

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 28TH DAY OF MAY 2013/7TH JYAISHTA 1935

CrI.MC.No. 3012 of 2009 ()

IN MC 1/1975 of SUB DVL.MAGISTRATE,DEVIKULAM

PETITIONER(S) :

1. P.N.RAJAN, S/O.NICHOLAS,
PAREMADATHIL HOUSE, SINGAKANDAM P.O.
CHINNAKANAL VILLAGE.
2. M.P.BABY, S/O. PAULOSE,
MARACHERIYIL HOUSE, SINGAKANDAM P.O.
CHINNAKANAL VILLAGE.
3. P.N.JAIMON, S/O.NICHOLAS,
PAREMADATHIL HOUSE, SINGAKANDAM P.O.
CHINNAKANAL VILLAGE.
4. P.N.SUNIL, S/O.NICHOLAS,
PAREMADATHIL HOUSE, SINGAKANDAM P.O.
CHINNAKANAL VILLAGE.
5. GEORGE ANKATHIL, CHINNAKANAL,
SINGKANDAM P.O.
6. P.N.SAJEEVAN, S/O.NICHOLAS,
PAREMADATHIL, SINGKANDAM, CHINNAKANAL VILLAGE.
7. SUSY MOHANRAJ, KEECHERI,
SINGKANDAM P.O., CHINNAKANAL VILLAGE.
8. P.D.JOSE, PUTHANPURAYIL,
SINGKANDAM P.O., CHINNAKANAL VILLAGE.
9. SOLLY TOMY, KANNAM PAMPURATH,
SINGKANDAM P.O., CHINNAKANAL.
10. PRASHUR JOSE, S/O.JOSE, PAINAM
SINGKANDAM P.O., CHINNAKANAL.
11. P.D.JOY, S/O.DEVASSY, PEZHUMKUDY,
SINGKANDAM P.O., CHINNAKANAL.

12. P.T.MARKOSE, PATTAKUNNEL,
SINGKANDAM P.O., CHINNAKANAL.
13. V.C.PAULOSE, S/O.CHACKO,
VALIYAMACKAL, SINGKANDAM P.O.
14. P.N.JOHNY, S/O.NICHOLAS,
SINGKANDAM P.O., CHINNAKANAL VILLAGE.

BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENT :

1. STATE OF KERALA, REPRESENTED BY
GOVERNMENT PLEADER, HIGH COURT OF KERALA, ERNAKULAM.
2. SUB DIVISIONAL MAGISTRATE, DEVIKULAM.
3. VILLAGE OFFICER, CHINNAKANAL.
4. PRAKASH CHITTOOR, S/O.K.S.CHITTOOR,
KIZHAKKEKALAPURACKAL HOUSE, MANAKKAD VILLAGE
THODUPUZHA TALUK.
5. CHITTOOR RAJMANAN, S/O.K.S.CHITTOOR,
KIZHAKKEKALAPURACKAL HOUSE, MANAKKAD VILLAGE
THODUPUZHA TALUK.
6. DILEEP CHITTOOR, S/O.K.S.CHITTOOR,
KIZHAKKEKALAPURACKAL HOUSE, MANAKKAD VILLAGE
THODUPUZHA TALUK.
7. RANI B.CHITTOOR, D/O.K.S.CHITTOOR,
KIZHAKKEKALAPURACKAL HOUSE, MANAKKAD VILLAGE
THODUPUZHA TALUK.
8. RESMI B.CHITTOOR, D/O.K.S.CHITTOOR,
KIZHAKKEKALAPURACKAL HOUSE, MANAKKAD VILLAGE
THODUPUZHA TALUK.

R1 TO R3 BY PUBLIC PROSECUTOR SMT. ANITHA RAVINDRAN
R5 BY ADV. CHITTOOR RAJAMANNAN (PARTY-IN-PERSON)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-05-2013, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

BP

APPENDIX

PETITIONER'S EXHIBITS :

- ANNEXURE A1: COPY OF THE ORDER DT 16/5/1990 OF THE R2.
- ANNEXURE A2: COPY OF THE COMMUNICATION DT 26/5/1990 OF THE 3RD RESPONDENT
- ANNEXURE A3: COPY OF THE PROCEEDINGS DT 13/6/02.
- ANNEXURE A4: COPY OF THE I.A.16515/2004 IN O.P. 5904/2002 OF THE HON'BLW HIGH COURT.
- ANNEXURE A5: COPY OF THE JUDGMENT DT 1/9/2005 PASSED BY THIS HON'BLE COURT IN OP 5904/2002.
- ANNEXURE A6: COPY OF THE JUDGMENT DT 10/8/2009 IN WA 2346/2005 OF THE HON'BLE HIGH COURT.
- ANNEXURE A7: COPY OF THE ORDER DT 6/8/2009 UNDER RIGHT TO INFORMATION ACT.

RESPONDENT'S ANNEXURES :

- ANNEXURE R4(1): SURVEY PLAN PREPARED BY THE COMMISSIONR IN O.S. 42/75 OF MUNSIFFS COURT DEVIKULAM DT 10/4/1975.
- ANNEXURE R4(2): COMMISSION REPORT IN O.S. 42/75 PREPARED BY THE ADVOCATE COMMISSIONR IN O.S. NO. 42/1975 OF MUNSIFFS COURT DEVIKULAM DT 6/5/1975.
- ANNEXURE R4(2A): ENGLISH TRANSLATION OF ANNEXURE R4(2)
- ANNEXURE R4(3): ATTACHMENT MAHAZAR IN M.C. NO. 1/75 OF THE SDM COURT DEVIUKULAM DT 24/10/1975.
- ANNEXURE R4(4): ATTACHMENT REPORT IN M.C. NO. 1/75 OF THE SDM COURT DEVIKULAM DT 13/11/1975.
- ANNEXURE R4(5): ORDER DISMISSING RESTORATION PETITION IN I.A. NO. 5981988 IN O.S. NO. 206/1983 OF MUNSIFFS COURT DEVIKULAM DT 19/6/1989.
- ANNEXURE R4(6): PETITION FILED BY THE LEGAL HEIRS OF K.S.CHITTOOR BEFORE THE SDM DEVIKULAM DT 14/2/1990.
- ANNEXURE R4(7): PETITION FILED BY THE LEGAL THIRS K.S.CHITTOOR BEFORE THE SDM COURT DEVIKULAM DT 18/3/1993.

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ANNEXURE R4(8) : PETITION FILED BY THE LEGAL HEIRS OF
K.S.CHITTOOR EFORE THE SDM DEVIKULAM
DT. 5/7/1995.

ANNEXURE R4(9) : ORDER OF TLB UDUMBANCHOLA DT 8/12/1995.

ANNEXURE R4(10) : NOTICE OF FRESH PROSEEDINGS OF TLB
UNDUMBACHOLA ISSUED TO LEGAL HEIRS OF
K.S.CHITTOOR DT 18/12/1995.

ANNEXURE R4(11) : PETITION FILED BY THE LEGAL HEIRS K.S.
CHITTOOR BEFORE THE SDM DEVIKULAM 2
DT 0/12/1995.

ANNEXURE R4(12) : PETITION FILED BY THE LEGAL HEIRS OF K.S.
CHITTOOR FOR THE EVICTION OF UNAUTHORIZED
OCCUPANTS BEFORE THE SDM COURT DEVIKULAM
DT 13/10/2000.

ANNEXURE R4(13) : PETITION FILED BY THE LEGAL HEIRS OF K.S.
CHITTOOR FOR INCIDENTAL ORDERS BEFORE THE SDM
COURT DEVIKULAM DT 22/10/2001.

ANNEXURE R4(14) : PETITION FILED BEFORE SDM COURT BY THE LEGAL
HEIRS OF K.S. CHITTOOR DT 3/7/2002.

ANNEXURE R4(15) : PETITION FILED NBY THE LEGAL HEIRS OF K.S.
CHITTOOR BEFORE THE SDM COURT DEVIKULAM
DT 20/1/2003.

ANNEXURE R4(16) : REPORT FROM TAHSILDAR JUDUMBANCHOLA TO RDO
DEVIKULAM DT 20/10/2003.

ANNEXURE R4(16A) : ENGLISH TRANSLATION OF ANNEXURE R4(16)

ANNEXURE R4(17) : DIRECTION BY RDO DEVIKULAM TO DFO MUNNAR
13/1/2004.

ANNEXURE R4(17A) : ENGLISH TRANSLATION OF ANNEXURE R4(17)

ANNEXURE R4(18) : AFFIDAVIT FILED BY THE PETITIONER NO.1 IN
I.A. 16515/04 IN O.P. 5904/2002 DT 29/11/1004.

ANNEXURE R4(19) : PETITION DT 15/5/2007 FILED BY LEGAL HEIRS OF
K.S. CHITTOOR BEFORE THE SDM COURT DEVIKULAM
ON 21/5/2007

ANNEXURE R4(20) : PETITION FILED BY THE LEGAL HEIRS OF
K.S.CHITTOOR BEFORE THE SDM COURT DEVIKULAM
DT 2/7/2007.

ANNEXURE R4(21) : PETITION FILED BY THE LEGAL HEIRS OF
K.S.CHITTOOR BEFORE THE SDM COURT DEVIKULAM
DT 20/7/2007.

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ANNEXURE R4(22) : PETITION FILED BY THE LEGAL HEIRS OF
K.S.CHITTOOR BEFORE THE SDM COURT DEVIKULAM
DT 11/11/2008.

ANNEXURE R4(23) : POWER OF ATTORNEY EXECUTED BY REPONDENTS
NO.4,6,7 AND 8 TO RESPONDENT NO.5 FOR
CONDUCTING THE CASE.

ANNEXURE R4(24) : COPY OF THE ORDER IN I.A. NO. 3681/2004 IN
O.P.5904/2002 OF THIS HON'BLE COURT
DT 6/8//2004.

ANNEXURE R4(25) : COPY OF THE LIST FURNISHED BY THE RDO
DEVIKULAM DT 20/10/2004

ANNEXURE R4(26) : COPY OF THE I.A. NO. 16515/2004 IN
O.P.NO. 5904/2002 DT 29/11/2004.

ANNEXURE R4(27) : COPY OF THE PETITION FOR THE CANCELLATION OF
THE FALSE ANNEXURE P2 LIST FILED BY
PETITIONERS BEFORE THE SDM COURT DEVIKULAM
ON 20/7/2007.

ANNEXURE R4(28) : COPY OF THE ATTACHMENT MAHAZAR PREPARED BY
THE SUB INSPECTOR OF POLICE SANTHANPARA
DT 24/10/1975.

ANNEXURE R4(29) : COPY OF THE ATTACHMENT REPORT MADE BY THE
VILLAGE OFFICER CHINNACKANAL TO THE SDM COURT
DEVIKULAM DT 13/11/1975.

ANNEXURE R4(30) : COPY OF THE JUDGMENT IN O.P.5904/2002 OF
THIS HON'BLE COURT DT 1/9/2005.

ANNEXURE R4(31) : COPY OF THE COUNTER AFFIDAVIT OF R3 I
O.P.5904/2002 DT 30/1/2003.

//TRUE COPY//

P.A. TO JUDGE

BP

K. RAMAKRISHNAN, J.

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Dated this the 28th day of May, 2013

ORDER

This is an application filed by the petitioners for quashing Annexure-A7 order passed by the Sub Divisional Magistrate, Devikulam in M.C No.1/75 under Section 482 of the Code of Criminal Procedure.

2. The case of the petitioners is in the petition was as follows:

“There was a dispute between the said K.S. Chittoor and one Mr.Theja Singh regarding the possession, ownership of 50 acres of land in Sy.Nos.430, 431 and 299/2 of Chinnakanal Village. Since the said dispute generated a law and order problem in the area, the 2nd respondent took over possession of the property pursuant to the proceedings initiated as M.C.1/1975 and the 3rd respondent village officer was appointed as the receiver under Section 146 of the Code of Criminal Procedure. Thereafter a suit bearing number O.S.228/1978 in the file of the Munsiff Court, Devikulam was decreed in favour of the said K.S. Chittoor whereby it was declared that the plaintiff therein had title over the schedule property. Therefore by vide Annexure A4, the 2nd respondent withdrew the receivership over the land comprised in Sy.No.430, 431 and 229/2 of Chinnakanal village and directed the village officer to hand over the property to the respondents 4 to 8 forthwith. The village officer

by vide Annexure-A2 communication informed the 2nd respondent that ceiling proceedings have been initiated in respect of a portion of the property under receivership and without demarcating the property covered by the ceiling proceedings, it is not possible to handover the same. Thereafter by Annexure-A3 proceedings, the Taluk Land Board dropped the ceiling proceedings in respect of the said property. Since petitioners and similarly situated others were residing in the land in question, it is practically impossible to handover the possession of the property to the respondents 4 to 8. Alleging the inaction the respondents 4 to 8 approached this Court as O.P.5904/2002. During the pendency of the above original petition, a detailed report of the residents in the land in question was furnished by the official respondents, as directed by this Court. On 1/9/2005 considering the right of the petitioners herein by way of adverse possession, this Court disposed the original petition by vide Annexure-A5 judgment with an observation to pursue the remedy before appropriate Forum. Challenging Annexure-A5 judgment passed by the learned Single Judge, the respondents 4 to 8 filed writ appeal No.2346/2005. On 10.08.2009 upon the submission made by the 5th respondent herein, this Court dismissed the writ appeal by vide Annexure-A6 as not pressed. Thereafter it was authentically made known to the petitioners that at the instance of the respondents 4 to 8, the Sub Divisional Magistrate passed an order of eviction against the petitioners and others. Immediately the 1st petitioner herein applied for the order dated 6.8.2009 passed by the 2nd respondent herein under Right to Information Act. On 19.08.2009 the Annexure-A7 order dated 06.08.2009 has been provided under Right to

Information Act. By Annexure-A7 order, the 2nd respondent directed the 3rd respondent Village Officer to evict the petitioners, in which they are not a party and also not afforded an opportunity of hearing. Being highly aggrieved by the abuse of the process of the court, petitioners herein constrained to invoke the inherent power of this Hon'ble Court under Section 482 of Cr.P.C, hence this case.

3. The contesting respondents 4 to 8 filed counter affidavit denying the allegations in the petition.

4. Heard both sides.

5. Learned counsel for the petitioners submitted that M.C. No.1/75 was registered, when there was dispute arose between the predecessor of the respondents 4 to 8, and one Theja Singh and thereafter the predecessor of the respondents 4 to 8 namely, K.S Chittoor filed suit before the Munsiff Court, Devikulam and obtained a judgment in his favour, restraining the said Theja Singh getting a declaration that he is the title holder in respect of the property in subject matter in M.C. No.1/75 pending before the Sub Divisional Magistrate, Devikulam and on that basis, he filed writ petition No.5904/2002-C before this

court, seeking several reliefs including a relief of mandamus directing the official respondents to remove the encroachers in that property on the basis of the report of the Village Officer. Respondents 8 to 59 were impleaded of which some of them are petitioners herein. According to the counsel for the petitioners, these petitioners have raised contentions that they are in possession of the property since long time, and submitted in that proceedings they are in possession since long time and they acquired title to the disputed property by adverse possession, and since the question regarding possession etc., cannot be considered in the writ petition, this court has disposed of that writ petition vide Annexure-A5 order, relegating the parties to move the appropriate Forum to redress their grievance without prejudice to that right the O.P was disposed of. Thereafter, the petitioners therein filed writ appeal No.2346/2005 before the Division Bench of this court, and as per Annexure-A6 order that was allowed to be dismissed as not pressed, and suppressing this order according to the

counsel for the petitioners, Annexure-A7 order has been obtained. So according to him without giving an opportunity to the petitioners, who were claimed to be in possession of the property, the Sub Divisional Magistrate was not justified in passing the order of summary eviction.

6. On the other hand, the 5th respondent in this petition in person appeared on his behalf and on behalf of respondents 4, 6, 7 and 8 submitted that he had filed detailed counter affidavit and it will be seen from the counter affidavit that, at the time when the Sub Divisional Magistrate attached the property and appointed the Village Officer as receiver, only one person was there, and he was evicted and thereafter the Village Officer has taken possession of the property as receiver, and the present petitioners are only subsequent encroachers. So they are not entitled to get any protection, being subsequent encroachers, while the property was in the possession of the receiver. So according to him, the order passed by the Sub Divisional Magistrate is just and proper and he had also

submitted that they have filed review petition in the writ appeal No.2346/2005 and that is pending, which fact was disputed by the counsel for the petitioners.

7. It is an admitted fact that when there was some dispute arose between the predecessor of respondents 4 to 8 Shri. K.S. Chittoor and one Theja Singh, proceedings were initiated under Section 145 of the Code of Criminal Procedure as M.C.No.1/75, and the properties under dispute were attached and put in possession of the Village Officer. It is also in away admitted that Shri.K.S. Chittoor filed a suit as O.S. No.42/75 before the Munsiff Court, Devikulam and later transferred to Munsiff Court, Kottayam and again retransferred to Munsiff Court, Devikulam. Where it was renumbered as O.S. No.228/78 and a decree was passed in favour of late K.S. Chittoor, declaring his title over the property and also a decree for injunction restraining Theja Singh and others who were shown as defendants in that suit from trespassing in that property. It appears that the decision has become final. It is

also seen from the documents produced by the contesting respondents that one Devassy filed O.S. No.206/83 before the Munsiff Court, Devikulam to set aside the decree in O.S.No.228/78, and that suit was also dismissed. Thereafter, the land ceiling proceedings were initiated against the predecessor of the contesting respondents, and Annexure-A3 order was produced, and the land board dropped the proceedings holding that the declarant is not having any excess land to be surrendered. Before this, the contesting respondent filed O.P No.5904/2002 before this court claiming several reliefs including issue a writ of certiorari or other appropriate writ, order or direction quashing proceedings under C6/5416/79 of 2nd respondent/Taluk Land Board, Udumbanchola, commenced by Ext.P7 notice and during the pendency of the proceedings, since land board proceedings were ended in their favour, they did not press for that relief. Subsequently, after hearing both sides that writ petition was disposed of by Annexure-A5 judgment as follows:

“5. I, heard the learned counsel on both sides. The petitioner would point out that as evident from Exts.P1 and P2, when the village officer took over the property as Receiver, there were no encroachers. The encroachments as on that date were evicted also. Therefore, the subsequent encroachments while the property was under receivership are totally illegal and they will not confer any right on the encroachers. The encroachers would point out that the decree obtained by the petitioners will not bind them. They are in possession of their respective properties and they have obtained title by adverse possession and limitation. I feel that this dispute between the petitioners and additional respondents 8 to 59 cannot be resolved in a proceedings under Article 226 of the Constitution of India. The petitioners have to approach other forums. But, they can proceed on the footing that the receivership is no longer in force, in view of Ext.P4 order. The petitioners can take steps in accordance with law, for taking possession of the property.

6. The petitioners have a case that the eucalyptus trees planted by them have been cut and removed. If that be so, they may move the competent civil court or criminal court against the persons who cut and appropriated them.

Accordingly, the Original Petition is disposed of, without prejudice to the contentions of the petitioners and the party respondents and the right of the petitioners to move other forums for redressal of the grievances raised in this Original Petition”.

8. It is also seen from the documents produced,

against Annexure-A5 judgment, the contesting respondents therein filed writ appeal as W.A No.2346/2005 and that writ appeal was disposed of by Annexure-A6 Judgment, as dismissed as not pressed on the basis of the submissions made by Shri K.S. Chittoor Rajamannar, who was the 2nd appellant in that writ petition. Now Shri. Chittoor Rajamannar who appears in person submitted that a review petition is pending to review that order.

9. It is during the pendency of the writ appeal that Annexure-A7 order has been passed by the Sub Divisional Magistrate, Devikulam as follows:

“In these circumstances the Village Officer Chinnackanal is hereby directed to ascertain the boundary of the 50 acres of land Sy.Nos.430, 431 & 229/2 of Chinnackanal Village with the help of the Taluk Surveyor, Udumbanchola and to demarcate the boundaries clearly. He is further directed to ascertain the actual number of the encroachers within the boundary and the Tahsildar, Udumbanchola should serve them with notices to vacate the land mentioned above failing which they will be summarily evicted. If they do not vacate the land within 5 days of the receipt of the notice, prosecution steps may be initiated against them also. The Village Officer Chinnackanal shall be given all Police assistance in the matter by the Deputy Superintendent of

Police, Munnar. The Village Officer Chinnackanal is directed to handover the vacant possession of the land to the petitioners after evicting the encroachers forthwith”.

10. When a question was posed, to the counsel for the petitioners as to why a revision has not been filed against that order, as the order passed by the Sub Divisional Magistrate is amenable to revisional jurisdiction of this court under Section 397 of the Code of Criminal Procedure, learned counsel submitted that it is only an interim order and so no revision is maintainable. If such a submission is accepted, then it is not safe for this court to quash the proceedings as well, invoking the power under Section 482 of the Code of Criminal Procedure as the petitioners can very well approach the Sub Divisional Magistrate, and move for stay of that order and also raise their objections claiming possession and seek for an adjudication regarding their possession. So the remedy of the petitioner is to move the Sub Divisional Magistrate and establish their possession and avoid eviction and without resorting that remedy, they are not entitled to come before

this court to quash the proceedings under Section 482 of the Code of Criminal Procedure. So, I feel that this petition can be disposed of leaving open the right of the petitioners to move the Sub Divisional Magistrate and establish their possession and get the interim order passed by the Sub Divisional Magistrate varied or modified. It is also made clear that if the petitioners move the Sub Divisional Magistrate within 10 days from today, then the Sub Divisional Magistrate shall conduct enquiry regarding their objections and if they are able to establish, that they are in possession of the property prior to the receiver took possession of the property, then consider their objection and pass appropriate orders. If it is found on enquiry that they are subsequent encroachers, after receiver took possession of the property, then they will not any right in the property, and they can be summarily evicted from the property after identifying the property as directed in the impugned order. If on enquiry it is found that they are entitled to be in possession and they are in possession of the

property under dispute prior to the receiver took possession of the property, then the Sub Divisional Magistrate is directed to relegate the parties to establish their right in appropriate Forums or the Civil Court as provided under Section 137 of the Code of Criminal Procedure, and after getting a declaration from that court, release of property to the person who is entitled to get possession of the property.

In the meantime, the direction given in the order to conduct the survey and identification of the property and also find out who are of in possession of the property can go on. But dispossession of the property as far as petitioners are concerned should not be carried out, till the disposal of the objections made by the petitioners herein. If the petitioners herein filed an application before the Sub Divisional Magistrate as directed by this court, then the Sub Divisional Magistrate is directed to give notice to the petitioners in Annexure-A7 order, and after giving opportunity to both parties and considering the rival contentions pass appropriate orders. It is needless to say

that opportunity must be given to the parties adduce evidence as well.

With the above observations and directions, the above petition is disposed of. Communicate this order to the Sub Divisional Magistrate, Devikulam forthwith.

Sd/-
K.RAMAKRISHNAN,
(Judge)

// True Copy //

P.A. To Judge

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