
(2002) 06 KL CK 0032
In the High Court Of Kerala
Case No : C.R.P. No. 2039 of 1994

Sankaran

APPELLANT

Vs

Lakshmikutty

RESPONDENT

Date of Decision : 12-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Kerala Land Reforms Act, 1963 — Section 34

Citation : (2002) 2 KLJ 54

Hon'ble Judges : A. Lekshmikutty, J

Bench : Single Bench

Advocate : B.G. Bidan Chandran, for the Appellant; N.L. Krishnamoorthy and Renu D.P., Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A. Lekshmikutty, J.—Against the judgment in A.A. No. 64 of 1992 of the Appellate Authority (LR), Kozhikode this Civil Revision Petition is filed by the applicant. The original petitioner died and his legal representatives were impleaded as supplemental petitioners 2 to 5. Late Madathil Sankaran was the appellant in A.A. No. 64 of 1992 before the Appellate Authority (LR), Kozhikode. Original Application No. 326 of 1990 was filed by late Sankaran u/s 54 of the Kerala Land Reforms Act for assignment of the appurtenant land of the karaima as per Amended Act 16 of 1989; Late Sankaran was in possession of 1.1. cents of land in T.S. 1-37-1531 of Katchery Village as Karaima along with the appurtenant land having an extent of 14 cents. In respect of assignment 1.1. cents, there is no dispute. He filed the original application before the Land Tribunal claiming assignment of 14 cents of land held by him for the beneficial enjoyment of his Karaima under the Amended Act 16 of 1989. The predecessors of respondents 1 to 6 filed a counter contending inter alia that the petitioner is only entitled for assignment of 1.1. cents of land as karaima and he is not entitled for assignment of the appurtenant land as he had not pressed his claim in an earlier suo motu proceedings initiated by the Land Tribunal as S.M. 130/78

dated 12.12.1978. The Land Tribunal dismissed the application on the ground that it is hit by res judicata. Against the said order of the Land Tribunal late Sankaran preferred A.A. No. 64 of 1992 before the Appellate Authority (LR), Kozhikode. The Appellate Authority confirmed the order of the Land Tribunal and dismissed the appeal. Against the said judgment, this revision is filed by the appellant therein. During the pendency of this revision, the original petitioner died and his widow and children were impleaded as supplemental petitioners.

2. The question to be considered is whether there is any reason to set aside the judgment passed by the Appellate Authority. The original application was filed by late Sankaran for assignment of 14 cents of land which was appurtenant to the land having an extent of 1.1 cents which he held as Karaima in T.S. 1-37-1531 of Katchery Village. The contention of the respondents is that late Sankaran was entitled for assignment of 1.1 cents as karaima and he is not entitled for assignment of the appurtenant land. There was an earlier suo motu proceedings as S.M. 130/78 wherein late Sankaran had not pressed his claim in respect of the appurtenant land. So the claim is hit by res judicata. There is no dispute with regard to the fact that an earlier suo motu proceedings was initiated in respect of the property in dispute having an extent of 14 cents. With regard to 1.1 cents of land as karaima, there is no dispute. The only dispute is in respect of the appurtenant 14 cents which according to late Sankaran used for the beneficial enjoyment of the karaima right.

3. According to the learned counsel for the petitioners, the Land Tribunal as well as the Appellate Authority dismissed the application on the ground of res judicata. From the nature of the contention raised by respondents, it is seen that possession of late Sankaran was not disputed. So, the question to be considered is whether the present application is hit by Section 11 of the Code of Civil Procedure. The contention of the respondent is that in an earlier proceedings in S.M. 130/78 late Sankaran has abandoned his right and he did not press the said claim. So, he is not entitled for assignment of the said land. It is true that a suo motu proceedings S.M. 130/78 has been initiated in respect of the Karaima property along with the appurtenant land. Subsequently the claim over the appurtenant land was not pressed. As per the learned counsel, on the date of the endorsement late Sankaran had no right of assignment as per the Kerala Land Reforms Act. So, he did not press the claim in the earlier proceedings. But he has acquired the right as per the Amended Act 16 of 1989. So, there is no question of abandonment of right. Only an existing right can be abandoned. The respondents also have no case that on the date when Sankaran made the endorsement that he is not pressing the claim, he had no existing right for assignment of the appurtenant land. The right had accrued only after the Amended Act 16/1989. The Land Tribunal as well as the Appellate Authority found that the application is hit by res judicata. Admittedly, no issue was raised and decided in S.M. 130/78 in respect of the 14 cents of land claimed by the petitioners. At the time of the suo motu proceedings no right of assignment was accrued to him. So, the question of res judicata or constructive res judicata does

not arise. The Appellate Authority and the Land Tribunal were not correct in finding that the application is hit by res judicata. Only an existing right can be abandoned. So, the contention of the respondents that the predecessors of the petitioner abandoned their right over the appurtenant land cannot be accepted. In this circumstances, I set aside the judgment in A. A. No. 64 of 1992 of the Appellate Authority and the order of the Land Tribunal, Kozhikode in O.A. No. 326 of 1990 and remand the case before the Land Tribunal for fresh disposal in accordance with law. The Land Tribunal shall consider whether late Sankaran had got any right over the appurtenant land as per the Amended Act 16 of 1989 and whether the petitioners are entitled to assignment as claimed in O.A. 326 of 1990. The Land Tribunal shall give an opportunity to both parties to adduce evidence.

The Civil Revision Petition is allowed.