

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

RSA.No.543 of 2003 (F)

AGAINST THE JUDGMENT IN AS 33/1994 of SUB COURT, OTTAPPALAM
DATED 20-07-2002

AGAINST THE JUDGMENT IN OS 190/1988 of MUNSIFF COURT, OTTAPPALAM
DATED 13-12-1993

APPELLANTS/APPELLANTS & 14TH RESPONDNET/DEFENDANTS 14 TO 20:

1. RAMACHANDRAN, S/O. LATE PARVATHY AMMA. (DIED. LRs IMPEADED).
2. PRABHAVATHY, D/O. LATE PARVATHY AMMA.
3. SATHYAVATHY, D/O. LATE PARVATHY AMMA.
4. SOBHANA, D/O. LATE PARVATHY AMMA.
5. MANIKANDAN, S/O. LATE PARVATHY AMMA.
6. RAJU, S/O. LATE PARVATHY AMMA.
7. PRASANNA KUMARI, D/O. LATE PARVATHY AMMA.

ALL ARE RESIDING AT KOORIYATTIL HOUSE,
EASWARAMANGALAM DESOM, SREEKRISHNAPURAM VILLAGE,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

1ST APPELLANT DIED. ADDL.APPELLANTS 8 TO 10 IMPEADED

ADDL.A8 KUMARI, WIDOW OF RAMACHANDRAN.

ADDL.A9 ARCHANA (MINOR), D/O. LATE RAMACHANDRAN.

ADDL.A10 ADHITHYAN (MINOR), S/O. LATE RAMACHANDRAN.

(MINOR ADDL.APPELLANTS 9 AND 10 ARE REPRESENTED BY
THEIR GUARDIAN MOTHER THE ADDL.8TH APPELLANT HEREIN)
ALL ARE RESIDING AT KOORIYATTIL HOUSE,
EASWARAMANGALAM DESOM, SREEKRISHNAPURAM VILLAGE,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

LRs OF THE DECEASED FIRST APPELLANT ARE IMPEADED AS
ADDL.APPELLANTS 8 TO 10 AS PER ORDER DTD.6.6.12 IN
I.A.39/12.

BY ADVS.SRI.T.C.SURESH MENON
SRI.PRINCE.K.ELIAS
SRI.R.RAJA RAJA VARMA
SRI.NIMOD A.K.
SRI.P.S. APPU.

RESPONDENTS/RESPONDENTS 1 TO 13/ PLAINTIFF & DEFENDANTS 2 TO 13:

1. RADHA AMMA, D/O. LATE LAKSHMI AMMA.
2. SARADA AMMA, D/O. LATE LAKSHMI AMMA.
3. DRAUPATHY AMMA, D/O. LATE LAKSHMI AMMA (DIED. LRs IMPEADED).

(RESPONDENTS 1 TO 3 ARE RESIDING AT KOORIYATTIL
HOUSE, EASWARAMANGALAM DESOM, SREEKRISHNAPURAM
VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT).

4. PARUKUTTY AMMA, D/O. LATE MADHAVIKUTTY AMMA.
5. SOMASUNDARAM, S/O. PARUKUTTY AMMA.
6. PAMBAVASAN, S/O. PARUKUTTY AMMA.
7. KRISHNA DASAN, S/O. PARUKUTTY AMMA.
8. DHANALAKSHMI, D/O. PARUKUTTY AMMA.

RESPONDENTS 4 TO 8 ARE RESIDING AT VADAKKEKALATHIL
HOUSE, VELLINEZHI DESOM, OTTAPALAM TALUK, PALAKKAD
DISTRICT.

9. SAKUNTHALA AMMA, D/O. LATE RATHNAVALLY AMMA,
RESIDING AT KOORIYATTIL HOUSE, EASWARAMANGALAM
DESOM, SREEKRISHNAPURAM VILLAGE, OTTAPALAM TALUK,
PALAKKAD DISTRICT.
10. BHARGAVI AMMA, W/O. LATE PARAMESHWARAN NAIR.
11. SURESHKUMAR, S/O. LATE PARAMESHWARAN NAIR.
12. LAKSHMIKUTTY, D/O. LATE PARAMESHWARAN NAIR.
13. SUDHA, D/O. LATE PARAMESHWARAN NAIR.

RSA.No.543/2003

RESPONDENTS 10 TO 13 ARE RESIDING AT KULAPPADATH
PARANGODATH HOUSE, KUMARAMPUTHUR DESOM, OTTAPALAM
TALUK, PALAKKAD DISTRICT.

3RD RESPONDENT DIED. ADDL. R14 & R15 IMPEADED:

ADDL.R14 PRADEEP, S/O. LATE DRAUPATHY AMMA.

ADDL.R15 PRASANTH, S/O. LATE DRAUPATHY AMMA.

ADDL.R14 & R15 ARE RESIDING AT KOORIYATTIL HOUSE,
SREEKRISHNAPURAM POST, PALAKKAD DISTRICT.

LRs OF THE DECEASED 3RD RESPONDENT ARE IMPEADED AS
ADDL. RESPONDENTS 14 & 15 AS PER ORDER DTD.6.6.12 IN
IA.39/12.

RESPONDENTS 4 TO 8 ARE DELETED FROM THE PARTY ARRAY
AS PER ORDER DTD.24.1.14 IN I.A.242/2014.

R1, 2 & 9 BY ADV. SRI.SANTHEEP ANKARATH
R1, 2 & 9 BY ADV. SRI.P.P.SURESHKUMAR
ADDL. R14 & R15 BY ADV. SRI.R.SREEHARI

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Regular Second Appeal No.543 OF 2003

Dated this the 27th day of July, 2015.

J U D G M E N T

Defendants 14 to 20 who are the legal heirs of the 1st defendant who died pending the suit are the appellants.

2. The suit was one for partition of two items of properties. Admittedly, the property belonged to Lakshmi Amma and Raman Nair. They had seven children. Plaintiff and defendants 1 to 3 are their children. 4th defendant is the wife of the pre deceased son of Lakshmi Amma and Raman Nair. Other defendants are the grand children of late Raman Nair and Lakshmi Amma. Consequent on the death of Lakshmi Amma and Raman Nair, suit was laid. It appears that the 1st defendant alone very seriously contested the matter. She set up an oral lease in favour of her husband from Lakshmi Amma and Raman Nair and claimed fixity of tenure.

3. On the above pleadings, issues were raised. Since a plea of tenancy was raised, the matter was referred to Land

Tribunal under Section 125(3) of Kerala Land Reforms Act. The Land Tribunal, on appreciation of the evidence, negatived the claim of tenancy and remitted the matter to the trial court. The trial court, accepting the findings of the Tribunal, passed a preliminary decree as follows:

“The plaint B schedule properties are available for partition and it is to be divided into 7 equal shares by metes and bounds and the plaintiff is allotted one share. The house in item No.2 is to be set apart to the share of defendants 14 to 20 as equity and its value is to be divided among the sharers. Defendants 14 to 20 are liable to account for mesne profits, the quantum of which is relegated to final decree. The costs of the sharers will come out of the estate. Any one of the parties can apply for passing final decree. The Order of the Land Tribunal will form part of this judgment”.

4. Aggrieved defendants 14 to 19 took up the matter in appeal as A.S.No.33/94. The lower appellate court, on independent consideration of the materials, concurred with the trial court but was gracious enough to hold that the house which the defendants 14 to 20 claimed to have put up and in which they have been residing, need not be valued as directed by the

trial court in the preliminary decree and that it may be set apart to their share. With the said modification, the appeal was dismissed.

5. Notice was issued on the following question of law:

“Is the lower appellate court which is the final court of facts justified in not adverting to the testimonies of DWs 1 to 3 relied on by D14 to D20 in support of their claim regarding the tenancy in respect of plaint schedule item No.2?”

6. Learned counsel appearing for the appellants invited the attention of this Court to the issue raised by the lower appellate court for consideration and contended that the main issue has been omitted to be raised. Pointing out that there is no independent appeal against the findings of the Land Tribunal and the only appellate forum which has to deal with the question of tenancy is the lower appellate court, it was contended that the lower appellate court ought to have considered the question of tenancy independently and come to a conclusion. It is contended that there is no consideration of the question of tenancy raised by the contesting defendants and that is sufficient for remanding the matter to the lower appellate court for fresh consideration.

7. Learned counsel appearing for the contesting respondents, on the other hand, pointed out that it is true that the issue raised by the lower appellate court may not be a very happy one. But the discussion made by the lower appellate court takes within its fold the issue regarding tenancy and that aspect has been considered in considerable detail. The lower appellate court independently assessed the evidence and found that the oral lease set up in favour of the husband of the 1st defendant cannot be true for more reasons than one. It could not therefore be said that the lower appellate court has not considered the issue independently. It is also contended that the question of tenancy being a result of appreciation of evidence in the case is essentially a question on fact and unless it is shown that the finding is perverse or contrary to the evidence on record, interference under Section 100 of the Code of Civil Procedure is not warranted. In short, the contention is that the appeal is devoid of merit and it is only to be dismissed.

8. Learned counsel appearing for the appellants relied on the decision in **George** vs. **Govindan** (2004 KHC 203) wherein it

was held that the first appellate court is bound to consider the findings entered by the Land Tribunal regarding tenancy. It has to re-appraise the evidence and materials on record and has to arrive at its own conclusion. If that is not done, the only course available is to remand the matter to the appellate court for fresh consideration.

9. True, if that be the position, in the present case the same procedure ought to be followed. But, unfortunately for the appellants, it is not so. It is true that the issue raised by the lower appellate court betrays the discussions made by the lower appellate court. The only issue raised is 'whether the house set apart to the share of the defendant No.1 should be valued and if so, is it liable to be apportioned among the sharers'. Read in isolation, the issue raised would give the impression that the only aspect considered was the allotment of house to the 1st defendant. However, in the body of the judgment, there is considerable discussion regarding the claim of tenancy raised by the contesting defendants. The lower appellate court has taken pains to ascertain the genuineness of the claim made by the

contesting defendants and also verified the records.

10. Both the courts below found that the only items of evidence produced by the defendants who claimed tenancy are two tax receipts namely, Exts.B1 and B2 which are of the year 1975 and 1988. One may here recall that the earlier tenancy set up is of the year 1954.

11. There is no dispute regarding the fact that the property belonged to Lakshmi Amma and Raman Nair. As on the date of the alleged oral lease, the couple had seven children and the 1st defendant was one of the daughters. It is rather inconceivable that in such situation there would have been an oral lease in favour of the husband of the 1st defendant.

12. Apart from the above aspect, there is absolutely no evidence except for the claim made by the contesting defendants regarding oral tenancy. Of course, contesting defendants get support from DW2 in that regard. But his evidence is not above board. His presence itself is doubtful. Whatever that be, both the courts below considered the fact finding aspect of the case and have come to a conclusion that evidence adduced are totally

inadequate to come to a conclusion that the tenancy put up by the contesting defendants is true. It is also interesting to note that in a proceeding before the Land Tribunal, purchase certificate was issued in favour of Lakshmi Amma. That is after the alleged date of oral lease. This was taken as a strong ground by the courts below to disbelieve the claim of oral tenancy. Further, it is difficult to believe that if, as a matter of fact, there was an oral lease as claimed by the contesting defendants, they would not have taken steps to have the property assigned in their favour as per the provisions of the Kerala Land Reforms Act and would have remained idle.

13. It was the above facts and circumstances which persuaded the Land Tribunal as well as the lower appellate court to come to a conclusion that oral tenancy set up cannot be true or in other words, it is not proved.

14. In the light of the above circumstances, the mere fact that the issue raised by the lower appellate court does not reflect the one regarding tenancy has not caused any prejudice to the appellants though there is considerable discussion regarding that

before the lower appellate court.

15. The lower appellate court has been gracious enough to allot the house to the legal heirs of the 1st defendant and also to nullify that portion of the preliminary decree passed by the trial court directing valuation of the house and division among the sharers. No objection is taken by the other side to that finding of the lower appellate court.

For the above reasons, this Court finds no grounds to interfere with the judgment and decree of the lower appellate court. This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.