A PATINHARE PURAYIL NABEESUMMA

v.

MINIYATAN ZACHARIAS AND ANOTHER

(Civil Appeal No. 1231 of 2007)

FEBRUARY 12, 2008

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[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Kerela Land Reforms Act, 1963 – ss. 13, 72, 72B and 72 K(2) – Certificate of assignment of right title and interest of C *landlord in favour of tenant – Grant of – Held: Land tribunal on reference made by civil court is required to arrive at a finding that the applicant was cultivating tenant u/s. 13 – On facts, land tribunal issued two certificates of assignment for the same land to appellant-tenant and respondent – Appellant proved* D *her title as also possession – Her husband was cultivating tenant in respect of the suit property – Certificate was granted in favour of tenant earlier and was not set aside on the ground of fraud or illegality, was conclusive even as against Land Tribunal – Thus, Land Tribunal did not have the jurisdiction to* E *issue second certificate – High Court on basis of the findings of tribunal could not have held that tenant was intermediatory and as such his estate also vested with respondent – Thus, order of High Court is unsustainable and set aside.*

Appellant's husband was in cultivating possession F **of five items of properties as a tenant under one J. He applied for the certificate of purchase and was granted the same by the Land Tribunal in 1976. Respondents were also granted certificate of purchase for the same land in 1977. Appellant then filed suit for permanent injunction** G **and for recovery of possession of the immovable properties in Schedule A and B of the plaint. The trial judge decreed the suit for all the items of the suit land, except item no 1 of Schedule B. The appellate court upheld the findings with regard to item no 1 in plaint B Schedule,**

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however set aside the finding with regard to item no 2 in the plaint B Schedule. The matter was remanded to the lower court for refering the matter to the land tribunal. The Land tribuna! opined that except the receipts and the purchase certificate, the appellant did not produce any other title deeds evidencing tenancy and the respondents though were in possession of the property but did not possess any valid title deeds evidencing tenancy, and thus, had no tenancy right over the said property. Trial court in view of the fact that the appellant was able to prove his possession by producing tax receipts from 1955 onwards; whereas the defendants were paying tax from 1977 onwards, held that the appellant had title to item No.2 in the B schedule property and was entitled to recover possession of the property from the respondent. The first appellate court upheld the order of the trial court. Respondents then filed second appeal. High Court held that as both the parties failed to prove their title over the property, the respondent being in prior possession over item No.2 of Schedule B of the suit property, the suit should have been dismissed to that extent. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. Section 72-B of the Kerela Land Reforms Act, 1963 empowers the Tribunal to entertain an application for assignment of the right, title and interest of the landlord in favour of the tenant on payment of a price to be determined in the manner envisaged thereunder. Therefore, jurisdiction of the Tribunal was restricted. Before arriving at a conclusion that the applicant was entitled to a certificate of assignment, a finding was required to be arrived at that he was a cultivating tenant within the meaning of Section 13 of the Act. The properties of the erstwhile landlord or intermediates having vested in the State, they were conferred a limited right, namely, the right to receive the

A sale proceeds. [Paras 25 and 26] [807-A, B, C, D]

2.1 In respect of four items of the properties, the plaintiff-appellant has been able to prove her title as also the possession. The fact that her husband was the cultivating tenant in respect of the suit property is not in B dispute. The tax receipts filed by her also go to show that the entire suit land was the subject matter of grant of tenancy by the landlord and if not from a date, tax has been paid by the appellant-plaintiff atleast from 1955 onwards. In view of Section 110 of the Evidence Act a C presumption can be raised in regard to possession both backward and forward. Once a certificate of assignment had been granted in favour of the husband of the appellant, no other certificate could have been issued unless a finding of fact was arrived at that the first certificate D was obtained by fraud. [Paras 24 and 27] [806-F, G, H; 807-A, D, E]

Hamza Haji vs. State of Kerala and Anr. 2006 (8) SCALE 75; *A.A. Gopalakrishnan vs. Cochin Devaswom Board and Ors.* 2007 (10) SCALE 572 – relied on.

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2.2 The Land Tribunal could not have, on the basis of a stray statement made by a co-villager, arrived at a finding that the defendant had been in possession. The said purported finding on the basis of a statement made before the Revenue Inspector could not have been acted F upon. In any event, the Civil Court was the final court of fact. Before it oral or documentary evidence had been adduced. It was not bound by the observations made by the Tribunal either in regard to title or possession of the property. The Tribunal moreover failed to consider that a G tenancy can be created orally upon delivery of possession and/or upon grant of rent receipt. Rent receipt indisputably evidences possession. What was relevant for the purpose of determination of the issue was who was in possession of the properties in question when H Section 72-B of the Act came into force. As the Tribunal

itself had issued two certificates, the jurisdiction to determine the right, title and interest as also possession of the suit properties was only with the Civil Courts. Therefore, it is not correct to contend that as on the basis of the purported report, the Tribunal had found possession over the plot in question. [Paras 28 and 29] [807-E, F; 808-A, B, C]

2.3 The approach of the High Court was not correct. The right to obtain a certificate of assignment is dependent upon one's right as a tenant in terms of s. 13 of the Act and not otherwise. The High Court could not have held that the appellant was an intermediatory and as such his estate had also vested with the respondents. No contention was raised by the appellant that the respondent was the sub-tenant of the appellant. The same was irrelevant. The High Court proceeded only on the basis of the findings of the Tribunal. It failed to notice that for all intent and purport the said findings was over turned by the Civil Court, wherefor it had the requisite jurisdiction. [Paras 30 and 31] [808-C, D, E]

2.4 A certificate issued under s. 72-K of the Act is conclusive. Once the same is found to be conclusive, the same cannot be refused to be taken into consideration for any purpose whatsoever. Therefore, the only issue which, should have been raised by the High Court was as to who was entitled thereto, keeping in view the fact that the Land Tribunal had granted certificates of assignment to both the parties. In view of the statutory scheme, both the parties could not have been given the certificates of assignment. The certificate in favour of the appellant, even otherwise, having been granted earlier and the same having not been set aside on the ground of fraud or illegality, it was conclusive even as against the Land Tribunal. Therefore, the Land Tribunal had no jurisdiction to issue a second certificate. [Para 32] [808-F, G, H; 809-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1231

A of 2008.

From the final Judgment and Order dated 25.01.2007 of the High Court of Kerala at Ernakulam in SA No. 643/1994.

T.V. George R. Marar and Vikram S. Mawari for the B Appellant.

H.V. Hameed, Ranjit K.C., Alex Thomas and K. Rajeev for the Respondents.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** 1. Leave granted.

2. Plaintiff in a suit for declaration of title and possession is before us, aggrieved by and dissatisfied with the judgment and decree dated 25th January, 2007 passed by a learned D Single Judge of the Kerala High Court in Second Appeal No. 643 of 1994, whereby and whereunder the judgment and order of the first appellate court dated 13th January, 1994 as also that of the trial court dated 27th February, 1993 respectively, decreeing the suit of the appellant, were set aside.

E 3. In this appeal we are concerned only with Item No.2 of the properties described in Schedule 'B' of the plaint, which reads as under :-

Schedule B

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Item No.	Revised Survey No.	Measurement	
1	90/7	21 cents	B
2	90/3	26 cents	A
3	90/8	13.5 cents	F

G

4. Husband of the appellant was an agriculturist. He was in cultivating possession of five items of properties as a tenant under one Jenmi Palkodan Kunhmina Ayissa. Appellant contended that her husband had been in possession of the suit H land from the date of settlement which took place in the year

1943; and in support thereof, Revenue Tax Receipts since 1955 were filed. A

5. The Legislature of the State of Kerala enacted Kerala Land Reforms Act, 1963 (the Act for short) with a view to enact a comprehensive legislation relating to land reforms in the State. B

6. Section 13 of the Act provides for rights of tenants for fixity of tenure in respect of the land holding. Section 27 of the Act provides for determination of a fair rent which a tenant is liable to pay to the landlord. Section 53 confers upon a cultivating tenant who is entitled to fixity of tenure, a right to purchase the C right, title, interest and ownership of the land by moving an application before the Land Tribunal constituted under the Act upon payment of purchase price as may be determined in the manner laid down under Section 55 thereof. Section 72 of the Act, which was inserted in the year 1969, provides for vesting D of the landlords' rights in the State as regards holdings held by cultivating tenants entitled to fixity of tenure and in respect of which certificate of purchase has not been issued under sub-section (2) of Section 59.

7. Whereas Section 72 provides for cultivating tenant's E right to assignment of the land which he had been holding, Section 72-F provides that where an application under Section 72-B is moved before the Land Tribunal, it upon issuing a notice to the landlord and other intermediaries, if any, may determine the quantum of compensation and purchase price payable F therefor.

8. A certificate of purchase issued by the Land Tribunal to the cultivating tenant under sub-clause (2) of Section 72-K is conclusive proof of assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over G the holding or portion thereof to which the assignment relates.

9. Indisputably the husband of the appellant applied for and has been granted a certificate of purchase by the Land Tribunal in the year 1976. H

A 10. Respondents also applied for and were granted such a certificate by the Land Tribunal of the same land in 1977. Two certificates, therefore, came to be issued in respect of the same land.

11. Inter alia on the premise that she may be dispossessed
B the appellant filed a suit for permanent injunction and for recovery of possession of the immovable properties described in Schedules A and B of the plaint. In their written statement, the defendants did not raise any contention with regard to the plots of land described in Schedule A of the plaint. However, the right,
C title and possession of the appellant in regard to the plots of land mentioned in Schedule B were questioned.

12. Several issues were framed by the learned trial Judge, the relevant one being Issue Nos.1, 2, 4 and 5, which read as
D under :-

"1. Whether the plaintiff is in possession of the plaint properties?

2. Whether the plaintiff is entitled to the injunction prayed
E for?

4 Whether the plaintiff has title to the plaint schedule property?

5. Whether the plaintiff is entitled to recovery of possession of any portion of the plaint schedule
F property?"

13. On 25th March, 1988 the learned trial Judge decreed the suit of the plaintiff appellant for all the items of the suit land, except for Item No.1 of Schedule B.

G 14. On appeals preferred by the appellant as well as the respondents, the learned Subordinate Judge, Thalassery, passed the following order on 18th December, 1990.

"10. In view of the foregoing discussions, I hold that the finding of the trial Court with regard to items 2 and 3 in the
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plaint A schedule is liable to be confirmed. So also the finding of the trial Court in favour to the plaintiff for recovery of possession of item No.3 in the plaint B schedule is also to be confirmed. The finding of the lower Court with regard to item No.1 in the plaint B schedule that the same belongs to the defendants is also to be confirmed. But, the finding on item No.2 in the plaint B schedule is liable to be set aside and the question of tenancy over this item (R.S. 90/3) has to be remanded to the lower court for referring the matter to the Land Tribunal for a fresh adjudication. The point is answered accordingly."

15. The learned Munsif, in view of the aforementioned, as also the two conflicting certificates, referred the matter to the Land Tribunal.

16. In its order dated 15th October, 1992, the Land Tribunal, in regard to the possession of the parties, opined :-

"Except the receipts referred to above and Ex.A2 purchase certificate, the plaintiff has not produced any other title deeds evidencing tenancy or of creation of tenancy in favour of plaintiff's predecessors by the land owner."

It was held :-

"The respondent did not produce any jenmam deed to prove conclusive that Shri Palakodan Moideen is the actual jenmi of the suit property.

The case is that the Ist respondent (defendant) does not possess any title deeds or valid documents evidencing tenancy except some land revenue receipts towards payment of assessment since the year 1976-77, the manuscript rent receipts available in the case records as Ex.B1 to B1(f) have not been proved and as such the receipts have no evidentiary value. The mere production of land tax receipts cannot be taken as a conclusive evidence to prove the title to the property. The 1st respondent (defendant) has no title deeds, whatsoever, to

establish creation of tenancy in his favour on or before 1.4.1964. But the 1st respondent has obtained purchase certificate in SM 6343/77 dt. 31.10.1977 (Ex.B3) by filing J form statement whereas the plaintiffs predecessor had obtained purchase certificate previously for the same property as per SM 6324/75 dated 7.6.76 by filing J form statement. It is evident that one of the purchase certificate has been obtained by fraud or collusion, but none of the aggrieved parties did not approach this tribunal for remedy under section 72MM (7) of the KLR Act.

On a consideration of the facts and circumstances of the case and the report of the authorized officer I am satisfied that the respondents (A party in SM 6343/77) is in possession of the property but he does not possess any valid title deeds evidencing tenancy. No valid records have been produced by the respondent (defendant) (A party in SM 6343/77) to establish creation of tenancy in his favour by the land owner on or before 1.4.1964. As a result, I hold that the respondents/defendant in OS 105/85 are having no tenancy right over the said property."

17. Before the trial court, the parties adduced oral as well as documentary evidence. Keeping in view the fact that the plaintiff has been able to prove his possession by producing tax receipts from 1955 onwards; whereas the defendants were paying tax from 1977 onwards, the learned trial Judge in his judgment dated 27th February, 1993 held :-

"On a proper appraisal of the evidence adduced in this case it may be safely concluded that the property comprised in R.S. No. 90/3 the predecessor in interest of the plaintiff, Bavu Valappil Mammad had title over these property. This right has been subsequently developed on the plaintiff. In the light of discussions made this court is satisfied that the plaintiff has title to item No.2 in the B schedule property and she is entitled to recover possession of the same as it is evident that the defendant is in

possession of the same."

As regards the contention of the defendants that they had acquired title by adverse possession, it was held that the same has not been proved.

18. The first appellate court, by its judgment dated 13th January, 1994, affirmed the said findings of the learned trial court holding that the purchase certificate was granted by the Tribunal upon service of notice upon Ayisumma, who was the original landlord. It was held :-

> "There is also no satisfactory or reliable evidence to prove that the appellants have been in possession of item No.2 of B schedule at any point of time. If realiy the first appellant had been in possession of the property eversince 1959 atleast he would have paid the assessment in respect of the plaint schedule property. But for the first time the assessment was paid by the respondent in 1974. This is just prior to the initiation of proceedings before the Land Tribunal. From the evidence available in this case I find that the Land Tribunal and the lower correct correctly came to the conclusion that the respondent is the tenant of the disputed property and item No.2 of B schedule belongs to her. So this point is answered in favour of the respondent."

Plea of the respondents in regard to his claim of adverse possession was also negated.

19. The High Court in the second appeal filed by the respondents framed the following substantial question of law :-

> "Whether the courts below were justified in holding that the plaintiff has title to be granted a decree for recovery of possession of B schedule item No.2 from the defendants, after the Land Tribunal had found that the plaintiff does not have valid title deeds evidencing tenancy?"

20. The High Court proceeded on the basis that as both the parties failed to prove their title over the property, the

A defendant-respondent being in prior possession over item No.2 of Schedule B of the suit property, the suit should have been dismissed to that extent.

21. Mr. T.V. George, learned counsel appearing on behalf of the appellant in support of the appeal would submit :-

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1) The High Court committed a serious error in interfering with the concurrent finding of fact arrived at by the courts below in regard to possession of the appellant.

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2) Keeping in view the underlying principle governing the Act, the fact that was required to be determined was whether respondent No.1, having failed to prove that he was a tenant within the meaning of Section 13 of the Act, could have been granted a certificate

D of assignment.

22. Mr. H.V. Hameed, learned counsel appearing on behalf of the first respondent, on the other hand, urged that the learned trial court as also the court of appeal proceeded to determine the issue only on the premise that the defendant being a sub-

E tenant under the plaintiff-appellant, the High Court cannot be said to have committed any error in applying the correct legal principle, namely that if the parties have not been able to prove their title, the respondent who was in prior possession, should be allowed to continue to do so.

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23. We have noticed hereinbefore the relevant provisions of the Act.

24. In respect of four items of the properties, the plaintiff-appellant has been able to prove her title as also the possession.

G The fact that her husband was the cultivating tenant in respect of the suit property is not in dispute. The tax receipts filed by her also go to show that the entire suit land was the subject matter of grant of tenancy by the landlord and if not from a date, tax has been paid by the appellant-plaintiff atleast from 1955 onwards.

H In view of Section 110 of the Indian Evidence Act a presumption

can be raised in regard possession both backward and forward.

25. Section 72 of the Act was inserted in the year 1969. If prior to coming into force of 1969 amendment Act, a tenant had purchased the right, title and interest of the landlord, the matter might have been different. Section 72-B of the Act empowers the Tribunal to entertain an application for assignment of the right, title and interest of the landlord in favour of the tenant on payment of a price to be determined in the manner envisaged thereunder.

26. The jurisdiction of the Tribunal, therefore, was restricted. Before arriving at a conclusion that the applicant was entitled to a certificate of assignment, a finding was required to be arrived at that he was a cultivating tenant within the meaning of Section 13 of the Act. The properties of the erstwhile landlord or intermediates having vested in the State, they were conferred a limited right, namely, the right to receive the sale proceeds.

27. Once a certificate of assignment had been granted in favour of the husband of the appellant, no other certificate could have been issued unless a finding of fact was arrived at that the first certificate was obtained by fraud as was the case in *Hamza Haji vs. State of Kerala and another* : 2006 (8) SCALE 75 and *A.A. Gopalakrishnan vs. Cochin Devaswom Board and others*: 2007 (10) SCALE 572.

28. The Land Tribunal on the reference made by a Civil Court was required to arrive at the conclusion one way or the other as to whether the plaintiff or the defendant was the cultivating tenant within the meaning of Section 13 of the Act. It could not have, on the basis of a stray statement made by a co-villager, arrived at a finding that the defendant had been in possession. The said purported finding on the basis of a statement made before the Revenue Inspector, CR, Payyannur could not have been acted upon.

29. In any event, the Civil Court was the final court of fact. Before it oral or documentary evidence had been adduced. It

A was not bound by the observations made by the Tribunal either in regard to title or possession of the property. The Tribunal moreover failed to consider that a tenancy can be created orally upon delivery of possession and/or upon grant of rent receipt. Rent receipt indisputably evidences possession. What was B relevant for the purpose of determination of the issue was who was in possession of the properties in question when Section 72-B of the Act came into force. As the Tribunal itself had issued two certificates, the jurisdiction to determine the right, title and interest as also possession of the suit properties was only with C the Civil Courts. It is, therefore, not correct to contend that as on the basis of the purported report, the Tribunal had found possession over the plot in question.

30. The approach of the High Court, with respect, was not correct. The right to obtain a certificate of assignment is D dependent upon one's right as a tenant in terms of Section 13 of the Act and not otherwise. The High Court could not have held that the appellant was an intermediatory and as such his estate had also vested with the respondents. No contention was raised by the appellant that the respondent was the sub-tenant E of the appellant. The same, in our opinion, was irrelevant.

31. The High Court proceeded only on the basis of the findings of the Tribunal. It failed to notice that for all intent and purport the said findings was over turned by the Civil Court, wherefor it had the requisite jurisdiction.

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32. A certificate issued under Section 72-K of the Act is conclusive. Once the same is found to be onclusive, the same cannot be refused to be taken into consideration for any purpose whatsoever. The only issue which, therefore, should have been G raised by the High Court was as to who was entitled thereto, keeping in view the fact that the Land Tribunal had granted certificates of assignment to both the parties. In view of the statutory scheme, both the parties could not have been given the certificates of assignment. The certificate in favour of the appellant, even otherwise, having been granted earlier and the

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same having not been set aside on the ground of fraud or illegality, it was conclusive even as against the Land Tribunal. The Land Tribunal, therefore, had no jurisdiction to issue a second certificate. A

33. For the reasons aforementioned the impugned judgment of the High Court is unsustainable which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs. B

N.J. Appeal allowed. C