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IN THE SUPREMECOURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8727 OF 2003

St. Joseph's Clara Convent & Ors. ... Appellants

Versus

State of Kerala & Anr. ... Respondents

O R D E R

1. This appeal has been preferred against the impugned judgment and order dated 27.9.2002 passed by the High Court of Kerala at Ernakulam in MFA No. 984 of 1991, by way of which, the High Court has dismissed the writ petition filed by the appellants challenging the judgment and order passed by the Forest Tribunal, Palakkad, Kerala.

2. Appellants acquired the land in dispute measuring about 60 acres vide registered document of title dated 31.3.1969. The Kerala Private Forest (Vesting and Assignment) Act, 1971 (hereinafter referred to as 'the Act, 1971') came into force on 10.5.1971, providing that all the private forest in Kerala vested in the State free from all encumbrances with few exceptions provided therein. The appellants filed O.A. No. 130 and 131 of 1976 before the Forest Tribunal, (hereinafter referred to as 'the Tribunal'), in respect of the land measuring 30 acres in each case for exemption under Section 3(3) of the Act, 1971, which was allowed by the Tribunal. The said order was challenged by the State before the High Court and the High Court vide judgment and order dated 17.9.1979, set aside the judgment and order of the tribunal and remanded the case to consider the matter afresh. It was, after considering afresh, the applications of the appellants were dismissed vide order dated 15.7.1980.

3. Aggrieved, the appellants approached the High Court by filing MFA No. 432 of 1980 wherein the High Court set aside the said order dated 15.7.1980 passed by the tribunal and remanded it back with the permission to the appellants to implead the institution. The

Forest Tribunal reconsidered the whole case and dismissed the OAs' vide judgment and order dated 31.1.1991.

4. Aggrieved, the applicants preferred the appeal before the High Court, which was dismissed vide judgment and order dated 27.9.2002.

Hence, this appeal.

5. Shri M.M. Paikeday, learned senior counsel appearing on behalf of the appellants, has submitted that the High Court as well as the Tribunal committed an error construing the word 'intended cultivation' contained in Section 3(3) of the Act, 1971 as it could have been construed more liberally and there was sufficient material on record to show that the appellants had intended to cultivate the land. Thus, the appeal deserves to be allowed.

6. Shri M.T. George, learned counsel appearing on behalf of the respondent State, has submitted that the appellants have raised the false claim throughout, as there was neither any cultivation on the suit land in actual, nor the appellants intended cultivation. The pleadings taken by the appellants had been to the extent that there had been plantation of coffee, cardamom, tea etc. Had it been so, the appellants could claim total exemption from vesting as the land containing such plants before the date of vesting i.e. 10.5.1971, could not have vested in the State. The appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

Section 2(f) of the Act, 1971, defines the private forest, however, it excludes the land used for cultivation of tea, coffee, coco, rubber, cardamom or land used for any purpose ancillary to the cultivation of such crops or for preparation for the same for the market prior to the appointed day.

Section 3(3) provides for exemption from vesting of private forest to certain extent as it reads:

"Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with another lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 of the said Act."

8. The evidence adduced by the appellants, does not disclose that the appellants had ever pleaded for exemption of the land from vesting in view of the provisions contained in Section 2(f) of the Act 1971.

Even otherwise, the tribunal as well as the High Court after appreciating the entire evidence adduced by the appellants, came to the conclusion that there was neither cultivation, nor intended cultivation in the suit land prior to the date of vesting. In the counter affidavit, it has been pleaded by the State that there was no cultivation at all; the entire area was covered by trees by natural growth and, thus, the land in dispute vested in the State on the appointed date i.e. 10.5.1971.

9. The courts below further recorded the findings of the fact

that in order to prove cultivation or intended cultivation, no independent witness was examined. No application had ever been filed to appoint Commissioner to establish the nature of the property. Appellants never made any attempt to examine any of the neighbours of the property or any worker to prove their case. Therefore, the appellants miserably failed to prove that the property was under their cultivation or they intended cultivation prior to the appointed day.

10. We have examined the pleadings ourselves. In the OAs' pleadings had been taken that the land was full of plants of coffee, cardamom, fruit bearing trees etc.

Shri Varghese Chathaparambil, (PW.1) who got the assignment in the suit land, made a similar statement in examination-in-chief, saying that the properties were purchased for the purpose of agricultural cultivation. Coffee, cardamom, etc. were cultivated in the properties. In the cross-examination, he submitted that the accounts would show the amount spent on cultivation of coffee, cardamom etc., and those accounts were in possession of the institution.

11. Sister Florence, (PW.2), who was the mother superior of the institution, could not say anything regarding the cultivation, who simply said that the accounts of the appellants were audited every year. It has been rightly pointed out by the learned counsel for the State that had there been such crops on the land prior to the appointed day, the appellants could have claimed exemption from vesting under Section 2(f) of the Act, 1971. The appellants miserably failed to lead any evidence whatsoever, in support of their claim that they had ever intended cultivation.

12. The learned counsel appearing on behalf of the appellants, has placed very heavy reliance on the judgment of this Court in Joseph & Anr. v. State of Kerala & Anr., (2007) 10 SCC 414, wherein this Court has interpreted the phrase "intended cultivation" observing:

".....For the purpose of attracting sub-section (3) of Section 3 of the 1971 Act, it was not necessary that the entire area should have been cultivated for arriving at a decision as to whether the owner of the land had the intention to cultivate or not. Also, it was required to be considered having regard to the activities carried on by the owner from the day of purchase till the appointed day. For the said purpose, subsequent conduct of the owner of the land was also relevant. Development of the land by plantation of rubber plants is not in dispute. The Explanation appended to Section 3(2) of the 1971 Act clearly suggests that cultivation would include cultivation of trees or plants of any species. Intention to cultivate by the owner of the land, we think, has to be gathered not only in regard to the fact situation obtaining at a particular time but also with regard to the subsequent conduct of the parties. If the activity in regard to cultivation of land or development thereof is systematic and not sporadic, the same also may give an idea as to whether the owner intended to cultivate the land. The words "intend to cultivate" clearly signify that on the date of vesting the land in question had not actually been cultivated in its entirety but the purchaser had the intention of doing so. Such intention on the part of the purchaser can be gathered from his conduct in regard to the development of land for making it fit for cultivation preceding to and subsequent to the date of vesting."

13. As the appellants failed to lay down any factual foundation

in support of their case, we do not see, how the ratio of the aforesaid judgment can be applied herein. We do not find any cogent reason to interfere with the impugned judgment and order of the High Court as well as the Tribunal. The appeal lacks merit and is, accordingly, dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi,
January 24, 2013.

ITEM NO.103

Court No.7

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 8727 OF 2003

ST. JOSEPH'S CLARA CONVENT & ORS.

Appellant (s)

VERSUS

STATE OF KERALA & ANR.

Respondent(s)

(With office report)

Date: 24/01/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Mathai M. Paikeday, Sr. Adv.
Mr. Shishir Pinaki, Adv.
Mr. P.I. Jose, Adv.

For Respondent(s) Mr. M.T. George, Adv.
Ms. Kavitha K.T., Adv.

Mr. P.V. Dinesh,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal lacks merit and is, accordingly, dismissed in terms of the signed order.

	(DEEPAK MANSUKHANI)		(M.S. NEGI)	
	Court Master		Court Master	

(Signed order is placed on the file)