

Kesavan. Vs. Ayyappan.

Kesavan. Vs. Ayyappan.

SooperKanoon Citation : sooperkanoon.com/911949

Court : Kerala

Decided On : Nov-25-2010

Judge : M.N.Krishnan, J.

Acts : Kerala Land Reforms Act - Section 72(5), 105

Appeal No. : RFA.No. 652 of 2010

Appellant : Kesavan.

Respondent : Ayyappan.

Advocate for Def. : SRI.RAJESH SIVARAMANKUTTY, Adv.

Advocate for Pet/Ap. : SRI.ROY CHACKO, Adv.

Judgement :

1. This is an appeal preferred against the judgment and decree of the Subordinate Judges court, Palakkad in O.S.No.993/1995. Originally, the suit was one for a permanent injunction and ultimately it has now become a suit for recovery of possession on the strength of title with a prayer for damages. So the ultimate result of the suit will depend upon the success of the plaintiff in proving his title to the property on the date of the institution of the suit. The brief facts would reveal that the property was obtained by the predecessors in interest of the plaintiff namely Arumughan and Velan by virtue of a document in Ext.A1 of the year 1908. It is the case of the plaintiff that there was an oral partition between the two brothers and the plaint schedule was set apart to the share of Arumughan and by

virtue of succession and inheritance it has ultimately come into the hands of the plaintiff and therefore, the plaintiff is having right over the property. The defendant who is a neighbour is attempting trespass into the property and therefore, the suit has been filed to start with one for injunction and ultimately for recovery of possession on the strength of title.

2. The defendant would contend that it is not possible to identify the plaintiff schedule property properly with the descriptions and boundaries shown in the plaintiff schedule. According to him 39 cents of property had been taken lease by the defendant from the father of the plaintiff namely Vayapuri 35 years prior to the institution of the suit and thereafter by virtue of the provisions of the Kerala Land Reforms Act. Certificate of Purchase had been obtained from the Tribunal and therefore, he is the owner in possession of the property and so the plaintiff is not entitled to claim any recovery nor any damages. In the trial court Exts.A1 to A6 and B1 to B9 and X1 were marked. On analysis of the materials the trial court found against the plaintiff and dismissed the suit. It is against that decision the plaintiff has come up in appeal.

3. Heard the learned counsel for the appellant as well as the respondent. At the outset, I may like to state that in a suit for recovery of possession on the strength of it is the imperative duty of the plaintiff to prove his title and he cannot rely on the loopholes in the case of the defendant. Now let me consider about the identification of the property. The defendant in his written statement has specifically stated that he is not having any property as described by the plaintiff near the plaintiff schedule. He has no case that he is holding any other property of the plaintiff's family by virtue of any separate arrangement. The difficulty had arisen because; the plaintiff had incorporated in the schedule in the plaintiff which is the schedule to the 1908 document. The suit is filed after a period of 88 years and therefore, it is nothing but natural that the boundaries may not tally. But it has to be stated that the defendant is claiming right from the plaintiff's family by virtue of lease and he has no case that it is with respect to any other property. So it has to be understood that the property claimed by the plaintiff and defendant are one and the same the only rider to that the defendant is claiming tenancy right over the plaintiff schedule property under the father of the plaintiff.

4. Now the trial court found that Ext.B3 had been issued by a competent land tribunal which is a certificate of purchase.
5. Under Section 72K of the Kerala Land Reforms Act a Certificate of Purchase is a conclusive proof of tenancy. It is also a settled proposition that until and unless a personal notice is issued as contemplated under Section 72F(3) of the Kerala Land Reforms Act, such a Certificate of purchase will not be binding on the other side. The Hon'ble Supreme Court of India in the decision reported in 1979 KLT 601 Mather & Others v Taluk Land Board as held that Certificate of Purchase is a conclusive proof of tenancy unless it is proved that it is accurate face on the record. This Court had also held in very much decision that report filed by an authorised Officer under Section 105 of the Kerala Land Reforms Act is entitled to weight. Further it has to be held that in the decision reported in 1979 KLT 412 Velappan v Thomas, this Court held that when a Certificate of Purchase is vitiated by fraud it is a matter that can be looked by a Civil court. So the net result of the discussion is that unless a certificate of purchase is inaccurate on the record or is vitiated by fraud or there is the non service or personal notice on the landlord or intermediary as the case may be, it has to be treated conclusive document under the provisions of the Kerala Land Reforms Act. Now when this is the situation the trial court has called for the records from the Tribunal which is produced as Ext.X1. Before stating about Ext.X1 this Court has also to resolve the issue regarding the name of the father of the plaintiff. Plaintiff would contend that his father's name was Andu and not Vayapuri. Registered documents are produced wherein it is specifically stated and the plaintiff is described as the son of Vayapuri. So the contention that Vayapuri is not the father of the plaintiff cannot be accepted in this case. When Ext.X1 file is perused it is seen that an acknowledgment card containing the thump impression of Vayapuri is received by the Land Tribunal and further an authorised Officer when he inspected the property to enquire about the tenancy right Vayapuri was present before him.
6. So this will also amplify that notice has been served on Vayapuri personally otherwise there was no occasion to him to be present when the authorised Officer inspected the property. The learned counsel for the appellant would submit before me that plaintiff had taken his father also to Bombay where he was working and

therefore, the presence of the father was not possible as contended by the defendant. But the record kept with ordinary course of business is entitled to weight and which is supported by the law of presumption.

7. Therefore, Ext.B3 Certificate of Purchase stares at the face of the plaintiff regarding his present right over the property. When there is a certificate of purchase issued by a competent Tribunal by jurisdiction with the father of the plaintiff on the party array and as for reasons unknown as the plaintiff has failed to file any appeal before appellate authority or competent body Ext.B3 has become conclusive. Therefore, Ext.B3 will nullify the case of the plaintiff regarding title. Now regarding the payment of revenue it can be easily analysed that till 01-01-1970 the tenants were not entitled to pay the revenue and it was all paid by the intermediary or the landlord. Only by virtue of the provisions under Section 72 (5) of the Kerala Land Reforms Act, the authority started collecting land revenue from the tenants. So even if the payment of revenue for the period of 1959/60 is there it cannot be conclusive proof to show that the father of the plaintiff was really in possession of the property at that point of time.

8. On the other hand, there are no documents produced by the plaintiff to show that from 1970 he has paid tax of the property and therefore it also indicates that the defendants contention regarding the tenancy of the property has to be upheld. So from these materials, I hold that the plaintiff has not succeeded in proving his existing title over the property whereas the defendant has shown that he has become the tenant entitled to fixing of tenure and obtained a certificate of purchase issued by the Land Tribunal. It is also a well settled principle that the right of the landlord intermediary had vested in the Government on 01-01-1970 and the right of the persons are only to receive compensation as provided under the Kerala Land Reforms Act and nothing else. Therefore, I hold that the plaintiff is not entitled to any decree as prayed for and the judgment and decree of the trial court do not call for any interference. Therefore, the appeal is dismissed, but under the circumstances, without any order as to costs.