
(1989) 10 KL CK 0068
In the High Court Of Kerala
Case No : E.M.F.A. 533 of 1989

Kurian Varghese

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 30-10-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 7, 7(4)

Citation : (1989) 2 KLJ 723

Hon'ble Judges : T.V Ramakrishnan, J; K. P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P. Ravinaran, for the Appellant;

Final Decision : Dismissed

Judgement

Radhakrishna Menon, J.—This appeal arises from I.A. 507/88, seeking review of the order dismissing O.A. 151 of 1977, under sub-section 4 of Section 7 of The Kerala Private Forests (Vesting and Assignment) Act, 1971, for short, The Vesting Act. The application aforesaid stands dismissed by the order under appeal. Sub-section 4 of Section 7 confers jurisdiction on the Tribunal to review any of its decisions, in the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein. The plain and unambiguous language employed in this sub-section would clearly indicate that the review contemplated thereunder is not the review which a defeated party can be had under Order 47 Rule 1 C.P.C. In order to attract the application of this Section, the applicant shall establish that there is, a mistake on the face of the record or there exists an arithmetical or clerical error in the order. It therefore follows, that in a case where the mistake is not apparent on the face of the record, no review under this sub-section is possible. To say that an order can be corrected on the ground of arithmetical or clerical error, it should be established that that is an error that was committed by the court or the office of the court. A mistake apparent on the face of the record must also be an obvious and patent mistake

and not something which can be established by a long drawn process of reasoning. To put it pithily the error must be an error apparent on the face of the record in that on the mere perusal of the records the mistake must be able to be detected. Not otherwise.

2. Coming to the facts of this case: We are of the view that the petition will not fall under this sub-section. We shall in this connection refer to the relevant grounds raised in the application:

". The petitioner is also now producing more documents found at a further search of the records and. which were not available when the case was tried earlier, to further fortify and prove that the subject matter property is a plantation on the appointed and relevant day. The Hon"ble Tribunal while passing the order, sought to be reviewed, has not appreciated the oral and documentary evidence in the case in a correct perspective. Material aspects of Law and facts did not catch the eye and attention of the Hon"ble Tribunal so much so an erroneous view was taken leading to an error of judgment and a wrong decision."

3., It is clear from these statements that the grounds urged at most enable the petitioner to challenge the order in appeal.

4. The petition from which this appeal arises is also one filed under Order 47 Rule 1 C.P.C. The grounds urged in this regard read:-

"The order of the Hon"ble Tribunal in the original application has to be reviewed in the light of the apparent errors in the earlier order discovered and production of new and important matter and materials bearing on the question and which have been produced now in O. A 150/77, the leading case, in which evidence, had been recorded and the 3 O. As. were disposed of under a common order. The order of the Hon"ble Tribunal required to be reviewed since the petitioner could not place all relevant information, data, documents and other particulars to prove his claims and contentions as the documents now produced could not be traced and produced before the disposal of the petition and were found out only just now."

These grounds ordinarily are grounds raised in a petition under Order 47 Rule 1 C, P. C. The petition therefore can be treated as one coming under Order 47 Rule 1 C.P.C. Admittedly this petition was filed out of time. There was no petition to condone the. delay. If that be the position, we are of the view that the application, provided the same is treated as one falling under Order 47 Rule 1 C. P. C, is barred by limitation. It should in this connection be remembered that an application under Order 47 Rule 1 is not maintainable since The Vesting Act contains a specific provision for review (Section 7(4)). The application under Order 47 Rule 1 therefore is not maintainable. That means no application for review of an order passed u/s 8 of The Vesting Act can be had except as provided for under sub-section 4 of Section 7. The court below therefore, in our view, has rightly rejected the application. "

The appeal fails. Accordingly the same is dismissed.