

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. ANIL KUMAR

MONDAY, THE 9TH DAY OF AUGUST 2021 / 18TH SRAVANA, 1943

RSA NO. 79 OF 2020

Against the judgment and decree dated 27.8.2019 in A.S.No.62/2018 on the file of the Additional District Court, N.Paravur arising out of the judgment and decree dated 27.9.2018 in O.S.No.437/2013 on the file of the Munsiff's Court, Aluva

APPELLANT/RESPONDENT/PLAINTIFF:

LIGY PAUL,
AGED 59 YEARS,
(SHOWN AS LIJI PAUL IN THE IMPUGNED JUDGMENTS)
D/O A.T.POULOSE, ALIYATTUKUDY HOUSE,
CHORAMUDY KARA, KOMBANADU VILLAGE, KUNNATHUNAD
TALUK AND W/O. DR. GEORGE JOHN, CHELAPARAMBATH
HOUSE, EDAYAR KARA, EDAYAR VILLAGE,
KOOTHATTUKULAM TALUK, REP.BY THE POWER OF
ATTORNEY HOLDER, DR. THOMAS ALIYATTUKUDY,
S/O A.T.POULOSE, AGE 51, ALIYATTUKUDY HOUSE,
CHEMBAKASSERY JUNCTION, ALUVA,
ERNAKULAM DISTRICT-683 101.
BY ADVS.
SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS/APPELLANTS/DEFENDANTS:

- 1 MARIYAKUTTY,
AGED 82, W/O.LATE C.L.MATHACHAN,
MULAMKUZHY CHALAPPURATHU HOUSE, ILLITHODU KARA,
MALAYATTOOR VILLAGE, MALAYATTOR POST,
ALUVA TALUK-683 587.
- 2 JOHNSON,
AGED 59 YEARS,
S/O. LATE C.L.MATHACHAN,
MULAMKUZHY CHALAPPURATHU HOUSE, ILLITHODU KARA,
MALAYATTOOR VILLAGE, MALAYATTOR POST,
ALUVA TALUK-683 587

..2..

3 SIBI,
AGED 53 YEARS, S/O. LATE C.L.MATHACHAN,
MULAMKUZHY CHALAPPURATHU HOUSE, ILLITHODU KARA,
MALAYATTOOR VILLAGE, MALAYATTOR POST,
ALUVA TALUK-683 587.

4 ELSY,
AGED 56 YEARS,
W/O. SHAJI, MULAMKUZHY CHALAPPURATHU HOUSE,
ILLITHODU KARA, MALAYATTOOR VILLAGE,
MALAYATTOR POST, ALUVA TALUK-683587.

5 JISY SHAJI,
AGED 33 YEARS,
D/O. SHAJI, MULAMKUZHY CHALAPPURATHU HOUSE,
ILLITHODU KARA, MALAYATTOOR VILLAGE,
MALAYATTOR POST, ALUVA TALUK-683587.

6 JESNA SHAJI,
AGED 30 YEARS,
D/O. SHAJI, MULAMKUZHY CHALAPPURATHU HOUSE,
ILLITHODU KARA, MALAYATTOOR VILLAGE,
MALAYATTOR POST, ALUVA TALUK-683587.

7 JINSON SHAJI,
AGED 25 YEARS,
S/O. SHAJI, MULAMKUZHY CHALAPPURATHU HOUSE,
ILLITHODU KARA, MALAYATTOOR VILLAGE,
MALAYATTOR POST, ALUVA TALUK-683587.

* STATE OF KERALA,
ADDL.R8 REPRESENTED BY THE CHIEF SECRETARY.

*(ADDL.R8 IS SUO MOTO IMPEADED AS ADDITIONAL
8TH RESPONDENT IN THE APPEAL UNDER ORDER 1 RULE
10 C.P.C. AS PER ORDER DATED 11.08.2020.)

R1 TO R7 BY ADVS.

SRI.P.THOMAS GEEVERGHESE

SRI.TONY THOMAS (INCHIPARAMBIL)

ADDL.R8 BY GOVERNMENT PLEADER SRI.SAJEEVAN

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 29.07.2021, THE COURT ON 09.08.2021
DELIVERED THE FOLLOWING:**

JUDGMENT

The appellant is the respondent in A.S.No.62/2018 on the file of the Additional District Court, N.Paravur (hereinafter referred to as 'the first appellate court') and the plaintiff in O.S.No.437/2013 on the file of the Munsiff's Court, Aluva (hereinafter referred to as 'the trial court'). The respondents 1 to 7 are the appellants in the A.S. and the defendants in the O.S. The parties are hereinafter referred to as 'the plaintiff' and 'the defendant' according to their status in the trial court unless otherwise stated.

2. The suit was filed for permanent prohibitory injunction restraining the defendants from trespassing into the plaint schedule property, forcefully evicting the plaintiff from the property, from creating new documents with respect to the property and also from doing anything detrimental to the peaceful possession and enjoyment of the same by the plaintiff.

..4..

3. One C.L.Mathachan, the predecessor-in-interest of the defendants got patta in respect of 2.47 acres of land as per P.F.No.192/1981. 62.682 cents of this property was lying on the southern side of Edamalayar-Illithodu road. The property lying on the southern side of the said 62.682 cents is belonging to the plaintiff and one Susan P.Aliyattukudy. C.L.Mathachan, along with the 1st defendant, who is his wife, entered into an agreement on 22.6.1984 to sell out the said property to the said persons. Since there was a bar against the sale of the property for a period of 12 years from the date of issuance of patta, no time was specifically fixed and it was tentatively agreed to execute the sale deed after 10 years. The plaintiff agreed to purchase 28.672 cents out of the said property and the rest by Susan.P.Aliyattukudy. The said 28.672 cents is the plaint schedule property. The possession of the property was handed over to the

..5..

purported purchasers then and there. The entire sale consideration was paid in simultaneous with the said agreement. The plaintiff and the other purchaser put up compound walls on the north, west and the east of their properties. The plaintiff installed a gate in the plaintiff's property and a way was also provided to her southern property. She made much improvement in the property and trees were also planted. All this while, the plaintiff had been in exclusive possession and enjoyment of the said property. Simultaneously with the execution of the said agreement, power of attorney dated 22.6.1984 was also executed by the assignors in favour of A.K.Poulose, father of Susan.P.Aliyattukudy to do everything including the sale of property to the said purchasers in respect of the said properties. In 1993 A.K.Poulose expired. Later, C.L.Mathachan, whose legal representatives are respondent Nos.4 to 7, also passed

..6..

away. In the meanwhile, the respondents expressed their willingness to execute the purported sale deed but they demanded more amount although the entire amount was already paid to them earlier. In the above circumstances, they became a nuisance which led to the complaint before the police and ultimately resulted in filing the above suit.

4. The defendants filed written statement contending that the agreement for sale is illegal. It is further contended that the validity of the agreement ceased to exist after the expiry of the agreement. Even if a way is there to the southern property of the plaintiff through the plaint schedule property, the same has come into existence only on license. They claimed that the improvements were effected by them. According to them, instead of filing a suit for specific performance of contract, the appellant had filed a suit for injunction simplicitor to protect her alleged possession.

..7..

5. After framing requisite issues, PWs.1 to 3 were examined and marked Exts.A1 to A5 on the side of the plaintiff. DWs.1 to 5 were examined and marked Exts.B1 to B5 series on the side of the defendants. The trial court decreed the suit. The defendants carried the matter in appeal. The first appellate court allowed the appeal setting aside the judgment and decree of the trial court. Challenging the divergent findings, the plaintiff filed this Regular Second Appeal.

6. On 23.1.2020, this Court admitted the appeal on the following substantial question of law:-

- i) Is the finding made by the lower appellate court that the appellant/plaintiff is not entitled to have the benefit of Section 53A of the Transfer of Property Act, 1882, legally correct?

7. An interim injunction was also granted restraining the defendants from trespassing into the plaint

..8..

schedule property and interfering with the peaceful possession and enjoyment of the same by the plaintiff pending disposal of the appeal.

8. During the pendency of this appeal, a learned Single Judge of this Court passed an order dated 11.8.2020 suo motu impleading the State of Kerala, represented by the Chief Secretary as additional 8th respondent in this appeal taking into consideration of large scale malpractices done by a group of people virtually defeating the benefit extended to the landless persons.

9. Heard Sri.Sajan Vargheese.K., the learned counsel for the appellant, Sri.P.Thomas Geeverghese, the learned counsel for the respondents 1 to 7 and Sri.Sajeevan, the learned Government Pleader for Revenue.

10. The learned counsel for the appellant submitted that PW1 adduced evidence on the strength of the power of attorney, executed while his daughter who was merely a student at the time of Ext.A1 transaction and is wrongly disbelieved by the first appellate court. According to the learned counsel, the finding made by the first appellate court regarding the competency of PW1, who is the father of the appellant in tendering evidence, is legally unsustainable. The learned counsel further submitted that in a suit for injunction the material question arising for consideration is as to whether the plaintiff has been in possession of the plaint schedule property on the date of suit and the plaintiff has valid cause of action to institute the suit. Elaborating on the submission, the learned counsel for the appellant further submitted that the plaintiff is entitled to protect her possession in accordance with Section 53A of the Transfer of Property Act, 1882.

11. Per contra, the learned Government Pleader for Revenue submits that once the Government land is characterised as an assigned land, the same continues and remains to be an assigned land. The plaintiff who had entered into an agreement with the predecessor of the defendant cannot have a better right than the original assignee and even the plaintiff who allegedly came into possession on the strength of an agreement for sale is bound by the provisions contemplated under the Kerala Government Land Assignment Act, 1960 (hereinafter referred to as 'the Act') and any contract for sale between the predecessor of the defendant and the plaintiff is void under the Act and the Kerala Land Assignment Rules, 1964 (hereinafter referred to as 'the Rules') framed thereunder. It was further contended that as per Section 8 of the Act all the provisions, restrictions, conditions and limitations contained in any patta or other document

evidencing the assignment of Government land or of any interest therein, shall be valid and take effect according to their tenor, notwithstanding any law for the time being in force or any custom or contract to the contrary. The learned Government Pleader further submitted that alienation or transfer made by the predecessor of the defendants in violation of Section 8 of the Act and Rule 8 of the Rules are void and it is within the realm of the competent authority to resume the land in accordance with law.

12. The learned counsel for the contesting respondents submitted that Ext.A1 agreement is illegal. It was further contended that the validity of the said agreement ceased to exist by 22.6.1994 after the period of ten years. According to them, they have been in possession of the property as absolute owner in possession of the same in continuation of the predecessor-in-interest.

13. Ext.A1 is the notarized copy of the agreement for sale dated 22.6.1984. It discloses that the assignee of the land Sri.C.L.Mathachan and Smt.Mariyakutty agreed to sell an area of 28 cents and 672 sq.links of assigned land having a total area of 2 acres and 47 cents comprised in Old Sy.No.29/1/1 of Malayattoor Village obtained from the Government by virtue of patta No.PF 192/1981 in favour of the plaintiff for an amount of Rs.10,203 + Rs.8,601.60 = Rs.18,804.6. In Ext.A1 agreement for sale, the possession was handed over to the plaintiff with liberty to make improvements therein. The period covered under Ext.A1 is 10 years from the date of agreement. On the strength of Ext.A1 agreement, the plaintiff claimed that she has been in possession of the suit property on the date of suit in accordance with the terms contained in Ext.A1 agreement. The plaintiff had not taken steps before the trial court directing the defendants to produce

the original pattayam issued in favour of the predecessor-in-interest of the defendants. However, the defendants produced the original pattayam as Ext.B6 before the first appellate court. It is clear from Ext.B6 that the pattayam was issued to the predecessor-in-interest of the defendants by virtue of the provisions contemplated under the Act and the Rules then in force. As per the Rules, the term 'alienation' and 'assignee' are defined. Rules 2(a) and (b) of the Rules read as under:-

"2(a) "Alienation" includes sale, gift, bequest under a will, mortgage, hypothecation or lease.

(b) "assignee" means a person to whom land is assigned under these rules and includes his heirs or successors in interest."

14. Rule 8 of the Rules prescribes conditions of assignment on registry. The Rule is extracted as hereunder:-

"8. Conditions of assignment on registry:-

(1) Lands, granted on registry shall be heritable and alienable.

(1A) Notwithstanding anything contained in sub-rule(1), the land assigned on registry as per sub-rule (1) of Rule 7 shall be heritable and alienable.

(1A) Notwithstanding anything contained in sub-rule(1), unoccupied lands assigned on registry shall be heritable but not alienable for a period of twelve years from the date of assignment on registry.

Provided that the assignee may mortgage such lands to the Government banks, financial institutions, Rubber Board and Tea Board as security for obtaining loans for housing, agricultural or land improvement purposes.

(2) The assignee or a member of his family or his successor-in-interest shall reside in the land if it is granted as house site, or shall personally cultivate the same if it is granted for cultivation; and such residence or cultivation, as the case may be, shall

commence effectively within a period of one year, from the date of receipt of the patta or of the provisional patta in cases where a provisional patta is issued in the first instance:

Provided that-(i) in the cases of assignment to military personnel or their dependents as the case may be, the assignee may cultivate the land by his own labour or by the labour of any member of his family and with the occasional assistance, if any, of hired labour or servants on wages payable in cash or in kind but not in crop share;

(ii) the military personnel may apply for land anywhere in the State irrespective of the State to which they belong; and in the matter of assignment preference shall be given to persons belong to Kerala;

(iii) the military personnel may lease for cultivation purposes the lands assigned to them whilst they are away on active service.

(3) The registry shall be liable to be cancelled for contravention of the provisions in sub-rule (1) or sub-rule (2). The registry may be cancelled also, if it is found that it was grossly inequitable or was made under a mistake of facts or owing to misrepresentation

of facts or in excess of the limits of the powers delegated to the assigning authority or that there was an irregularity in the procedure. In the event of cancellation of the registry, the assignee shall not be entitled to compensation for any improvements he may have made on the land. The authority competent to order such cancellation shall be the authority which granted the registry, or one superior to it;

Provided that no registry of land shall be cancelled without giving the party or parties affected thereby, a reasonable opportunity of being heard:

Provided further that no assignment of Land shall be cancelled if the annual family income of the transferee occupant does not exceed Rs.10,000 (Rupees Ten thousand only) and who does not own or possess any landed property, anywhere in the State:

Provided also that in the case of a transfer of Land covered by the above proviso the assignee shall not be eligible for further assignment of Land anywhere in the State.”

15. A plain reading of the above provision would show that the land was assigned by the Government to landless poor persons under the Rules for the time being in force. The land is allotted or transferred subject to the condition of non-alienation for a specific period. Assigned land is heritable but not alienable for a period of 12 years from the date of assignment on registry. However, the assignee may mortgage such lands to the Government banks, financial institutions, Rubber Board and Tea Board as security for obtaining loans for housing, agriculture or land improvement purposes. However, the land shall not be alienable for a period of 12 years from the date of assignment on registry by virtue of the amended rules with effect from 17.8.2017. Rule 8(3) of the Rules provides the registry shall be liable to be cancelled for contravention of the provisions in sub rule (1) or sub-rule (2) of the Rules. Thus the competent authority is

empowered for restoration of the land assigned to the landless persons in accordance with the Rules which are now in force.

16. In **Papaiah v. State of Karnataka & others** [(1996) 10 SCC 533], the Supreme Court considered the provisions of the Karnataka Scheduled Castes & Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. The appellants therein purchased the assigned land under a registered sale deed. The alienation by the assignee under the said Act was declared void and inoperative. The Act also provides the procedure for restoration of the land and resumption of land in accordance with law. The assignee filed an application before the competent authority for restoration of the land. The competent authority allowed the appeal which was confirmed by the High Court. The appellant contended before the Supreme Court that the Act has no application to the land

purchased by them as they have perfected their title by adverse possession and limitation. The Supreme Court had considered this question in similar circumstances and held in paragraph 8 of the judgment in **Papaiah's** case (supra) thus:-

"It is seen that Article 46 of the Constitution, in terms of its Preamble, enjoins upon the State to provide economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections of the society and to prevent their exploitation. Under Article 39(b) of the Constitution, the State is enjoined to distribute its largess, land, to sub-serve the public good. The right to economic justice to the Scheduled Castes, Scheduled Tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person are teasing illusions. In rural India, land provides economic status to the owner. The State, therefore, is under constitutional obligation to ensure to them opportunity giving its largess to the poor to augment their economic position. Assignment of land having been made in furtherance thereof, any

alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act, 1872. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder. It is seen that Rule 43 (8) specifically prohibits alienation of assigned land. It does not prescribe any limitation of time as such. However, it is contended that the appellant has obtained land by way of sale in 1958 long before the Act came into force and thereby he perfected his title by adverse possession. We find no force in contention.”

17. It is thus clear that the lands which are originally assigned continues to be assigned lands even assuming that there was a contract for sale in favour of the plaintiff and possession was passed thereunder. In **Papaiah's** case (supra) the Supreme Court categorically held that such contract for sale is opposed to public policy under Section 23 of the Contract Act. Thereby, any alienation made in violation thereof is void and the

purchaser does not get any valid title or interest thereunder.

18. In the case on hand, the claim of the appellant is that the land in question is an assigned land and they have been in possession of the assigned land from the original assignee pursuant to Ext.A1 contract for sale as absolute owner in possession on payment of full consideration. Even assuming that the appellant has been in possession of the property pursuant to Ext.A1 as contended by her, still she cannot contend that she is entitled to get a decree for permanent prohibitory injunction on the strength of Ext.A1 document which is totally prohibited in terms of the Act and the Rules framed thereunder. A decree for permanent prohibitory injunction is discretionary in nature. The Act and the Rules are liable to be interpreted and construed giving due importance to the true intention of the makers of the legislation.

19. It is clear from the conduct of the plaintiff that she had suppressed material facts and alleged falsehood before the Court. Ext.B6 would show that there is a prohibition in transferring the property or giving possession of the property to any person for 10 years as per the Government Order then in force subject to the usual conditions laid down in the Act and Rules as modified from time to time. Ext.B6 further provides that in case the property is alienated against the stipulations contained in Ext.B6, the pattayam will be liable to be cancelled by the competent authority.

20. In interpreting the provisions of the Act and Rules, it must be held that a landless poor person, who purchased the land after obtaining permission under the Act and the Rules, is not entitled to transfer the land ignoring the provisions contemplated under the Act and the Rules framed thereunder. On the date of execution of

Ext.A1, the defendants were aware of the fact that the land could not be alienated for a period of 10 years. Hence they fixed 10 years period for its performance. The assignee is bound by the terms thereunder. The alienation by way of Ext.A1 or otherwise violating the Act and the Rules are void. It is settled law that what cannot be sold directly cannot also be sold indirectly by way of contract for sale. No authority is required for this proposition. Hence, it is unnecessary to peruse the commission report and other evidence to ascertain the actual possession on the date of the suit.

21. Going by the Rules, it is clear that, it is within the realm of the competent authority to take appropriate action to resume the assigned land. Section 53A of the Transfer of Property Act, 1882 is not applicable in respect of an agreement for sale which is void in nature. It may be noted that Section

53A of the Transfer of Property Act is applicable only where contract for transfer is valid in all respects. It must be an agreement enforceable by law under the Indian Contract Act, 1872. In view of the above, it may be noted that the judicial precedents cited by the learned counsel for the appellant under Section 53A of the Transfer of Property Act are not binding and cannot be taken into consideration while deciding substantial question of law based on Ext.A1 contract for sale which is void and inoperative. The substantial question of law formulated by this Court is answered as above.

In the result, this R.S.A. is dismissed. The judgment and decree dated 27.8.2019 in A.S.No.62/2018 on the file of the Additional District Court, North Paravur stand confirmed. The suit is dismissed. It is within the realm of the competent authority to take appropriate action for restoration of the land assigned to the original assignee in

R.S.A.No.79 of 2020

..25..

accordance with law. There will be no order as to costs.

Pending applications, if any, stand closed.

Sd/-

**N.ANIL KUMAR,
JUDGE**

skj