

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

CRP.No. 1367 of 2000 (F)

AGAINST THE ORDER IN AA 210/1994 OF THE LAND REFORMS APPELLATE
AUTHORITY, THRISSUR DATED 11-01-2000

AGAINST THE ORDER IN SMP 61/90 OF LAND TRIBUNAL, ERNAKULAM DT.
7.4.1994

REVISION PETITIONER/APPELLANT/APPLICANT:

T.JPETER S/O. JOSEPH, THAIPPARAMBIL VEEDU
PROVIDENCE ROAD, ERNAKULAM - DIED LR'S IMPLEADED

ADDL. PETITIONERS 2 TO 16:

2. SMT. ELIZABETH JOSEPH, D/O. LATE T.J.PETER
THAIPARAMBIL HOUSE, CHAMMANY ROAD, KALOOR, COCHIN - 11.
3. SRI.JOSE PETER, S/O.LATE T.J.PETER, -DO-
4. SMT. MARY T.P.,D/O. LATE T.J.PETER, -DO-
5. SMT. LISEENTHA T.P., D/O. LATE T.J.PETER, -DO-
6. SMT. THRESIAMMA PETER, W/O. LATE T.J.PETER, -DO-
7. SMT.CICILY T.P., D/O. LATE T.J. PETER, -DO-
8. SRI. FRANCIS T.P., S/O. LATE .J.PETER, -DO-
9. SRI.MARTIN T.P., -DO-
10. SRI.JUDSON T.P. @ KUNJUMON T.P., -DO-
11. SMT.GRACY SEBASTIAN, KURISINGAL HOUSE, MULAVUKAD P.O.,
NORTH JETTY
12. SMT. JAISHA PAPPACHAN, D/O. LATE PHILOMINA T.P.,
KUNNALAKKAD HOUSE, MANJUMMAL P.O., UDYOGAMANDAL.
13. SMT. JENEESHA PAPPACHAN, -DO-
14. SMT.JISHA PAPPACHAN, -DO-
15. SRI.PAPPACHAN, -DO-
16. SRI.THOMAS T.P.,S/O. LATE T.J.PETER, THAIPARAMBIL HOUSE
CHAMMANYREOAD, KALOOR, COCHIN - 11.

ADDL.PETITIONERS 2 TO 16 ARE IMPEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED SOLE REVISION REVISION PETITIONERS AS PER ORDER DATED 13.3.2006 ON I.A.1807/2004.

BY ADVS.SRI.GEORGE THOMAS (MEVADA)
SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS:

1. VARAPUZHA ARCHDIOCESEASE, ERNAKULAM, REP. BY ARCH BISHOP
2. ANTONY JOSE, KATTKARAN, PUTHENPURACKAL
KACHERYPPADY, CHITTOOR ROAD, COCHIN - 18.
3. ANTONY ANTONY, -DO-
4. PEARLY K. ANTONY, PEARLY HOUSE CHITTOOR ROAD, COCHIN - 18.
5. LAL ANTONY, S/O. ANTONY, KATTIKARAN, -DO-
6. SMT. SARAMMA VARGHESE, W/O. LATE JOSEPH VARGHESE,
THAIPPARAMBIL HOUSE, NORTHERN SIDE OF HOUSE OF PROVIDENCE
ERNAKULAM. - *DIED LR'S RECORDED
7. ANTONY ALIAS SANDAPPAN, -DO-
8. JOHN ALIAS LAZER, -DO-
9. BENEDICT ALIAS BENNY, -DO-
10. MRS.MARTHA, -DO-
11. MARY ALIAS MAGDELENA, -DO-

*RESPONDENTS 7 TO 11 ARE RECORDED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 6TH RESPONDENT AS PER ORDER DT.17.6.2002 ON CMP 2469/2002

12. ADDL.R12 IMPEADED

STATE OF KERALA REP. BY THE CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM IS IMPEADED AS ADDITIONAL 12TH RESPONDENT AS PER ORDER DT. 26.7.2006 ON I.A.1852/2006

R,R2,4,5 BY ADV. SRI.BLAZE K.JOSE
R, BY ADV. SMT.MEDONA LOPEZ

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN , J.

C.R.P. NO. 1367 OF 2000

Dated this the 21st October, 2015.

O R D E R

This revision under Section 103 of the Kerala Land Reforms Act, 1963 (the 'Act' for short) is filed by the tenant against an order of the Appellate Authority (LR), Thrissur in A.A.210/1994 dismissing the appeal filed by him. The tenant had preferred the appeal against an order dated 7.4.1994 of the Land Tribunal, Ernakulam in SMP 61/1990.

2. Suo motu proceedings were initiated under Section 72 of Act on the basis of a petition filed by the tenant for assignment of the right, title and interest of the land owner in respect of an extent of 14 cents of garden land comprised in survey No: 303/1 of Ernakulam village. The case of the tenant was that, he was entitled to fixity of tenure as the cultivating tenant in respect of the property. His case is that

his father late Shri. Joseph Thaipparambil had been put in possession of 28 cents of land comprised in survey No: 303/1 of Ernakulam Village under an oral pattom arrangement with one Shri. Pappachan who had acted on behalf of the father, Shri. Thomman Chacko. After getting possession of the property, he had reclaimed the paddy land and cultivated the same as a cultivating tenant and has been enjoying the fruits thereof. The pattom payable was Rs.3/- per annum. While so, the land owner sold the property to the Metropolitan of Varapuzha Arch Diocese. Thereafter, the revision petitioner and his only brother Shri. Joseph Varghese continued the pattom arrangement and was paying pattom at an enhanced rate of Rs.4/- per year. According to the revision petitioner, the total extent of 28 cents of land was partitioned among himself and his only brother Shri. Joseph Varghese. Thereafter, he is in possession and enjoyment of 14 cents of land, which is the northern portion of the property. Respondents 6 to 11 are the legal heirs of his brother Shri.

Joseph Varghese who is no more. Thus, the revision petitioner along with respondents to 6 to 11 are in occupation of the entire 28 cents of land. Though the property was initially used for paddy cultivation, after it was reclaimed by the revision petitioner he has been cultivating the land with plantains and other crops.

3. The first respondent did not contest the petition. Respondents 2 to 4 claimed that they were the land owners of the property. They are the legal representatives of late Kattikaran Antony. According to them, the revision petitioner is a 'kudikidappukaran' in respect of the property and not a cultivating tenant as claimed. As per registered deed No:1420/1106 of Ernakulam Sub Registry Office executed by Shri. Joseph Thaiparambil, father of the revision petitioner and grand father of respondents 6 to 11 in favour of Shri.Kattikkaran Thomman Chacko, permission was granted for putting up a homstead on the property on payment of a ground rent of Rs.4/- per year. The said document has been

marked as Ext.B1. On the death of Shri. Kattikkaran Thomman Chacko his wife Mariyam and son Ouseph who were his legal heirs had sold the property to the Varappuzha Arch Dioceses as per Ext.B2 document. Later on, as per Ext.B2 Exchange Deed executed between the Varappuzha Arch Diocese, Smt. Chellamma, wife of Shi. Kattikkaran Kuruvilla and Antony Kattikkaran, father of respondents 2 to 5, certain properties were exchanged between the parties. As per the said deed, the present property was conveyed to Shri. Kattikkaran Antony, father of respondents 2 to 5. The said respondents have succeeded to the rights of the father, upon his demise. According to them, in the year 1980 they had issued a notice through their Lawyer seeking shifting and relocation of the 'kudikidappu'. As per Ext.B4 reply notice dated 3.10.1980, the revision petitioner had admitted the 'kudikidappu' but, had demanded an amount of Rs.1,50,000/- and an extent of 6.5 cents of land as consideration for shifting. It was long thereafter, in the year

1989 that the present proceedings were initiated at the instance of the revision petitioner alleging that he was a cultivating tenant. The said contention according to respondents 2 to 5 is absolutely unsustainable.

4. Respondents 6 to 11 who are the legal representatives of late Shri. Joseph Varghese, brother of the revision petitioner supported the contentions of respondents 2 to 5. According to them, they have only 'kudikidappu' rights in respect of the property. The house situate in the property consists of six rooms out of which three rooms are used by them while the rest of the rooms are used by the revision petitioner. On the contrary, according to the revision petitioner, half of the entire property of 28 cents along with the half portion of the building therein was in his possession and enjoyment.

5. The Land Tribunal, Ernakulam considered the contentions of the respective parties, on the above pleadings. Both sides adduced evidence in support of their respective contentions. On the side of the revision petitioner, Exts.A1 to

A7 documents were marked and P.Ws 1 to 3 were examined as witnesses. On the side of respondents 2 to 5 Exts.B1 to B4 documents were marked and RWs 1 to 3 were examined as witnesses. The Land Tribunal considered the evidence on record and found that, there was absolutely no evidence available to support the contention of the revision petitioner that he was a cultivating tenant. The evidence on record only showed that he had been granted permission to put up a homestead and therefore he was only a 'kudikidappukaran'. In view of the above, his claim for fixity of tenure as a cultivating tenant was rejected. The revision petitioner challenged the order of the Land Tribunal before the Appellate Authority in AA 210/1994. The Appellate Authority considered the contentions of the parties afresh in the light of the evidence on record and found that the order of the Land Tribunal was fully justified. Therefore, the appeal was dismissed. This revision is filed by the aggrieved tenant.

6. According to the Senior Counsel Shri.George Thomas

Mevada, initially the property had been given to the revision petitioner for cultivation. It is the initial entrustment that is crucial. Therefore, irrespective of the fact that the property was converted into a garden land, the legal status of the revision petitioner as a cultivating tenant would continue. Since the authorities below have negated the claim of the revision petitioner finding that there was no evidence for payment of 'pattom' to the land owner by the tenant at any time, it is contended that, for being a cultivating tenant it is not necessary to pay 'pattom'. There could also be a deemed tenancy under Section 7A of the Act and the provisions that follow. The learned Senior Counsel also pointed out that there were cultivations like banana, coconut palms etc. in the property. Therefore, the finding that the revision petitioner was not a cultivating tenant was unjustified. According to the counsel, the only question to be considered is whether the revision petitioner has been in possession of the property and whether he had been undertaking any cultivation therein.

Regarding the delay in preferring his claim, it is contended that the claim could not be negated for the said reason. The Appellate Authority has only reproduced the findings of the Land Tribunal and therefore it is contended that there has been no proper consideration of the issues in this case.

7. Adv. Blaze K. Jose who appears for respondents 2 to 5 on the other hand refutes the contentions of the learned Senior Counsel for the revision petitioner to point out that, there is absolutely no evidence available in the present case in support of the contention of the revision petitioner that his father had been put in possession of the property on the basis of an oral lease with Shri. Kattikkaran Thomman Chacko. It is clear from Ext.B1 registered deed that, the limited permission that was granted to the father of the revision petitioner was to put up a homestead in a portion of the property and to reside there. Since there is absolutely no evidence to the contra, Ext.B1 has to be accepted as evidencing the real nature of the transaction between the

parties. Therefore, it is contended that, the authorities below have rightly rejected the claim of the revision petitioner. Since the issue is one that is entirely dependent on facts, no interference under Section 103 of the Act is called for, it is contended. Therefore, the counsel seeks dismissal of the revision.

8. Heard. As noticed above, the case of the revision petitioner is that, his late father was put in possession of the property as a cultivating tenant, at a time when the property was a paddy field. The description of the property, as noticed by the authorities below in the Revenue Records is as a paddy field even now. According to the revision petitioner, he had converted the paddy field by filling it up. It is not in dispute that, a house was constructed in the property in a portion of which the revision petitioner is residing. Respondents 6 to 11 are occupying the remaining portion. The claim of the revision petitioner is with respect to the appurtenant land forming part of the same property. He

claims 14 cents out of the total extent of 28 cents alleging that on the strength of a partition deed between himself and his late brother, the balance 14 cents has been given to respondents 6 to 11.

9. A perusal of the orders of the Land Tribunal as well as the Appellate Authority shows that, they have elaborately considered the oral evidence adduced in this case. They have evaluated the testimonies of the witnesses and have found that, there is no evidence available to support a conclusion that there was an oral lease at any time in favour of the father of the revision petitioner for the purpose of cultivation, as alleged. Though this case was heard at length, the counsel for the revision petitioner has not been able to point out any evidence in support of the contention that there was an oral lease in favour of the revision petitioner's father for the purpose of cultivation. Had there been any such oral lease and payment of 'pattom' as alleged, there would certainly have been receipts for such payment. No such receipts are

available in this case. Therefore, the said claim of the revision petitioner has been rightly rejected by the authorities below.

10. A perusal of Ext.B1 document shows that, the same has been executed by the father of the revision petitioner in favour of Shri.Kattikkaran Thoman Chacko. What has been permitted by Ext.B1 is the putting up of a homestead in a portion of the property. There is absolutely no reference in the said document to any oral lease for cultivation, as contended by the revision petitioner. Therefore, the only conclusion possible is that, the revision petitioner is entitled only to the rights emanating from Ext.B1.

11. It is not in dispute that, at present the property is situate in a crowded residential locality in the Cochin City. The prices of land have gone up considerably. Even according to the revision petitioner, the land had been converted by filling up the paddy land, about 50 years prior to the filing of the application. Though the revision petitioner has tried to

support his claim by adducing oral evidence, the authorities below, who had the benefit of seeing the witnesses and watching their demeanour have not chosen to rely on their testimonies. In view of the above, reliance on such testimonies cannot advance the case of the revision petitioner before this Court. It is trite that the person who asserts a right has to prove that he has such a right. In the present case as already noticed above, there is absolutely no evidence to show that the revision petitioner is a cultivating tenant as defined under the Act. A perusal of the definition of cultivating tenant in Section 2(8) of the Act reads as under:-

“cultivating tenant' means a tenant who is in actual possession of, and is entitled to cultivate the land comprised in his holding.”

Going by the above definition a cultivating tenant is a person who is not only in actual possession but who is also 'entitled to cultivate' the land comprised in his holding. In the present case, as already found above, there is no evidence to show that the revision petitioner is a person “entitled to cultivate”

the land. Therefore, the revision petitioner is not a cultivating tenant, as contended.

12. The authorities below have addressed the issues correctly and in the proper perspective. They have appreciated the evidence both oral and documentary and have supported their conclusions with proper reasons. I do not find any grounds to interfere with the said findings or conclusions, in exercise of my power of revision.

For the foregoing reasons, the revision fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

jj

/True copy/

K.SURENDRA MOHAN, J.

C.R.P.NO: 1367 OF 2000

O R D E R

Dated: 21st October, 2015.