

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF JULY 2014/18TH ASHADHA, 1936

RP.No. 269 of 2014 ()

CRP 423/2003 of THIS HOB'BLE COURT

REVIEW PETITIONERS/RESPONDENTS 1 AND 2:

1. ELIAS,S/O.PAULOSE,
RESIDING AT RESIDING AT EDASSERIL HOUSE,
ANGAMALY, KOTHAKULANGARA, ERNAKULAM.
2. GEORGE, AGED 68 YEARS,
S/O.PAULOSE, RESIDING AT EDASSERIL HOUSE,
ANGAMALY, KOTHAKULANGARA, ERNAKULAM.

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH
SRI.S.SUJIN**

RESPONDENTS/REVISION PETITIONERS/RESPONDENTS 3 TO 11:

1. MARIYAMMA,
W/O.KORATH, RESIDING AT KOORANKARAVATHU
VIA-MOOKKANNUR, POST AZHAKAM, ERNAKULAM-683577.
2. POULOSE,
S/O.KORATH, RESIDING AT KOORANKARAVATHU,
VIA-MOOKKANNUR, POST AZHAKAM, ERNAKULAM-683577.
3. THANKAMMA,W/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY
KOTHAKULANGARA, ERNAKULAM-683572.
4. MARY, D/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.
5. LILLY, D/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY
KOTHAKULANGARA, ERNAKULAM-683572.
6. AVARACHAN, S/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.

- 7. ANNA, D/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.**
- 8. BABY, D/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.**
- 9. RAJU, S/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.**
- 10. SHAJU, S/O.PAULOSE,
RESIDING AT EDASSERIL HOUSE, ANGAMALY,
KOTHAKULANGARA, ERNAKULAM-683572.**
- 11. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.N.M.MOHAMMED AYUB
R11 BY GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD
ON 09-07-2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

BP

K.Vinod Chandran, J.

C.M.Appln.No.234/2014 in R.P.No.269/2014 in C.R.P.No.423/2003 &
R.P.No.269 of 2014 in C.R.P.No.423 of 2003

Dated this the 09th day of July, 2014

ORDER

The review is filed with a delay of around 500 days, against an order of this Court upsetting the order of the Land Tribunal as confirmed by the Appellate Authority.

2. The short facts required for consideration is that one Ittikuriyath is alleged to have given on lease the subject properties to one Paulo, whose son, Korath, was the original revision petitioner. On the basis of the lease given to his father and continued by him, he claimed fixity of tenure under the Kerala Land Reforms Act, 1963 [for brevity "KLR Act"]. The specific case was that Paulo was the original lease holder, who was the cultivating tenant and on his death, the same devolved on his son Korath. Ittikuriyath, during his life time, executed a Will, in January, 1957, bequeathing his properties in the name of his daughters and a grandson and two great-grandsons in the said grandson. The land, which is the subject matter of the proceeding, was bequeathed to the great-grandsons. The grandson,

whose name was Poulose, was given life interest in the said property. The Land Tribunal as also the Appellate Authority, on a perusal of the Will, found that there is no reference to the tenancy and, hence, rejected the claim. Both the lower authorities, on that ground, refused to go into the evidence led in by the claimant. The Tribunal found that it would come under the exemption under Section 3(vi), since the tenancy was one given by Poulose (the grandson), who has only life interest in the property.

3. This Court found the absence of recitals in the Will to be of no consequence. Finding that the Land Tribunal and the Appellate Authority placed reliance on irrelevant material and failed to look into the evidence, the Court set aside the orders of the authorities below and allowed the claim raised by the revision petitioner.

4. The learned counsel for the review petitioner would urge three issues in furtherance of the review sought; (i) that the review petitioners are entitled to exemption under clause (vi) of Section 3 of the KLR Act; (ii) the acceptability of the report of the

Revenue Inspector, which spoke of possession only from 1960; and (iii) the possession asserted by Ittikuriyath in his Will, which, according to the learned counsel, would not have been there if the property was given on lease, since the Transfer of Property Act, treats lease as a transfer of possession.

5. It is to be noted that these points were not urged when the petition was heard and what effectively sought is, a re-hearing of the matter. It is also to be noticed that despite the grounds having not been urged, the answer to the exemption claimed is in the judgment itself, which finds Ittikuriyath having granted the lease to the father of the revision petitioner and the same having been continued incessantly till the death of Ittikuriyath and thereafter. The later period lease-rents have been accepted by the grandson of Ittikuriyath, Poulouse. This would effectively answer the contention regarding the acceptability of the report of the Revenue Inspector also. Regarding the third contention, it cannot be assumed that Ittikuriyath was a person properly instructed in law and was aware of the intricacies of law, more specifically the

effect of a lease on the possession of the property. A mere reference made to possession in the Will cannot efface the lease which has been claimed by the revision petitioner, from the time of his father; i.e., from 1941 onwards. It is to be noticed that the arguments addressed at this point of time goes beyond the contours of the powers of review under Order 47 Rule 1 of the Code of civil Procedure as has been succinctly stated in **State of West Bengal v. Kamal Sengupta [(2008) 8 SCC 612]**.

6. As already stated, the review has been filed with a delay of more than 500 days and the only explanation offered is that the petitioner has been before the Hon'ble Supreme Court in a Special Leave Petition. The learned counsel for the review petitioner also produces an order of the apex Court, wherein the un-numbered Special Leave Petition, on the request of the petitioner, was allowed to be withdrawn. The reason stated by the petitioners before the Hon'ble Supreme Court was that the petitioners desire to file a review before the High Court. It is to be noticed that the order which is sought to be reviewed was passed

on 28.09.2012 and the Special Leave Petition was withdrawn by order dated 27.01.2014. There is no direction by the Hon'ble Supreme Court to file a review or even liberty reserved. Hence, the explanation offered for the delay in filing the review petition cannot be sustained.

The delay condonation application hence is dismissed; and the review petition also stands rejected for the reasons aforestated.

Sd/-

K.Vinod Chandran,
Judge

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(true copy)