the

above contention. This Court, after hearing the parties and after having perused the records, in the order dated 25.6.2015 found that by virtue of the Apex Court having set aside the judgment and decree passed in S.A. 363 of 1984 and 403 of 1984, which in fact restored the judgment and decree of the trial court and appellate court, there is a clear finding that the contesting respondents herein are in possession of 1.20 acres of land as per the document by which they claim tenancy right. It cannot be said that that finding is to be ignored even otherwise, the Land Tribunal, to the true spirit and letter of the order of the Apex Court, had redetermined the issue. The Land Tribunal was correct in its approach and right in holding that the decree in O.S. 29 of 1977 will have considerable bearing on the issue in the application for purchase of tenancy right filed by both the parties. It is therefore contended that there is no merit in any of the contentions raised by the learned counsel for the review petitioners and the review

petitions are only to be dismissed.

6. After having heard the learned counsel on both sides and having perused the records, it is felt that the submission made by the learned Senior Counsel for the respondents is justified. It cannot be disputed that the property involved in O.S. 29 of 1977 is the same property involved in these proceedings. Ultimately, the trial court found that 1.20 acres of land is taken in by the document of title of the plaintiff in the suit and decreed the suit.

7. The contention of the review petitioners is that going by the documents by which the respondents obtained tenancy right, they have no paddy land and they have only reclaimed land and chira.

8. The trial court in O.S. 29 of 1977 found in favour of the plaintiff therein and the matter was carried in appeal which was dismissed by the lower appellate court. In Second Appeal, this Court was impressed by the contention raised by

the appellant, i.e. the defendant in the suit and therefore allowed the appeal and dismissed the suit. That judgment and decree were the subject matter of appeal before the Supreme Court in Civil Appeal Nos. 8048 and 8049 of 1995.

9. The Apex Court found that the finding of the courts below were concurrent findings of fact and since no fraud or collusion was either pleaded or established, the finding of the lower courts are to be honoured. The Apex Court made it clear that interference by the High Court is unwarranted and unjustified.

10. It cannot be disputed that the judgment and decree in O.S. 29 of 1977 will have considerable bearing on the issue involved in the present proceedings. True, the Apex Court by virtue of the judgment referred to above has directed the Land Tribunal to consider both the applications together and to determine the issue involved afresh.

11. In the decision reported in Mathevan Padmanabhan's case (supra) it was held that question of tenancy has necessarily to be referred to the Land Tribunal and any judgment rendered without doing so is non-est.

12. In fact on a close scrutiny of the disputes, it can be seen that it is not actually the question of tenancy that is in dispute, but it is the identity of the property leased out to either party that is in dispute. Neither of the parties have a case that if the court locates the respective properties covered by the respective documents, there is any dispute regarding the tenancy claimed by the parties. The contention of the review petitioners is that in the document of tenancy created in favour of the respondents, there is no reference to any paddy land and therefore the respondents in the review petitions are not entitled to any paddy field. This issue infact was the subject matter of decision in O.S. 29 of 1977. If as a matter of fact, it was found that the plaintiff in O.S. 29 of 1977

was in actual possession of 1.20 acres covered by the document, there is nothing else to be considered. As already stated, it is conceded by both parties that in respect of the properties as per the respective deeds, they are cultivating tenants of the respective properties. In other words, the status of the parties is not disputed. It is only the identity of the property covered by the respective documents that is the subject matter of dispute.

13. Therefore, it could not strictly be said that the decision rendered in O.S.29 of 1977 without reference to the Land Tribunal is a nullity. As far as the Land Tribunal proceedings are concerned, the Apex Court only observed that the application filed by the respective parties will continue and the Land Tribunal may determine the issue afresh. In fact, there was no issue of tenancy to be determined in O.S. 29 of 1977 by the Land Tribunal in the sense that it was the identity of the property that was the subject matter of dispute and as

has been repeatedly stated above, there is no case for either of the parties in respect of the properties covered by the respective deed that they are not cultivating tenants.

14. In the light of the above circumstances, the contention of the learned counsel for the review petitioners has no merit. Whether the mortgage executed by the respondent is after the litigation commenced, whether the review petitioner has received a portion of the land acquisition award etc are of no consequence.

15. These aspects have been elaborately dealt with in O.S. 29 of 1977 which was a suit for declaration in respect of 1.20 acres comprised in Sy. No.253/2.

16. Therefore, even assuming that the Apex Court has directed the Land Tribunal to reconsider the O.A. filed by the respective parties, it has not the effect of re-opening the issue in O.S. 29 of 1977.

17. The Land Tribunal came to the conclusion that in the light of the judgment and decree in O.S. 29 of 1977, nothing more remained to be determined and the judgment in the said suit covered the entire controversy.

18. The Apex Court had felt that the consideration of the two O.As. are still open and there is nothing in O.S. 29 of 1977 which restricts the scope of adjudication of the two O.As. As already stated, it is not a question of tenancy that is in dispute. But, it is the identity of the properties. The Commissioner in O.S. 29 of 1977 has located the property of the plaintiff in that suit and has come to the conclusion that 1.20 acres is the subject matter of lease in favour of the respondents herein. In the light of the above finding, the claim made by the review petitioners that decision rendered without referring the issue of tenancy to the Land Tribunal does not survive. The Land Tribunal has in fact gone into that question and has found that the real dispute is with regard to

the extent of property and nature of the property and in arriving at a decision on that basis, it borrowed the finding in the suit O.S. 29 of 1977.

19. It is quite justifiable in the sense that as already stated, it is not a question of two parties claiming tenancy over an item of property, but it is a case of identity of the property of the respective parties. It was that issue that was determined.

In the light of the above facts, nothing survives in these review petitions for consideration and the review petitions are accordingly dismissed.

sb.

P. BHAVADASAN,
JUDGE