

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

RP.No. 732 of 2015 IN RSA.578/2005 (B)

AGAINST THE JUDGMENT IN RSA 578/2005 of HIGH COURT OF KERALA
DATED 01-07-2015

REVIEW PETITIONER/APPELLANT/DEFENDANT:

P.I.ABRAHAM
S/O.P.M.ITYY, 39-MUNNAR MEDICALS, MUNNAR P.O.
K.D.H. VILLAGE, DEVIKULAM TALUK.

BY ADVS.SRI.K.REGHU KOTTAPPURAM
SRI.R.MAHESH (KOTTAPPURAM)
SRI.M.MUKESH
SRI.MURUKESH REGHU

RESPONDENT/RESPONDENT/PLAINTIFF AND DEFENDANTS:

1. TATA TEA LTD.
REPRESENTED BY DEPUTY MANAGER,
SOUTH INDIA ESTATE DEPARTMENT, REGIONAL OFFICE,
MUNNAR, K.D.H. VILLAGE, DEVIKULAM TALUK.
2. K.M.ABDUL JABBAR,
BISMI TEA STALL, BUILDING No.IX/2224,
NEAR MUNNAR POST OFFICE, MUNNAR P.O., K.D.H. VILLAGE.
3. V.V.GEORGE
S/O.VARKEY, T.V.HOUSE, BUILDING NO.IX/2225,
NEAR MUNNAR POST OFFICE, MUNNAR P.O., K.D.H. VILLAGE.

R1 BY ADVS.SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS
R3 BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
15-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

**Review Petition No.732 OF 2015 IN
R.S.A No.578 OF 2005**

Dated this the 15th day of September, 2015.

O R D E R

Under the guise of review, what is now being attempted is re-hearing of the Regular Second Appeal.

2. Learned counsel appearing for the review petitioner placed reliance on the provisions of Kannan Devan Hills (Resumption of Lands) Act, 1971 to contend for the position that as per Section 14 of the Act, jurisdiction of the civil court is barred. It is also contended that the Company has suppressed the Award passed by the Land Board which would indicate that the Company had no longer any rights over the property. If that be so, fraud has been played by the Company and therefore, the judgment of this Court cannot be sustained. Finally it is contended that the petitioner has filed a suit alleging fraud and to set aside the decree of injunction. It is submitted that this Court

may observe that the judgment of this Court shall not stand in the way of the lower court deciding the issue in any other suit.

3. As far as the contention based on Act 5 of 1971 is concerned, this Court has adverted to the said contention in paragraph 8 of the judgment and in paragraph 9, the reason for repelling that contention has also been mentioned. It is not as if the court did not address itself to that contention. It cannot be said that the argument based on Act 5 of 1971 was not considered.

4. As regards the question of fraud, Order 6 Rule 4 of the Code of Civil Procedure insists that in all cases in which the party pleading relies on fraud, all the particulars necessary to establish the same shall be pleaded. Learned counsel for the petitioner, except for pleading in his written statement that property is a Government land, he was not able to point out any pleading to the effect that the Company had played any fraud and the decree obtained by the Company is vitiated by fraud.

5. Learned counsel appearing for the review petitioner

placed before me for perusal a copy of the Award passed by the Land Board and referred to that document in extenso. This Court has gone through various paragraphs in that document. It may be noticed that the document is dated 29.03.1974 and nothing prevented the petitioner from producing that document before the lower court when the suit was being tried and having not done so, it cannot be contended that the Company ought to have produced that document and they had suppressed the same.

6. Both the courts below had found that the petitioner is a licensee and if that be so, the Company is entitled to recover possession. Being concurrent findings on fact, this Court will not be justified in interfering in the matter under Section 114 (A) read with Order 47 Rule 1 of Code of Civil Procedure. This Court finds no error apparent on the face of record to review the judgment of this Court dated 01.07.2015.

7. As regards the plea regarding fraud is concerned, it may not be proper for this Court to observe whether there is fraud or not since it is for the court before which the suit is pending to

decide whether there is fraud and if it is found that there is fraud, the court may consider the consequence.

This Review Petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.