

Thomas Thomas Vs. Cheriyan Varghese

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Court : Kerala

Decided On : Jun-12-2015

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Thomas Thomas

Respondent : Cheriyan Varghese

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 12TH DAY OF
JUNE 2015 22ND JYAISHTA, 1937 CRP(LR).No. 149 of 2015 ()
----- THE

ORDER

DATED 23/01/2015 IN AA. NO.56/2007 (OLD NO.47/1990 OF APPELLATE
AUTHORITY (LR), ATTINGAL) OF APPELLATE AUTHORITY (LAND
REFORMS), ALAPPUZHA- CAMP SITTING AT PATHANAMTHITTA, WHICH IS
AGAINST

ORDER

DATED 06/03/1990 IN SM.46/1987 OF LAND TRIBUNAL, PATHANAMTHITTA.
REVISION PETITIONER/APPELLANT/TENANT:

----- THOMAS THOMAS, MALAYIL
PUTHIYAVEETIL, KEZHUKARA MURI, KOZHENCHERY VILLAGE,

PATHANAMTHITTA. BY ADV. SRI.RAJEEV V.KURUP.
RESPONDENTS/RESPONDENTS/LAND LORDS:

----- 1. CHERIYAN VARGHESE,
BLOCK NO. 30, EX-SERVICEMEN'S COLONY, KUNNAM VECHOOCHIRA P.O.,
PATHANAMTHITTA - 686 511 (DIED).

2. THANKAMMA VARGHESE, MALAYIL PUTHIYAVEEDU, KUNNAM
VECHOOCHIRA P.O., PATHANAMTHITTA - 686 511.

3. SHYNU VARGHESE, MALAYIL PUTHIYAVEEDU, KUNNAM VECHOOCHIRA
P.O., PATHANAMTHITTA - 686 511.

4. SHERLY, MALAYIL PUTHIYAVEEDU, KUNNAM VECHOOCHIRA P.O.,
PATHANAMTHITTA - 686 511.

5. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA - 686 001. R2 TO R4 BY ADV. SRI.T.M.ABDUL LATIFF
(CAVEATOR) R5 BY GOVT. PLEADER SRI.REJI JOSEPH. THIS CRP (LAND
REFORMS ACT) HAVING COME UP FOR ADMISSION ON 12-06-2015, ALONG
WITH CRP(LR) NO.179/2015 AND CONNECTED CASES, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING: rs. B.KEMAL PASHA, J.

..... C.R.P. (LR) Nos.149, 179, 283, 284,
285, 286, 287, 288 and 313 of 2015
Dated this the 12th day of June, 2015

ORDER

The petitioner in CRP(LR) No.149.2015 was the respondent in SM46 of 1987 on the file of the Land Tribunal, Pathanamthitta. The Land Tribunal dismissed the suomotu proceedings initiated in favour of the revision petitioner, holding that he is not a cultivating tenant and that the property belongs to the respondent and the same is not vested in the Government. As such, the revision petitioner preferred an appeal before the Appellate Authority. The appellate authority reversed the decision rendered by the Land Tribunal by holding that the said revision petitioner is a lessee who is entitled to fixity of tenure. The order passed by the Land

Tribunal was set aside by the Appellate C.R.P. (LR)Nos.149 of 2015 & con. cases -:

2. :- Authority and the Land Tribunal was directed to take further action in the matter. The matter was challenged before this Court by the father of the first respondent in CRP1492015 through CRP1033of 1996. This Court elaborately considered the matter and allowed the CRP with the following observations: "I am of the view that the Appellate Authority was not justified in holding that the applicant Thomas Thomas is a cultivating tenant entitled to fixity of tenure. I am inclined to set aside the order, dated 21.12.1995, passed by the Appellate Authority and remand the case to the Appellate Authority for fresh disposal. The Appellate Authority shall dispose of the case in accordance with law after taking note of the pleadings and the documentary and oral evidence on record. In the result, the Civil Revision Petition is allowed. The order passed by the Appellate Authority is set aside and the case is remanded to the Appellate Authority for fresh disposal in the manner indicated above. No order as to costs." 2. The matter was again considered by the Appellate Authority. The Appellate Authority has passed the C.R.P. (LR)Nos.149 of 2015 & con. cases -:

3. :- impugned order dismissing the appeal thereby confirming the decision rendered by the Land Tribunal on 06.03.1990.

3. The appellant has come up in revision. Petitioners in CRP(LR) Nos.179, 283, 284, 285, 286, 287 and 288 of 2015 are the subsequent transferees from the petitioner in CRP(LR) 149/2015. According to them, they are bonafide purchasers from the petitioner in CRP(LR) 149/2015. Further, according to them, there was no order of stay in the matter and therefore, there was no impediment on their part in purchasing the properties. Much discussion is not required to conclude that the petitioners in those revision petitions cannot have any independent claim, other than the claim of the present petitioner in CRP(LR) 149/2015. They are only to be considered as pendente lite transferees and they cannot forward an independent claim of title. Their entitlement depends on the entitlement, if any, of the petitioner in CRP(LR) 149/2015.

4. The learned counsel for the petitioner in CRP(LR) C.R.P. (LR)Nos.149 of 2015 & con. cases -:

4. :- 149/2015 has pointed out that the Appellate Authority has not acted in conformity with the remand order in CRP No.1033 of 1996. The argument is that even though there was a specific direction by this Court in the said remand order that the Appellate Authority shall dispose of the matter afresh in accordance with law, after taking note of the pleadings and the documentary as well as oral evidence on record, the Appellate Authority has not cared to consider the oral and documentary evidence in the matter; especially the oral evidence of PWs.2 and 3.

5. It seems that the Appellate Authority has made a thread bare examination of the evidence of PW1. At any stretch of imagination the petitioner could not be treated as a cultivating tenant. The Appellate Authority has clearly stated in the impugned order that there is no evidence on record to prove any such oral lease or to prove the payment of rent. According to the petitioner, the evidence of PW2 and PW3 would categorically show that there was payment C.R.P. (LR)Nos.149 of 2015 & con. cases -:

5. :- of rent as well as the fact that the petitioner was a cultivating tenant. It is true that the Appellate Authority has not specifically mentioned the evidence of PW2 and PW3, apart from stating that there is no evidence on record to prove the payment of rent or oral lease.

6. The learned counsel for the revision petitioner has taken me through the evidence of PW2. The evidence of PW2 is to the effect that he had an occasion to see the payment of rent by the petitioner when the petitioner once came to attend the Maramon convention. On that occasion, according to PW2, the petitioner had visited his house and there he made the payment of rent of 50/-. It seems that he has not even mentioned the date of such alleged payment. In cross-examination, it seems that he had deviated from his version in chief examination and had deposed that the payment of rent was made at his shop and not at the house. The evidence of PW2, even if discussed, will not improve the case of the petitioner in any manner. C.R.P. (LR)Nos.149 of 2015 & con. cases -:

6. :- The evidence of PW2 cannot be relied on for any purpose at all.

7. Similar is the case with PW3 also. Even though the evidence of PW2 and PW3 is not discussed separately by the Appellate Authority, it can never create any short fall in the discussions made by the Appellate Authority in the impugned order. The Appellate Authority, by finding that the evidence of PW2 and PW3 is not credit worthy, has gone to the extend of stating that there is no evidence at all to prove the payment of rent or the oral lease.

8. Even though the learned counsel for the petitioner in CRP(LR) 149/2015 and the learned counsel for the petitioners in the other CRPs have forwarded a request for remand of the matter, there is absolutely nothing to show that the impugned order is illegal, irregular, or improper. Neither there can be a genuine request for setting aside the impugned order, nor to have a remand of the matter. Moreover, on such a remand, the evidence on record will C.R.P. (LR)Nos.149 of 2015 & con. cases -:

7. :- never improve the case of the petitioner. Matters being so, these C.R.Ps.(LR) are devoid of merits, and are only to be dismissed, and I do so. In the result, these Civil Revision Petitions fail and are dismissed. No costs. Sd/- B.KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge

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