
(2012) 11 KL CK 0038
In the High Court Of Kerala
Case No : CRP. No. 234 of 2006

Mariyamma

APPELLANT

Vs

T.P. Bhargavi Amma and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 103, 72(F)5

Citation : (2012) 11 KL CK 0038

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Johnson Manayani, for the Appellant; V. Ramkumar Nambiar, R1 to R6 and Sri. P.S. Abdul Kareem Government Pleader R7, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The A party/claimant is before this Court challenging the order of the Appellate Authority, reversing the order passed by the Land Tribunal. Suo Motu proceedings were taken as S.M. No. 132/2001 in which the revision petitioner herein claimed tenancy of about 34 cents of property under one Sri. P.P. Krishnan Nambiar (B Party). The revision petitioner claimed that she was in possession of the said land under a tenancy on an oral lease by the land owner. B party appeared and contended that, there is no oral lease and that the husband of the revision petitioner was his employee. A1 to A10 were produced from the side of the claimant and it is seen from the order of the Land Tribunal that a lawyer notice was produced as Ext. B1 from the side of B party. The Land Tribunal having considered the issue, relying on the tax receipts produced from the side of A party, as also the report of the Authorized Officer, held that the revision petitioner is a cultivating tenant of the holding and ordered assignment u/s 72(F)5 of the Kerala Land Reforms Act, 1963. During the pendency of the proceedings the land owner had expired and his legal heirs were impleaded who are the respondents herein too. The legal heirs were in appeal before the Appellate Authority.

2. The Appellate Authority found that the Building tax receipts would not establish the claim of the alleged tenant and in any event land tax was paid by Krishnan Nambiar. It is submitted by the learned counsel for the revision petitioner that the payment of land tax by the land owner would not disentitle the claim of tenancy put up by the revision petitioner. Much reliance was placed on Ext. B1 lawyer notice dated 03/05/1979, which, the husband of the revision petitioner, was alleged to have instructed to be send on his behalf. The entire controversy in the Civil Revision Petition according to the learned counsel for the revision petitioner Sri. Johnson Manayani, is in the narrow compass of whether the said document Ext. B1 was marked before the Land Tribunal or not.

3. Though the records of the Land Tribunal were not available, the learned counsel for the petitioner has produced, across the bar, a certified copy of the deposition of the claimant who was examined as PW1 before the Land Tribunal. That would show that PW1 was specifically asked as to the existence of the notice, she denied it. She has not been confronted with the document. In such circumstances, the Land Tribunal could not have marked the document as Ext. B1 in the proceedings. I say this specifically because none was examined on the respondent side. PW1 having denied the existence of the lawyer notice, the proper procedure would have been to confront her with the document and then mark it subject to the objection, through the witness of the respondents. That obviously has not been done in the above case. It is also submitted by the learned counsel for the revision petitioner that even going by the recital in the notice, as is evidenced from the order of the Appellate Authority, it can safely be found that there was a lease in existence and the tenancy claim set up by the revision petitioner is quite valid under the provisions of the Kerala Land Reforms Act, 1963. However the learned counsel appearing for the respondents, Sri Ram Kumar Nambiar, cautions me as to the jurisdiction I am exercising u/s 103 of the Act. This Court u/s 103 is competent to examine as to whether the lower authorities have erroneously answered or failed to examine a question of law. The fact whether the document was marked and whether the recitals would lead to a conclusion of tenancy set up by the claimant is necessarily a question of fact which has to be looked into by the fact finding authorities. In such circumstances, this Court of the opinion that the specific issues raised by the learned counsel for the revision petitioner as also the learned counsel for the respondent, noticed above, has to be reconsidered by the Appellate Authority, after examining the records of the suo-motu proceedings. In such circumstances, this Court, is of the opinion that the impugned order of the Appellate Authority in A.A. No. 65/2002 dated 22/2/2006 is to be set aside and the matter remanded to the Appellate Authority for fresh consideration. The parties shall appear before the Appellate Authority on 15/11/2012. The Appellate Authority after affording an opportunity for hearing, within a period of one month, shall cause final orders to be passed within a period of two months thereafter. Needless to say that the possession of the revision petitioner shall not be disturbed till then, especially since, the revision petitioner has been enjoying an interim order staying dis-

possession in the Civil Revision Petition right from 2006 onwards.

The Civil Revision Petition hence is allowed by setting aside the impugned order, and the matter is remanded to the Appellate Authority.