

B.S. Ibrahim Vs. Devaki Amma and Others

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Court : Kerala

Decided On : Jul-30-2012

Judge : K. Vinod Chandran

Appeal No. : WP(C).No. 24882 of 2010 (I)

Appellant : B.S. Ibrahim

Respondent : Devaki Amma and Others

Judgement :

K. Vinod Chandran, J

1. The petitioner in possession of 20 cents of property in Survey No. 269/2 of Kasaragod village challenges Ext.P7 order of the Land Tribunal, the sixth respondent. The petitioner's father was the tenant of the father of respondents 2 to 5 namely Aithu Ballal. The petitioner's father and landlord Aithu Ballal together filed an application before the Land Tribunal for assignment of 20 cents of property held by the petitioner's father as tenancy; in the name of the tenant. The application showed the survey number as Resurvey No. 274/5. The purchase certificate Ext.P1 was issued in the name of the petitioner's father showing the survey number as R.S.No.274/5. After the death of the petitioner's father the property devolved upon the petitioner and his brother. The petitioner purchased half share of the brother by Ext.P2 document. The original landlord is also no more.

2. Subsequently it was realised that the survey number shown in the purchase certificate was wrong and hence an application for correction was filed under Rule 136-A of the Kerala Land Reforms (Tenancy) Rules, 1970. On Ext.P3 application being filed the sixth respondent called for a report from the Village Officer, Kasaragod. The said report is produced as Ext.P5. In Ext.P5 report it is specifically noticed as below:

"There is no changes in the physical Boundary and boundary shown in the purchase certificate issued as per s.m.2706/75. Hence it is clear that only a clerical mistake while issuing purchase certificate. The Re survey number in the purchase certificate is wrongly shown as 274/5 instead of 269/2. Hence rectification is necessary in this case."

3. Notice was issued to the legal heirs and the Land Tribunal issued Ext.P7 order rejecting application made by the petitioner on the ground that the original application made by the petitioner's father and the landlord also showed the survey number of the land as R.S. 274/5 and hence the same is not a mistake committed by the Tribunal and could not come within the purview of Rule 136-A. It is evident that a mistake has been committed and the village officer after inspection based on the property and on the records available in the village office filed a report stating that the petitioner is in possession of 20 cents of land in survey No. 269/2 of the Kasaragod village, which is covered by Ext.P1 purchase certificate issued in proceedings S.M. 2706/75. He has also recommended that the obvious mistake may be corrected.

4. I am of the opinion that powers conferred under Rule 136-A could be invoked even in such matters where an obvious mistake has been committed. The mere fact that the mistake was committed by the original applicants themselves and that the application itself disclosed a mistaken survey number can not at all be treated as one not rectifiable invoking the powers under Rule 136-A. If the survey number noted in a purchase certificate is shown to be a mistake; from the records available with the village office, no matter who committed the mistake the Tribunal who issued the purchase certificate is competent to correct the same. On the strength of the discussion made above I set aside Ext.P7 and restore Ext.P3

application to the Land Tribunal. The petitioner shall produce a certified copy of this judgment before the Land Tribunal within two weeks. The Land Tribunal shall issue notice to the legal heirs of Aithu Ballal and complete the proceedings within a period of four months from the date of receipt of a copy of this judgment. The Land Tribunal on finding the mistake to be an obvious one, is directed to correct the same, notwithstanding that the mistake was one committed by the original applicants.

The writ petition is allowed.

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