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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

LA.APP. NO. 675 OF 2002

ARISING OUT OF THE JUDGMENT DATED 06.06.1996 IN LAR NO.33 OF 1994 OF II ADDITIONAL SUB COURT,THIRUVANANTHAPURAM

APPELLANT/CLAIMANT (E):

1 THOMAS CRUZ ANDRUZE : DIED
KONATHU VEEDU,PATTOM, TRIVANDRUM.

ADDL.R2

2 B.J.SELINE,
W/O.LATE THOMAS CRUZE ANDRUZE, PRESENTLY RESIDING JACOB VILA, T.C.3/560 (1),T.K.DIVAKARAN ROAD, PARAYIL DEVI TEMPLE LANE, MUTTADA P.O., THIRUVANANTHAPURAM.

ADDL.R3

3 MERCY,
JACOB VILLA,T.C.3/560 (1), T.K.DIVAKARAN ROAD, PARAYIL DEVI TEMPLE LANE, MUTTADA P.O., THIRUVANANTHAPURAM.

ADDL.R4

4 THRESIAMMA,
JACOB VILA,T.C.3/560 (1), T.K.DIVAKARAN ROAD, PARAYIL DEVI TEMPLE LANE, MUTTADA P.O., THIRUVANANTHAPURAM.

ADDL.R5

5 METTILDA,
JACOB VILA,T.C.3/560 (1), T.K.DIVAKARAN ROAD,

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PARAYIL DEVI TEMPLE LANE, MUTTADA P.O.,
THIRUVANANTHAPURAM.

LEGAL HEIRS OF THE DECEASED IST APPELLANT IS IMPLEADED AS ADDITIONAL APPELLANTS 2 TO 5 VIDE ORDER DATED 16.11.2017 IN I.A.NO.1269/2011 IN LAA NO.675/2002.

BY ADV B.S.SWATHI KUMAR

RESPONDENTS/CLAIMANT D:

1 THYVANI JAGATHAMMA
T.C 42/720, AJITHA BHAVAN,
MUTTATHARA, TRIVANDRUM.

2 STATE OF KERALA.

BY ADVS.
B.KRISHNA MANI
N.V.SANDHYA, R1
REKHA C.NAIR, SR.GOVERNMENT PLEADER, R2
DHANUJA M.S

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 02nd day of April, 2025

This Land Acquisition Appeal (Pauper) is filed challenging the judgment and decree dated 06.06.1996 in LAR No. 33 of 1994 of the II Additional Sub Court, Thiruvananthapuram.

2. The dispute relates to the disbursement of award amounts under a land acquisition award. Originally there were four claimants in the LAR. They were enumerated as claimants A to D. Apportionment made by the reference court to claimants A to C are not in dispute. The dispute and difference arose among claimants D and E. Both of them stake claim over the award amount of Rs.3,32,669.45 lying in deposit. Appellant was the claimant E/claimant No.5 (hereinafter referred to as “the appellant”) and respondents were the claimant D/claimant No.4 (hereinafter referred to as the 1st respondent) in the LAR and State.

3. Land having an extent of 4.05 Ares comprising Sy.No.2610/25-50 of Muttathara Village along with building therein was acquired for development of Thiruvananthapuram Airport. Since a dispute arose between the appellant and the respondent as to who

is entitled to receive the said amount, reference was made to decide on apportionment. Before the reference court, both sides tendered evidence. The appellant marked Ext.E1 and examined EW1 and EW2. The 1st respondent marked Exts.D1 to D6 and examined DW1 and DW2. Exts.X1 and X2 were also marked in the LAR. After due appreciation of evidence and hearing, the learned Sub Judge permitted the respondent to withdraw Rs.3,32,669.45 lying in deposit before the court less notice charges. The said judgment and decree is challenged by the appellant in this LAA.

4. The appellant passed away during pendency of the proceedings and his legal heirs were impleaded as additional appellants vide order dated 16.11.2017. I.A.No.2 of 2025 was filed by the additional appellants producing Annexure A1 document which is a true copy of the certificate dated 01.02.2025 issued by the Principal Sub Registrar, Thiruvananthapuram, stating that no documents concerning the property had been executed by the appellant/s in favour of anyone during the period 01.01.1964 to 31.12.1999.

5. **Contentions of the appellants in brief :**

- The Sub Court erred in its appreciation of evidence and law.

The judgment and decree are liable to be set aside.

- Ext.X2 produced by the Village Officer would reveal that 4.05 Ares of land had been assigned to the original appellant to compensate for the loss caused to him due to acquisition of certain other land in the same village. This crucial evidence points to which the title of the original appellant was brushed aside by the Sub Court.
- The original appellant had filed O.S.No.231 of 1967 before the Munsiff Court, Thiruvananthapuram, to evict the 1st respondent from the acquired properties. Though the same happened to be dismissed for default and was not restored or challenged in appeal, Order 9 Rule 9 of the CPC would be attracted as the disposal was not on merits.
- The appellant was in possession of tax receipt for 1967-68, which could not be produced earlier. The Sub Court had erroneously turned down the request to permit its production.
- The tax receipt produced by the 1st respondent ought not to have been accepted by the Sub Court as she had been remitting it on behalf of the original appellant.
- The 1st respondent's statements, when examined as DW1,

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were inconsistent and unreliable. The Sub Court ought not to have relied on them.

- In the written statement filed by the respondent in OS No. 231 of 1967, she did not claim that the land belonged to her. She had only stated that it did not exclusively belong to the original appellant and that her children, too, had a share therein along with the original appellant.
- There was no evidence that the ownership of the land had been transferred to the name of the 1st respondent.
- The Sub Court ought to have allowed the appellant's plea to summon the Tahsildar with all revenue records, which would have exposed the falsity of the respondent's claim. The Sub Court erred in declining this plea.
- Relying on Annexure A1 certificate dated 01.02.2025 issued by the Principal Sub Registrar, Thiruvananthapuram, it is contended that since no documents had been executed by the appellant/s in favour of anyone during the period 01.01.1964 to 31.12.1999, the respondent cannot claim to have obtained any title over the property. The documents relied on by her are thus unreliable in law and confer no title upon her.

- The judgment and decree impugned is thus unsustainable in law and fit to be set aside.
- The LAR ought to be remanded for fresh consideration after the additional appellants afforded the opportunity to adduce further evidence.
- *Res judicata* will not be attracted by the dismissal in default of O.S.No.231 of 1967. Reliance is placed on the dictum laid down by this Court in **Manakkal Nandakumar v. Subramanyan M and others** [2017 KHC 2719].
- The documents Exts.X1 and X2 relied on by the respondent have no sanctity in the eye of the law. It is a trite law that the Tahsildar has no power to examine issues of title and validity of documents. Reliance is placed on the dictum laid down by this Court in **Santhosh Jacob v. Tahsildar Muvattupuzha Taluk** [2024 (2) KHC 665].
- Reliance is placed on the dictum of the Hon'ble Supreme Court in **Union of India v. Moksh Builders and Financiers Ltd. and others** [1977 KHC 409], wherein it had been held that an admission is substantive evidence of fact admitted and the admission duly proved is admissible evidence irrespective

of whether the party making them appeared in the witness box or not and whether the party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. It is thus contended that the admission in the written statement filed by the respondent in O.S.No.231 of 1967 before the Munsiff Court, Thiruvananthapuram, is binding and relevant. This aspect was overlooked by the Sub Court while rendering the impugned judgment.

- In the context of Annexure A1 document produced, reliance is placed on the dictum laid down in **Synudheen v State of Kerala** [2013(1) KHC 437] and it is contended that mutations carried out in favour of the respondent have no value in the eye of the law as regards the question of titular rights over the property. The admission in the Written statement has now been corroborated by Annexure A1 and hence the judgment of the Sub Court impugned in this LAA is fit to be set aside.

6. **Contentions of the 1st respondent in brief :**

- The contentions put forth by the appellant/s are not legally sustainable. The judgment and decree of the Sub Court do

not call for any interference. LAA is only a chance litigation devoid of any bona fides.

- The Sub Court, based on the evidence tendered, including the records produced by the Village Officer, validly concluded that, based on a *pokkuvaravu* case, the patta of the property bearing No.1001/1 had been transferred in favour of the 1st respondent. The property had thus been included in the respondent's *thandapper* account.
- Exts.D1 and D2 documents clearly revealed that the respondent had been paying tax interest of the acquired property from 1979 onwards.
- The appellant/s had not produced even a single tax receipt to substantiate their claim regarding title and ownership. The contention now put forth that appellants are ready to produce the same, if afforded an opportunity, is bald and devoid of any bona fides. The objective is only to further protract the matter.
- Assessment registers for the years 1972-73, 1978-79, 1988-89, and 1993-94, copies of which had been produced, clearly evidence that the 1st respondent is the owner of the property.
- The 1st respondent produced Ext.D5, tax receipt for the

building situated in the property, revealing that she is its owner. She also produced Ext.D7, which revealed that the Municipal Corporation had issued permission to the respondent to construct the building in the said property.

- The court correctly concluded that there was no evidence to substantiate the appellant's claim that he had constructed a hut on the acquired property.
- Though the original appellant had contended that the building in the acquired property had been rented out to the respondent, this claim was not substantiated by any documents.
- O.S.No.231 of 1967 before the Munsiff Court, Thiruvananthapuram, had been filed by the original appellant seeking eviction of the respondent and claiming recovery of possession on the strength of title. In the said suit, the contention of the original appellant was not that the premises had been rented out to the respondent. On the other hand, it had been contended therein that the respondent had encroached into the said property. The said suit had been dismissed for non-prosecution. No restoration, no appeal had

been filed by the original appellant therein.

- The Sub Court rightly concluded that the original appellant, who was the plaintiff in OS No.231 of 1967, was precluded from filing a fresh suit on the same cause of action.
- The Sub Court had rightly concluded that the purported admission in the written statement filed by the respondent in O.S.No.231 of 1967 does not confer any title on the appellant/s. The title to the property has to be proved by producing documents. No such documents have been produced by the appellant/s. Patta had been transferred to the respondent after the filing of the written statement in O.S.No.231 of 1967.
- The only document relied on by the appellant/s is Ext.E1 written statement, which is strikingly inadequate to prove the title.
- The documents produced by the 1st respondent clearly revealed that the title to the property was vested in the respondent. The finding of the Sub Court to this effect is valid and remains uncontradicted.
- Annexure A1 certificate dated 01.02.2025 issued by the

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Principal Sub Registrar Thiruvananthapuram now produced after decades does not prove any title on the original appellant. The purported absence of conveyance documents during the period 01.01.1964 to 31.12.1999 does not confer title. The title has to be independently proved and established. Annexure A1 does not invalidate the documents produced by the respondent which were relied on by the Sub Court to render the impugned judgment. Documents relied on by the 1st respondent continue to be reliable and Annexure A1 does not even cast a shadow of doubt on said documents.

7. **Discussion and analysis :**

I have heard both sides in detail and have perused the records. The bone of contention between the parties relates to the title over the acquired property and the right to claim the compensation amounts lying in deposit. The Sub Court is seen to have elaborately considered the evidence on record. The appellant/s had only produced a single document Ext.E1 which is the copy of a written statement filed by the respondent in a suit of the year 1969. The contention put forth based on Ext.E1 is that the admission therein that the property is jointly owned with the appellant, binds the



1st respondent and negates the stance taken by her based on Exts.D1 to D6. Even in this LA.Appeal the attempt made by the appellant/s is to bolster the said contention by producing Annexure A1 which, according to the appellant/s, when read along with the admission in Ext.E1 would evidence that the respondent had made an admission regarding the joint ownership of the original appellant over the property. On this point, I find legal merit in the observation of the learned Sub Judge that title to a property has to be independently proved and established by producing legally reliable documents. Even though a faint contention had been put forth by the appellant that he is in possession of the tax receipts and is ready to produce the same, it is noted that no documents other than Annexure A1 had been produced, to substantiate the title claimed by the appellant/s. The same buttresses the contention of the respondent that the claim of being in possession of additional documents is merely a charade and devoid of any bonafides. Nothing has been brought to my notice to term the appreciation of Exts.D1 to D6 by the learned Sub Judge as erroneous. They are found to be legally reliable documents which clearly substantiate the claims put forth by the respondent regarding her title. The reliance

placed by the learned Judge on Exts.X1 and X2 also cannot be termed as faulty. The said documents are produced from the legal custody and possession of the concerned officials and are found reliable. There has been a total absence of any effort on the part of the appellant/s to prove title. The contentions put forth based on the purported admission by the respondent in a written statement and the mere absence of any document to prove that he had executed any conveyance transferring the property to the respondent during the periods 01.01.1964 to 31.12.1999 as sought to be proved by the production of Annexure A1 document are not substitutes for positively proving the title that appellant/s claims over the acquired property. Ext.D6 which is termed a *'Thandapper kanakku'* read along with tax receipts from 1979 onwards to 1990 substantiates the claim of the respondent. Ext.D4 judgment and Exts.X1 and X2 add on to the evidence in favour of the title of the respondent. Even assuming that there is merit in the reliance placed on the dictum in ***Manakkal Nandakumar*** (supra), the same by itself is incapable of winning this appeal for the appellant/s. Further Exts.X1 and X2 documents relied on by the respondent remain unchallenged. The purported reliance on the dictum in ***Santhosh Jacob*** (supra) that revenue officials

cannot confer title does not plug the total lack of evidence regarding the existence of or vesting of title upon the appellant/s. The dictum in ***Moksh Builders and Financiers*** (supra) that the admission duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not, is a totally inadequate substitute for evidence regarding title. Though it is trite as laid down in ***Synudheen*** (supra) that mutations carried out in favour of a party have no value in the eye of law as regards the question of titular rights over the property, the same are not the sole reliance placed by the 1st respondent and are seen produced only to buttress the claim put forth.

Conclusion:

In view of the above, there are no valid reasons to interfere with the judgment and decree dated 06.06.1996 in LAR No.33 of 1994 of the IInd Additional Sub Court, Thiruvananthapuram. LAA No.675 of 2002 is dismissed. All interlocutory applications filed in the LAA stand closed.

Sd/-

SYAM KUMAR V.M.
JUDGE

csl

APPENDIX OF LA.APP. 675/2002

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE CERTIFICATE NO. 1141/2024 DATED 1-2-2025 ISSUED BY SUB REGISTRAR OFFICE, THIRUVANANTHAPURAM.**