

**SUPREME COURT OF INDIA**

Hameed (D) By Lrs. and Others

Vs

Kummottummam Kunhi P.P.Amma (D) By Lrs and Others

Appeal (Civil) 3023 of 2006 (Arising Out of Slp (C) No.13712/2003)

(Dr. Ar. Lakshmanan and L. S. Panta, JJ)

18.07.2006

**JUDGMENT**

**DR. AR. LAKSHMANAN, J.**

Delay condoned.

Leave granted.

Heard Mr. P. Krishnamoorthy, learned Senior Counsel for the appellants and Mr. M.K.S. Menon, learned counsel for the respondents.

This appeal is directed against the final order/judgment dated 12.7.2002 in A.S. No.624 of 1994 passed by the High Court of Kerala, whereby the High Court, after setting aside the decree and judgment of the courts below, remanded the matter back to the trial court for reconsideration. The LRs. of 5th defendant are the appellants before us. The respondents filed the suit for recovery of possession on the strength of title of the plaint schedule property from the possession of defendants 4 to 6 and for partition of the same among the tavazhi members and also for prohibitory injunction and damages. The defendants including defendant no.5 resisted the suit contending that the title and possession of the property is with them and if at all the title of the property is found to be with the plaintiffs, the same is lost by adverse possession and limitation. Witnesses were examined on both

sides. The contesting defendants produced about 41 documents showing the derivation of title and possession of the property with them.

The Trial Court holding that the respondents-plaintiffs failed to prove title and the defendants, the appellants herein, are in continuous and uninterrupted possession of the suit property, dismissed the suit with costs to the contesting defendants. On appeal by the plaintiffs, the High Court remanded the matter back to the Trial Court for reconsideration.

We have perused the order passed by the High Court. While remitting the matter, the High Court has not indicated as to what question of facts and law are required to be assessed and the circumstances upon which the High Court found itself unable to decide the matter.

Aggrieved by the order passed by the High Court, the LRs. of 5th defendant preferred the above appeal in this Court. Mr. P. Krishnamoorthy, learned Senior Counsel, submitted that the High Court was not justified in remanding the matter back to the Trial Court for reconsideration with liberty to adduce further evidence without entering into a finding that the judgment and decree are erroneous and without considering the case on merit, in view of Order 41, Rule 23A of the Code of Civil Procedure. He would further submit that the High Court was not justified in remanding the matter without indicating as to what question of law and facts are required to be decided and why remand is necessitated? Per contra, Mr. M.K.S. Menon, learned counsel for the respondents, submitted that the order of remand passed by the High Court is perfectly in order and that the High Court after satisfying that it is a case whereby the parties are given sufficient opportunity to adduce evidence, both documentary and oral, and remanded the matter and therefore no interference is called for with the judgment passed by the High Court. We are unable to countenance the submissions made by the learned counsel for the respondents.

The Trial Court in paragraph 16 of its judgment held as follow:

*"Apart from Ext.A1 and A2 which are the copies of adangal registers, no other documents are produced by the plaintiffs to show that they or their predecessors have got title to the plaint schedule property. During cross-examination the 7th plaintiff who is examined as PW.1 stated that the property originally belonged to Kummottungal tarwad and the tarwad gave it to the tavazhi of Kalliani Pillari Amma. It is on the basis of this that the jama was transferred in the name of Kalliani Amma. But he could not state how the tarwad got right over the property."*

It is seen from the judgment passed by the Trial Court that apart from Ext.A1 and A2, which are the copies of adangal registers, no other documents are produced by the plaintiffs to show that they or their predecessors have got title to the plaint schedule property. This apart, the plaintiff was given sufficient opportunity to produce the documents. In spite of opportunity, no other documents were filed and in the circumstances, we are of the opinion that the High Court should not have remanded the matter with liberty to produce documents in order to fill lacuna in the evidence.

We, therefore, set aside the order passed by the High Court and remit the matter to the High Court for consideration of appeal before it on merits only on the materials already on record. The High Court will dispose of the appeal without being influenced by any of the observations made by us in this appeal. The Civil Appeal stands disposed of with no orders as to costs.