

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 26914 of 2004 (D)

PETITIONER(S):

**VELAPPAN, S/O.LATE KRISHNAN,
KOOTTALA, ALPARA DESOM,
PEECHI VILLAGE, THRISSUR DISTRICT.**

BY SRI.N.N.SUGUNAPALAN, SENIOR ADVOCATE.

RESPONDENT(S):

- 1. SAINABANU, D/O.LATE KADEEJABI &
LATE MEER HUSSAIN, RESIDING AT VELIYANNUR DESOM,
THRISSUR TOWN, THRISSUR VILLAGE, THRISSUR TALUK.**
- 2. YASMIN, D/O. LATE KADEEJABI &
LATE MEER HUSSAIN, RESIDING AT VELIYANNUR DESOM,
THRISSUR TOWN, THRISSUR VILLAGE, THRISSUR TALUK.**
- 3. M. MUHAMMED KHALEE, S/O. LATE KADEEJABI &
LATE MEER HUSSAIN, RESIDING AT VELIYANNUR DESOM,
THRISSUR TOWN, THRISSUR VILLAGE, THRISSUR TALUK.**

**BY ADVS. SRI.SANTHOSH P.PODUVAL,
SMT.R.RAJITHA,
SRI.K.D.SREEVISAKH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE JUDGMENT DATED 24/08/1976 IN O.S. NO.76/1970 OF THE SUB COURT, THRISSUR.
- EXT.P2 COPY OF THE JUDGMENT IN A.S. NO.6/1977 ON THE FILE OF THE DISTRICT COURT, THRISSUR DATED 03/07/1981.
- EXT.P3 COPY OF THE ORDER DATED 16/08/2004 IN E.A. NO.1390/1997 ON THE FILE OF THE SUB COURT, THRISSUR.
- EXT.P4 COPY OF THE APPLICATION IN E.A. NO.1086/2004 IN EA. NO.1390/1997 IN EP. NO.613/1994 IN OS. NO.76/1970 FILED BY THE PETITIONER BEFORE THE SUB COURT, THRISSUR.
- EXT.P5 COPY OF THE LETTER DATED 12/08/2003 OF THE PRINCIPAL SECRETARY TO GOVERNMENT REFERRED TO IN EXT.P4.
- EXT.P6 COPY OF THE ORDER DATED 16/08/2004 IN E.A. NO.613/1994 IN O.S. NO.76/1970 OF THE FILE OF THE SUB COURT, THRISSUR.
- EXT.P7 COPY OF THE ORDER DATED 25/08/2004 IN I.A. NO.2619/2004 IN CRP. NO.1078/2004 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.BHAVADASAN, J.

W.P. (C) No. 26914 of 2004

Dated this the 11th day of June, 2015

J U D G M E N T

In this writ petition, the following reliefs are sought for:

- “i) Issue a writ of mandamus or any other appropriate writ, order or direction, restraining the respondents from evicting the petitioner pursuant to Ext.P6 order in E.P. No. 613 of 1994 in O.S.No. 76 of 1970, pending disposal of Ext.P5;
- iii) Grant the cost of these proceedings to the petitioner and;
- iv) Order such other reliefs that are just and proper in the facts & circumstance of the case.”

2. The facts absolutely necessary for the disposal of this writ petition are as follows:

The petitioner before this Court is one of the legal heirs of the original defendant in the suit. The suit was one for eviction. The suit was initially dismissed and an appeal was preferred as A.S.No.6/1977. In appeal, the decree of the trial court was set aside and eviction was ordered. Though the aggrieved person carried the matter in second appeal before this Court as S.A.No.1039/1981, that was dismissed by

judgment dated 17.12.1984. Execution was taken out as E.P.No. 613/1994. During the pendency of the execution proceedings, the original judgment debtor died and his legal heirs were brought on the party array in the execution proceedings. It may be noticed here that in A.S.6/1997 in which decree was granted, there was a specific finding that the original defendant was not a tenant and the Kaichit produced by him is a forged document. That finding is confirmed in the second appeal also.

3. In the E.P., one of the brothers of the petitioner therein sought value of improvements which was dismissed by the execution court holding that since the predecessor-in-interest was not a tenant, he shall not be entitled to value of improvements. That order was challenged in O.P.No.17771/1997, which was dismissed. The review petition filed was also dismissed. Though the matter was carried to the Apex Court, that ended in failure. On the basis of the Government Order, eviction was stalled by the

District Collector in a case of similar nature which is produced as Ext.P5. Taking aid of Ext.P5, Government Order, the petitioner approached this Court for the reliefs already made mention of.

4. The learned counsel appearing for the respondents pointed out that a similar order in favour of the additional 22nd judgment debtor in E.P.No. 613/2004 was brought before this Court in C.R.P.No. 1078/2004. In C.R.P.No. 1078/2004, Ext.P6 produced before this Court was set aside and the execution court was directed to reconsider the matter hearing all the parties concerned. It is pointed out that in pursuance of order of this Court, a fresh order has been passed on 02.03.2009 and therefore, relief in the O.P. has become infructuous.

5. After having heard the learned counsel on both sides, after having perused the records and after having gone through the order in C.R.P.No. 1078/2004 dated 14.08.2007 and in E.P.No. 613/1994 dated 02.03.2009,

nothing survives for consideration in this writ petition.

6. The order of implementation of eviction, which was sought to be forestalled, no longer exists as a fresh order has been passed in 2009 and that has not been challenged.

7. The senior counsel appearing for the petitioner then pointed out that in the ceiling proceedings, it has been found that if this parcel of land is taken into consideration, then the declarant will have excess land in his possession. If that be so, in case it is to be surrendered, it becomes 'Puramboke land' and the petitioner may be able to stake their claim on that basis. That is a matter to be decided by the Taluk Land Board.

Reserving the liberty of the petitioner to take such steps as are available to him under law, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

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