

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

RP.No. 874 of 2015

JUDGMENT DATED 25-05-2015 IN RSA 503/2008.

.....

REVIEW PETITIONER/APPELLANT:

**MARY @ MARIAMMA, WIFE OF RAPHEL,
AGED 57 YEARS, KANIAMPURATH HOUSE,
MULAVUCAD VILLAGE, KANAYANNUR TALUK.**

BY ADV. SRI.ALAN PAPALI

RESPONDENTS/RESPONDENTS:

-
- 1. STANLEY REBERA, AGED 70,
KANIATH HOUSE, MANJANAKAD,
NARAKKAL VILLAGE, NARAKKAL P.O.,
KOCHI TALUK, PIN - 682505.**
 - 2. JOSEPH, SON OF OUSEPH, AGED 67 YEARS,
KURUPPASSERY HOUSE, PERUMPADAPPU,
PALLURUTHY P.O., EDAKOCHI VILLAGE,
KOCHI TALUK, PIN-682006.**
 - 3. K.A.ANTONY, SON OF OUSEPH, KURUPPASSERY HOUSE,
NEAR KALLUMADAM, MANJANAKKAD JATTY,
NARAKKAL P.O., NARAKKAL VILLAGE,
KOCHI TALUK, PIN - 682505.**
- IS DELETED FROM THE PARTY ARRAY AS PER
ORDER DATED 01-12-2008 IN I.A.NO. 1978/2008.**
- 4. K.A.GEORGE, SON OF OUSEPH, AGED 62 YEARS,
KURUPPASSERY HOUSE, NEAR MANJANAKKAD JATTY,
NARAKKAL P.O., NARAKKAL VILLAGE,
KOCHI TALUK, PIN - 682505.**
 - 5. K.A.PETER @ PERU, SON OF OUSEPH, AGED 57 YEARS,
KURUPPASSERY HOUSE, HOSPITAL JUNCTION (WEST),
NARAKKAL P.O., NARAKKAL VILLAGE, KOCHI TALUK, PIN-682505.**

R1 BY ADV. SRI.ANTONY MUKKATH

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 21-10-2015,
THE COURT ON 16-11-2015 PASSED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE I: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE II: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE III: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE IV: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE V: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE IV: PHOTOGRAPH REFERRED IN THE REVIEW PTITION.
ANNEXURE VII: PEN DRIVE BY WHICH THE PHOTOGRAPH S ARE STORED.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

R.P. No. 874 of 2015
in
R.S.A. No. 503 of 2008

Dated this the 16th day of November, 2015

ORDER

The review petitioner was the appellant and the respondents were the respondents in RSA No.503/2008.

2. The review petition is filed to review the finding in the last portion of paragraph 7 and the finding in paragraph 8 of the judgment dated 25.05.2015 in RSA No.503/2008. The review petitioner is mainly challenging the finding of this Court in para 7 of the judgment to the effect that, “the entire complication arose on account of the non-issuance of a fresh certificate of Kudikidappu by the Land Tribunal showing the exact location after the remand” and also that, “the appellant claims right over that portion by virtue of Ext.B1 assignment deed while the claim petitioner claims right over that portion as per Ext.B3 settlement deed. By description, both the

..2..

properties are same". According to the review petitioner/appellant, the said statements are incorrect and, hence, is an error apparent on the face of the record and in the interest of justice, the said finding has to be corrected in the facts and circumstances of the case. Along with the review petition, the review petitioner/appellant filed IA No.2548/2015 for receiving Annexures I to VII produced along with the review petition and to the mark the same as Exts.B4 to B10. According to the review petitioner/appellant, on the basis of the documents and the evidence, the question of law raised in the regular second appeal should be answered in favour of the review petitioner that the 2 cents out of the 12 cents in Sy.No.514/2 of Narakkal Village is available on the northern side of the said property after excluding the 10 cents given to the Kudikidappukaran, the father of the claim petitioner. The said 2 cents is now shown as 'H' plot in the partition in OS No.100/1996. Hence, according to the review petitioner/appellant, as there is mistake apparent on the

..3..

face of the record, in the interest of justice and in the facts and circumstances of the case, it is only just and proper to review the judgment dated 25.05.2015 in RSA No.503/2008 and allow the RSA. Hence, the review petition.

3. Arguments have been heard.

4. The learned counsel for the respondents made a frontal attack against the review petition pointing out that it is nothing, but, an appeal in disguise.

5. The review petitioner/appellant is mainly challenging the findings in para 7 & 8 of the judgment on the ground that there is an error apparent on the face of the record and the question of law raised by the review petitioner/appellant has not been correctly answered. The total extent of property admittedly in Sy.No.215/2 of Narakkal Village is 12 cents. By Ext.A1 purchase certificate, the claim petitioner's father was given 10 cents touching the northern boundary of the said 12 cents of property. However, the said allotment of 10 cents touching the northern boundary of the said 12 cents of

..4..

property was set aside by Ext.B3 judgment of the Land Reforms Appellate Authority. According to the review petitioner/appellant, the 10 cents was allotted to the 'Kudikidappukaran' touching the western, southern and eastern boundaries of the property so that the applicant's house, latrine, peeling shed and the shed would come within the 10 cents. The review petitioner/appellant points out that when the claim petitioner was examined as PW1, he has stated that after the appellate judgment, as evidenced by Ext.B3, the land was further measured and a fresh sketch was prepared. His evidence in cross-examination to that effect is that, “അപ്പീൽ വിധി പ്രകാരം അളവു നടത്തി സ്കെച്ച് തിരിച്ചു.” Hence, according to the review petitioner/appellant, the finding of this Court that after the Land Reforms Appellate Authority judgment, the land was not measured and fresh sketch was not prepared, is not correct. To substantiate the argument, the learned counsel for the review petitioner/appellant relied on Ext.B2 judgment in OS No.253/1975 before the Munsiff's

Court, Kochi. The said suit was filed by the predecessor-in-interest of the review petitioner/appellant. By Ext.B2, the claim petitioner's father, who is the 'kudikidappukaran', the claim petitioner and others were restrained from objecting the plaintiffs therein from using the latrine situated on the north-eastern corner of Sy.No.514/2 and also from interfering with the shed put up around the said land and also from removing or demolishing the shed so put up. The definite case of the review petitioner/appellant is that she is having land on the western side of Sy.No.514/2 of Narakkal Village. It is pointed out that if the said 2 cents of land is not available, the Commissioner in the said suit would not have reported that the review petitioner's predecessor-in-interest could not use the said 2 cents to go to the latrine situated on the north-eastern corner of Sy.No.514/2 of Narakkal Village. I see valid force in the said submission.

6. The learned counsel for the review petitioner/appellant further points out that the house constructed by the review petitioner/appellant is not in

..6..

the 2 cents of property situated in the northern portion of Sy.No.514/2 of Narakkal Village. It was further argued that the claim petitioner's own assignment deed would reveal that his father has assigned 2½ cents of property touching the north-eastern side of the above said 10 cents. As per the boundary description of the said property, the north eastern side of the aforesaid 10 cents is the property comprised in Sy.No.514/2. That means, there is remaining 2 cents of property in Sy.No.514/2 situated on the northern side of the said 10 cents of property. In EP No.64/2004 in OS No.100/1996, 'H' plot was demarcated from the said 10 cents and a sketch was produced by the Village Officer, Narakkal, which also would clearly show that the said 2 cents is available on the northern portion of the 10 cents of land given as 'kudikidappu'.

7. The definite case of the review petitioner/appellant is that the 2 cents of land claimed by her is not the same as the 2½ cents assigned to the claim petitioner as per Ext.A3; and the finding to that effect in

..7..

para 7 of the judgment that both the properties are the same is incorrect from the materials placed on board. The recent photographs taken by the review petitioner/appellant are produced as Annexures to substantiate her case.

8. The entire confusion arose on account of the non identification of 2 cents of land claimed by the claim petitioner on the basis of the assignment deed. Though the assignment deed indicates that the property is comprised in Sy.No.514/2 of Narakkal Village on the northern boundary of the 2 cents assigning the name of the claim petitioner, the claim petitioner would say that the boundary on the north-east is not in Sy.No.514/2, but, it is comprised in Sy.No.514/1. It is further north of Sy.No.514/2. This fact has escaped the attention of the lower appellate court; and therefore, this Court is of the view that the matter requires a re-look by the lower appellate court.

In the result, the review petition is allowed.

- The judgment impugned is recalled.

..8..

- The regular second appeal is allowed, quashing the judgment of the lower appellate court and remitting the same back to the lower appellate court to identify the property of the claim petitioner and that of the review petitioner/appellant through a proper measurement on the basis of the present possession and enjoyment and to give a verdict within a period of six months from the date of appearance of the parties before the lower appellate court.
- The parties shall mark appearance before the lower appellate court on 31.12.2015.
- IA No.2548/2015 is allowed and the annexures to the said IA are allowed to be marked as Exts.B4 to B10. Those exhibits shall be transmitted to the lower appellate court along with the lower court records.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-