

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

SA.No. 784 of 2001 (B)

**AGAINST THE JUDGMENT AND DECREE IN AS 41/2000 of PRL.SUB COURT,THRISSUR
DATED 31-03-2001.**

**AGAINST THE ORDER IN OS 1330/1986 of I ADDL.MUNSIFF COURT,THRISSUR DATED
13-08-1997.**

APPELLANT(S)/RESPONDENT IN A.S/PLAINTIFFS 4 TO 9 IN O.S:

1. CHANDRIKA, D/O CHULLIPARAMBIL KUNJITTI,
EAST FORT P.O., THRISSUR.
2. VIJAYARAMAN (DIED), S/O CHULLIPARAMBL KUNJITTI,
EAST FORT P.O, THRISSUR.
3. SIDHARTHAN, S/O CHULLIPARAMBIL KUNJITTI,
EAST FORT P.O., THRISSUR.
4. SUJATHA. D/O CHULLIPARAMBIL SARASWATHY,
KODANNUR HOUSE, KUNDUVARA,
CHEMBUKAVU VILLAGE, THRISSUR.
5. PRASANTH, S/O CHULLIPARAMBIL SARASWATHY,
KODANNUR HOUSE, KUNDUVARA,
CHEMBUKAVU VILLAGE, THRISSUR.
6. SUNITHA, D/O CHULLIPARAMBIL SARASWATHY,
KODANNUR HOUSE, CHEMBUKAVU VILLAGE, THRISSUR.
- * 7. NIRMALA VIJAYARAMAN, W/O VIJAYARAMAN,
CHULLIPARAMBIL HOUSE, NEAR R.C.BISHOP'S HOUSE,
KIZHAKKUMPATTUKARA, THRISSUR - 5.
- * 8. NIMIYA VIJAYAN, D/O CHULLIPARAMBIL VIJAYARAMAN,
NEAR R.C.BISHOP'S HOUSE, KIZHAKKUMPATTUKARA, THRISSUR - 5.
- * 9. NITHIN VIJAY, S/O CHULLIPARAMBIL VIJAYARAMAN,
NEAR R.C.BISHOP'S HOUSE, KIZHAKKUMPATTUKARA, THRISSUR - 5.

*** ADDITIONAL RESPONDENTS 7 TO 9 ARE IMPEADED AS THE LEGAL
HEIRS OF THE DECEASED SECOND APPELLANT AS PER ORDER
DATED 10-11-2009 IN I.A NO.2602/2009.**

BY ADV. SRI.N.P.SAMUEL.

RESPONDENT(S)/APPELLANTS/DEFENDANTS :

1. RAMAN, S/O CHULLIPARAMBIL KUTTAN,
NEAR R.C.BISHOP HOUSE, KIZHAKKEKOTTA,
EAST FORT P.O., THRISSUR DISTRICT.
2. BHANU PRAKASH, S/O CHULLIPARAMBIL RAMAN,
KIZHAKKEKOTTA, NEAR R.C.BISHOP HOUSE,
EAST FORT P.O., THRISSUR DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN.

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 15-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

amk

A.HARIPRASAD, J.

S.A No.784 of 2001

Dated this the 15th day of January, 2015.

J U D G M E N T

Challenge in this appeal is against the judgment and decree in A.S No.41/2000 on the file of the Principal Sub Judge, Thrissur, whereby the learned Sub Judge allowed the first appeal and dismissed the suit for permanent prohibitory injunction filed by the appellants.

2. Heard the learned counsel for the appellants and the learned counsel for the respondents.

3. Facts in short, are as follows :

Property admeasuring 11.5 cents, belonging to the appellants lies on the eastern side of the respondents' property. It is seen from the pleadings that both the appellants and the respondents claimed right from a common ancestor. The property claimed by both parties were originally belonged to Vadakke Brahmaswom, Thrissur. It is the case of the appellants that as per a Suo Motu proceedings No.4074/1976 of Deputy

Collector, Land Tribunal, Thiruvambadi, he got purchase certificate in respect of the plaint schedule property. The property claimed by the appellants and that of the respondents were outstanding in the possession of their common ancestor in tenancy right. It is also seen that the second defendant also purchased title in respect of his holding as per Ext.B2 purchase certificate. Appellants' case is that there was a dispute between them in respect of the boundaries separating their properties. The appellants approached Revenue Divisional Officer for redressal of their grievance. The boundary was fixed after measurement. But it was caused to be obliterated by the respondents raising untenable contentions. Hence, the suit was filed.

4. The respondents/defendants filed a written statement contending that the appellants/plaintiffs are not having title or possession in respect of 11.5 cents of property in Survey

No.357/1 of Thrissur Taluk. According to the respondents, the plaintiffs have got only 9 cents of property and they are only in possession of that extent. The predecessor-in-title of the appellants and the respondents obtained 18 cents of property in tenancy right and it was divided among his children in equal shares. Therefore, the claim of the appellants are that they are entitled to 11.5 cents of land and they are in possession of that extent is false.

5. Learned counsel for the appellants contended that the court below erred seriously in reversing the decree of permanent prohibitory injunction passed by the court below. According to them although the court below considered the documents, it was not properly appreciated, which resulted in miscarriage of justice. Per contra, learned counsel for the respondents submitted that the lower appellate court was right in holding that the appellants were not in possession of the extent of land

shown in the plaint as on to the date of suit. It is trite that the question arising in a suit for injunction is as to whether the appellants/plaintiffs were in possession of the property on the date of suit.

6. Ext.B4 is the verumpattam chit under which the property was originally claimed by the ancestor of the parties to the litigation. Ext.B4 property was allotted to Raman, who is the predecessor-in-interest of the respondents. Out of this 18 cents of land, 9 cents was allotted to the predecessor-in-title of the appellants and remaining 9 cents to the predecessor-in-title of the defendants. Therefore, it is contended by the respondents that the claim laid by the appellants for 11.5 cents of land cannot be sustained. In reply to this argument, learned counsel for the appellants places reliance on Ext.X1 file, which was caused to be produced from the Land Tribunal concerned. The file shows that a purchase certificate was issued to the appellants in respect

of the plaint property on 31-12-1977. The descriptions in the schedule to the purchase certificate exactly tally with the descriptions in the plaint schedule. There is no dispute regarding the boundaries shown in the purchase certificate. It shows that 11.5 cents of land was assigned to the appellants as per the purchase certificate. Learned counsel for the appellants contended that Section 72 K(2) of the Kerala Land Reforms Act, 1963 (in short 'K.L.R Act') would show that the certificate of purchase issued under the above provisions shall be conclusive proof of assignment to the tenant of right, title and interest of landowner and intermediaries, if any, over the holding or portion thereof to which the assignment relates. Learned counsel for the respondents contended that even if one admits for the sake of argument that the appellants are having title in respect of 11.5 cents of property, it cannot be presumed that they are in possession of the property shown in the plaint. The definition of

“cultivating tenant” in Section 2(8) of the K.L.R Act would show that a tenant is a person who is in actual possession of, and is entitled to cultivate, the land comprised in his holding. Ext.X1 file shows that after initiation of S.M proceedings, the Land Tribunal caused the Revenue Inspector concerned to inspect the property and he submitted the report. Even though notice was issued to the Jenmy showing an extent of 7 cents in the possession of the appellants, after enquiry the Revenue Enquiry Inspector reported that the cultivating tenants (appellants) are in possession of 11.5 cents of property. That apart, the Manager of the Vadakke Brahmaswam Office admitted that the cultivating tenants were in possession of 11.5 cents of land at the time of issuance of patta.

7. Learned counsel for the respondents contended that the lower appellate court is right in holding that the revenue inspector's report does not show what type of enquiry was

conducted by him. Section 125 of the K.L.R Act says that the civil court has no jurisdiction to deal with any question arising under the K.L.R Act. There is no case for any of the parties that the order passed by the Land Tribunal in the above mentioned S.M proceedings was challenged in any forum. It is therefore clear that the proceedings has to come finality. The lower appellate court legally fell in error in not accepting the report of the Revenue Inspector for the reason that the Land Tribunal is a creation of the statute for determining the question of tenancy and kudikidappu. That apart, the presumption under Section 114 of the Evidence Act regarding regularity of official acts was also lost sight of by the lower appellate court.

8. The appellants have produced basic tax receipts showing payment of tax long prior to the litigation. All these receipts will indicate that they were paying basic tax for the land in their possession.

9. I have gone through the Commissioner's reports and plan. The Commissioner has inspected the property taking into account the two purchase certificates propounded by the respondents. In the report, the Commissioner has specifically stated that the portion in the first plan shown as 'A' is part of the appellants' property, which is the subject matter of dispute. I find that the plan and the reports are not fully supportive to both sides to the extent it ought to be. However, the indications in the Commissioner's reports and plan are that the appellants are in possession of the disputed property. Reasoning stated by the lower appellate court for reversing the finding of the court below is legally unsupportable. Merely for the reason that the verumpattam document evidencing demise of land in favour of the ancestor of the parties measured only 18 cents, it cannot be held that the appellants are not in possession of the plaint schedule property with the descriptions shown therein. The

lower appellate court without appreciating the evidence or rather misreading the evidence entered a perverse finding in this matter. I find that the trial court was legally justified in granting the decree. Hence, the appeal is liable to be allowed.

In the result,the appeal is allowed. The decree passed by the lower appellate court is set aside. The decree of the trial court is restored. There is no order as to costs.

All pending interlocutory applications will stand dismissed.

amk

Sd/-
A.HARIPRASAD,
JUDGE.

//True Copy//

P.A to Judge