[2025] 5 S.C.R. 1007 : 2025 INSC 771

Peter Augustine
v.
K.V. Xavier and Others

(Civil Appeal No. 7160 of 2024)

23 May 2025

[B.R. Gavai, CJI* and Augustine George Masih, J.]

Issue for Consideration

Issue arose whether High Court was justified in remitting the matter back to the trial court on the second occasion, for *de-novo* disposal.

Headnotes†

Remand – Remand by High Court – Property dispute between the parties – High Court remitting the matter to the trial court on the second occasion for *de-novo* disposal – Correctness:

Held: High Court remitted the matter back to the trial court only on the ground that there was no proper identification of the subject land by the Court Commissioner – Appeal could have been very well decided on the basis of the interpretation of sale deed, conveyance deed and settlement deed since the area of the property as well as the borders and boundaries shown were the same in all the said documents – When the matter could have been decided on the interpretation of the said three documents, again remitting the matter only for the appointment of another Court Commissioner would further delay the proceedings between the parties which have been pending for more than 14 years – High Court itself could have appointed the Court Commissioner and called for the report – High Court erred in remitting the matter on the second occasion – High Court to decide the appeal expeditiously. [Paras 8, 13-15]

List of Keywords

Remand; Sale deed; Conveyance deed; Court Commissioner; Remitting matter on second occasion; Further delay of proceedings; Remitting the matter back to the trial court for *de-novo* disposal; Property dispute; Proper identification of the land by Court Commissioner; Interpretation of sale deed, conveyance deed and settlement deed; Matter pending for more than 14 years.

* Author

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7160 of 2025

From the Judgment and Order dated 09.01.2024 of the High Court of Kerala at Ernakulam in RFA No. 42 of 2018

Appearances for Parties

Advs. for the Appellant:
Dama Seshadri Naidu, Sr. Adv., Tomy Chacko, Ms. Lakshmi Kg, Ms. Tualia Rehman, Ashish Jacob Mathew, Shubhankar Sharma.

Advs. for the Respondents:
Manoj V George, Ms. Shilpa Liza George, Bibhu Dutta Das, Nasib Masih, Azeem Samuel, Ms. Brinda, Ms. Antra Srivastava, Raja Ramalingam Sethupathi R.

Judgment / Order of the Supreme Court

Judgment

B.R. Gavai, CJI

1. Leave granted.

2. The present appeal challenges the judgment and final order dated 9th January 2024 passed by the High Court of Kerala at Ernakulam[1] in R.F.A. No.42 of 2018 whereby the learned Single Judge of the High Court set aside the judgment of the Principal Sub Court, Ernakulam[2], allowing the appeal filed by the respondents and remanding the matter back to the Trial Court for *de-novo* disposal.

3. The facts, *in brief*, giving rise to the present appeal are as under:

   3.1 On 8th February 1955, father of the appellant executed a sale deed being Sale Deed No.122/1955[3] for a consideration of Rs.500/-, conveying the "*Verumpattom Rights*" over 9 cents of land in Survey No.1236 in Poomthura Village, Ernakulam, pertaining to Kallor Mana in favour of the father of the respondents.

1 Hereinafter referred to as, "High Court".

2 Hereinafter referred to as, "Trial Court".

3 Hereinafter referred to as, "sale deed".

3.2 Subsequently, on 13th February 1964, father of the appellant executed a conveyance deed being Conveyance Deed No.185/1964[4] for a consideration of Rs.100/-, transferring the "*Jenmam Rights*" over 9 cents of land in Survey No.1250 in Poomthura Village, Ernakulam[5] in favour of the father of the respondents.

3.3 In the year 1993, it appears that several partition and settlement deeds were executed in respect of the subject land in favour of the appellant thereby devolving the interest of the subject land upon the appellant.

3.4 In the meantime, on 22nd March 1994, the father of the respondents executed a settlement deed being Settlement Deed No.1560/1994[6] in favour of respondent No.1 over the land obtained under Sale Deed No.122/1955 and Conveyance Deed No.185/1964.

3.5 In order to resolve the dispute over the subject land, the respondents herein filed a suit being O.S. No.246 of 2011 before the Trial Court seeking declaration of title, fixation of boundary and injunction *vis-à-vis* the subject land against the appellant. The Trial Court *vide* order dated 31st October 2017 dismissed the suit.

3.6 Aggrieved thereby, the respondents filed an appeal being R.F.A. No.42 of 2018 before the High Court wherein *vide* order dated 5th July 2021, the High Court allowed the appeal of the respondents and remanded the matter back to the Trial Court for reconsideration of evidence.

3.7 Discontented by the order passed by the High Court, the appellant approached this Court by way of a special leave petition being SLP (C) No. 13602 of 2021 wherein this Court *vide* order dated 10th April 2023, granted leave and held that the approach of the High Court in passing the remand order was totally erroneous since it lacked necessary reasoning. Therefore,

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4 Hereinafter referred to as, "conveyance deed".

5 Hereinafter referred to as, "subject land".

6 Hereinafter referred to as, "settlement deed".

this Court set aside the order of the High Court dated 5th July 2021 and remitted the matter back to the High Court directing to decide the matter afresh.

3.8 Ultimately, by way of the impugned judgment and final order dated 9th January 2024, the High Court allowed the appeal filed by the respondents and once again remanded the suit back to the Trial Court for *de-novo* disposal. Further, the High Court afforded an opportunity to the parties to adduce further evidence.

4. Being aggrieved thereby, the present special leave petition was filed by the appellant wherein notice was issued by this Court *vide* order dated 8th April 2024. By the same order, this Court directed the parties to maintain *status quo*.

5. We have heard Shri Dama Seshadri Naidu, learned Senior Counsel appearing on behalf of the appellant as well as Shri Manoj V. George, learned counsel appearing on behalf of the respondents.

6. Shri Naidu, learned Senior Counsel appearing on behalf of the appellant submits that the learned Single Judge of the High Court has grossly erred in again remitting the matter back to the Trial Court. He submits that the borders and boundaries described in both the sale deed and the conveyance deed would reveal that the property is one and the same. He further submits that the conveyance deed was required to be executed after the sale deed to transfer the "*Jenmam Rights"* vested with the father of the appellant to the father of the respondents. He submits that in any case, the settlement deed is very clear which would show that the property is one and the same i.e., pertaining to survey no.1236 and not survey no.1250.

7. *Per Contra*, Shri George, learned counsel appearing for the respondents, submits that since the earlier report of the Court Commissioner was not clear, the learned Single Judge of the High Court has rightly remitted the matter back to the Trial Court for appointment of another Court Commissioner in order to decide the matter on merits, after getting their reports.

8. A perusal of the impugned judgment and final order would reveal that the learned Single Judge of the High Court has remitted the matter back to the Trial Court only on the ground that there has been no proper identification of the subject land by the Court Commissioner. The High Court observed that unless such an identification was made,

it could not be said that the subject land was properly identified. In this regard, it will be relevant to refer to the following observations of the learned Single Bench of the High Court:

> "18. **As noticed earlier, the boundary description on all the four sides of the property included in Exts. A1, A8, A9 and B6 are one and the same. Since there is discrepancy in the survey number, and the boundary description on all the four sides in Exts. A1, A8, A9 and B6 being one and the same, an identification based on boundaries would clinch the issue.** Admittedly there has been no identification by the commissioner. Unless such identification is made, it cannot be said that the plaint schedule property has been properly identified. Point No.2 is answered as above"
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> [emphasis supplied]

9. It can thus be seen that the learned Single Judge of the High Court himself has observed that the boundary description on all the four sides of the property included in Exhibits A1[7], A8[8], A9[9] and B6[10] are one and the same. However, the learned Single Judge of the High Court observed that there was discrepancy in the survey number and therefore identification based on boundaries would clinch the issue.

10. In the present appeal, the only issue that will have to be considered is as to whether the learned Single Judge of the High Court was justified in again remitting the matter back to the Trial Court for *de-novo* disposal.

11. It is clear from the record that in the sale deed, the area of the property shown was 9 cents. The boundaries of all the four sides of the property were also clearly recorded and the survey number mentioned therein was 1236. As already discussed hereinabove, after the appellant's father acquired "*Jenmam Rights"*, the conveyance deed was executed in order to transfer the said rights in favour of the father of the respondents. In the said conveyance deed, though

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7 Original deed dated 13.02.1964.

8 Original deed dated 05.02.1955.

9 Original deed dated 05.02.1955.

10 Original deed dated 17.09.1963.

the borders and boundaries were the same and though the area mentioned was also of 9 cents, survey number mentioned therein was 1250. However, this position is clarified by the settlement deed which is executed by the father of the respondents on 22nd March 1994 in favour of Respondent No.1. It will also be relevant to refer to the following recital in the said settlement deed:

> "The birth right of the property which I am giving to you is as per document No.185/64 dated 13.02.1964 and the Survey number is mentioned in the document as 1250 but then as per Sale Deed No.122/55 dated 08.02.1955, as per Thandaper number 276, and Village certificate dated 25.10.1990, **the property which I am giving to you is included in Survey No.1236**."
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> [emphasis supplied]

12. Perusal of the aforesaid would reveal that the Conveyance Deed No. 185/64 dated 13th February 1964 was executed by the father of the appellant in favour of the father of the respondents and the survey number mentioned therein was 1250. However, in the Sale Deed No.122/1955 dated 8th February 1955, the property was included in survey number 1236. It is relevant to note that in the said Settlement Deed also, the survey number written was 1236.

13. In that view of the matter, we find that the appeal could have been very well decided on the basis of the interpretation of the three documents (*being the sale deed, the conveyance deed and the settlement deed*) since the area of the property as well as the borders and boundaries shown were the same in all the said documents. When the matter could have been decided on the interpretation of the said three documents, again remitting the matter only for the appointment of another Court Commissioner would further delay the proceedings between the parties which have been pending for more than 14 years.

14. In any case, if the learned Single Judge of the High Court was of the view that a Court Commissioner's report would have assisted in deciding the appeal, the learned Single Judge of the High Court himself could have appointed the Court Commissioner and called for the report. Even then, in view of the aforesaid discussion, the same was not necessary.

15. We are thus of the considered view that the learned Single Judge of the High Court has erred in remitting the matter on the second occasion and as a consequence, the present appeal deserves to be allowed.

16. In the result, we pass the following order:

    i. The present appeal is allowed; and

    ii. The learned Single Judge of the High Court is requested to decide the appeal on its own merits in accordance with law and in the light of the aforesaid observations as expeditiously as possible and in any case, within a period of 6 months from the date of this judgment.

17. Pending application(s), if any, shall stand disposed of. No costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain