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Joseph Vs. Vironi Thomas

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Court : Kerala

Decided On : Jun-25-2015

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Joseph

Respondent : Vironi Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE25H DAY OF JUNE20154TH ASHADHA, 1937 CRP.No. 403 of 2004 ---------- AGAINST THE

ORDER
IN AA1162003 of APPELLATE AUTHORITY (LR), ALAPPUZHA. AGAINST THE

ORDER
IN OA1581999 of LAND TRIBUNAL, ERNAKULAM. REVISION PETITIONER(S)/RESPONDENTS1AND2APPLICANTS IN O.A.: ---------- 1. JOSEPH, S/O. ANTHO, (DIED, LRS IMPLEADED) AKKEYEZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

2. ANTONY, S/O. ANTHO, AKKAYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5. ADDL. PETITIONERS3TO9ARE

IMPLEADED.

3. ANNIE JOSEPH, W/O. LATE A.A. JOSEPH, AKKIYAZHATH HOUSE, MUNDAMVELI P.O., KOCHI - 7.

4. MARY A.J., W/O. LAWRENCE A.J., ARAKKAPARAMBIL HOUSE, MUNDAMVELI P.O., KOCHI - 7.

5. FRANCIS A.J., AKKIYAZHATH HOUSE, MUNDAMVELI P.O., KOCHI-7.

6. ROSY JOSEPH, W/O. SAJAN ANTONY T.A., THEVANKATT HOUSE, KOCHI - 7.

7. NELSON. A.J., AKKIYAZHATH HOUSE, MUNDAMVELI P.O., KOCHI.

8. STANCILOUSE A.J., AKKIYAZHATH HOUSE, MUNDAMVELI P.O., KOCHI - 7.

9. JANOORUS A.J., AKKIYAZHATH HOUSE, MUNDAMVELI P.O., KOCHI - 7. ADDITIONAL PETITIONERS3TO9ARE IMPLEADED AS THE LR'S OF DECEASED1T OPETITIONER VIDE

ORDER
DT. 7.1.13 IN I.A. 3191/12 IN C.R.P. 403/04. BY ADVS.SMT.V.P.SEEMANDINI (SR.) SRI.M.S.UNNIKRISHNAN SRI. ANISON SMT. GEETHAMANI SMT. P.A. RINUSA SMT. ANNIE JACOB RESPONDENT(S)/APPELLANTS AND RESPONDENTS: ---------- 1. VIRONI THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

2. LILLY THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

3. OTTAM THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

4. MATHEW THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

5. JOSELY THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

6. ANTONY THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

7. MERCY THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

8. XAVIER THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

9. LINTO THOMAS, AKKEYAZHATH HOUSE, MOOLAMKUZHI MURI, RAMESWARAM VILLAGE, KOCHI-5.

10. R.PADMANABHA SHENOY (DIED), S/O. LATE RAMA SHENOY, THALAYEDIYIL HOUSE, SOUTH CHERLAI, MATTANCHERRY, KOCHI-2.

11. P.S.NARAYANA SHENOY (DIED), S/O. LATE PADMANABHA SHENOY, SOUTH CHERLAI, MATTANCHEERY.

12. P.S.NAVIN CHANDRA SHENOY, 8/955 ALATHUKUTTY ROAD, MATTANCHERRY.

13. P.S.LEKSHMI BAI, W/O. N.S.KAMATH, C.247 GIRI NAGAR, ERNAKULAM.

14. P.S.SUSEELA BAI, C/O. RANGA R.SHENOY, PANDIKUDY ROAD, KOCHI-2.

15. JAYALEKSHMI, W/O. P.S.NARAYANA SHENOY, TALIYADIPARAMBIL, R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-2.

16. SREE RAM SHENOY, S/O. P.SNARAYANA SHENOY, THALIYADIPARAMBIL, R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-2.

17. JAYARAM SHENOY, S/O. P.S. NARAYANAN SHENOY, THALAYEDIPARAMBIL, R.G. PAI ROAD, SOUTH CHERLAI, KOCHI-2. R1 BY ADV. SRI.P.B.KRISHNAN R1 BY ADV. SMT.GEETHA P.MENON R1 BY ADV. SRI.N.AJITH R1 BY ADV. SRI.P.M.NEELAKANDAN R1 BY ADV.

SRI.P.B.SUBRAMANYAN R1,2,3,5 TO9BY ADV. SRI.S.SHYAM R1,2,3,5 TO9BY ADV. SRI.V.K.BALACHANDRAN R1,2,3,5 TO9BY ADV. SRI.BOBBY MATHEW KOOTHATTUKULAM R1,2,3,5 TO9BY ADV. SRI.LATHEESH SEBASTIAN THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON2506-2015, ALONG WITH CRP. 888/2004, CRP. 905/2004, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: - - - - -P.-BHAVADASAN, -J.- - - - - - - - - - - - - C.R.P. Nos. 403, 888 & 905 of 2004 - Dated this the 25th day of June, 2015.

ORDER

These three revision petitions arise out of three proceedings in which there are rival claims of tenancies in respect of a portion of the property comprised in Sy. No. 253/2.

2. C.R.P. No. 403 of 2004 was filed by the legal heirs of one Antho. Antho is the applicant in O.A.158 of 1999 before Land Tribunal, Ernakulam. Antho had initially filed O.A. 778 of 1970 before Land Tribunal, Palluruthy, which was transferred to Land Tribunal, Vypin and reumbered as O.A. 4308 of 1976. It was later transferred to Land Tribunal, Ernakulam and numbered as O.A. 158 of 1999. Batho Thomman, the rival claimant was impleaded as the second respondent in the said application. The C.R.P. is directed against that portion of the Appellate Authority's order which interfered with the relief granted to the legal heirs of Batho by the Land Tribunal. CRP No.403/2004 & conn. cases. 2 3. C.R.P. No. 888 of 2004 is filed by the legal heirs of Batho Thomman aggrieved by the modification of the order in O.A. 158 of 1999 in appeal.

4. C.R.P. No. 905 of 2004 is filed by the legal heirs of Batho Thomman who has filed O.A. 143 of 2000, though it was initially filed before the Land Tribunal, Palluruthy. Batho sought assignment of 2.77 acres of land in Sy. No. 253/1, 2531-2, 255 and 252/1.

5. The two rival claimants are Antho and Batho. Antho claimed that he had taken lease from one Rama Shenoy an extent of 1.20 acres comprised in Sy. No. 253/2 of Rameswaram Village as per patta chit 10/6/1096 M.E. The property is described as 'H_\" H_5Jm DaI_ Iy''Lm'. The document does not specify the extent of the

property. Apart from specifying the boundaries, the deed also says that the property contains 51 coconut trees and 12 areconut trees. The pattom fixed was as Rs.56/-. Consequent on the death of Rama Shenoy, his legal heirs partitioned the property and possession and right of this property was set CRP No.403/2004 & conn. cases. 3 apart to Padmanabha Shenoy. Batho got himself impleaded as second respondent claiming 80 cents out of 1.20 acres as it was included in Ext.P4 pattom chit executed by him in favour of Rama Shenoy.

6. While the O.A. filed by Antho was pending, Batho filed O.A. 143 of 2000 claiming that by virtue of Ext.P4 dated 24.9.1098, 2.72 acres of paddy land was taken on lease from Rama Shenoy. There were three items of properties. Item No.1 is comprised in Sy. No.253/1 and 255. Item No.2 is comprised in Sy. No. 253/1-2 and 255 and item No.3 is comprised in Sy. No. 252/1.

7. While the above two O.As were pending, J Form was filed in respect of 2.77 acres comprised in four survey numbers and purchase certificate has been obtained in that proceeding by Batho. Antho, coming to know about that fact and finding that a portion of the leasehold property with him had been assigned to Batho, had instituted O.S. 29 of 1977 for a declaration that they are in absolute possession of 1.20 acres comprised in Sy.No.253/2 and CRP No.403/2004 & conn. cases. 4 purchase certificate obtained by Batho is not binding on them. Defendants in that suit were Batho and his sister Mary.

8. The above suit along with three other suits were disposed of by the Principal Sub Court, Kochi. One of the cardinal issue was whether the lease in favour of Antho covers 1.20 acres or only 40 cents in Sy. No. 253/2. The suit was decreed in favour of Antho.

9. It may be noticed here that O.S.129 of 1978 was filed by Mary. The plaintiffs in O.S. 29 of 1977 also filed O.S. 35 of 1979. That suit was for injunction only. In the light of the relief granted in O.S. 29 of 1977, O.S. 35 of 1979 was dismissed. O.S. 129 of 1978 was also dismissed. The matter was carried in appeal by the aggrieved persons. The appellate court confirmed the finding of the trial court. Two appeals, i.e., S.A. 363 and 403 of 1984, both by Batho Mary were filed before this Court. By judgment dated 28.8.1989 both the appeals were allowed resulting in

O.S. 129 of 1978 being decreed and O.S.29 of 1977 being CRP No.403/2004 & conn. cases. 5 dismissed. The High Court held that the appellants before this Court are in possession of the disputed portion in Ext.C1(b) plan except F plot shown therein.

10. The legal heirs of Antho carried the matter in appeal before the Apex Court as Civil Appeal Nos. 8048 and 8049 of 1995. Setting aside the judgment and decree passed by the High Court and restoring that of the trial court which was confirmed by the lower appellate court, the Apex Court observed as follows: "We are of the considered view that learned Single Judge has committed jurisdictional error in interfering with the concurrent finding on facts. Ext.A7 order and its by-product Ext.B10 Certificate of Purchase, both are vitiated by fraud as found by the fact finding courts. O.A. No. 1810 of 1971 must be tried jointly with O.A. No. 4308 of 1976 so that a finality can be reached regarding the rival claims raised in respect of the same land. We direct the Land Tribunal concerned to do so." 11. In the light of the order passed by the Apex Court, O.A. 143 of 2000 and O.A. 158 of 1999 were heard CRP No.403/2004 & conn. cases. 6 together by the Land Tribunal, and the Land Tribunal allowed O.A. 158 of 1999 and 1.20 acres were directed to be assigned to the applicants therein. The respondents in the said applications, aggrieved by the order, filed two appeals namely, A.A. 116 of 2003 and A.A. 119 of 2003, against the order allowing O.A.158 of 1999 and dismissing O.A. 143 of 2000 respectively.

12. Before the Land Tribunal, applicants in O.A. 158 of 1999 marked Exts. P1 to P34 and respondents marked Exts. D1 to D38.

13. The Land Tribunal based on the judgment of the Apex Court held that the applicants in O.A. 143 of 2000 had tenancy right over the properties other than the properties involved in O.A. 158 of 1999. The pattom receipts produced as Exts.D18 to D34 do not show the survey number. Tax receipts produced by the applicants in O.A. 143 of 2000 were found to be of no help to the applicants therein. Ultimately, relying on the judgment in the suits which are already made mention of, the Land CRP No.403/2004 & conn. cases. 7 Tribunal allowed O.A. 158 of 1999 and found that the applicants therein are in absolute possession and

enjoyment of 1.20 acres in Sy. No. 253/2 from 1096 M.E. onwards and directed to issue purchase certificate.

14. Respondents in O.A. 158 of 1999 filed A.A. 116 of 2003 and A.A. 119 of 203. The Appellate Authority, after elaborate consideration mainly on the basis of Ext.D16 plan held as follows: (i) Jenm right of plots D E F in Ext.D16 be assigned to applicants in O.A. 158 of 1999. (ii) 1.81.250 acres in Sy.No.252/2, 8 cents in Sy. No.253/3, 9 cents in Sy. No.253/4, 28 cents in Sy. No.253/5, 28 cents in Sy. No. 252/1, 11 cents in Sy. No. 252/2 and 22.630 cents in Sy. No. 255/2 were assigned to the applicants in O.A. 143/2000.

15. Aggrieved by the Appellate Authority's order, applicants have come up before this Court.

16. Shri. P.B. Krishnan, learned counsel appearing for the petitioners in C.R.P. Nos. 888 and 905 of CRP No.403/2004 & conn. cases. 8 2004 contended that the dispute is with regard to the property comprised in Sy. No. 253/2 only. Learned counsel pointed out that admittedly both Antho and Batho obtained properties on lease evidenced by the respective pattom chits in respect of the property comprised in Sy. No. 253/2 and lease deed by Antho is dated 10.6.1096 and it is contended that on a reading of the document would show that no paddy land was taken in by that document. What is mentioned in that document is only 'H_\" H_5Jm DaI_ Iy" Lm' containing 51 coconut trees and 12 areconut trees. The pattom is fixed at Rs.56/-. Learned counsel pointed out that significantly enough it is to be noticed that no paddy is measured as pattom. On the other hand, in the lease deed by which Batho got properties on lease, it is specifically mentioned that there is 'H_\".' Ext.P4 is the relevant document. According to the learned counsel, there is considerable evidence adduced by the legal heirs of Batho to show that pattom was paid and Food Grain Cultivation Register, i.e., Ext.P5, shows 2.48 = acres in Sy. No. 253/2 is CRP No.403/2004 & conn. cases. 9 shown to be in the possession of Batho. The paddy produce and Rent Receipt Register Exts. D6 and D8 would show that property comprised in Sy. No. 253/2 stands in the name of Batho. According to the learned counsel, neither Antho nor his successors-in-interest could say that they had cultivated paddy in the property comprised in Sy.

No. 253/2. Reliance was placed on Ext.P25 which is an award in land acquisition proceedings where 3.95 hectors in Sy. No.253/2 was acquired. Both Antho and Batho were given compensation. The contention is that going strictly by the terms of Ext.A2, in the pattom chit in favour of Antho, it could be seen that they had only 40 cents of property and he obtained no portion of the property comprised in Sy. No. 253/2. That being the position, the Appellate Authority was not justified in allotting plots D and E in the Commission report to Antho. Plots D, E and C ought to have been allotted to Batho.

17. Countering the above argument, Smt.Seemanthini, learned Senior Counsel, pointed out that CRP No.403/2004 & conn. cases. 10 there is no merit in the argument. Apart from opposing the contention of the learned counsel for the petitioners in the two Revision Petitions, learned Senior Counsel also raised a contention to justify the claim made in C.R.P. 403 of 2004 in respect of C plot. According to her, apart from plots D and E, C plot also be allotted to her.

18. Learned Senior Counsel referred to the judgment in O.S. 29 of 1977 and other connected suits. Emphasis was laid on the fact that that was a suit filed by Antho against Batho claiming exclusive possession over 1.20 acres of land in Sy. No. 253/2. The suit filed by Batho was dismissed and the other suits were decreed. The appellate court confirmed the same. Learned counsel went on to point out that even though in Second Appeal this Court referred to the finding of the trial court in O.S.29 of 1977 and granted a decree in O.S. 158 of 1977, the matter was taken up to the Apex Court which set aside the order of the High Court in Second Appeal and restored the judgment and decree of the trial court decreeing O.S. 29 of CRP No.403/2004 & conn. cases. 11 1977.

19. Learned Senior Counsel went on to point out that even though there is an observation by the Apex Court to consider the two O.As. filed by the respective parties jointly, in fact nothing remains to be considered in the light of the decision in O.S.29 of 1977 wherein it has been categorically held that Antho did take on lease 1.20 acres of land in Sy. No. 253/2 as per the lease deed of 1096 M.E. and he is in absolute possession and enjoyment of the same.

20. Even otherwise, according to the learned counsel, several documents have been produced to show that Antho has been cultivating the paddy field and hence the claim granted. A careful reading of the judgment in O.S.29 of 1977 would show that the claim in the said suit was with respect to 1.22 acres in Sy. No. 253/2 and the decision in the suit which was confirmed by the appellate court cannot be called annulled by the order of the Land Tribunal. CRP No.403/2004 & conn. cases. 12 21. There is much to be said on either side. Admittedly the lease in favour of Antho is prior in point of time. If 1.20 acres in Sy. No. 253/2 was already outstanding on lease with Antho, obviously that property could not have been the subject matter of lease to Batho and document executed by Batho is a subsequent deed.

22. The main thrust of the argument of the learned counsel for the revision petitioner in C.R.P. 888 of 2004 is that going by the recital in the lease deed of 1096 M.E. it could be seen that no paddy land is stated. It takes in only 'H_\" H_5Jm DaI_ Iy"Lm' and ':_y'. It also makes mention of 51 coconut trees and 12 areaconut trees. The pattom has to be paid in cash. The vehement contention on behalf of the revision petitioners in C.R.P. Nos. 888 of 2004 and 905 of 2004 is that there is absolutely no evidence to show that the respondents in those revision petitions have been taken a land for paddy cultivation or ever cultivated the property with paddy. CRP No.403/2004 & conn. cases. 13 23. Both sides have produced several documents in support of their respective cases. One cannot omit to note that in O.S. 29 of 1977 filed by Antho against Batho and others, the former asserted his possession over 1.20 acres in Sy. No.253/2. It may be noticed here that Antho claimed 1.20 acres only comprised in Sy. No. 253/2. Batho on the other hand claims much larger extent including a portion of the property in Sy. No. 253/2. The difficulty arises because of the absence of mention of the extent and survey number in the respective lease deeds.

24. The Land Tribunal was of the opinion that in view of the judgment and decree in O.S. 29 of 1977 as confirmed by the appellate court, nothing more remains to be determined and adopted the finding in O.S. 29 of 1977 and connected cases.

25. The Appellate Authority, on the other hand, took the view that if as a matter of fact, the matter was concluded by the judgment of the Apex Court, i.e., O.S. 29 of 1977 and connected cases, there was no necessity to CRP No.403/2004 & conn. cases. 14 direct O.A. 1810 of 1971 and 4308 of 1971 to be tried and disposed of jointly. Thereafter, the Appellate Authority went on to determine the issue and held as already noticed.

26. Even if in the patta chit executed by Antho it is mentioned that 'H_\" H_5Jm DaI_ Iy"Lm' and ':_y' and no 'H_\"' as such is not included, the legal heirs of Antho had produced several documents to show that they are in possession of 1.20 acres and they have repeatedly mortgaged the property. Objection is taken to these documents contending that most of them did not contain the extent of property mortgaged except the one in 1973. Anyhow, there is some evidence to show that at least at one point of time 1.20 acres of land was offered as security and it was accepted. If the contention of the petitioners in C.R.P. 888 of 2004 is to be accepted, it would mean that Antho is entitled to 40 and odd cents only and rest of the property in Sy. No. 253/2 belongs to Batho.

27. The Commissioner deputed in O.S.29 of 1977 has identified the respective properties. A perusal of CRP No.403/2004 & conn. cases. 15 the said document shows that the lease deed in favour of Antho took in paddy land also.

28. There are three suits filed in respect of the property. O.S. 29 of 1977 was filed by Antho who is the applicant in O.A. 158 of 1999 to set aside Ext.P15 certificate which is obtained by Batho behind the back of Antho. The defendants in O.S. 29 of 1977 instituted O.S. 129 of 1978 claiming absolute possession and right over 2.70 acres of land. Therein she set up an oral lease in respect of the property in Sy. No. 253/2.

29. After having gone through the documents and having heard counsel in these revisions, it is felt that there is little substance in the contention raised by the learned counsel for the revision petitioners in C.R.P. 888 and 905 of 2004 and that there is no considerable force in the contention raised by the learned Senior Counsel for the petitioners in C.R.P. 403 of 2004.

30. One cannot omit to note that the issue as to whether Antho had only 40 cents of land as per patta chit CRP No.403/2004 & conn. cases. 16 executed by him consisting of only 'H_\" H_5Jm DaI_ Iy" Lm' and ':_y' or whether it contains 'H_\"' also, total extent of 1.20 acres in Sy. No. 253/2 was directly and substantially in issue in O.S. 129 of 1978 that was filed by the legal heirs of Antho. It is also important to notice that Batho had instituted O.S.129 of 1978 regarding his claim over 2.70 acres of land. After taking evidence in the case and elaborate discussion of the evidence in the matter, the trial court came to the conclusion that Antho was in possession of 1.20 acres of land in Sy. No. 253/2 and he had been in absolute possession and enjoyment of the same. It was confirmed in appeal also. True, in second appeal, this Court allowed the appeal and another plea was turned down. However, on further appeal by the aggrieved party, the decree of the trial court was restored.

31. May be that the Apex Court directed the two O.As to be considered afresh. The Appellate Authority was in error in holding that going by the materials Antho had only 60 cents of property in Sy. No. 253/2. Nobody has a CRP No.403/2004 & conn. cases. 17 case that Antho had only 60 cents. The specific claim put forward by Batho is that Antho had only 40 cents of land. A reading of the order of the Appellate Authority does not appear to be very convincing. On the other hand, a reading of the judgment in O.S. 29 of 1977 and other connected cases, it can be seen that the trial court had discussed each and every item of evidence adduced by the parties and obtained a commission report and plan regarding the lie and nature of the property and thereafter came to the conclusion that Antho had obtained 1.20 acres of land in Sy. No. 253/2.

32. The petitioners in C.R.P. 888 and 905 of 2004 cannot now again raise the very same question which is covered by the decree in O.S. 29 of 1977 relying on the remand order passed by the Apex Court. They had assailed the judgment and decree in OS. 29 of 1977 and ultimately lost the chase. It is therefore clear that the finding that Antho had 1.20 acres of land in Sy. No. 253/2 had become final. CRP No.403/2004 & conn. cases. 18 33. The mere fact that before the Land Tribunal Antho or his legal heirs might have failed to prove that they had paid any pattom as paddy nor had they produced any evidence to show that they have cultivated

paddy in the property cannot be of much help to the petitioners in C.R.P. 888 and 905 of 2004 in the light of the judgment in O.S. 29 of 1977.

34. It is significant to notice that the finding in O.S. 29 of 1977 was confirmed in appeal filed by Batho and others. As long as the finding in O.S. 29 of 1977 stands, it is difficult to come to a different conclusion in the present case. The observation of the appellate authority that since the question of tenancy which might have been raised in O.S. 29 of 1977 was not referred to the Land Tribunal, the decision in O.S. 29 of 1977 can be kept aside cannot be countenanced.

35. First of all that is a case which nobody has. Further, even assuming that the trial court did not refer the matter to the Land Tribunal, it is by now well settled that if CRP No.403/2004 & conn. cases. 19 the appellate court considered the matter in its entirety and reaches a conclusion regarding tenancy, that would be binding on the party. For the above reasons, the order of the Appellate Authority is set aside and that of the Land Tribunal is restored resulting in C.R.P. 888 and 905 of 2004 being dismissed and C.R.P. 403 of 2004 being allowed. P. BHAVADASAN, JUDGE sb.

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