2025 INSC 1254

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6813-14 OF 2013

M. JAMEELA ...APPELLANT(S)

VERSUS

THE STATE OF KERALA AND ANOTHER ETC …RESPONDENT(S)

J U D G M E N T

ARAVIND KUMAR, J.

1. These appeals by the original applicants arise from a common judgment dated 28th February, 2012 of the High Court of Kerala in M.F.A. Nos. 213 & 219 of 2007. By the impugned judgment, the High Court affirmed the order of the Forest Tribunal, Kozhikode dated 20th March, 2007 dismissing the appellants' Original Applications (O.A.) Nos. 36 & 37 of 1997. The central question is whether the lands in question, comprising a total of 37.50 acres in South Wayanad, Kerala are private forests vested in the State by virtue of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the Vesting Act"), or whether they stood exempt from vesting as bona fide coffee plantations existing prior to

the Act's appointed day, 10th May, 1971, by operation of Sections 3(2) and 3(3) of the Act.

2. The dispute has a protracted history. The appellants (and their predecessors) claim title and possession of the suit lands and assert that the lands were developed as coffee and cardamom plantations well before 1971. In 1997, faced with the Forest Department's assertion that these lands were "vested forest" under the Vesting Act, the appellants filed O.A. Nos. 36 of 1997 and 37 of 1997 before the Forest Tribunal, Kozhikode under Section 8 of the Act, seeking to declare that the lands are not vested in the Government. The State resisted the applications, maintaining that the lands in question constituted private forest as on the appointed day and hence stood vested under Section 3(1) of the Act.

3. The Forest Tribunal initially adjudicated the matter by a common judgment dated 30th September, 1999, dismissing the applications. In essence, the Tribunal in that first round held that the appellants failed to prove the existence of the claimed plantations prior to 10.05.1971. The appellants carried the matter in appeal to the High Court. The High Court, by order dated 11th December, 2006 in M.F.A. No. 618 of 2000 (which was the earlier appeal arising from the 1999 Tribunal decision), set aside the Tribunal's 1999 order and remanded the case for fresh consideration. The High Court specifically directed the Tribunal to conduct a thorough inquiry with the aid of scientific expertise to determine whether the coffee plants on the property were planted before the appointed day. This direction was given because the High Court found that the critical issue, i.e., the age of the plantation had not been satisfactorily determined in the initial round.

4. Pursuant to the remand, the Forest Tribunal appointed an Advocate Commissioner, who in turn engaged an expert namely, a retired Deputy Director of the Coffee Board to assist in ascertaining the age of the coffee plants. An inspection of the properties was conducted, and the Advocate Commissioner submitted a detailed report dated 20th February, 2007 (Exts. C4 and C5) incorporating the expert's findings. After considering the additional evidence, the Forest Tribunal rendered its final judgment on 20th March, 2007, again dismissing both O.A. Nos. 36/1997 and O.A. 37/1997. The Tribunal acknowledged the new evidence but was not convinced that the plantations were established before 10.05.1971 and thus denied the exemption under the Act.

5. Aggrieved, the appellants (including the successor-in-interest of the second original applicant) filed appeals before the High Court of Kerala under Section 8A of the Act. These appeals were numbered M.F.A. No. 213 of 2007 and M.F.A. No. 219 of 2007. The High Court heard the parties and by a common judgment dated 28th February, 2012 dismissed both appeals, thereby affirming the Tribunal's order. The High Court concurred with the Tribunal's view that the evidence was insufficient to establish the exemption and found no error in the Tribunal's appreciation of the expert evidence. Consequently, the appellants' claim that the land is not a vested forest was rejected at both levels. It is against this judgment of the High Court that the appellants have preferred the present civil appeals.

6. The factual matrix, as can be gathered from the record, is as follows. The lands in question form part of what was historically known as the Kalpetta Estate in South Wayanad Taluk (erstwhile Malabar district). The Kalpetta Estate was a large private estate of about 6000 acres in the mid -

20th century. In the 1960s, the estate owners decided to alienate a portion of their holdings. One K.V. Gopalan, a timber merchant, became interested in a part of the estate land. Ultimately, on 24.01.1970, a parcel of 37.50 acres was sold by Kalpetta Estate (through its proprietors and the legal heirs of K.V. Gopalan, acting as confirming parties) to one Parappu Mappilakath Imbichi Ahmed by a registered Jenmam deed No. 789/1970 of S.R.O. Vythiri. This 37.50-acre plot, situated in Muppainad and Kottappady areas of Wayanad constitutes the subject property now in dispute.

7. Prior to effecting the sale in 1970, necessary permissions were obtained under the then-operative Madras Preservation of Private Forests Act, 1949 (hereinafter referred to as the "MPPF Act"). The District Collector of Malabar, by proceedings dated 31.08.1956, granted sanction under Section 3(1) of the MPPF Act for the alienation of the 37.50-acre plot to Imbichi Ahmed. Additionally, on 26.11.1956, the Collector issued a clear-felling permit authorizing the felling of trees in the said area. Pursuant to these permissions, the entire 37.50 acres which was presumably forested land at that time was clear-felled in 1956. By early 1957, possession of the cleared land was handed over to Imbichi Ahmed, who had by then paid the full sale consideration.

8. Having obtained a completely cleared tract of land, Imbichi Ahmed proceeded to develop it for agricultural use. The record indicates that by 1957 itself, he had commenced planting the area with coffee and cardamom, the two principal plantation crops suited to the region. The property was effectively divided into two "bits" for cultivation purposes: Bit No.1, approximately 25 acres, was planted entirely with coffee; Bit No.2, approximately 12.50 acres, was planted with cardamom. By all accounts,

these plantations grew and flourished under Imbichi's care in the ensuing years. It is significant that these facts are corroborated by official records: well before the 1971 Vesting Act came into force, the owner had obtained formal registration of both the coffee and cardamom plantations under the relevant commodity boards. In 1972, Imbichi Ahmed was issued Coffee Plantation Registration Certificate No. 284/1972, covering the coffee plantation on the 25-acre bit. Likewise, for the cardamom cultivation on the 12.5-acre bit, Cardamom Registration Certificate No. 81/SW was granted, dated 30.06.1971. These certificates being official recognitions strongly support the claim that as on the crucial date (10.05.1971) the entire 37.50 acres was under bona fide plantation cultivation (coffee in one part and cardamom in the other). Indeed, the appellants emphasized that the estate was fully planted up long before the appointed day.

9. After the Vesting Act came into force on 10th May, 1971, initially there appears to have been no immediate interference with Imbichi Ahmed's possession of the plantation. On the contrary, further evidence suggests that government authorities treated the land as agricultural plantation, not forest. In land reform proceedings under the Kerala Land Reforms Act, 1963, the Taluk Land Board in 1976 recorded these 37.50 acres as exempt plantation land under Section 81 of that Act. Since plantations (such as coffee, tea, cardamom, etc.) were exempt from the land ceiling by virtue of Section 81, no portion of this land was taken as surplus which is an implicit acknowledgment of its plantation character. Imbichi Ahmed continued in occupation, paying land revenue and also remitting Plantation Tax and Agricultural Income Tax on yields from the land.

10. In 1979, Imbichi Ahmed decided to divest his ownership. By two registered sale deeds both dated 24.04.1979, he assigned the land in roughly two equal halves. One half, measuring 18.75 acres, was sold to P.P. Mehmood (also referred to as P.P. Muhammed) under Document No. 2104/1979. The remaining 18.75 acres was sold to M. Jameela (the present appellant) under Document No. 2105/1979. It is not a coincidence that each 18.75-acre parcel contained a mix of coffee and cardamom cultivation. As described in the evidence, out of the original Bit No.1 (25 acres coffee), 12.50 acres of coffee went to P.P. Mehmood and the remaining ~12.50 acres of coffee to Jameela. Similarly, the cardamom Bit No.2 (12.50 acres) was divided roughly into 6.25 acres each to Mehmood and Jameela. In this manner, both purchasers acquired portions of the coffee plantation and cardamom plantation. The Coffee Board and Spices Board were duly notified of these transfers. Upon sale, Imbichi Ahmed surrendered his plantation registration certificates to the concerned authorities so that fresh certificates could be issued to the purchasers for their respective portions. The coffee plantation registration was accordingly transferred to P.P. Mehmood's name for the 12.5-acre coffee area he acquired (a new Registration No. RC 13091/80/SW was issued for that portion). The record indicates that P.P. Mehmood thereafter continued to maintain the plantation on his 18.75 acres, and he too regularly paid land revenue, plantation tax and agricultural income tax for his holding.

11. A few years later, in 1983, P.P. Mehmood sold his 18.75-acre share to the appellant M. Jameela. This transfer was effected through two registered sale deeds (Doc. Nos. 777/1983 and 893/1983 of S.R.O. Vythiri). By 1983, therefore, the entire 37.50 acres came to be consolidated in the hands of Smt. M. Jameela (the appellant), who is a planter by profession.

From 1983 onwards, Jameela has been in possession of the entirety of the land, treating it as one estate and continuing the cultivation of coffee and cardamom thereon. It is on record that she, like her predecessors, dutifully paid the land taxes and agricultural income taxes due for the property and maintained the plantation without interference for many years.

12. The first signs of dispute with the Forest Department arose only in the late 1990s. Initially, when the Forest Department conducted its demarcation survey of vested private forests post-1971, it did not treat this plantation as vested forest. In fact, the demarcation officers at the time expressly excluded the coffee plantation area from the notified vested forest boundaries. The appellants have produced evidence showing that concrete boundary markers (*jundas*) were placed along the outer edges of the plantation, keeping the entire 12.50-acre coffee area outside the demarcated government forest. The Department's survey team had found that this area was a cultivated plantation well before the cutoff date, and hence not a "private forest" within the meaning of the Vesting Act. However, in or about 1997, local forest officials revisited the matter and took a divergent stand. They began asserting that a portion of the estate was in fact vested forest that had been mistakenly left out earlier. Specifically, the Forest Department laid claim to about 2 acres of land (described as the 'A Schedule' in the O.A. 37/1997) on the periphery of the coffee plantation, contending that this patch was not under coffee cultivation as of 10.05.1971 and thus had vested in the Government. They also seemingly disputed certain parts of the cardamom-planted area, totaling roughly 6.25 acres, as vestible forest land. In total, approximately 8.25 acres out of the 37.50 acres were now alleged by the Department to be vested forest (2 acres from the coffee bit and 6.25 acres from the cardamom bit). The remaining extent (mostly the coffee-planted

area of about 29.25 acres) was still acknowledged by the Department as a pre-existing plantation not subject to vesting.

13. Faced with this the appellant Jameela (who by 1997 had become the owner of the entire estate) initiated legal action to protect her property. O.A. No. 36 of 1997 was filed by Smt. M. Jameela seeking a declaration that 12.50 acres of her land (presumably the portion primarily under coffee but including any disputed part thereof) is not a vested forest. O.A. No. 37 of 1997 was filed by the other affected title holder (Naduvilakath S. Nazim Bushra, who was by then holding an interest, but subsequently assigned it to Jameela), in respect of 8.25 acres (the portion corresponding to the disputed 2-acre coffee patch plus 6.25-acre cardamom patch). In substance, both O.A.s together covered the entire 20.75 acres that the Forest Department had started to claim (though initially the Department's claim was 8.25 acres, the applications appear to also preemptively cover the remaining plantation area to forestall any further claim). The appellants' consistent case was that the entire 37.50 acres had been fully converted to plantation by 1957 and remained so at the time of vesting in 1971; hence no part of it was "private forest" subject to government takeover.

14. To summarize the factual position established on record: Parappu Mappilakath Imbichi Ahmed lawfully purchased 37.50 acres of land in 1956-57, obtained government permissions, cleared the jungle, and planted coffee and cardamom crops over the whole extent well before 1971. These plantations were duly registered with statutory boards by 1971-72. The land was treated as agricultural plantation in land ceiling proceedings (exempt under law). Through subsequent transfers, the appellant acquired the entire area and continued cultivation. The Forest Department itself initially

recognized the non-forest status of at least the coffee-planted portion, excluding it from vested forest boundaries. The controversy arose when the Department, after a gap of decades, claimed that certain pockets (aggregating about 8.25 acres) were not under plantation on the crucial date and therefore vested. These conflicting positions led to the litigation at hand.

15. Learned Senior Counsel Sri Chidambaresh on behalf of the appellants contended forcefully that the courts below have misread both facts and law in denying the exemption to the subject lands. The appellants submit that the evidence overwhelmingly demonstrates the existence of a bona fide plantation on the land well before 10.05.1971, which takes the land out of the purview of vesting. It is emphasized that the 37.50-acre property was part of a larger estate and was specifically acquired by their predecessor for cultivation. By 1957 itself, the entire area was planted with coffee and cardamom, and it has been continuously utilized for those crops ever since. He further pointed out that this is not a case of casual or sporadic cultivation, but of a systematically developed plantation estate with decades of continued agricultural operations.

16. The learned Senior Counsel referred in detail to the documentary evidence on record, namely, the registration certificates for the plantations: Certificate No. 284 of 1972 for the coffee estate, and Certificate No. 81/SW of 1971 for the cardamom area. These official certificates, issued shortly after the appointed date, are said to be conclusive proof that the respective crops (coffee and cardamom) were planted and in existence at least by 1971. It was argued that one cannot obtain such certificates unless the plantation is actually established and verified on the ground by the authorities concerned. The coffee certificate, being dated 1972, indicates the coffee plants were

mature enough by then thereby pointing to a planting in the 1960s, well before vesting. Similarly, the cardamom registration dated June 1971 shows that crops were also planted by that time. Learned counsel submitted that the High Court failed to attach due weight to these evidentiary records, which strongly corroborate the appellants' case.

17. The learned Senior Counsel further placed reliance on the proceedings under the Kerala Land Reforms Act, 1963. He submitted that in 1976, the Taluk Land Board (Sulthan Bathery) in Case No. 929/73/SW acknowledged that the land in question was a plantation exempt under Section 81 of the Land Reforms Act. The Land Board's order (Annexure P-11) listed the disputed area as plantation land not subject to the land ceiling limit. The appellants argue that this official finding is highly relevant: it evidences that the State itself treated the land as a plantation (coffee/cardamom) and not as wild or fallow land in the post-1971 period. While conceding that the Land Board's exemption was for a different statutory purpose, the Learned Senior Counsel for the appellants submitted that the factual determination underlying it, that the land was under plantation cultivation, cannot be ignored in deciding vesting status. In essence, if the government in 1976 considered the land a plantation for land reform purposes, it is incongruous for the Forest Department to label it as "forest" for vesting purposes. Learned Senior Counsel submitted that there is a consistency in all records up to the 1980s portraying the land as agricultural estate land.

18. Learned Senior Counsel for the appellants further highlighted the Forest Department's own conduct. According to the Learned Senior Counsel, when the private forests in the region were surveyed and vested in

the 1970s, the Department's surveyors did not include this land in the vesting notification. On the contrary, as evidenced by the letter and sketch from the forest demarcation file, the Department's officials physically demarcated the boundaries so as to exclude the 12.50-acre coffee plantation from the adjoining reserve forests. It is submitted that the Department thereby effectively admitted that this portion was not a private forest but a pre-existing plantation. Learned Senior Counsel pointed to the categorical statement in the appellants' pleadings (and supporting documents) that concrete boundary stones were erected at the extreme boundary of the plantation, leaving it outside the vested forest map. This, the Learned Senior Counsel argued, is an admission which binds the State. Having once accepted that at least 12.50 acres under coffee was exempt, the State cannot arbitrarily come back decades later and cherry-pick 2 acres within it to claim as forest. The Learned Senior Counsel representing the appellants contended that the belated claim over an internal 2-acre patch (and another 6.25-acre cardamom patch) is ill-founded and appears to be the result of a mistaken or overzealous re-survey.

19. Further relying on the statutory provisions, the Learned Senior Counsel contended that they squarely fall within the exemptions carved out in Sections 3(2) and 3(3) of the Vesting Act. Learned Senior Counsel took us through the language of these provisions. He submitted that Section 3(1) is the vesting clause, but it operates "subject to the provisions of sub-sections (2) and (3)". Section 3(2) provides that nothing in the vesting clause shall apply to so much of a private forest that is held by the owner under personal cultivation (as defined) up to the extent of the ceiling area applicable to him under the Kerala Land Reforms Act. The Explanation to Section 3(2) expansively defines "cultivation" to include cultivation of trees

or plants of any species, which would undeniably cover a coffee or cardamom plantation. Section 3(3) further exempts any private forest land held under a valid registered document of title executed before the appointed day, intended for cultivation by the owner, to the extent that the total holding (together with other lands of the owner) does not exceed the land ceiling limit. Learned Senior Counsel further submitted that the present case fulfills both these exemptions. He submitted that Imbichi Ahmed was the owner of the land under a registered sale deed of 1970 (pre-appointed day), and the land was indisputably held for cultivation by him. At the time of vesting, he and his family held this 37.5-acre estate. The appellants maintain that this extent was within the permissible ceiling area when his family unit is considered, and moreover, since the land was a plantation, it was exempt land under the Land Reforms Act, meaning the question of ceiling excess did not arise in the same manner. He further pointed out that in similar situations, courts have allowed family owners to club their ceiling entitlements to retain larger plantation holdings. He further urged that even if one were to theoretically split hairs about a few acres vis-à-vis the ceiling, that exercise is unnecessary here because the entire property was under cultivation and the Act does not intend to divest genuine plantations.

20. Learned Senior Counsel further placed reliance on the decision of the Kerala High Court in ***State of Kerala v. Balagopal***[1] for the proposition that the burden lies on the claimant to prove that land is not private forest on the appointed day, a burden which, they assert, has been fully discharged in the present case. He also placed reliance on the Full Bench ruling in ***State of***

[1] **(1986) KLT SN 17**

Kerala v. Chandralekha[2], wherein it was underscored that lands which were effectively cultivated prior to 1971 do not vest, and that the owner's intention and preparatory acts to cultivate (even if cultivation was not fully accomplished) are relevant to claim exemption. In ***State of Kerala & Another v. A.C.K. Rajah***[3], this Court had upheld the High Court's finding that about 60 acres of land were under the owner's personal cultivation (as a family unit) at vesting and hence exempt under Section 3(2). By analogy, the Learned Senior Counsel contended that their case is even more compelling because the area here (37.5 acres) is smaller and the evidence of cultivation is concrete and historical. He submits that the courts below failed to properly apply these principles and precedents favoring a liberal interpretation of the exemption for genuine plantations.

21. Learned Senior Counsel took us through the Advocate Commissioner's report (Ext. C4 series) and the testimony regarding the expert's findings. He submitted that the expert, a retired Deputy Director of the Coffee Board with decades of field experience, inspected the coffee plants on the property in February 2007. By examining the girth of the trunks and the number of nodal rings on the coffee stems, he estimated many of the coffee plants to be around 40 to 42 years old as of 2007. This would place their origin in the mid-1960s (circa 1965–67), squarely supporting the claim that they were planted well before May 1971. The expert also identified the varieties of coffee present, noting a predominance of Arabica (which was commonly planted in the 1960s) and some Kauveri (Cauvery) variety plants. The Advocate Commissioner's report recorded that there were indeed some young coffee seedlings in small patches where older

[2] **(1995) 2 KLJ 121 (FB)**
[3] **AIR 1994 SC 1030**

plants had been felled and replaced. However, this did not detract from the fact that the bulk of the plantation comprised old, well-established coffee trees. The Learned Senior Counsel emphasized that the expert's methodology i.e., visual and physical inspection to gauge age, is a scientifically accepted practice in plantation agronomy, and that the expert had no doubt in concluding that the coffee plants in question were of pre-1971 origin. It is pointed out that the State did not produce any counter-expert or alternative scientific evidence; the expert opinion on record stands unimpeached and not contradicted. Learned counsel argues that both the Tribunal and the High Court erred in brushing aside this expert evidence. According to him, once an expert, who is a neutral officer of the court, supported the appellants' case with a plausible scientific basis, the courts ought not to have disregarded it absent any cogent reason or contrary evidence. He contended that the standard of proof required in such civil proceedings is only a preponderance of probability, and by that standard, the expert report tilts the balance decisively in their favor.

22. Summing up, the Learned Senior Counsel submitted that the concurrent findings of the Tribunal and High Court are manifestly erroneous and warrant reversal by this Court. He argued that both forums below placed an unrealistically high burden of proof on the appellants, almost akin to proving a negative, whereas in practical terms, a claimant in 1997 could not be expected to produce direct evidence from the 1950s or 60s beyond what has been produced (official permits, registrations, tax receipts, etc.). He further submits that they have done all one could reasonably do: they produced title deeds, government permissions, plantation registers, tax receipts, and even got an expert to assess the age of the plants, all of which point in one direction. He contends that if despite this the courts below

remained unsatisfied, it reflects a mis-appreciation of the evidence and a failure to give effect to the beneficial purpose of the exemption clauses (which is to protect genuine cultivators). He urged this Court to re-appraise the evidence in exercise of its appellate jurisdiction (especially since the High Court's appellate review under Section 8A was itself on facts and law), and to set aside the impugned judgment. Lastly the Learned Senior Counsel submitted that he is praying for a declaration that the suit lands are not vested forest but exempted private lands, and for consequential directions restoring their full ownership and possession.

23. Per contra, learned Senior Counsel Sri Jayanth Muth Raj appearing for the State of Kerala supported the judgment of the High Court and the findings of the Forest Tribunal. At the outset, he submitted that the scope of the Vesting Act must be kept in mind: it was a social welfare legislation aimed at vesting large tracts of private forests in the State for conservation and for assignment to the landless. The Act was intended to put an end to deforestation and land monopolization by private estates. Given this context, the exemption clauses (Sections 3(2) & 3(3)) have to be construed strictly, and the burden lies on the person claiming exemption to clearly establish their case. Learned counsel emphasized that mere assertion of plantation is not enough; the claimant must prove with convincing evidence that the land was under cultivation (of the specified kind) as on the appointed day and that all conditions of the exemption provision are satisfied. In the present case, he further contended that the appellants failed to discharge this onus to the degree required, and thus the High Court was right in denying relief.

24. Learned Senior Counsel appearing for the State of Kerala refuted the appellants' factual narrative to the extent that it suggests the entire 37.50

acres was fully planted with coffee/cardamom by 10.05.1971. While not disputing that some cultivation had been undertaken by the late 1960s, the learned Senior Counsel argued that the extent and completeness of such cultivation is doubtful. He pointed out that cardamom, for instance, is a shade-loving crop usually grown under forest canopies or planted in cleared areas but takes years to yield. The cardamom registration obtained in June 1971, learned counsel argues, does not conclusively prove that all 12.5 acres were covered with mature cardamom by May, 1971 and it only shows the owner's intent and initial steps. Similarly, for the coffee area, the State contends that significant portions of the land might have remained undeveloped or only sparsely planted by the cutoff date, which would still classify as "private forest" under the Act's definition if the area is above the threshold (which it is, being over 5 hectares). The respondents maintain that the appellants have not produced records from around 1971 (such as plantation journals, labour records or photographs) that delineate the actual cropped area at that time. The heavy reliance on later documents (1972 coffee certificate, 1976 Land Board order, etc.) is, in the State's view, misplaced because those do not incontrovertibly speak to the ground reality as on 10.05.1971. At best, they show a general recognition of plantation activity, but the question under the Vesting Act is a precise one i.e., whether each portion of the land was under cultivation on the appointed day. Learned Senior Counsel submitted that any portion not so cultivated would vest, even if other parts were cultivated. Thus, if the Forest Department found in 1997 that about 8.25 acres within the estate did not bear evidence of pre-1971 plantation, that determination should not be disturbed lightly.

25. The learned Senior Counsel took strong exception to the appellants' invocation of the Forest Department's initial demarcation. He clarified that

exclusion by demarcation officers does not confer any legal status; many a time, errors in demarcation have had to be corrected upon further verification. The State's stand is that upon careful resurvey, it was noticed that a 2-acre portion within the so-called coffee area had no old coffee growth and appeared to have been either vacant or naturally re-forested around the 1970s, indicating it was not part of the genuine plantation. As for the 6.25-acre cardamom segment, it was argued that cardamom cultivation under tree shade is often hard to distinguish from forest, and in this case the claimant did not prove that the entire 6.25 acres were planted with cardamom before the appointed day. The High Court noted the cardamom registration certificate was issued only in mid-1971, which might mean the planting was done around that time and not substantially earlier. The State's counsel urged that the High Court's finding that there was no credible material to hold these disputed portions were planted before 10.05.1971 is a reasonable and permissible inference from the evidentiary gaps. It is not, according to him, a case of ignoring evidence but rather of finding the evidence insufficient or unpersuasive on the critical point.

26. He further submitted that the so-called expert did not follow any rigorous scientific procedure such as dendrochronology (ring analysis) or carbon dating to fix the age of the plants. Instead, he employed a rough-and-ready method of visual inspection, which can be subjective. The Advocate Commissioner's report indicates that the expert "told him" about the method of counting nodes to assess age, suggesting that the expert's observations were relayed informally and not as a formally sworn deposition or detailed written analysis. The High Court found this to be of limited evidentiary value. The State supports that view, arguing that expert evidence is just one piece of the puzzle, and the court is not bound to accept it especially if it

lacks proper foundation. Learned Senior Counsel further contended that the existence of young saplings in the area, as noted by the expert himself, raises the possibility that substantial replanting took place post-1971, which would mean those parts were not continuously under the original plantation. The respondents assert that the courts below rightly exercised caution and did not treat the expert's opinion as conclusive.

27. The learned Senior Counsel also touched upon the legal requirements of Sections 3(2) and 3(3). He argued that even assuming some portion of the land was under cultivation, the appellants needed to demonstrate that the area was within the "ceiling limit" of the owner as of 1971. Imbichi Ahmed, an individual owner, would ordinarily have a land ceiling of far less than 37.5 acres under the Kerala Land Reforms Act (typically 15 acres for a family of five, unless plantations are not counted). The respondents suggest that the exemptions in the Vesting Act were not intended to allow a single person to hold 37.5 acres of what would otherwise be forest, merely by planting some crops. In their view, Sections 3(2) and 3(3) were meant to protect small holders and family holdings under the ceiling limit, not larger estate acquisitions by individuals. The State thus contends that the lower courts' decisions can also be justified on the ground that the appellants never clearly established compliance with the ceiling-area limitation for the original owner. He submitted that the appellants fell short of proving both prerequisites: (a) full cultivation on the appointed day, and (b) confinement within the permissible extent.

28. Finally, learned Senior counsel for the State urged that this Court, in exercise of jurisdiction under Article 136, ought not to disturb concurrent factual findings of the courts below. He submitted that the Forest Tribunal

had the advantage of seeing the materials and evidence first-hand, and the High Court as first appellate court re-appraised the same and came to the same conclusion. Unless manifest perversity or legal error is shown, he argues, the Supreme Court would be slow to interfere with such findings. He further submitted that the High Court gave cogent reasons for not accepting the appellants' version – including the lack of proof of pre-1971 planting and the inconclusive nature of the expert evidence and those reasons are neither perverse nor absurd. Therefore, he prayed that the appeals be dismissed and the impugned judgment be upheld, so that the disputed portions of land continue to vest in the Government to be managed as forest or assigned as per law.

29. We have heard the Learned Senior Counsels appearing on behalf of the appellants and the respondents. From the rival submissions and perusal of the record, according to us the following key points arise for determination in these appeals:

I. Whether the appellants have established that the suit lands (37.50 acres in two parts) were under personal cultivation (coffee/cardamom plantation) as on the appointed day (10.05.1971) so as to be exempt from vesting under Section 3(2) of the Act.

II. Whether the conditions of Section 3(3) of the Act are satisfied, i.e. the land was held under a valid title deed executed before the appointed day with intention for cultivation, and the extent of land so held (together with any other lands of the owner) did not exceed the ceiling area applicable under the Kerala Land Reforms Act.

III. Whether the findings of the Forest Tribunal and High Court suffer from any legal infirmity, misreading of evidence, or failure to apply correct principles, in particular, whether they erred in their appreciation of the expert evidence and other documentary evidence regarding the age and existence of the plantation.

IV. What is the consequence of the above findings: if the land (or any part of it) is found to be exempted from vesting, and what are the reliefs and directions to be issued.

DISCUSSION AND ANALYSIS

30. For ease of reference and convenience we have reproduced Section 3 of the "Vesting Act" below:

> **"3. Private forests to vest in Government. –**
> **(I)** Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the state of Kerala shall by virtue of this Act, stand transferred to and bested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.
>
> **(2)** Nothing contained in sub-sections (1) shall apply in respect of so much extent of land
> comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.
> Explanation. - For the purposes of this sub-section, "cultivation" includes cultivation of trees or plants of any species.
>
> **(3)** 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 other 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 are applicable to him under Section82 of the said Act.

> **(4)** Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub-section (3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be "other dry lands" specified in Schedule II to the said Act."

31. Before delving into the factual analysis, it is apposite to outline the statutory framework of the Kerala Private Forests (Vesting and Assignment) Act, 1971 relevant to this case. The Act came into force retrospectively on 10th May, 1971, declared as the "appointed day". Section 3 is the heart of the Act. Section 3(1) provides that, save as otherwise provided in sub-sections (2) and (3), with effect from the appointed day, the ownership and possession of all private forests in the State of Kerala stand transferred to and vested in the Government, free from all encumbrances. The expression "private forest" is defined in Section 2(f) of the Act (read with the schedule) broadly to include any area of land which was a private forest as per the Madras Preservation of Private Forests Act, 1949, as well as any forest as per normal dictionary meaning, admeasuring more than the prescribed limit (e.g. >2 hectares in Malabar) and not principally under cultivation or inhabited, etc.. Importantly, Sections 3(2) and 3(3) carve out exceptions to the sweeping vesting of Section 3(1). These provisions, quoted earlier, essentially aim to spare bona fide agricultural lands from vesting, even if they formally fell within the definition of private forest.

32. Section 3(2) exempts "so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963". The Explanation to 3(2) clarifies that "cultivation" for this purpose includes cultivation of trees or plants of any species. This was intended to ensure that

owners of forest land who had actually brought portions of it under cultivation (including plantation crops like tea, coffee, rubber, etc.) could retain those portions up to their land reform ceiling extent. Section 3(3), on the other hand, addresses lands held under a valid registered document of title executed before the appointed day which are intended for cultivation by the owner, subject again to the ceiling area limit. In simpler terms, 3(3) covers cases where an owner had purchased or otherwise acquired forest land before 1971 with the genuine intention of cultivating it (even if cultivation hadn't fully commenced by 1971), allowing him to keep that land (up to the ceiling extent) rather than vesting in the State. Together, these provisions seek to strike a balance between conservation and private interests: preserving truly forested areas while protecting the rights of those who had invested in converting forests to farmland within legal landholding limits.

33. It is well-settled, and Learned Senior Counsels on both sides concur on this point, that the burden of proof lies on the person who claims the benefit of these exemptions. This has been affirmed in multiple precedents, including ***Joseph & Another v. State of Kerala & Another,***[4] wherein it was held that the applicant before the Forest Tribunal must establish that the land does not fall within the definition of private forest under the Act i.e., in other words, either that it was not a forest at all, or that it was exempt by virtue of Sections 3(2) and 3(3). The rationale is that vesting is the norm and exemption is the exception; hence the claimant must prove the applicability of the exception. We approach the evidence with this principle in mind. At the same time, we bear in mind that these are civil proceedings, and the

[4] **(2007) 6 SCR 347**

standard of proof is preponderance of probabilities, not proof beyond reasonable doubt. The claimant is not required to demonstrate their case with absolute certainty or direct evidence of every historical fact which in many cases from 1971 would be impossible but must lead such evidence that a reasonable fact-finder can conclude that it is more likely than not that the ingredients of the exemption are satisfied.

34. A second guiding principle is that the concurrent factual findings of the Tribunal and the High Court are ordinarily given deference by this Court. However, where the findings are shown to be clearly against the weight of evidence or vitiated by disregard of relevant materials or wrong legal standards, this Court would be justified in overturning them. In the present case, the High Court's analysis (as evident from the judgment) was relatively brief and, in our view, did not engage with several critical pieces of evidence. The High Court's conclusion was that "there was no credible material" to show the coffee plants were pre-1971, and it agreed with the Tribunal in not relying on the expert's report. If it emerges that the lower courts overlooked significant undisputed evidence or applied an excessively onerous standard of proof, that would amount to a legal infirmity enabling us to interfere. With these principles in mind, we proceed to evaluate the evidence on record point by point.

RE: Point – I

35. Existence of Coffee and Cardamom Plantations prior to 10.05.1971: On this crucial factual issue, we find the evidence adduced by the appellants to be not only credible but also largely unrefuted by the State. The historical narrative, supported by various documents, reveals that as

early as 1956–57 the entire 37.50-acre plot was deforested and planted with coffee and cardamom by the then owner Shri Imbichi Ahmed. The proceedings of the District Collector in 1956 (granting sanction to alienate and clear-fell) and the very sale deed of 1970 (Annexure P-1) reflect this fact. In particular, the sale deed in favor of Imbichi Ahmed (Ext. A1 before the Tribunal) recites the obtaining of the Collector's permission under the MPPF Act and the clear-felling carried out in 1956. Thus, it is incontrovertible that the land was a blank slate by 1957, no longer forest in the sense. The next incidental point that would arise is: whether it was planted up is evidenced by the registrations of plantations with statutory bodies: Coffee Board Certificate in 1972 and Cardamom registration in mid-1971. The fact of issuance of these certificates is admitted. The High Court appears to have given little importance to them, but in our opinion, these are cogent evidence. A Coffee Board registration in 1972 implies the planter had an established coffee cultivation that needed to be brought within the Board's regulatory purview (including for marketing the produce). It is in evidence that the coffee cultivation spanned 25 acres (Bit No.1) and the cardamom 12.5 acres (Bit No.2). We also have on record the certificate number for cardamom (No. 81/SW) dated 30.06.1971, i.e. within about 50 days of the appointed date. This strongly suggests that by May, 1971 the cardamom crop was existent (likely planted a few years prior, as cardamom typically takes 2-3 years to mature). The respondents argued that registration in June 1971 might mean planting happened around that time. We cannot accept that speculation; it is more reasonable that the planting had occurred before and the registration application was processed and approved by June. There is no evidence that the registration was for a nascent plantation, on the contrary, being a number as low as 81 in the Wayanad region indicates it

was among early registrations, consistent with a plantation that had been there.

36. Further, official records in subsequent years corroborate the continuous plantation use. The Taluk Land Board's 1976 proceedings (Ext. A11 series) explicitly list the land as exempted plantation. The appellant Jameela's ownership was recorded in the land tax registers, and she paid plantation tax (a levy exclusively on plantation holdings) copies of such tax receipts from the 1980s are on file (Ext. A7, A17, etc.). There is also evidence that agricultural income tax assessments were made for the yields from this land (Imbichi Ahmed and later P.P. Mehmood had been assessees). The State did not rebut or challenge these documents. Cumulatively, therefore, the record shows a consistent picture from 1957 up to 1997: the land was treated as an agricultural plantation by all concerned agencies/ authorities.

37. Now, the specific bone of contention is the *finer question* of whether any portions of the land (specifically 2 acres within the coffee area and 6.25 acres of the cardamom area) lacked plantation on 10.05.1971, as the State belatedly claims. On this, the State's evidence is scant, mostly inferential, whereas the appellants' evidence is direct and circumstantial is compelling. The Forest Tribunal in 2007 seemed swayed by the fact that the expert and commissioner noted some young coffee plants in the area, presuming that to mean parts were planted later. However, as the appellants rightly argued, the presence of younger plants in a plantation in 2007 does not automatically prove that area was barren in 1971. Plantations are dynamic; old plants die or are felled, and new ones are put in their place. What matters is the overall character of the land. Was it retained under cultivation, or did it revert to

wilderness? Here, all evidence points to the former. The Forest Department's own initial demarcation conclusively indicates that as of the 1970s, they found a contiguous plantation of 12.5 acres of coffee and did not consider any part of it vestible. The record at Ext. A24 (demarcation sketch and memo) was produced, evidencing that concrete markers were placed around the 12.5-acre coffee block, excluding it from the vested forest. It is mentioned that only in 1997 did officials attempt to claim 2 acres within that block. The High Court unfortunately did not discuss this aspect. We find it difficult to accept the State's explanation that this was a mere correction of an error. If indeed those 2 acres were untouched forest amidst the coffee, it is improbable that the original survey team would have missed that fact. No convincing reason or evidence was given by the State as to what changed or what new information came to light in 1997 prompting the claim on exactly 2 acres. This arbitrary approach lends credence to the appellants' stance that the 2-acre claim was unjustified.

38. Regarding the 6.25-acre cardamom area, that entire segment had always been under shade trees with cardamom beneath, which might superficially resemble forest. The appellants' evidence, however, establishes that cardamom was planted there from the late 1950s and continuing (the cardamom certificate covers the whole 12.5 acres of Bit No.2 originally, which was then split into 6.25 + 6.25 for Mehmood and Jameela's portions). Cardamom is a crop that regenerates and can persist if maintained or perish if abandoned. The fact that plantation tax was being paid on it indicates it was maintained. There is no evidence that the cardamom area was abandoned at any time. The Tribunal's reasoning seemed to imply that since coffee was more obviously cultivated, they were more inclined to accept the coffee portion but were doubtful about cardamom. This is a

misapprehension; cardamom cultivation may be less conspicuous, but it is cultivation nonetheless. The statute's explanation explicitly includes cultivation of any species of plants. We are satisfied from the documents (especially the cardamom registration, tax receipts, and the continuous possession by planters) that the entire cardamom area of 12.5 acres (and thus each 6.25-acre portion thereof) was indeed a cultivated private spice plantation on the appointed day. No part of it was wild forest that got vested. The High Court's failure to discuss the cardamom aspect separately is a lapse. They seemed to have focused mainly on coffee and generalized the lack of proof, which we find untenable.

39. Turning to the expert evidence, we find that the courts below took an unduly dismissive view of it. The Advocate Commissioner's Report along with the expert's notes (Exts. C4, C5) was part of the evidence. The expert, Mr. T.K. Mathew (as seen from records), was a former Coffee Board Deputy Director and his expertise was acknowledged even by the Tribunal. He inspected representative samples of the coffee plants. His finding was that a substantial number of coffee plants were in the range of 40-42 years old in 2007. This aligns perfectly with a planting in the mid-1960s. The Commissioner's report describes the method: counting the nodal whorls (each year's growth of a coffee plant often leaves a ring or node on the stem) and measuring girth. These are standard, field-expedient techniques in agronomy to estimate age. No doubt, they are not as precise as lab tests, but they give a reasonable approximation. The respondents did not object to or cross-examine on the expert's methodology at the time; their objection seems to have been raised only at the appellate stage to downplay the findings. It is true that the expert's observations were funneled through the Advocate Commissioner's report (perhaps the expert did not file a separate

report of his own). But the Commissioner's report is evidence once duly proved, and the expert's opinions therein are part of that evidence. The Tribunal and High Court could have sought clarification or even summoned the expert if they had doubts, and in absence, they ought to give due weight to the uncontroverted assertions in the report.

40. The High Court called the expert opinion "not scientifically substantiated." We respectfully disagree with that characterization. Within the limitations, the expert did scientifically substantiate it by reference to observable physical indicators on the plants. It was not a mere guess. Moreover, nothing in the report suggests that the entire case rested on one or two trees; the expert surveyed the plantation generally. Even if we assume some margin of error in his age estimation, even a ±5-year error would still largely place the origin of the coffee before 1971 (e.g. even if some plants were only 35 years old in 2007, that pegs them to 1972, which could be explained by staggered planting or replanting of a few gaps, while majority were older). The presence of young seedlings was noted, but the expert never said the whole plantation was young, to the contrary, he identified most plants as decades old. We therefore find that the expert evidence, instead of being marginalized, should have been seen as reinforcing the appellants' case that the plantation was an established one dating back to the 1960s.

41. It is also important to note that the State did not adduce any evidence in rebuttal. If the State doubted the age of the plants, nothing prevented them from bringing in a Forest Department expert arborist or requesting a core sample test on some stumps, etc. They did not do so. In such a scenario, the unchallenged expert evidence on record takes a persuasive value. The

Tribunal and High Court, in our view, fell into error by effectively placing a higher standard (almost requiring *scientific certainty*) on the appellants. We reiterate that in vesting matters, once the claimant produces substantial evidence of cultivation, slight gaps or doubts should not negate the claim, especially if the claimant's version is inherently probable and the State has largely left it uncountered. This approach is supported by the Full Bench ruling in ***M.S. Bhargavi Amma v. State of Kerala***[5]**,** which held that the object of the Act was not to divest areas which were genuinely under cultivation and that the authorities must adopt a practical view of the evidence, not a technical or pedantic view. The High Court here unfortunately took a rather technical view, focusing on perceived inadequacies (like not having a more "scientific" test or not proving the exact year of planting) while ignoring the larger picture painted by the evidence.

RE: Point No – II.

42. We now address the ceiling limit issue raised by the State. It is true that Sections 3(2) and 3(3) both incorporate the ceiling area limitation. In the present case, the original owner, Imbichi Ahmed, held 37.50 acres of plantation land as of 10.05.1971. Under the Kerala Land Reforms Act, ordinarily an adult individual (with a normal family) could hold 15 standard acres (which for dry land might equal around that in ordinary acres) as the ceiling, with some allowances for larger families. On the face of it, 37.5 acres exceeds a single person's ceiling. Does that mean only part of it is exempt and the rest vested? In principle, the Act could operate so indeed, the

[5] **(1997) 2 KLT 866 (F.B.)**

text “so much extent… as is within the ceiling limit” suggests a possibility of partial vesting. However, two factors weigh against applying that harsh result here. First, as a plantation, this land was exempt from the land ceiling altogether by Section 81 of the KLR Act, which means the “ceiling limit applicable” to this owner in respect of this land was, in a sense, not a small figure but the full extent (since plantations were excluded from computation). An argument was made by the appellants that if land is exempt under Section 81, then it implicitly satisfies the ceiling test because the legislature did not intend to break up plantations. Second, even if we were to strictly impose a ceiling of (say) 15 acres on Imbichi Ahmed, we note that he was not a solitary individual in the legal sense. The records show that the property was part of a Marumakkathayam tavazhi of the family (though acquired in his name) – the ***A.C.K. Rajah*** case (supra) recognized that in matrilineal or joint families, the ceiling must be computed based on the family unit. Here, evidence (Ext. A12 Karar of 1963) indicated that the property was treated as part of the family pool with at least 10 members in the tavazhi. The High Court in ***A.C.K. Rajah*** had noted that 10 members in a Marumakkathayam family could retain up to 75 acres under the Land Reforms ceiling. In the present case, though the matter was not elaborated in the Tribunal’s findings, the appellants did place genealogy materials suggesting Imbichi’s family structure. Considering that, 37.5 acres would likely fall well within the family’s aggregate ceiling limit. Crucially, the State did not specifically contend or lead evidence that the original owner’s ceiling entitlement was exceeded rather they only made a passing argument in appeals, which is mostly academic. In absence of a concrete contest on this point at trial and given our finding that the land was a plantation exempt under *KLR*, we conclude that the ceiling condition does

not bar the appellants' claim. The exemption provisions should be interpreted in light of their object, i.e., to save cultivated land and not to forfeit parts of an established plantation on a technicality of ceiling, especially when the land reforms law itself exempted it.

43. On point (I) and (II) framed above, therefore, our finding is firmly in favor of the appellants. The suit lands were under personal cultivation (coffee and cardamom plantation) on 10.05.1971, and the owner held them under a valid title deed of 1970 with the intent (indeed the reality) of cultivation. The entire extent qualifies for exemption. There is no portion that can be segregated as vested forest, since even the parts the State disputed were in our view part of the integrated plantation. The conditions of Sections 3(2) and 3(3) are met: by virtue of the land being a registered estate, cultivated, and within permissible holdings, it escapes vesting. We clarify that this finding covers the full 37.50 acres, which encompasses O.A. Nos. 36/1997 and O.A. 37/1997 lands together.

RE: Point – III.

44. Coming to point (III), we hold that the Tribunal and the High Court committed legal errors in their assessment. They approached the evidence with unwarranted skepticism and failed to consider material evidence in favor of the claimants. The High Court's one-line dismissal that no credible material was shown is, with respect, contrary to the record which we have detailed. Such an observation, despite the voluminous documents and an expert report to the contrary, indicates a misdirection. It is possible that the sheer passage of time (and the consequent challenges of proof) coloured the courts' perspective, but that cannot justify denying relief when the available

evidence actually tilted the balance in favor of the appellants. The High Court also did not address the legal import of the prior proceedings (land board, plantation tax, etc.) or the effect of the Department's initial stand, all of which bolster the appellants' case. As such, the concurrent findings are manifestly unsustainable on the evidence and deserve to be set aside. This is one of those exceptional cases where, notwithstanding two lower court decisions, the interference of this Court is warranted to prevent miscarriage of justice to bona fide cultivators.

RE: Point No – IV.

45. In view of our findings, it is unnecessary to remand the matter again (which would be pointless given the ample evidence already on record). This Court can directly grant the relief due. We hold that the appellants (and their predecessor-in-title) have established their case that the lands in question are not private forests vested in the Government but are exempted lands under Sections 3(2) and 3(3) of Act 26 of 1971. Consequently, the declaration prayed for in O.A. Nos. 36/1997 and 37/1997 must be granted.

46. In the result, the appeals are allowed. The judgment of the High Court of Kerala dated 28.02.2012 in M.F.A. Nos. 213 & 219 of 2007 and the order of the Forest Tribunal, Kozhikode dated 20.03.2007 (dismissing O.A. Nos. 36/1997 and 37/1997) are hereby set aside. We answer the core issue in favor of the appellants and hold that the lands comprising 37.50 acres in South Wayanad (originally covered by Jenmam Assignment Deed No. 789/1970 of SRO Vythiri) are not vested in the Government under the Kerala Private Forests (Vesting and Assignment) Act, 1971. The entirety of the said lands stands exempted from vesting by virtue of Sections 3(2) and

3(3) of the Act, being lands under bona fide coffee and cardamom plantations existing prior to the appointed day.

47. Consequently, we direct as follows:

(a) It is declared that the appellants are the lawful owners in possession of the aforesaid lands, and that those lands did not vest in the Government on 10.05.1971. The appellants' title and possessory rights over the property shall stand confirmed.

(b) The State of Kerala, the Custodian of Vested Forests, and their officials are restrained from interfering with the appellants' peaceful possession, enjoyment, and management of the said plantation lands on the premise of vesting under Act 26 of 1971. Any ancillary proceedings or orders inconsistent with this declaration (such as listing of the land as vested forest in government records) are quashed.

(c) If, in the interregnum, the Forest Department has erected any boundary marks that incorrectly encroach into the appellants' land or has taken any action treating the disputed portions as government land, the same shall be corrected forthwith. Specifically, the boundary shall be realigned (if shifted) to exclude the entirety of the 37.50 acres from the vested forest demarcation. This exercise shall be completed by the Custodian of Vested Forests in coordination with the local revenue authorities within six (6) weeks from today.

(d) There shall be no order as to costs, given the facts and circumstances. However, the appellants will be entitled to refund of any fee or deposit made in respect of the appeals.

48. The declaration and directions above shall secure to the appellants the full enjoyment of their property rights. The interim order, if any, passed by this Court during the pendency of the appeals stands vacated.

49. Before parting, we commend the painstaking efforts taken by the learned Advocate Commissioner and the expert in this matter, which have aided the cause of justice. Genuine cultivators should not be made to fight a prolonged battle to vindicate rights that are apparent from the public records. It is hoped that the State will henceforth show greater circumspection and fairness in scrutinizing claims of this nature, to avoid unnecessary litigation against citizens who have prima facie valid exemptions.

50. In conclusion, the appeals are allowed with the aforesaid declarations and directions. The impugned High Court judgment is set aside, and the appellants' Original Applications 36/1997 and 37/1997 stand allowed as prayed. All pending applications, if any, stand disposed of.

……., J.
[ARAVIND KUMAR]

……., J.
[N.V. ANJARIA]

New Delhi;
October 15th, 2025.