
(2014) 12 KL CK 0091

In the High Court Of Kerala

Case No : L.A. App. Nos. 772 of 2013 and 118 of 2014

Sreedharan Pillai

APPELLANT

Vs

Karthiyayini Amma Padmavathy Amma

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Land Acquisition Act, 1894 — Section 31(2) 9(3)

Citation : (2014) 12 KL CK 0091

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : Sakir K.H., Advocate for the Appellant; S. Sidhardhan, V.L. Shenoy, Advocates and R. Padmaraj, Government Pleader, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair, J.—Both these appeals are from the judgment in L.A.R. No. 33/1993 of Sub Court, Cherthala. It was a reference under Section 31(2) of the Land Acquisition Act. The appellant in L.A.A. No. 772/2013 is the B claimant and the appellant in L.A.A. No. 118/2014 is the F claimant.

2. Altogether, the claimants were arrayed as A, B and C and it is seen that the C claimant died pending the reference and additional parties, who are the sisters and brothers of deceased C claimant were impleaded.

3. We heard the learned counsel for the appellants in both the appeals and the learned counsel for the respondents.

4. The claimants A to L are allowed to realise Rs. 207437/- which has been deposited before the court, by the trial court. The land was acquired for the four laning of NH 47 from Aroor to Cherthala. The acquired land involved is 5.80 Ares in extent in Sy. No. 43/1 ABCDEFH of Aroor village. One Sri Chettiar Raman Pillai owned the land as per T.P. No. 387 of Aroor village. It was under the possession and enjoyment of Thoppil Karthiyayini Amma Padmavathy Amma Aroor Muri. She did not adduce any documentary evidence to prove the title when notice under

Section 9(3) of the Land Acquisition Act was issued. The award was passed therefore on 6.1.1993 ordering to deposit the compensation before the reference court.

5. As far as the judgment under appeal is concerned, in a nutshell, the court below was of the view that in the light of Exts. A1 to A4 judgments in a suit filed by the original C claimant, no right can be claimed by them. None of the other claimants can support their case. It is also seen from the judgment that, in paragraph 9 the learned counsel for the C claimant conceded that by virtue of Exts. A1 to A5 documents, he is not entitled to get any compensation on the acquired land. It was also submitted by the learned counsel for the C. claimant that he has no objection in releasing the compensation amount in favour of the B claimant. The court therefore proceeded to consider the right of the B claimant.

6. At the outset, the learned counsel for the A claimant submits that in the light of the facts recorded in paragraph 9 of the judgment, the appeal filed by the F claimant, L.A.A. No. 118/2014, who was claiming under C claimant cannot survive. The learned counsel for the appellants therein submitted that the appellants can maintain the said appeal on the merits of the matter.

7. As far as the claim of the B claimant is concerned, who is the appellant is L.A.A. No. 772/2013 he is claiming under an exchange deed No. 472/72 of Kuthiathodue SRO in respect of ten cents of property in Sy. No. 43/1 of Aroor village. The said exchange deed was executed between the original C claimant and the B claimant.

8. The A claimant contended that the said claimant alone is entitled to get compensation and other claimants B and C have no title of possession over the acquired land. At the time of acquisition of land, it was in the possession and enjoyment of A claimant as well as their brother Thoppil Aravindakshan Pillai. Even prior to the acquisition of the property, it was in the possession and enjoyment of the father of the A claimant Padmanabha Pillai under a Dhananichayadharam (settlement deed) dated 12/10/1094 ME. He died leaving behind five legal heirs. It is pointed out that neither the predecessor in interest of B and C claimants have got any right over the acquired land in the light of the said settlement deed. It is also submitted that in the light of the judgment in O.S. No. 275/1972 which was filed by the original C claimant which was decreed against them, all the contentions are barred by the principles of res judicata and estoppel.

9. Before the court below, the evidence adduced consisted of Exts. A1 to A5 on the side of the A claimant and P.W. 1 and P.W. 2 were examined and Exts. B1 to B8 on the side of the B claimant were marked. No evidence was adduced by the C claimant.

10. The suit O.S. No. 154/1974 (originally numbered as O.S. No. 275/1972) was filed by the C claimant Sri. Prabhakara Pillai seeking for declaration of title, recovery of possession and injunction. When the suit was dismissed, he filed

appeal as A.S. No. 616/1999 which was also dismissed by judgment dated 23.8.2007 by a learned Single Judge of this court. The matter was taken up before the Apex Court and the special leave petition was dismissed and the copy of the same has been produced as Ext. A4 order in SLP(C) No. 4144/2008. The entire claim of the B claimant depends upon the exchange deed. The property included in the schedule to the earlier suit O.S. No. 154/1974 is 1 acre 22.575 cents. There is no dispute that the property claimed as per the exchange deed is part of the said larger extent. Therefore as far as the B claimant is concerned, the entire issue rested upon the interpretation of the judgment of the Civil Court namely O.S. No. 154/1974 as confirmed by the judgment of this Court in A.S. No. 616/1999.

11. We find from the judgment of the reference court that the findings of this court in A.S. No. 616/1999 has been considered in every details. There was clear finding that the plaintiff has no possession of suit properties described in the plaint. It was held by the reference court therefore that in the light of Section 11 of CPC, all the contentions are barred by the principles of rest judicata. There is a finding while considering the claim of the B claimant that mutation of the properties has not been effected as per Ext. B1 exchange deed. After assessing the documentary and oral evidence and in the light of Exts. A1 to A4, Ext. C1 Commission Report and Ext. C1(a) plan, it was held that the claim of B claimant for 10 cents of property cannot be sustained.

12. Even though the learned counsel for the appellant submitted that the identity of the property has not been fully established, it is a case where the parties were before the Civil Court and they have suffered the judgment. Therefore at this distance of time, the said contention cannot help the B claimant. Even though the learned counsel for the appellant in L.A.A. No. 772/2013 submitted that the approach made by the court below is not correct, we cannot agree. In the earlier round of litigation, when the B claimant was claiming under C. claimant, every one of the contentions were considered and hence are barred by the principles of rest judicata. Hence, there is no merit in the said appeal.

13. As far as L.A.A. No. 118/2014 is concerned, in the light of the submission made at the Bar as recorded in paragraph 9 of the judgment, we cannot hear the appellant at all as regards the merits of the matter. The C claimant has conceded before the court below that they have no right as far as the present dispute is concerned. So there is no merit in that appeal also.

In the light of the above, both the appeals are dismissed. No costs.