

Abdulla Vs. Gopalakrishna Bhat

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SooperKanoon Citation : sooperkanoon.com/3618

Court : Kerala

Decided On : Nov-19-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Abdulla

Respondent : Gopalakrishna Bhat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 19TH DAY OF NOVEMBER 2014 28TH KARTHIKA, 1936 CRP.No. 576 of 2009 (A) ----- AA1631998 of APPELLATE AUTHORITY, KANNUR ----- PETITIONER IN CRP: APPLICANT IN I.A./PETITIONER IN RP/APPELLANT IN AA:

ABDULLA, S/O.MOIDEENKUNHI, CHEMBODE, KUMBADAJI, KASARAGOD TALUK, P.O.KUMBADAJI. BY ADVS.SRI.K.JAYAKUMAR (SR.) SRI.P.B.KRISHNAN SRI.R.SURAJ KUMAR SMT.GEETHA P.MENON SRI.P.M.NEELAKANDAN RESPONDENTS IN CRP:RESPONDENTS2TO13IN IA./RESPONDENTS2TO13IN RP. RESPONDENT2TO13IN AA : *1. GOPALAKRISHNA BHAT, S/O.NOOJI SUBRAMANYA BHATTA, RESIDING AT, CHEMBOD, KUMBADAJE VILLAGE, KUMBADAJE P.O, KASARAGOD TALUK.

2. RAMACHANDRA SHARMA, S/O. DO. IN DO. DO.

3. N.SEETHARAMA BHAT,S/O. DO. IN DO. DO. *4. N.RAMAKRISHNA BHAT,S/O. DO. IN DO. DO.(DIED) 5. N.LAKSHMINARAYANA BHAT, S/O. DO. IN DO. DO. *6. ISHWARA BHAT, S/O. DO. IN DO. DO.(DIED) *7. GOURAMMA, D/O.DO. IN DO. DO.

8. SARASWATHI, D/O.DO. IN DO. DO.

9. SAROJA, D/O.DO. IN DO. DO.

10. ANANTHAPADMANABHAN, S/O.DO. IN DO. DO.

11. SREEDEVI, D/O.DO. IN DO. DO. CRP.No. 576 of 2009 (A) 12. LAXI AMMA, D/O.DO. RESIDING IN DO. DO. RESPONDENTS23,5, 8 TO12WHO ARE ALREADY IN THE PARTY ARRAY AND PREPARED ADDITIONAL RESPONDENTS13AND14ARE RECORDED AS THE LEGAL REPRESENTATIVES OF DECEASED RESPONDENTS NO.1 AND RESPONDENT NO. 7 VIDE

ORDER

DT307/2012 IN MEMO BEARING CF NO. 3142/12. ADDL. R13 IMPEADED :

13. SREEMATHI, W/O. RAMAKRISHNAN BHAT N., RESIDING AT K.P.1 /4, CHEMBODE HOUSE, KUMBDAJE, KASARAGOD - 671551. ADDL. R13 IS IMPEADED AS THE LEGAL REPRESENTATIV OF THE DECEASED R4 VIDE

ORDER

DT511/2014 IN IA16402012. ADDL. R14 IMPEADED :

14. KAMALA, W/O. ISHWARA BHAT, RESIDING AT NOOJI-CHEMBODE HOUSE, KUMBDAJE, KASARAGOD - 671 551. ADDL. R14 IS IMPEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED R6 VIDE

ORDER

DT511/2014 IN IA16422012. BY ADV. SRI.SURESH KUMAR KODOTH THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON1911-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: bp CRP.No. 576 of 2009 (A) APPENDIX PETITIONER'S ANNEXURES : ANNEXURE

A: MEDICAL CERTIFICATE DT33.2009. RESPONDENT'S ANNEXURES : NIL.
//TRUE COPY// P.S. TO JUDGE bp P. BHAVADASAN, J.

- - - - - C.R.P. No. 576 of 2009 - - - - -
- Dated this the 19th day of November, 2014.

ORDER

Aggrieved by the order dated 18.2.2009 in I.A. 134 of 2008 in R.P. 11 of 2008 in A.A. 163 of 1998 by the Appellate Authority (Land Reforms), Kannur, the petitioner before the court below has come up in revision.

2. The petitioner was the applicant in O.A. 465 of 1973 before the Land Tribunal, Kasaragod seeking assignment of right, title and interest over 1.50 acres of land under Section 72B of the Land Reforms Act. The property is comprised in Sy. No. 445/2 of Kumbadaje village. The applicant traced title to his father, who, according to the applicant had obtained the property on lease along with other properties for an yearly rent of Rs.12/-. Father of the applicant claimed to have obtained the property on lease from one Achutha Bhat. In the partition in the family of Bhat, the C.R.P.576/2009. 2 property involved in this proceedings was set apart to the share of Nooji Subrahmanya Bhat. During the pendency of the proceedings, he died and his legal heirs were brought on the party array.

3. The respondent entered appearance and resisted the claim. It was pointed out by the respondent that the applicant had never been in possession of the property and had no rights over the property. They therefore prayed that the application may be dismissed.

4. It is not in dispute that the Revenue Inspector, who is the authorised officer, filed a report pointing out that the applicant before the Land Tribunal was in possession of 2.65 acres of land out of a larger extent of 5.65 acres in the same survey number.

5. By order dated 4.10.1975 the application of the petitioner was allowed in respect of 1.50 acres of land. The aggrieved landlord took up the matter in appeal. The C.R.P.576/2009. 3 Appellate Authority allowed the appeal and remanded the

matter back to the Land Tribunal. Subsequent to the remand, the O.A. was dismissed on 27.8.1980 holding that the applicant was unable to prove his possession over the property.

6. In the meanwhile, the respondent instituted O.S.232 of 1980 seeking recovery of possession and in the alternative for mandatory injunction against the petitioner in respect of 2.15 acres. Though the petitioner raised the plea of tenancy and sought reference of the same to the Land Tribunal, it was rejected in view of the dismissal of the O.A. The suit was decreed. An appeal as A.S. 17 of 1986 did not succeed and therefore the petitioner filed S.A. 897 of 1988. Along with the S.A. he had also filed an I.A. for stay of dispossession from the property till the appeal was disposed of. C.R.P.576/2009. 4 7. While things stood so, the applicant filed A.A. 308 of 1984 against the order in O.A. dismissing his application after remand. That A.A. happened to be dismissed on 18.8.1984 and that gave rise to the applicant filing C.R.P. 435 of 1992 before this Court.

8. This Court heard C.R.P. 435 of 1992 along with S.A. 897 of 1988. The C.R.P. was allowed and the matter was remanded to the appellate authority for fresh consideration. The Second Appeal was dismissed with the observation that in respect of the property covered by the O.A., i.e. 1.50 acres, execution proceedings can be initiated only after the disposal of the appeal by the Appellate Authority and regarding the rest of the property the decree holder can proceed with the execution.

9. After remand to the Appellate Authority, it so happened that the petitioner did not participate further and the appeal happened to be dismissed. Long thereafter the C.R.P.576/2009. 5 petitioner moved restoration petition as R.P. No. 11 of 2008 seeking to have the dismissal of the appeal reviewed and since the review petition was hopelessly out of time, he also filed I.A.134 of 2008 to condone the delay of 1589 days in filing the restoration petition.

10. The Appellate Authority after evaluating the materials before it, found no reasons to condone the delay and dismissed the delay petition as well as the restoration petition.

11. Sri. S.V. Balakrishna Iyer, learned Senior Counsel appearing for the petitioner pointed out that he only wishes to have an opportunity to have the appeal heard on merits. It is fairly conceded that there has been delay on the part of the petitioner in filing the restoration petition, but that was not willful. Whatever that be, according to the learned Senior Counsel, since this Court was impressed with the case put forward by the petitioner, this Court had allowed the C.R.P. and had remanded the matter to the Appellate Authority for C.R.P.576/2009. 6 fresh consideration. Therefore, it could not be said that there is no merit in the case put forward by the petitioner. It is also pointed out that no particular prejudice or injury would be caused to the respondents herein by having the appeal heard on merits.

12. Learned counsel appearing for the respondents on the other hand pointed out that the Appellate Authority has considered the question of delay and has found that the restoration petition was hopelessly barred by limitation and no sufficient cause has been shown to condone the delay. Learned counsel reiterated the findings of the Appellate Authority regarding the reasons given for the delay and contended that by no stretch of imagination it could be said that the delay was properly explained. It was also contended that condonation of delay is not a matter of course for the reason that due to the delay rights might have accrued to the other parties which is now sought to be set at naught by filing C.R.P.576/2009. 7 the delay condonation petition, and that is to be viewed seriously.

13. It is no doubt true that there is undue delay in filing the restoration application for restoration of the appeal before the Appellate Authority. The Appellate Authority has considered the question of delay in considerable detail. Of course, the petitioner has stated that he was unaware of the remand to the Appellate Authority and only when he had approached the counsel on a later date that he came to know that the matter was remanded to the Appellate Authority. Thereafter, he fell ill and he could not take steps in time. He gave several other reasons also for the delay. As rightly pointed out by the learned counsel for the respondents and as noticed by the Appellate Authority, the reason given for the condonation of delay may not be very convincing.

14. However, the fact remains that this Court had occasion to consider the claim of the petitioner and this Court C.R.P.576/2009. 8 was persuaded to remand the matter to the Appellate Authority. Therefore, it could not be said that the case put forward by the petitioner is totally meritless especially in view of the fact that on an earlier occasion his claim for 1.96 acres was accepted by the Land Tribunal.

15. It is only proper and reasonable that the petitioner be given an opportunity to agitate his appeal on merits so as to end the dispute between the parties. Any loss or injury caused to the respondents in this regard can be compensated by awarding costs. This Civil Revision Petition is allowed, the order in I.A. 134 of 2008 in R.P.11 of 2008 of the Appellate Authority is set aside and the appeal is restored to file on condition that the petitioner pays a sum of Rs.5,000/- to the counsel appearing for the respondents before this Court within three weeks from today. If the amount is not paid within the stipulated time, this revision petition will stand dismissed. If C.R.P.576/2009. 9 the amount is paid, the parties will appear before the Appellate Authority on 17.12.2014 and the Appellate Authority shall dispose of the appeal as expeditiously as possible, at any rate, within a period of three months from the date of appearance of parties. P. BHAVADASAN, JUDGE sb.