

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**WEDNESDAY, THE 26<sup>TH</sup> DAY OF JUNE 2024 / 5TH ASHADHA, 1946**

**RSA NO. 788 OF 2007**

**AGAINST THE JUDGMENT DATED 24.03.2007 IN AS NO.71 OF 2004  
OF THE SUBORDINATE JUDGE'S COURT, KASARAGOD ARISING OUT  
OF THE JUDGMENT DATED 27.02.2004 IN OS NO.197 OF 2003 OF  
PRINCIPAL MUNSIFF COURT, KASARAGOD**

**APPELLANT/APPELLANT/PLAINTIFF:**

**MOHAMMED MAMMUNHI,  
S/O.MANNUNHI KUNHI MOOSA, CULTIVATOR AND  
MERCHANT RESIDING AT, PERINGADI, UPPALA  
VILLAGE, KASARAGOD TALUK,, P.O.UPPALA.  
BY ADV SRI.P.B.KRISHNAN**

**RESPONDENTS/RESPONDENTS/DEFENDANTS:**

- 1 STATE OF KERALA  
DISTRICT COLLECTOR, KASARAGOD DIST., POST  
VIDYANAGAR.**
- 2 THE SPECIAL TAHSILDAR (LAND ASSIGNMENT  
MANJESHWAR, KASARAGOD, POST KASARAGOD.**
- 3 THE VILLAGE OFFICER  
ICHALANGOD VILLAGE, POST ICHALANGOD.**
- 4 ABDUL MAJID (DIED) LHS IMPEADED  
S/O ABOOBACKER, RESIDING AT B.R.M. HOUSE,  
ICHALANGOD P.O.,, KASARAGOD. (APPELLANT IS  
EXEMPTED FROM IMPEADING LR'S OF DECEASED R4 AS  
PER ORDER DATED 19.06.2012 IN IA.1314/2012).**
- 5 SMT. SHEELAVATHI, (DIED) M LHS IMPEADED W/O  
SUNDARA SHETTY  
ANTHARATHETHLU HOUSE, BAMBRANA BEEDU,, BAMBRANA  
VILLAGE AND POST, KASARAGOD TALUK.**
- 6 SMT. JANAKI D/O KANNA BELCHAPPADA  
BANDIYODU, MANGALPADY POST,, KASARAGOD TALUK.**
- 7 MOOSA, (DIED)**

**S/O MOHAMMED, CULTIVATOR, RESIDING AT BANDADY, HEROOR VILLAGE,, KASARAGOD TALUK, P.O.HEROOR. (AS PER THE ORDER DATED 29.11.2016 ON MEMO VIDE CF.466/2015 DATED 27.01.2015 IS IS RECORDED THAT RESPONDENT NO.7 IS DEAD AND HIS SOLE REPRESENTATIVE IN INTEREST IS THE APPELLANT BEING HIS ASSIGNEE).**

- ADDL 8 ZOHRA,  
W/O.ABDUL MAJID, AGED 65, PEERARAM HOUSE, NEAR INCHALANGOD JUMA MASJID, INCHALANGODE POST, VIA MANGALPADY, KASARAGOD-671 324.**
- 9 MAHSHOOK,  
D/O.ABDUL MAJID, AGED 43, PEERARAM HOUSE, NEAR INCHALANGOD JUMA MASJID, INCHALANGODE POST, VIA MANGALPADY, KASARAGOD-671 324.**
- 10 MARZOOK,  
S/O.ABDUL MAJID, AGED 40, PEERARAM HOUSE, NEAR INCHALANGOD JUMA MASJID, INCHALANGODE POST, VIA MANGALPADY, KASARAGOD-671 324.**
- 11 MISAL,  
S/O.ABDUL MAJID, AGED 37, PEERARAM HOUSE, NEAR INCHALANGOD JUMA MASJID, INCHALANGODE POST, VIA MANGALPADY, KASARAGOD-671 324. (THE LEGAL HEIRS OF DECEASED RESPONDENT NO.4 ARE IMPEADED AS ADDL.R8 TO R11 AS PER ORDER DATED 18.01.2023 IN IA.3/2022.)**
- 12 ADDL.NITHYANANDA SHETTY,  
S/O.SHEELAVATHI, AGED 45, BAMBRANA, ANTHARAHITHLLU HOUSE, BOMBRANA POST, VIA KUMABAL, KASARAGOD DISTRICT-671 321. (THE LEGAL HEIRS OF DECEASED R5 IS IMPEADED AS ADDITIONAL R12 AS PER ORDER DATED 18.01.2023 IN IA.NO.1/2022 IN RSA.788/2007.)**  
**BY ADVS.**  
**R1 AND R2 BY GOVERNMENT PLEADER SRI JAYAN**  
**R5 BY SRI.V.V.ASOKAN**  
**SMT.S.AMINA**  
**R12 BY MAYANKUTTY MATHER K.I**  
**T.K.SREEKALA(K/000246/1987)**

RSA No.788 of 2007

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**THIS REGULAR SECOND APPEAL HAVING COME UP FOR  
ADMISSION ON 26.06.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**

**“C.R.”**

**K. BABU, J**

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**R.S.A.No. 788 of 2007**  
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Dated this the 26<sup>th</sup> day of June, 2024

### **JUDGMENT**

This Regular Second Appeal is filed challenging the judgment and decree passed by the Munsiff's Court, Kasaragod, in O.S.No.197 of 2003 which was confirmed by the decree and judgment dated 24.03.2007 passed by the Subordinate Judge's Court, Kasaragod in A.S.No.71 of 2004. The plaintiff is the appellant. The defendants are the respondents. During the course of the proceedings defendants 4 and 5 died. Their legal representatives were impleaded as additional respondents 8 to 11 .

#### **Pleadings:-**

##### **The plaintiff**

2. The plaint schedule property is 73cents of land in Re-Survey No.137/4 of Ichilangodu Village, Kasaragodu Taluk. Moosa, S/o Mohammed, the predecessor-in-

interest of the plaintiff acquired title and possession over the property as per proceedings in L.A.No.199/73/Ichilangodu. The plaintiff purchased the property as per registered sale deed No.456/1992 dated 24.02.1992. Ever since the date of assignment, Shri. Moosa had been possessing the property till it was assigned to the plaintiff. As per the sale deed No.456/92, the plaintiff obtained title and possession over the property as its absolute owner. The plaintiff schedule property is a dry and rocky land without any building. The property has well defined boundaries. The defendants have no right over the plaintiff schedule property. Defendants 4 to 6 raised a false claim in respect of the plaintiff schedule property that the property was assigned in their favour as per a proceeding initiated as per the Kerala Land Assignment Rules, 1964 (the KLA Rules, 1964). When defendants 4 to 6 attempted to trespass into the property on 27.04.2003 the plaintiff instituted O.S.No.308/1995 before the Munsiff's Court, Kasaragod seeking a permanent prohibitory injunction.

The said suit was dismissed. The appeal challenging the decree dismissing the suit was also dismissed. Since a cloud is cast on the plaintiff's title due to the false claim raised by defendnats 4 to 6, the plaintiff instituted the present suit seeking declaration of his title over the property and for an ancillary prohibitory injunction.

Defendants 1 to 3

3. The plaint schedule property comprised in Re-survey No.137/4 of Ichilangod Village was assigned in favour of one Moosa, S/o Maithakad Mohammad as per order of assignment dated 21.08.1978 in LA No.119/1973 of Ichilangod Special Tahsildar. But the said assignment was cancelled on 31.03.1981 due to non-remittance of LA dues within the time limit prescribed. This land was later assigned to defendant Nos.4 to 6 as per order in L.A.43/1993/Ichilangod dated 27.07.1994 and pattas were also issued.

Defendants 4 to 6

4. The suit is barred by the principle of *res judicata*. The plaintiff did not secure valid title over the plaint schedule property. The plaint schedule property was assigned in favour of defendant Nos.4 to 6 as per proceedings No.43/1993. The assignment in favour of Moosa, the predecessor-in-interest of the plaintiff had been cancelled due to non-remittance of LA dues. Defendant Nos.4 to 6 are in possession of the plaint schedule property. The plaintiff has no title or possession over the property.

Defendant No.7

5. Defendant No.7 is the original assignee of the plaint schedule property. The plaint schedule property was assigned in his favour as per order in proceedings No.LA 119/1973 of Ichilangod Special Tahsildar. He had paid the land assignment dues and the authorities had issued patta to him and thereafter he conveyed the same to the plaintiff.

6. The Trial Court framed the following issues:-

“(1).Whether the plaintiff has got title over the suit property.

(2)Whether the suit is barred by the principles of res judicata and estoppel.

(3)Whether the description of the suit property given in the plaint is correct.

(4)Whether the plaintiff is entitled to get a decree as prayed for in the suit.

(5)Reliefs and costs.”

7. The parties went to trial. PWs 1 and 2 were examined and Exts. A1 to A9 series were marked on the side of the plaintiff. DWs 1 and 2 were examined and Exts.B1 to B7 series were marked on the side of the defendants.

8. The trial Court dismissed the suit. The plaintiff challenged the decree and judgment in O.S.No.197 of 2003 by filing A.S.No.71 of 2004 before the Subordinate Judge’s Court, Kasaragod, which confirmed the decree of

the trial Court. The plaintiff is in appeal before this Court.

9. This Court formulated the following substantial questions of law:-

“(1)Whether there was a cancellation of the assignment granted in favour of the appellant under Ext.A1 order pursuant to which Ext.A2 patta was granted and even if there was a cancellation whether the cancellation is valid without issuance of a notice to the appellant under Rule 8(3) of Kerala Land Assignment Rules, 1964.

(2)Whether on the evidence the courts below were justified in holding that the appellant has no title when Exts.A1 and A2 establish the title.”

10. I have heard Sri.M.K.Sreegesh, the learned counsel for the appellant, the learned counsel appearing for the party respondents and the learned Government Pleader.

11. The plaintiff traced his title to the original assignment deed in favour of Moosa (defendant No.7) and the subsequent sale deed executed by Moosa in his favour. The case of the plaintiff is that he has absolute

title over the plaint schedule property and he is in possession of the same. The contention of defendant Nos. 1 to 3, the State and the Revenue officials is that though originally the plaint schedule property was assigned to Moosa in terms of LA No.119/1973, the assignment was cancelled on 31.03.1981 due to non-remittance of land assignment dues and thereafter the property was assigned in favour of defendant Nos.4 to 6 as per order dated 27.07.1994. The State contended that the sale deed executed by Moosa in favour of the plaintiff is not a valid document.

12. Defendant Nos. 4 to 6 resisted the suit contending that the land was assigned in their favour and they are in possession of the property. Defendant Nos. 4 to 6 pleaded that Patta in respect of the property was granted to them on 09.11.1984 and Moosa never obtained title and possession of the same and therefore he was incompetent to put the property in possession of the plaintiff by executing the alleged sale deed.

13. The learned counsel for the plaintiff/appellant submitted that it is for the defendants to prove that the assignment in favour of the original assignee Moosa had been cancelled validly adhering to the statutory mandate. The learned counsel submitted that the statutory scheme contained in the KLA Rules reflects that issuance of Patta presupposes payment of land assignment dues. The learned counsel submitted that the cancellation of the original assignment without affording an opportunity of hearing to the original assignee to show cause against the disputed issue renders such cancellation inoperative, illegal and invalid in law. The learned counsel further submitted that the alleged cancellation is not in conformity with Rule 8(3) of the KLA Rules and such cancellation in violation of the statutory mandate ordained by the said Rule is invalid, illegal and inoperative. The counsel further submitted that the subsequent assignment in favour of defendant Nos. 4 to 6 consequent to the alleged cancellation of the original

assignment does not have operative force as the invalidity of the order of cancellation premeats and vitiates the subsequent assignment.

14. The learned counsel for defendant Nos. 4 to 6 submitted that as per sub-rule (7) of Rule 9 of the KLA Rules, 1964, if the assignee does not remit land value, tree value and arrears of tax and other charges, the registry shall be cancelled and in the present case, the registry in favour of Sri. Moosa was cancelled on 31.03.1981. The learned counsel for defendant Nos. 4 to 6 further contended that since the registry was cancelled, Sri. Moosa, the original assignee had no title over the property to convey as per the alleged sale deed in favour of the plaintiff. The learned counsel further contended that the claim of the plaintiff is barred by *res judicata* and limitation.

14. The following facts are not in dispute:-

(a)The plaint schedule property was originally assigned to Maithakad Mohammed Moosa as per proceedings dated 21.08.1978 in LA No.119 of 1973 (Ext.A1).

(b)On 13.04.1984, the Special Tahsildar issued Patta to Moosa as envisaged by Rule 9(2) of the KLA Rules (Ext.A2).

(c)By registered conveyance deed dated 24.02.1992, the original assignee Sri. Moosa conveyed the property for consideration to the original plaintiff.

(d)The assignment in favour of Moosa was cancelled on 31.03.1981.

(e)The land was thereafter assigned to defendants 4 to 6 as per order in LA 43/93/Ichilangod dated 27.07.1994.

(f)The plaintiff had earlier filed O.S.No.308/1995 seeking a prohibitory injunction against the defendants which ended in dismissal. The appeal challenging the decree in O.S.No.308/1995 was also dismissed.

15. In the present suit, the Trial Court recorded the following findings:

(a) In the earlier suit, O.S.No.308/1995, the question of title of the property was not directly and substantially in issue.

(b)There was no explanation on the part of the plaintiff as to why the patta was issued after long lapse of five years.

(c)As per the KLA Rules, no registry of land shall be cancelled without giving the party or parties affected thereby a reasonable opportunity of being heard.

(d)There is no evidence to show that notice was issued to the original assignee Sri. Moosa before cancelling the original order of assignment. Eventhough it is evident that Ext.A1 assignment order was cancelled without issuing notice to the assignee, it cannot be treated as a ground to hold that the alleged cancellation is against law and invalid.

16. The First Appellate Court recorded the following findings:-

(a) There is no shred of materials to show that notice was issued to the original assignee before cancelling Ext.A1 order in view of the KLA Rules.

(b) Being a suit for declaration, burden is on the plaintiff to establish that he has got title over the plaint schedule property. There is no evidence to show that the plaintiff is in possession of the property.

(c) From the oral and documentary evidence, it is to be inferred that the assignee of the plaintiff never came to the possession of the property.

17. It is profitable to extract Rules 8 and 9 of the KLA Rules, 1964

**“8.Conditions of assignment on registry.-** [(1) Lands, granted on registry shall be heritable and alienable:

Provided that the assignee may mortgage such lands-

(a) to the Government or Co-operative Institutions or the Tea Board or the Rubber Board or any other financial institutions recognized

by the Government in this behalf, as security for obtaining loans for agricultural or land improvement purposes or for growing tea or rubber; and

(b)to the Government or Co-operative Institutions as security for obtaining loans for house construction under the Village Housing Project Scheme or any other housing schemes sponsored by the Government, if such house is required for the occupation of the assignee or his family.

(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 twenty five years from the date of assignment on registry;

(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 maybe, 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 by the labour of any member of his family and with the occasional assistants, 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 personal may lease for cultivation purposes the lands assigned to them whilst they are away on active services.

(3)The registry shall be liable to be cancelled for contravention of the provisions in sub-rule (1A) or sub-rule (2)]. The registry may be cancelled also, if it 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 the 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.

### **9.Collection of arrears of Government dues and issue of Provisional Patta.--**

(1)Order granting registry shall be issued in the form in Appendix I to these rules.

(2)In cases where registry is made, patta shall be issued in the form in Appendix II to these rules. Where such patta is issued pending survey and demarcation, a note to the effect that the area noted in the patta is

subject to revision after finalisation of the survey and demarcation shall be made in the Patta. In such cases, when survey and demarcation is completed, the exact area assigned shall be noted in the patta by the assigning authority

**Note:-**A patta issued under this sub-rule shall be liable to stamp duty of appropriate value

(3) In cases where the land granted on registry is already held by the assignee either under a lease, current or time expired or by way of encroachment, not considered objectionable, the arrears of assessment recoverable by the Government (whether by way of land revenue or any tax or fee levied in lieu thereof including prohibitory assessment and fines, arrears of lease amount or licence fee outstanding from such assignee) shall be limited to the amount of basic tax due on the land

(4)The liability for land revenue or any tax or fee levied in lieu thereof shall arise with effect from the year of issue of the patta and any difference in the tax consequent on the change in the extent after survey and demarcation, shall be adjusted to the future land revenue or any tax or fee levied in lieu thereof due from the assignee, or be collected straightway, if it is less than the land revenue or any tax or fee levied in lieu thereof due from the assignee.

(5) The land revenue or any tax or fee levied in lieu thereof shall be liable to revision.

(5A)In cases where the Kerala Land Development Corporation Limited has executed any development work on the land, the assignee shall be liable to pay the cost or the proportionate cost as the case may be, with interest thereon to the said corporation

(6)The land shall also be subject to all general taxes and local rates payable by law or custom.

(6A) Notwithstanding the order of registry of any land and the communication of that order to the assignee, the title to that land shall not pass to the assignee until he remits that land value and tree value payable in respect of that land, the arrears of tax, if any due in respect of the land and other charges due from him.

(7)If the assignee does not remit land value, tree value and arrears of tax due from him and other charges within three months from the date of sanctioning the registry, the registry shall be cancelled, the occupants evicted, the land resumed and reassigned to other eligible families. The patta for the land shall be issued only after the entire amount is paid within three months:

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Provided that the Tahsildar may, in the case of assignees who are landless and whose annual family income does not exceed Rs. 10,000 [*Inserted* in his discretion, allow the payment of land value, tree value and other dues in half yearly installments not, however, exceeding four in number. In such cases patta for the land shall be issued only after the entire amount has been paid by the assignee. If the assignee wants to cut and remove the trees from the land before the patta is granted, the prior permission, in writing of the Tahsildar shall be obtained. The Tahsildar may, before granting permission, direct the assignee to remit the estimated value of the trees sought to be cut and removed.

Provided further that if the occupants had not been evicted, the Revenue Divisional Officer may, at his discretion and in deserving cases condone the delay in payment of land value, tree value, arrears of tax and other charges due from the assignee, upto a period of one year from the date of the order sanctioning the registry. In such cases, the assignee shall remit the entire dues in a lump within fifteen days from the date of the orders of the Revenue Divisional Officer. If the occupants fail to remit the amount within the time so allowed, they shall be summarily evicted:

Provided also that the District Collectors and the Board of Revenue shall be competent to condone delay in payment of land value, tree value, arrears of tax and other charges due from the assignees in deserving cases upto a period of three years and five years respectively from the date of the order sanctioning registry. In all cases where the delay exceeds five years sanction of Government shall be obtained for condoning the delay]

**Note.**Arrears of assignment dues shall bear interest at 6 per cent per annum”

18. Relying on the statutory scheme extracted above, the learned counsel for the plaintiff/appellant contended that the alleged cancellation of the assignment in favour of Sri.Moosa without adhering to the statutory mandate renders the same inoperative, illegal and invalid in law. The assignment of the plaint schedule property in favour of the original assignee Sri. Moosa has been admitted by defendants 1 to 3. The said assignment stands proved by Ext.A1 assignment proceedings dated 21.08.1978 in favour of the original assignee Sri. Moosa. The Special Tahsildar issued Ext.A2 patta on 13.04.1984. Rule 8 of the KLA Rules, 1964, refers to the conditions of the assignment on registry. Sub-rule (3) of Rule 8 deals with certain circumstances in which the registry shall be cancelled. The present facts do not take in any of the circumstances referred to in sub-rule (3) for cancellation of registry. However, the proviso to Sub-rule (3) of Rule 8 says that no registry of land shall be cancelled without giving the party or parties affected thereby, a reasonable

opportunity of being heard. Sub-rule (1) of Rule 9 of KLA Rules postulates that the order granting registry shall be issued in the form prescribed in Appendix I to the Rules. Sub-rule (2) of Rule 9 provides that in cases where registry is made, patta shall be issued in the form prescribed in Appendix-II of the Rules.

19. Sub-rule (6A) of Rule 9 stipulates that notwithstanding the order of registry and the communication of the order of registry to the assignee, the title shall not pass to the assignee until he remits the land value and tree value payable in respect of the land. Sub rule (7) of Rule 9 makes it clear that if the assignee does not remit the land value within three months from the date of sanctioning the registry, the registry shall be cancelled and the land be resumed and reassigned to other eligible families. Sub-rule (7) further makes it clear that the patta shall be issued only after the entire amount is paid within three months.

20. The first Proviso to Rule 9 empowers the Tahsildar to permit the assignee to remit the land value etc. in instalments not exceeding four in number. Second proviso to Rule 9 enables the RDO to condone the delay in payment of the land value etc. upto a period of one year from the date of sanctioning the registry.

21. The sum and substance of the scheme of Rule 9 and the first proviso to Rule 9 is that the patta shall be issued only after the entire amount as stipulated in Rule 9(1) is paid. Sub-rule (7) of Rule 9 and the proviso thereto makes it crystal clear that the patta is liable to be issued only after the assignee remits all the charges contemplated by Rule-9. The necessary conclusion is that the stage of issuance of patta as contemplated by Rule 9 presupposes payment of all charges by the assignee.

22. It is important to note that as per the Statutory Scheme provided by the KLA Rules, 1964, cancellation of order of registry is distinct from cancellatin of Patta. Sub rule (3) of Rule 8 provides only cancellation of order of

registry. Sub-rule (7) of Rule 9 also refers to cancellation of registry. Even if it is assumed that the order of registry contemplated in Rule 8 includes Patta, the competent authorities can exercise the power of cancellation of patta based on the irregularities in procedure only after affording an opportunity of being heard to the assignee.

23. The adherence to principles of natural justice as recognised by all Civilised States is of supreme importance when a competent statutory authority embarks on an action involving civil consequences. These principles are settled. Notice is the first limb of the principle that no one should be condemned unheard. The Statutory Scheme provided under Rules 8 and 9 of the KLA Rules, 1964, warrants opportunity of being heard to the assignee when the authorities concerned embark upon to cancel the assignment on the ground that LA dues are not paid. Any contrary construction empowering the authorities to cancel the assignment or

Patta without affording an opportunity of being heard to the assignee is a mischief.

24. ***Soorya Narayana Bhat v. State of Kerala*** [2017(2) KLT 1141] laid down the proposition that an order of cancellation of assignment passed without following the mandate of issuing notice to the assignee prior to the order cancelling assignment is not in consonance with the KLA Rules, 1964, and consequently violates the mandate of Article 300-A of the Constitution.

25. In the present case, the Trial Court and the First Appellate Court concurrently held that there was no evidence to show that the competent authorities followed the mandate of sub-rule (3) of Rule 8 and issued notice to the original assignee before cancelling the order of assignment. After recording this finding the trial Court and the First Appellate Court, without embarking on the issue as regards whether such an order of cancellation passed by the authorities could be construed as valid or not, proceeded to hold that it is not a ground to conclude

that the cancellation is against law and is invalid. The findings recorded by the Trial Court and the First Appellate Court are unsustainable in law.

26. As the Statute provides that Patta for the land shall be issued only after the entire amount is paid within the stipulated time, the probable inference is that the original assignee Sri. Moosa had paid the LA dues. In the earlier round of litigation between the parties, the First Appellate Court therein held that as the Rules make it clear that patta would be issued only if the LA dues are paid by the assignee in all probability, Moosa could be taken to have paid the LA dues and the argument that the Patta was cancelled for non-payment of LA dues could not be sustained.

27. This Court therefore comes to the following conclusion:-

Cancellation of Patta and the registry (Exts.A1 and A2) is inoperative, illegal and invalid in law for the following reasons:-

(a)The cancellation of the original assignment was done without offering an opportunity of being heard to the original assignee.

(b)After issuing Ext.A2 Patta, going by the Scheme of the KLA Rules, 1964, the statutory authorities cannot canvas that the assignee had not paid the LA dues.

28. The resultant conclusion is that the title acquired by the original assignee as per Exts. A1 and A2 in respect of the plaint schedule property is in no way affected by the alleged cancellation of registry as per order dated 31.03.1981. It is further held that Moosa, the original assignee, had a valid title to convey through the sale deed in favour of the present plaintiff. The trial Court and the First Appellate Court are not justified in holding that the plaintiff had no title over the plaint schedule property.

29. The substantial questions of law are answered accordingly in favour of the plaintiff/appellant.

30. This takes me to the reliefs sought for in the plaint. The plaintiff prayed for the following reliefs:

(a) For a declaration that the plaintiff is the absolute owner of plaint A Schedule property and as a consequential relief for a permanent prohibitory injunction restraining the defendants, their men and agents from trespassing into any portion of the plaint A schedule property or otherwise interfering with the plaintiff's peaceful possession and enjoyment thereof.

(b) Directing the defendants to pay plaintiff and full costs of the suit.

(c) To grant the plaintiff such at her appropriate reliefs.

Now a question arises. Is the plaintiff entitled to the decree declaring his title without seeking the relief of recovery of possession?

31. The learned counsel for the appellant/plaintiff submitted that once the title as set up by the plaintiff stands established, no other person can legally continue to be in possession of the the property against the true owner.

31. The maxim 'possession follows title' is limited in its application to immovable property. The ordinary presumption would be that possession went with the title. This presumption cannot be of any avail in the presence of clear evidence to the contrary. [Vide: ***Bhagavathy Pillai Parvathi Pillai v. Anthony Kochumadan*** [1968 KLR 127], ***Nazir Mohamed v. J Kamala and Others*** [2020 (19) SCC 57].

32. In the earlier round of litigations (O.S.No.308/1995 and A.S.No.60 of 1987) the trial Court and the First Appellate Court held that the plaintiff failed to establish possession of the property. The said finding has become final. The trial Court and the First Appellate Court, relying on the finding which has become final in the earlier round of litigations and on the available evidence, held that the contentions raised by defendants 4 to 6 that the plaintiff is not in possession of the property is probable.

33. It is profitable to extract Section 34 of the Specific Relief Act.

**“34. Discretion of court as to declaration of status or right.—**

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

34. As per Section 34 of the Specific Relief Act, the plaintiff is not entitled to the relief of declaration simplicitor when he is able to seek further relief than a mere declaration of title and omits to do so. As per the proviso to Section 34 of the Specific Relief Act, the suit seeking declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Act, 1963, and, thus, not maintainable. [Vide:- ***Vasantha v. Rajalakshmi*** [2024 KLT OnLine 1073(SC),

***Union of India v. Ibrahim Uddin*** [(2012) 8 SCC 148],  
***Vinay Krishna v. Keshav Chandra*** [1993 Supp(3) SCC  
129], ***Ram Saran v. Ganga Devi*** [(1973) 2 SCC 60]  
***Venkataraja and Ors. v. Vidyane Doureradjaperumal***  
***(Dead) thr. LRS*** [(2014) 14 SCC 502].

35. The appellant/plaintiff is not entitled to the decree of declaration as prayed for without seeking the relief of recovery of possession.

The Regular Second Appeal stands dismissed.

Sd/-

**K. BABU  
JUDGE**

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