

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

SA.No. 222 of 2003 ()

**AGAINST THE JUDGMENT IN AS 18/1994 of SUB COURT, MANJERI
DATED 30-10-2002**

**AGAINST THE JUDGMENT IN OS 346/1986 of MUNSIFF COURT, MANJERI
DATED 15-01-1990**

APPELLANT(S)/1ST RESPONDENT/1ST DEFENDANT:

**1. N.MOHAMMED @ KOZHISSEERI KUNHIMOHAMMED,
S/O. MOIDEENKUTTY HAJI, 3/59, CHUNGATHARA
PANCHAYATH, MALAPPURAM DISTRICT. (DIED)**

**ADDL.A2. FATHIMA, W/O. HAMZA, AGED 52 YEARS,
KARADAM HOUSE, EDAKKARA P.O., MALAPPURAM DT.**

**(ADDL. A2 IS IMPEADED BEING LR OF DECEASED SOLE APPELLANT AS PER
ORDER DT. 25.07.2013 IN I.A. 1705/2013)**

**BY ADVS.SRI. S.A. SAJU
SMT. MEENA A.**

RESPONDENTS/APPELLANT & 3RD RESPONDENT/PLAINTIFF AND 3RD DEFENDANT:

**1. NILAMBUR RUBBER COMPANY LTD., BEACH
ROAD, CALICUT.**

**2. ST.MARRY'S ORTHADOX CHURCH
REPRESENTED BY ITS VICAR CHUNGATHARA, ERNAD TALUK
MALAPPURAM DISTRICT.**

R1 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

S.A. No. 222 of 2003

Dated this the 13th day of July, 2015

J U D G M E N T

The first defendant in O.S.No. 346/1986 before the Munsiff Court, Manjeri, who was successful in getting the suit dismissed, but suffered a decree at the hands of the lower appellate court, is the appellant before this Court.

2. The facts absolutely necessary for the purpose of disposal of this appeal are as follows:

The property admittedly belonged to Nilambur Kovilakam. The plaintiff claimed that it had taken about 125 and odd acres of land from Nilambur Kovilakam on lease as per Ext.A5 dated 17.11.1950. That is shown as plaint A schedule property. The plaint B schedule property which is about 25 cents in extent is a portion of the plaint A schedule property. According to the plaintiff, the first defendant, who was an employee of the company, was allowed to occupy a structure in the property which he was bound to surrender

on his retirement but he did not do so. The earlier Manager of the company, who ought to have taken such steps as are necessary to have the arrangement terminated did not do so and the result is that the defendant continued to be in possession of the property. The plaintiff came to know that the defendants have clandestinely obtained a purchase certificate, which is not binding on them and nor are their rights affected by the said purchase certificate. On the strength of their title, they sued for eviction.

3. The defendants 1 and 2 resisted the suit. They disputed the identity of the property. They disputed the right of the plaintiff over the plaint B schedule property and claimed that it exclusively belonged to them. In short, their case was that it was not a part of plaint A schedule or the property which the company obtained on lease from Nilambur Kovilakam. In the written statement, the case put forward was that 25 cents of land in Survey No.910/1A in Nilambur Amsom, which was a forest area, was clear felled

by the second defendant with the permission from Nilambur Kovilakam and she put up a structure therein. Later, the structure was developed and the defendants began to conduct a tea shop therein. They have availed a loan from the Bank also. She therefore claimed exclusive right and possession over the plaint B schedule property. In addition to the above said claims, they also pointed out that they had obtained a purchase certificate from the Land Tribunal concerned and that is conclusive of their rights. The plaintiff has not challenged the purchase certificate issued to the defendants and therefore, they are not liable to be evicted. On the basis of these contentions, they prayed for a dismissal of the suit.

4. The trial court raised necessary issues for consideration. The evidence consists of the testimony of PWs 1 and 2 and documents marked as Exts. A1 to A5 from the side of the plaintiff. Defendants examined DW1 and had Exts.B1 to B5 marked. Exts. C1 and C2 are the

Commissioner's report and plan. Ext.X1 is the file from the Land Tribunal, Nilambur.

5. The trial court non suited the plaintiff on the ground that plaint B schedule property has not been properly identified. The plaintiff took up the matter in appeal as A.S.No. 18/1994.

6. The lower appellate court mainly fixed the identity of the property on the basis of the admission made by the defendants before the Land Tribunal as they had no case that the company had no title over the property. To be more precise, the lower appellate court found that before the Land Tribunal, both defendants had admitted that the B schedule property belonged to the plaintiff and that the entrustment was initially to the first defendant followed by entrustment to the second defendant. The lower appellate court also found that there was no dispute regarding the identity since the Commissioner had identified plaint B schedule property and therefore found that the finding regarding the identity

entered into by the trial court cannot be supported. Finding that the purchase certificate obtained by the defendants is not binding on the plaintiff as they were not parties to the proceedings, the lower appellate court found that the plaintiffs had title to recover the property and accordingly granted a decree.

7. Notice was issued on the following substantial questions of law:

“a) Is the court below justified in perusing Ex.X1 filed and relying on the alleged admissions contained those proceedings before the Land Tribunal without affording an opportunity to the contesting defendants to explain the alleged admissions.

b) Is the court below justified in taking into consideration of the so called admissions contained in Ext.X1 filed since those statements are neither admitted in evidence nor proved in the trial court.

c) Is the court below justified in not taking into consideration of the alleged admission in its entirety.

d) Is the court below justified in

holding the alleged admission of the defendants before the Land Tribunal is sufficient to prove the title of the plaintiff in this suit.

e) On the face of Sec.72K of the Kerala Land Reforms Act whether the plaintiff is entitled to maintain his claim of title with respect to the plaint B schedule property without challenging the certificate of purchase issued by the Land Tribunal.

f) Are not the judgment and decree of the court below vitiated for not properly appreciating the evidence available in this case.”

8. The learned counsel appearing for the appellant contended that the lower appellate court was not justified in reversing the finding of the trial court regarding the identity. Referring to the evidence of PW1, it was contended that according to him, the property of the estate extends up to the Chaliyar river in the east and the said assertion of PW1 is belied by the Commissioner's report which shows that the eastern boundary of the B schedule property is a road. This vital aspect has been omitted to be noticed by the lower

appellate court. It was further contended that it was for the plaintiff to establish the title and identity of the property and the failure on the part of the defendants to substantiate their claim in that regard could not be taken aid of by the plaintiff. The lower appellate court was not justified in relying on the admission said to have been made by the defendants before the Land Tribunal to the effect that it was contended before the Land Tribunal that the first defendant had obtained the property from the company and thereafter the second defendant obtained it from the first defendant. First of all, it is contended that even assuming that there was an admission to that effect, it was no put to DW1 when she was examined before the Land Tribunal and without putting the admission to the person concerned, it could not be relied on. For the above proposition, the learned counsel relied on the decision reported in **Sainaba Umma and another v. Moideenkutty and others** [ILR 1988 (1) Kerala 206].

9. At any rate, according to the learned counsel for the appellant, now that a purchase certificate has been obtained by the defendants concerned, unless that purchase certificate is set aside, it is conclusive in nature regarding the right, title and interest of the person to whom the purchase certificate has been granted. The company cannot avoid the purchase certificate by saying that they were not parties before the Land Tribunal or that they had no notice of proceedings. The learned counsel pointed out that going by Section 102 of the Kerala Land Reforms Act, an appeal can be preferred by any person aggrieved by the order of the Land Tribunal. This shows that even assuming that a person is not a party to the proceedings before the lower tribunal, it does not mean that he is precluded from filing an appeal and in fact, the remedy is to file an appeal and get the order set aside. That has not been done. Further, the learned counsel relying on the decision reported in **Ramakke & Ors. v. Gopi & Ors.** [2011 (3) KLJ 514] and

Jithesh v. State of Kerala [2013 (4) KLT 565] contended for the position that going by Section 72K of the Kerala Land Reforms Act, the purchase certificate obtained is conclusive of the right, title and interest over holding the purchase certificate and it cannot be simply avoided by pleading fraud and without having it set aside by a competent authority by procedure known to law. These vital aspects, according to the learned counsel, have been omitted to be noticed by the lower appellate court and that has resulted in a wrong decree being passed.

10. The learned counsel appearing for the respondents on the other hand pointed out that the defendants have no consistent case. In one place, they would say that they had an entrustment directly from the Kovilakam; while in other place, they would say that the company entrusted the property to the first defendant who in turn entrusted it to the second defendant. Relying on the evidence of DW1, the learned counsel pointed out that she has no idea about the

property and it clearly shows that they were making a false claim. The learned counsel went on to point out that the Commissioner in his report has clearly identified the property and there was no challenge to the Commissioner's report at all regarding the identity. It is also pointed out by the learned counsel for the respondent that there is no suggestion to PWs 1 and 2 that the property identified by the Commissioner is not the property scheduled to the plaintiff. Drawing attention to the report, the learned counsel pointed out that the Commissioner has indicated in his report that the boundaries and the survey number shown in the plaintiff tally with the one found on site.

11. As regards the admission, the learned counsel for the respondents pointed out that even in Form No.1, the very same claim is made and it is not as if that it has not been challenged. The company, in the plaintiff, has clearly stated that they came to understand that the defendants 1 and 2 have obtained a purchase certificate by playing fraud

and without making them a party knowing fully well that the company is the owner of the property. The learned counsel went on to point out that going by Section 72K of the Kerala Land Reforms Act and the decisions cited by the learned counsel for the appellant, it can at best be said that the purchase certificate is conclusive against those persons who had notice of the proceedings. In the light of the decisions of this Court, it could not be said that the purchase certificate is conclusive against all the persons even against persons who had no notice and who could not participate in the proceedings. For the above proposition, the learned counsel relied on the decisions reported in **Muhammad Haji v. Kunhunni Nair** [1993 (1) KLT 227] and **Karicherry Charadan Nair and another v. Edayillam Kunhambu Nair and others** [AIR 1982 Kerala 232]. The learned counsel went on to point out that the lower appellate court has analysed the evidence and had come to the conclusion that the identity crisis agitated by the trial court does not

exist at all. Since it is not shown that the defendants have a better title to hold on to the property, the suit was rightly decreed.

12. Much could be said on either side. The trump card of defendants 1 and 2 is the purchase certificate namely Ext.B1 dated 24.02.1986. That was issued in a suo motu proceedings initiated by the Land Tribunal in which defendants 1 and 2 have filed Form No. 1 statement. In the statement, it is seen that the receiver is shown to be in possession of the property at the relevant time. It is here that the pleadings of the defendants assume importance. In one portion of the pleadings before the Land Tribunal, they had a case that they had obtained the property directly from the Nilambur Kovilakam and were holding the same. In another portion, their case is that the company handed it over to the first defendant and the first defendant subsequently handed it over to the second defendant. In evidence also, DW1 has no consistent case. That is evident

from the contradictory statements given by DW1 in her evidence. She admitted that the first defendant was an employee of the company. At the time of evidence, the definite case put forward is that the entrustment was from the Kovilakam. It could thus be seen that defendants have no consistent case except that they are holding the property. It is in this context, one will have to appreciate the allegations in the plaint and that the structure in 25 cents, which forms part of B schedule property, was allowed to be occupied by the first defendant since he was an employee of the company. It seems more probable.

13. As rightly pointed out by the learned counsel for the respondent, the finding of the trial court regarding the identity is erroneous. The commissioner has filed a report and has also appended a plan to his report. He has identified the property. The Commissioner in his report has stated that the survey number and the boundary shown in the plaint tally with the one found on site. The trial court

mainly went on the basis that there is a difference in the survey number shown.

14. The reliance placed by the learned counsel for the appellant that PW1 has stated that the eastern boundary of the Chaliyar river does not help the defendants 1 and 2 much in the light of the Commissioner's report. As rightly pointed out by the learned counsel for the respondents, there is no challenge to the Commissioner's report and there is no suggestion to PWs 1 and 2 that the property identified by the Commissioner is not the plaint B schedule property shown in the plaint.

15. The lower appellate court has also relied on the proceedings before the Land Tribunal wherein the contesting defendants had admitted that the property was entrusted to the first defendant by the Company and later the first defendant entrusted it to the second defendant.

16. It is true that the in the decision reported in **Sainaba Umma and another v. Moideenkutty and**

others [ILR 1988 (1) Kerala 206], the issue regarding admission was considered. In the said decision, it is mentioned that a portion of the admission cannot be relied on rejecting the other portion. Or in other words , the principle laid down in the said decision is that the admission will have to be taken as a whole.

17. It is difficult to understand how the decision can help the contesting defendants. As already stated, they have no consistent case regarding the entrustment. In some place, they say that the entrustment was from the company, in another place, they say that it was from the Nilambur Kovilakam. It was these inconsistent and contradictory statements which had persuaded the lower appellate court to grant a decree in favour of the plaintiff.

18. Considerable reliance was placed by the learned counsel for the appellant in the decision reported in **Ramakke & Ors. v. Gopi & Ors.** [2011 (3) KLJ 514] and **Jithesh v. State of Kerala** [2013 (4) KLT 565]. In the

decision reported in **Jithesh's case** (cited supra), it was observed as follows:

“31. In the decision reported in *Muhammed Basheer v. State of Kerala* (2002 (1) KLT SN 4 (C.No.4), this Court has held that purchase certificate issued under S.72K of the Kerala Land Reforms Act, is attributed with statutorily conclusiveness as regards title and possession. Such a certificate is conclusive proof of possession as well. Unless that certificate is set aside by a competent authority or by a court of law, the statutory conclusiveness in terms of S.72K(2) has to be honoured and a person claiming on the basis of such certificate has to be taken as in possession of the properties. It is true that in the reply affidavit, they have not specifically denied the allegation in the counter affidavit that they are not in possession of the property. However, considering the circumstances mentioned above and also relying on the decision reported in *Muhammed Basheer's case* (supra), that is not of much consequence as they can be deemed to be in possession of the property.”

19. In the decision reported in **Ramakke & Ors. v. Gopi & Ors.** [2011 (3) KLJ 514], a Division Bench of this

Court has considered the impact of a purchase certificate obtained under the Kerala Land Reforms Act and it was observed as follows:

“6. In our view, the learned counsel for the appellants appears to be justified in arguing that without impeaching Ext.A8, or in the alternative, without seeking a declaration that is inures to the benefit of the three children of Mundappa Gatty, it was impermissible to order partition merely on the assumption that Ext.A8 inured to the benefit of Manju Gatty, Birmage and Korappalu. The proceeding under the Land Reforms Act is a statutory proceeding. It gains finality by the issuance of the order and the consequential certificate of purchase.

7. Section 72K(2) of the Kerala Land Reforms Act provides that the certificate of purchase issued under sub-section (1) shall be conclusive proof of the assignment to the tenant of the right, title and interest of the land owner and the intermediaries, if any, over holding, or portion thereof, to which the assignment relates. Once such a certificate is issued, the person in whose name it is issued is to be considered as the person in possession

of the property. As held in *Cheeranthoodika Ahmmedkutty v. Parambur Mariakutty Umma*, (2000) 2 SCC 417, such certificate of purchase is binding and when the enactment enjoins that any evidence could be treated as conclusive proof of a particular factual position or legal hypothesis, the law would forbid other evidence from being adduced for the purpose of contradicting or varying that conclusiveness.

8. In the absence of any plea that the aforesaid certificate has been obtained by fraud and without seeking any declaration as to title on the basis of the purchase certificate which stands in the name of Manju Gatty, the other children of Mundappa Gatty or their heirs cannot stake any claim to the property covered under Ext.A8."

20. The decisions relied on by the learned counsel for the appellant will have to be understood in the facts and circumstances of those cases and also in the light of the statutory provision regarding conclusiveness of the purchase certificate. Section 72K of the Kerala Land Reforms Act reads as follows:

“72K. Issue of certificate of purchase. (1)

As soon as may be after the determination of the purchase price under Section 72F or the passing of an order under sub-section (3) of Section 72MM the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

(2) The certificate of purchase issued under sub-section (1) shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates.

(3) The purchase price payable by the cultivating tenant shall be a first charge on the land comprised in the holding or part thereof to which the assignment relates and shall be recoverable together with interest as provided in sub-section (3) of Section 72M, under the provisions of the Revenue Recovery Act for the time being in force.”

21. Section 72K only says that the purchase certificate be conclusive regarding the right, title and interest of the landlord and the intermediaries whose right is sought to be got assigned by the tenant. That means, it can have impact only on those persons who are party to the proceedings. There cannot be a general conclusiveness regarding the purchase certificate against the whole world. In fact, this aspect has been considered in a number of decisions of this Court starting from **Karicherry Charadan Nair and another v. Edayillam Kunhambu Nair and others** [AIR 1982 Kerala 232]. This Court had considered the impact of purchase certificate as against the persons who had no notice or no knowledge of the proceedings nor to which he was a party. In the decision reported in **Karicherry Charadan Nair's case** (cited supra), it was held as follows:

“The plaintiffs appear to have obtained an order from the competent Land Tribunal regarding the half Jenmam right of Kunhammar Amma and Ext.A-10 is the order. Subsequently

they obtained the purchase certificate which is now produced in this court in C.M.P. No. 14673 of 1981. The learned counsel for the appellants contended that the purchase certificate is conclusive under S.72-K (2) of the Kerala Act 1 of 1964. The plaintiffs have no case that his order has been passed in the presence of the defendant or that the Land Tribunal has issued notice to him before issuing the purchase certificate. The order Ext.A-10 has been passed and the certificate issued without notice to the defendant. It has been held by this Court that a purchase certificate is not conclusive as against a person to whom individual notice has not been issued before passing such order directing issuance of the purchase certificate. (See Velappan v. Peter Thomas, (1979 Ker LT 412): (AIR1979 Ker 194); Kochu Lakshmi v. Velayudhan (1980 Ker LN 642); Sree Karikkad Devaswom v. Wandoor Jubitar Chits (P) Ltd. (1980 Ker LT 760). It cannot, therefore, be said that the purchase certificate or the order is binding on the defendant or will shut out his contention. The order was passed and the purchase certificate was issued behind his back and therefore it can have no evidentiary value in so far as his claim is concerned, C.M.P. No. 14673 of 1981 is

dismissed.”

22. In coming to the above conclusion, this Court relied on the decisions reported in **Velappan v. Thomas** [1979 KLT 412], **Kochulakshmi v. Velayudhan** [1980 Ker LN 642], **Sree Karikad Devaswom v. Wandoor Jupiter Chits (P) Ltd.** [1980 KLT 760]. The same issue was considered in the decision reported in **George v. State of Kerala** [1987 (1) KLT SN 50 (Case No.67)], wherein, it was held as follows:

“A purchase certificate is not conclusive as against a person to whom individual notice has not been issued before passing such order directing issuance of the purchase certificate.”

23. None of the above decisions have been referred to in the decision reported in **Ramakke & Ors. v. Gopi & Ors.** [2011 (3) KLJ 514] and that decision could not be said to lay down the principle that irrespective of who are parties to the proceedings before the Land Tribunal, the purchase certificate is conclusive against the whole world. As already

stated, Section 72 of the Kerala Land Reforms Act confers conclusiveness only as against the person who are party to the proceedings and it will be extremely hazardous to venture a finding that it is binding against the whole world unless set aside.

24. It is not as if that the company has not made allegations against the purchase certificate. They have in detail pointed out that it was obtained by playing fraud on the Land Tribunal without making the party to the proceedings and by concealing the true facts. In fact, there is no effective contravention of that allegations in the plaint by the defendants 1 and 2. In one portion of their written statement, they contended that plaint B schedule is not the property comprised in plaint A schedule property. In another portion they had set up an entrusment from the Kovilakam and again in another place, they set up an entrusment from the company. At any rate, the company has to be an intermediary and that defendants 1 and 2 have no case that

they did make the company a party to the proceedings. It is interesting to say that in Form No.1 filed by the applicant before the land Tribunal, person in possession is shown as the receiver. It has come out from the record that there was a suit by the members of the Kovilakam as O.S.No. 22/1961 in which possession was taken over by the receiver. It is here that the court below has observed that the assertion made by the first defendant that he had taken the property on lease from Nilambur Kovilakam before 40 years back, cannot be true because at the relevant time property was in the possession of the receiver. As to when the receiver took possession and when he vacated possession there is no evidence. At any rate, there is nothing to show that defendants 1 and 2 have a consistent case regarding the entrustment.

25. It was the above facts which persuaded the lower appellate court to find in favour of the plaintiff. As rightly noticed by the lower appellate court, the admission

regarding the entrustment and so also the non challenge to the Commissioner's report identifying the plaint B schedule properties though the plaint A schedule property as such has not been identified and the statement in the Commissioner's report that the survey number and the boundaries tally and so also there is no suggestion either to PW1 or PW2 that the property identified by the Commissioner was not the B Schedule property leads to irrespective conclusion that there was no real crisis regarding the identification of the property.

26. For the above reasons, this Court is unable to find any error either legal or factual in the finding of the lower appellate court. The result is that no substantial question of law arises for consideration in this second appeal.

This second appeal is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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