

(1954) 01 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 22 of 1953

Revision Fr. Joseph Kuzhingalil

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 12-01-1954

Acts Referred:

Citation : (1954) 01 KL CK 0005

Hon'ble Judges : Subramania Iyer, J;Menon, J

Bench : Division Bench

Advocate : Manuel T. Paikeday, for the Appellant; Govt. Pleader for the State and T.R. Subramonia Iyer, M.U. Issae and P.H. Sankaranarayana Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Subramania Iyer, J.—This is an application presented by one Revision Fr. Joseph Kuzhingalil, residing at Christurajapuram, Marthandam praying the Court.

to call up the records of the proceedings in question connected with the 1st counter-Petitioner's order D. Dis. 6622/50/RD dated 23-10-1952, and issuing a writ in the nature of certiorari or other appropriate writ or writs, directions, or orders, quash the said proceedings and order, and also issue such consequential orders as may be deemed fit and expedient in the circumstances of the case.

The order impugned relates to an item of immovable property sold at a revenue sale in the year 1109 and purchased by one Sivaswami Nadar and (SIC) by him 3 years later in the year 1112 to the Petitioner. On 24-3-1950 as admitted in paragraph 12 of the affidavit sworn to by the Petitioner in support of the petition he conveyed the said property with possession to a convent under a registered document No. 1687/1950 of the Sub-Registry Office at Pattom. Paragraph 15 of the said affidavit proceeds to say that the title and the possession of the property in question vested in the convent under that deed of sale and before a second revision petition (sic) the order in which directing the registry of the property in

the name of the second Respondent is impugned in the petition.

The affidavit further proceeds to say that the order impugned throws a cloud upon the title of the convent which has to be cleared for which the petition is presented. The petition purports to be presented on behalf of the Petitioner and not on behalf of the convent or any other person.

In the counter-affidavits presented by the State as also by the second Respondent the "locus standi" of the Petitioner to maintain the petition was questioned. In answer to those counter affidavits what the Petitioner had to say in his affidavit in reply was merely that the Respondents admit that subsequent to the date of the original petition possession of the property in question was taken from the Petitioner and delivered to the second Respondent. The matter came before my learned brother sitting alone and the whole matter was argued including the question of the Petitioner's "locus standi". On 30-11-1953 my learned brother referred the original petition to a Division Bench.

2. On 8-12-1953, i.e., about a week after the order of reference to the Division Bench, the Petitioner filed a petition C.M.P. 321 of 1953 requesting that the persons representing the aforesaid convent should be made additional Petitioners in these proceedings. That application is contested on behalf of the Respondents.

3. It is clear law that no person not having a right can present an application for a writ except an application for a writ of "habeas corpus". A writ of the description asked for in this petition is one affecting immovable property and it is only a person who has an interest in the property that can sustain it. Reference may be made to - Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, ; - The State of Orissa Vs. Madan Gopal Rungta, ; - Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others, ; - "In re, Ramamoorthi", AIR 1953 Mad 94 (D).

This position could not be and has not been controverted by learned Counsel for the Petitioner. His attempt was merely to sustain the petition as originally filed on the ground that paragraph 15 of his affidavit read above does not say that the actual possession is not with the Petitioner. This is a position which surely we are not prepared to accept. The language of paragraph 15 is clear and there is no scope for any interpretation. If possession and title vest in the convent the contact that there might have been between the Petitioner and the property can be considered to be only custody which may loosely be called possession and that may account perhaps for the use of the expression in the counter-affidavit of the Respondents.

Whatever the Respondents might say the Petitioner must stand or fall upon what he has said in his own affidavit and even in the affidavit in reply that he has presented he does not attempt to amend the original affidavit or to give any explanation for having said so clearly in the first affidavit. If possession and title vest with the convent as is fully admitted in the affidavit of the Petitioner presented along with the petition there must be some other reason why the

Petitioner is interested in the property and no reason other than actual possession is even now attempted to be set up on behalf of the Petitioner and as regards that, as we have already said, we are not in a position to pay heed to the Petitioner when he says what he meant in paragraph 15 is not actual possession.

It is clear, therefore, that the Petitioner has no "locus standi" to maintain the original petition which is dismissed. As regards the application for impleading two members of the convent C.M.P. 321 of 1953 it must have the same fate as the original petition. The original petition is therefore, dismissed with costs, advocate's fee Rs. 100/- for each of the two Respondents.