

(2012) 08 KL CK 0037
In the High Court Of Kerala
Case No : CRP. No. 486 of 2007

Paramanandan, Raja Bicycle Shop

APPELLANT

Vs

Philip Ajoo and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Kerala Land Reforms Act, 1963 — Section 102, 103, 72

Citation : (2012) 08 KL CK 0037

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : M. Narendra Kumar, for the Appellant; K.S. Madhusoodanan Advocate, for the Respondent

Judgement

Honourable Mr. Justice, P. Bhavadasan

1. This revision filed u/s 103 of the Kerala Land Reforms Act, is directed against the order dated 2.3.2007 in A.A. No.52 of 2000 before the appellate authority, Alappuzha, whereby the said authority reversed the order in SM proceedings No.9/81 dated 6.11.81 of the Land Tribunal, Devikulam by which purchase certificate was directed to be issued to the respondent herein. It appears that SM proceedings were initiated in respect of the property involved in these proceedings by the Land Tribunal, Devikulam, showing the petitioner herein as the tenant and one James Philip as the owner of the property. Even though notice was issued to the land owner, he did not appear and contest the matter. Based on the evidence adduced by the cultivating tenant, the Land Tribunal, Devikulam, by its order dated 6.11.1981, ordered issuance of purchase certificate u/s 72 of the Kerala Land Reforms Act to the cultivating tenant. The respondent herein challenged the order of the Land Tribunal before the appellate authority in AA No.52/2000, which set aside the order of the Land Tribunal.

2. The case of the respondent before this court is that he had obtained assignment of the property under the Land Assignment Act in 1966 and

eversince then, he has been in absolute possession and enjoyment of the property. The father of the petitioner namely, Kanthaswamy was posted as a caretaker of the property and later, he left the employment. At a later point of time, when tax was sought to be paid, it was revealed that Thandaper was changed in the name of the petitioner herein. The respondent submitted before the appellate authority that fraud has been played and a fraudulent purchase certificate has been obtained by the petitioner. Therefore, he approached the appellate authority for necessary orders.

3. The appellate authority condoned the delay and by the impugned order, accepted the documents alleged to have been produced by the petitioner. The authority below came to the conclusion that the assignment in favour of the petitioner herein is fraudulent and therefore, set aside the said order. It was also held that the property belongs to the respondent.

4. Sri.M.Narendrakumar, learned counsel appearing for the petitioner before this court contended that the lower appellate authority is not justified in accepting the documents produced by the respondent, even without a petition to receive documents and also in having taken a decision without giving an opportunity to the petitioner herein to challenge the veracity of the documents produced by the respondent. Attention was drawn to Section 102 of the Kerala Land Reforms Act and it was pointed out that while disposing of the appeal, the appellate authority was bound to go by the provisions of the CPC. If that be so, the CRP 486/07 4 appellate authority could have received the documents only under Order XLI Rule 27 of the CPC. Apart from the fact that there is no such petition, it is pointed out that the documents on which now reliance is placed by the lower appellate authority are photostat copies and there is nothing to show that the original documents were either not available or that respondent has sought to get them produced by the authority concerned. In the absence of legal evidence, the appellate authority is not justified in relying on photostat copies of the documents. The procedure followed by the appellate authority cannot be countenanced in view of Section 102 of the Kerala Land Reforms Act.

5. Sri. K.S. Madhusoodanan, learned counsel appearing for the respondents before this court contended that the documents were produced as early as in 2007 and the petitioner had ample opportunity to check the veracity of the documents, but he did nothing in that regard. Now, he cannot be heard to say that he was not given an CRP 486/07 5 opportunity to assail the documents. The learned counsel drew attention of this court that in fact, a court certificate was obtained by the respondent herein from the appellate authority seeking to have the certified copies of the documents relied on by him issued by appropriate authority, but inspite of best efforts, those copies could not be obtained and it was under these circumstances that the photostat copies were happened to be produced. Attention was also drawn to the statement in the appellate order to the effect that "At any stage of the appeal, the respondent never questioned the validity of the documents produced by the appellant." Having not opposed the

admissibility of the documents, relying on the decision in *Anandan Nambiar v. Rajalakshmi* (1988(1) KLT 536), it was contended that the revision petitioner before this court cannot now contend that the documents ought not to have been admitted. It is pointed out that the suit filed by the petitioner for injunction was later withdrawn by him. Accordingly, it is contended CRP 486/07 6 that no grounds are made out to interfere with the order passed by the lower appellate authority.

6. After having given anxious consideration to the various aspects, it is found difficult to approve the finding of the lower appellate authority. As rightly contended by the learned counsel for the revision petitioner, Section 102 of the Kerala Land Reforms Act stipulates that in deciding appeals, the appellate authority shall exercise the powers of the court and follow the provisions of the CPC. On a perusal of the records, it is seen that there was no petition to receive the documents produced by the appellant before the appellate authority nor was there a petition requesting the court to accept photostat copies which are only secondary evidence. There was no attempt from the side of the respondent before this court to call for the records from the relevant office and no reasons are given as to why the originals were not produced. Apart from the above fact, it is not seen from the records that the documents are marked in evidence except CRP 486/07 7 for simply referring to the documents produced by the appellant. The question is one of admissibility of the documents and the petitioner before this court had no opportunity to oppose the admissibility of the documents. Therefore, the decision relied on by the learned counsel for the respondent may not have any application to the facts of the present case.

7. Apart from the above fact, it is to be noticed that the Land Tribunal, after following the procedure contemplated under the Kerala Land Reforms Act had decided the issue of purchase certificate from the petitioner before this court. There is nothing to indicate that the petitioner before this court was given an opportunity to challenge the veracity of the documents produced by the respondent before the authority below. It is true that a statement said to have been given by the father of the revision petitioner and various other documents were produced by the respondent before this court. It is significant that the respondent herein had noticed that the CRP 486/07 8 thandaper entry had been changed in the name of the respondent and he sought reversion of the same. There is nothing produced by the respondent herein to show that the petitioner before this court had notice of any of the proceedings by which respondent got assignment of the property. It is also significant to notice that the respondent's claim is that his father was a cultivating tenant of the property and after the death of his father, he continued to be the cultivating tenant. It is not discernible from the documents produced that who is the land owner under whom the respondent is claiming as a cultivating tenant. All these questions need to be probed into and the petitioner before this court ought to have been given an opportunity to show that the documents produced by the respondent before the lower appellate authority cannot be accepted. Apart from the fact that there was

no petition to receive the documents, no opportunity was given to the CRP 486/07 9 petitioner to challenge the veracity of the documents.

For the above reasons, this court is unable to sustain the impugned order and it is felt that the matter needs to be reconsidered by the appellate authority in accordance with law and in the light of what has been stated above. Accordingly, the impugned order is set aside and the matter is remanded to the lower appellate authority for fresh consideration of the matter after affording an opportunity to the petitioner to challenge the veracity of the documents produced by the respondent before this court. The respondent will be free to call for the relevant documents from the office concerned and if it is found that the documents are not available, the appellate authority may consider the admissibility of the photocopies of the documents in accordance with law. The parties shall appear before the lower appellate authority on 4.9.2012. The lower appellate authority shall dispose of the matter CRP 486/07 within six months from the date of appearance of parties before it.