

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-Sri.Praveen Kumar G., B.A.L., LL.B, Principal Munsiff
Wednesday, the 21st day of December, 2016, 30th Agrahayana, 1938

I.A.No.2837/2016 in O.S.No.212/2013

Petitioners/Defendants Nos.1,7 to 11:-

1. T.V. Sandhyavu, aged 69 years, S/o. Vakko, Thattasserry House, Edakochi P.O., Kochi – 682 010 (died).
2. Chinnamma, aged 65 years, W/o. Late T.V. Sandhyavu, Thattasserry House, Edakochi P.O., Kochi – 682 010.
3. Roxan, aged 38 years, S/o. Late T.V. Sandhyavu, Thattasserry House, Edakochi P.O., Kochi – 682 010.
4. Mercy, aged 40 years, D/o. Late T.V. Sandhyavu, Thattasserry House, Edakochi P.O., Kochi – 682 010.
5. Jasmine, aged 36 years, D/o. Late T.V. Sandhyavu, Thattasserry House, Edakochi P.O., Kochi – 682 010.
6. Sabu, aged 42 years, S/o. Late T.V. Sandhyavu, Thattasserry House, Edakochi P.O., Kochi – 682 010.

P1 Died

P2 to 6 By Adv. Suraj Krishna B.S.

Respondents/Plaintiffs/Defendants 2 to 6:-

1. Augustine, aged 40 years, S/o. Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010, represented by his Power of Attorney K.A. Bijoy, aged 30 years, S/o. K.A. Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.
2. K.A. Bijoy, aged 30 years, S/o. K.A.Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.
3. Antony, aged 70 years, S/o. Augustine, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.
4. Pushpam Antony, aged 68 years, W/o. Late Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.
5. Roxon K.A., aged 41 years, S/o. Late Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.
6. Mary Suja, aged 39 years, D/o. Late Antony, Kalathiparambil House, Edakochi P.O., Kochi – 682 010.

7. Joseph Saju, aged 35 years, S/o. Late Antony,
Kalathiparambil House, Edakochi P.O., Kochi – 682 010.

R1 & 2 By Adv. P.P. Raphaelkutty
R3,4 & 7 By Adv. Mathew Alappatt
R5 & 6 No Vakkalath

The petition filed under Order section 151 of the code of Civil Procedure to recall the order passed in I.A.167/2014 dtd.04.11.14 by this court and adjudicate the same on merits and also proceed against the plaintiffs who have produced a false document misrepresenting this court that the document is a correct one and also suppressed the material facts and mislead this court and obtained an order illegally.

The petition having been finally heard on 15.12.2016 and the court on 21.12.2016, passed the following:-

ORDER

Application filed by defendants 7 to 11 to recall the order issuing survey commission. Respondents 1 & 2 in the application are the plaintiffs in the suit. Respondents 3 to 7 are defendants 2 to 6 in the suit. Parties are referred to as the plaintiffs and the defendants, as in the suit, as defendants 2 to 6 have not contested the I.A.

2. Defendants' case is thus. Plaintiffs filed I.A. 167/2014 for appointment of a survey commission. Defendants' father filed a detailed objection to it, as the plaintiffs alleged that the predecessor of the defendants had applied for purchasing kudikidappu right as O.A.631/1972 and he was allowed to purchase 4.167 cents. Plaintiffs, at the time of hearing the commission application, produced an order of the

Land Tribunal which shows that one Vacco applied for kudikidappu. The court accepted it and allowed the commission application. Infact, the order was obtained by misrepresenting the court. The document produced by the plaintiffs is a false one. It was actually issued to one Vacco Xavier, Pozhively. The defendants' grandfather's name is Vacco, Thattassery. The former is a person residing near the property. It was relying on this document, the plaintiffs secured the order. So, the order has to be recalled. If not, the defendants would suffer prejudice as they are entitled to get 10 cents as kudikidappu. It is further alleged that the document does not bind the defendants or their rights.

3. Plaintiffs, through the 2nd plaintiff, filed a counter affidavit with the following allegations. In the written statement, it is admitted that the defendants' predecessor Vacco was a kudikidappukaran. Plaintiffs' grandfather had 12 kudikidappukars in his property and as per the order passed by the land tribunal, the maximum extent which each kudikidappukaran may get is only 4.167 cents. Defendants' father Vacco is one among the kudikidappukars. Defendants' predecessor Vacco did not apply for kudikidappu, but he is entitled to only 4.167 cents. So, the order of the land tribunal binds the defendants and the allegation that

the plaintiffs produced false document and played fraud is incorrect. Land Tribunal is the authority to determine the extent of property which a kudikidappukaran may get. The information obtained was that Vacco Xavier mentioned in the order of the land tribunal was the defendants' predecessor. Plaintiffs have not misrepresented or suppressed material facts.

4. Heard both sides.

5. In the commission application, I.A.167/2014, the plaintiffs have stated that the defendants' predecessor Vacco was a kudikidappukaran in the property, that he had applied for purchasing the kudikidappu right as O.A.631/1972, that he was allowed to purchase 4.167 cents and that he did not purchase it and opted to remain as such. Plaintiffs are seen to have relied on the order dtd:26.07.1972 of the Land Tribunal, Palluruthy, by producing a certified copy of it. The grievance of the petitioners is that Vacco, shown as the 3rd applicant in the order is not their predecessor, but is a different person. It is stated that their predecessor did not file any application for purchasing the kudikidappu and the plaintiffs have produced a false document and obtained an order in their favour. If the plaintiffs have secured an order by misleading the court by producing such a document,

obviously, the court owes duty to recall that order, particularly when it caused prejudice to the party. In that respect, I fully concur with what the defendants would repeatedly urge.

6. In the court affidavit to the present I.A, it seems that the defendants' allegations have some crux in it. However, the learned counsel for the plaintiffs submitted that his clients were of the bonafide belief that Vacco shown in the order of the Land Tribunal was the defendants' predecessor and there was no attempt to mislead the court by producing any false document. But, if it is not so as contended by the defendants and had the plaintiffs produced the document knowing it to be false, that is a serious issue to be sternly dealt with. That proceedings require inquiry and the court is short of materials at this stage to make an investigation thereof. So, I leave that question open for the time being.

7. The order dtd:26.07.1972 of the land tribunal shows that there were 12 kudikidappukars in the property and the eligible extent for purchase was 50 cents. The document, even according to the defendants, has not received any challenge over this period. Defendants have no case that the number of kudikidappukars falls short of 12. Their contention that they

are eligible to purchase 10 cents is unsupported by any materials on record. As held in Thomas v. Kunju Lurumba (1995 (1) KLT S.N. Case No.13), the plaintiffs have an option to set apart the maximum area of kudikidappu which the defendants may ultimately get. As of now, I cannot but hold that the defendants are entitled only to 4.167 cents. The suit is of the year 2013 and the commissioner has executed the work and filed the report after inspecting the property atleast trice. In these circumstances, with the present state of affairs, I do not intend to unsettle the proceedings and to re-issue the commission particularly when the situation would be unpleasant if the defendants choose to remain as unpurchased kudikidappukars for ever, claiming that they are entitled to 10 cents and it is for the land tribunal to make an investigation thereof. Plaintiffs cannot be put to prejudice by upholding such a contention. Therefore, the application is dismissed, subject to the above observations.

Dictated to the Confdl.Asst; transcribed and typed by her, corrected and pronounced by me in open court on this the 21st day of December, 2016.

Praveen Kumar G.
Principal Munsiff

Appendix: Nil

Principal Munsiff

sks
compd by: