

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

CRP.No. 307 of 2003 ()

**AGAINST THE JUDGMENT IN AA 11/1997 of APPELLATE AUTHORITY, KANNUR
DATED 31-07-2002**

**AGAINST THE ORDER IN SM 89/1984 of LAND TRIBUNAL-II,PAYYANNUR
DATED 16-10-1996**

REVISION PETITIONER(S)/APPELLANTS/A PARTY NO. 3 & 4:

- 1. AMMAL KAITHERI PRASAD,
S/O. DAMODARA PODUVAL, PAYYANNUR AMSOM, KOKKANISSERI
PAYYANNUR P.O., KANNUR DISTRICT.**
- 2. AMMAL KAITHERI MOHANDAS,
S/O. DAMODARA PODUVAL, PAYYANNUR AMSOM
KOKKANISSERI DESOM, PAYYANNUR P.O.**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENTS/A PARTY NO.1 AND 2 AND B PARTY:

- 1. CHENICHERY NARAYANAN NAMBIAR,
S/O. KRISHNAN ADIYODI, ERAMOM AMSOM, AND DESOM
ERAMAM P.O.**
- 2. KUNNUZHI PALUKKOOL BALAKRISHNAN
NAMBIAR, S/O. KANNAN PODUVAL, ERAMAM AMSOM DESOM
ERAMAM P.O.**
- 3. RAMAPURATH RAGHAVA PODUVAL,
S/O. KUNHAPPA PODUVAL, PAYYANNUR AMSOM
KOKKANISSERI DESOM, PAYYANNUR.**
- 4. RAMAPURATH GOPALAN, S/O. PARVATHI,
RESIDING AT ERAMAM AMSOM DESOM, PAYYANNUR P.O.**
- 5. RAMAPURATH CHEMMANCHERI VALAPPIL
GOVINDA PODUVAL, S/O. MANI AMMA
ERAMAM AMSOM DESOM (DIED).**

R1, R3 & R4 BY ADV. SRI.O.V.MANIPRASAD

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
03-09-2015, ALONG WITH CRP.867/2003, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

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P.BHAVADASAN, J.

C.R.P. Nos. 307 & 867 of 2003

Dated this the 03rd day of September, 2015

ORDER

Two sets of parties, namely, the 2nd applicant shown as A party in S.M. 89/1984 has filed C.R.P. 867/2003 and applicants 3 and 4 shown as A party in the same S.M. proceedings have filed C.R.P. 307/2003. Both the C.R.Ps. are against the same order.

2. It appears that suo motu proceedings were initiated in respect of 2.50 acres of land in R.S.No. 134/1 of Eramam Amsom and Desom by the Land Tribunal, Payyanur. As records now stand, it is seen that initially, the applications were allowed. However, some of the aggrieved persons, who are not parties to the proceedings, appealed to the Appellate Authority and the Appellate Authority set aside the order and remanded the matter back to the Land Tribunal for fresh consideration and disposal.

3. After remand, the case put forward seems to be that applicant No.1 among the A party claimed tenancy right on the basis of Ext.A1 document. On the basis of Ext.A1, he obtained a purchase certificate also. Subsequently, he sold a portion of the property measuring 1.75 acres to A party Nos. 3 and 4 as per Ext.A2 document and remaining extent of 0.75 acres to A party No.2 as per Ext.A21 document. Claiming that the property was outstanding on lease and the tenants have attained fixity of tenure, they claimed for upholding the earlier order of granting purchase certificate.

4. The contesting parties pointed out that the owner of the property are the three karanavans of the three thavazhies of Ramapurath tarwad. The property belonged to that tarwad and no valid tenancy could have been created in favour of B party No.2 as he was a joint owner along with other members of tarwad. They also pointed out that a junior member of the tarwad cannot set up a lease against the tarwad property and such a claim is untenable.

5. The Land Tribunal found that Ext.A1 document was not challenged by anybody, except the competency of the person to lease out the property to the persons who claimed tenancy right. The Land Tribunal extracted that portion of Ext.A1 in its order which showed that the person who claimed tenancy right was a member of tarwad. Thereafter, the Land Tribunal went on to hold that a person cannot lease out the property to himself and being member of the Tarwad, the lease set up by a junior member cannot be accepted. For the above proposition, the Land Tribunal relied on the decision reported in **Parvathi Amma v. Pavathi Amma** (1983 KLT 71). Finding that the claim is untenable, the proceedings were dropped. The aggrieved parties took up the matter in appeal as A.A.No.11/1997 and A.A.No. 17/1997. The Appellate Authority confirmed the finding of the Land Tribunal.

6. It is the dropping of S.M. proceedings 89/1984 that is under challenge in these revision petitions.

7. The learned counsel appearing for the revision petitioners contended that both the authorities below have erred both on facts and in law. The decision reported in **Parvathi Amma v. Pavathi Amma** (1983 KLT 71) can have no application at all to the facts of the case. That decision related to a situation where the person concerned had claimed specific tenancy and having failed to establish the same, he fell back upon the deemed tenancy principle and claimed fixity of tenure. It was in that context, it was held that it is not possible to do so and the claimant was non-suited.

8. The learned counsel appearing for the revision petitioners pointed out that in the case on hand, there is no such situation at all. According to the learned counsel, an extent of 2.50 acres of land in R.S.134/1 belonging to Ramapurath Tarwad was taken on oral lease by one Narayana Poduval long prior to 1945. The property was then orally assigned to Kunhikanna Poduval. Kunhikanna

Poduval, in turn, assigned the property to Narayanan Nambiar as per Ext.A1 dated 28.02.1984.

9. The learned counsel went on to point out that oral lease is not prohibited in law and it is an accepted form of transferring the property for enjoyment. Reliance was placed on Section 107 and 117 of the Transfer of Property Act and it was contended that in the case of agricultural land, even a written instrument is not necessary. The initial lease which was taken by Narayana Poduval ultimately came to vest with Narayanan Nambiar, who was therefore entitled to get purchase certificate.

10. The learned counsel went on to point out that Ramapurath Tarwad is a Tarwad following the Marumakkattayam system of law and before the commencement of the Madras Marumakkattayam Act, there was no prohibition in law in the Karanavan leasing out the property to anybody. The restrictions came after the 1932 Act followed by the subsequent amendments. It was

therefore contended that the initial lease was a valid lease and the question of deemed tenancy etc., do not arise for consideration. Relying heavily on Section 117 of the Transfer of Property Act, it was contended that none of the provisions under Chapter V applies to leases of land for agricultural purposes. Therefore, it is contended that the question of execution of a document, registration etc. do not arise for consideration. If that be so, even after the commencement of the Madras Marumakkattayam Act of 1933, since as per law there was a valid lease, such transactions are protected under Section 33 of the Madras Marumakkattayam Act as initially stood and amended subsequently. For that purpose, the learned counsel relied on the decision reported in **Neelakantan Sreedharan v. Subba Bhakthan Narayana Bhakthan** (1975 KLT 128), **Sivasubramania Thevar v. T.N.S. Theerthapathi** (AIR 1933 Madras 451), 1995 SC 73, **Sulaikha Beevi v. Mathew & Ors.** (2001 (1) KLJ 221) and **Anthony v. K.C. Ittoop &**

Sons and Others (2000 (6) SCC 394).

11. The learned counsel then pointed out that both the authorities below have not adverted to Ext.A15 document, which would clearly show that the three Karanavans of thavazhies had recognized the lease given to Narayanan Nambiar which ultimately came to rest on Kunhikannan Nambiar. Referring to the definition of cultivating tenant, it was contended that a person, who is in actual possession and is entitled to cultivate, is a cultivating tenant and became qualified to be a person entitled to get the purchase certificate. The learned counsel then went on to point out that these crucial aspects have not been considered by the authorities below which have a material bearing on the issue involved in the case and therefore, the orders are clearly unsustainable in law.

12. The learned counsel appearing for the respondents on the other hand pointed out that most of the contentions now raised are fresh contentions, which has never been

highlighted either of the authorities below and the present claim stands betrayed by the recital in Ext.A1 document. It is significant to notice, according to the learned counsel for the respondent, that the claimants based their claim on the basis of Ext.A1 document and not on the basis of any oral lease prior to that deed. It is therefore necessary only to look into Ext.A1 document and to see whether there is a valid lease created under that document or whether the recitals create right to claim fixity of tenure. The learned counsel went on to point out that no details of oral lease are seen mentioned in Ext.A1, except for saying that at some point of time, the vendor under Ext.A1 had taken the property on oral lease from the tarwad. The learned counsel pointed out that the fact that the vendor under Ext.A1 was the member of the tarwad shall not be lost sight of. The parties are governed by the Madras Marumakkattayam Act and restrictions imposed under the Act for granting the property on lease apply.

13. The learned counsel for the respondent went on to point out that the present case set up is that the original lease was to Narayana Poduval, who is also a member of Ramapuram tarwad. He is alleged to have assigned the leasehold right to Kunhikanna Poduval, who, in turn, assigned it to Narayanan Nambiar. The learned counsel pointed out that it is not the case that Narayanan Nambiar subleased the property to Kunhikanna Poduval but the case is that the leasehold right was assigned in favour of Kunhikanna Poduval. There is no case for the applicants that the property was worth less than ₹100. If that be so, the learned counsel went on to point out Section 17 1(b) of the Registration Act applies and the assignment in favour of Kunhikanna Poduval could have been only by a registered document. In the absence of any registered documents, that transaction cannot be taken note of. The learned counsel also pointed out that the case now set up is totally different from the case set up before the authorities below.

14. The learned counsel went on to point out that even under the Madras Marumakkattayam Act, there are restrictions with regard to the lease created by the Karanavan and when one tests the claim of lease urged in the present proceedings, it can be seen that they fail to conform to the standards specified in the statute.

15. The property having an extent of 2.50 acres comprised in R.S.No. 134/1 belonged to Ramapurath Tarwad is not a matter in dispute. Nowhere in the pleadings it is seen mentioned as is now claimed that Narayana Poduval had taken the property on oral lease from the Ramapurath Tarwad. Even assuming that the Karanavan of a Marumakkattayam Tarwad, prior to the commencement of the Madras Marumakkattayam Act, had authority to lease the property and a member of the Tarwad could take the property on lease, the subsequent claim that the leasehold right was assigned to Kunhikanna Poduval has to be tested. It is not the case at all that Narayana Poduval had subleased

the property to Kunhikanna Poduval. The case put forward now is that it was an assignment of the leasehold right. Reliance placed on Section 107 and 117 of the Transfer of Property Act can have no application to the facts of the case for the simple reason that those provision deals with creation of leases and not with transfer of leasehold right. As already noticed, it is not the case that Narayanan Nambiar subleased the property to Kunhikanna Poduval.

16. There is no case that the property was worth less than ₹100/- at the relevant time. If that be so, transfer by Narayana Poduval to Kunhikanna Poduval, even assuming the lease to be a proper one, had to be by means of a registered document. It is not necessary to dwell much on this aspect for Section 17 of the Registration Act stipulates so. The relevant provision reads as follows:

“17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and

if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--

(a) xxxxxxxxxxxxxxxx

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

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17. The learned counsel appearing for the petitioners try to take the aid of Section 17(1)(d) of the Registration Act and to contend for the position that the document need not be registered. But Section 17(1)(d) deals with the situation of creation of leasehold right and not with transfer of leasehold right. Therefore, that can have no application to the facts of the case. The decisions relied on by the learned counsel for the revision petitioners, for the proposition that

oral lease can be created and also that the cases falling under Section 117 of the Transfer of Property Act excludes the other provisions of Chapter V of the Transfer of Property Act have no relevance.

18. Coming to the question as to the competency of the Karanavan of the Marumakkattayam tarwad to lease the property as far as the Malabar area is concerned, the restrictions were first brought about by virtue of Madras Marumakkattayam Act of 1933. Before the said enactment, it was well recognized that the Karanavan, for Tarwad necessity and for sufficient reasons, was competent to lease out the property.

19. One may, for argument sake, go to the extent of saying that it is possible to lease out the property to a junior member. But the matter does not end there. The case set up is that Narayana Poduval, who obtained oral lease, assigned the leasehold right to Kunhikanna Poduval. Kunhikanna Poduval, as per Ext.A1 dated 28.02.1984,

assigned the right to Narayanan Nambiar. However, Ext.A1 betrays the said claim. Ext.A1 says that Kunhikanna Poduval had orally taken the property on lease from the tarwad, the details of which are conspicuously absent in Ext.A1.

20. Section 33 of the Madras Marumakkattayam Act as it was originally enacted, reads as follows:

“33. (1) Except for consideration and for tarwad necessity or benefit and with the written consent of the majority of the major members of the tarwad, no karnavan shall sell immovable property of the tarwad or mortgage with possession or lease such property for a period exceeding twelve years.

(2) No mortgage with possession or lease with premium returnable wholly or in part, of any such property executed by a karnavan for a period not exceeding twelve years, shall be valid unless such mortgage or lease is for consideration and for tarwad necessity or benefit.

(3) Nothing contained in this section shall be deemed to restrict the power of the karnavan to grant, in the usual course of management, for a period not exceeding twelve years, any lease without premium

returnable wholly or in part, or the renewal of an existing kanom.”

21. Section 33 of the Madras Marumakkattayam Act was amended in 1951 which reads as follows:

“33. Validity of sales, mortgages and leases.--(1) No sale or mortgage of any immovable property of a tarwad and no lease of any such property either for a premium returnable wholly or in part or for a period exceeding twelve years shall be valid. Unless it is executed by the karnavan for consideration, for tarwad necessity or benefit, and with the written consent of the majority of the major members of the tarwad.

(2) No lease of any immovable property of a tarwad in cases not referred to in sub-section (1) shall be valid unless it is executed by the karnavan and where the Malabar Tenancy Act, 1929, confers fixity of tenure on the lessee, unless also the written consent of the majority of the major members of the tarwad has been obtained to the lease.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be deemed to affect the validity of any mortgage or lease executed on or before the 27th July, 1950, in accordance

with the law in force at the time of such execution.”

22. In the Madras Marumakkattayam Act as it stood prior to the amendment of the same by the Joint Hindu Family System (Abolition) Act and amended Act of 1958, Section 33 reads as follows:

“33. (1) No sale or mortgage of any immovable property of a tarwad and to lease of any such property shall be valid, unless it is executed by the Karnavan for consideration, for tarwad necessity or benefit, and with the written consent of the majority of the major members of the tarwad.

(2) Nothing contained in sub-section (1) shall be deemed to affect the validity of any mortgage or lease executed before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, in accordance with the law in force at the time of such execution.”

23. It is significant to notice that in the Act, only those deeds which are executed in accordance with law are alone saved. It has already been noticed that the claim is not of

one of sublease but transfer of leasehold right. If that be so, as already noticed, Section 17 of the Registration Act comes into play and when that is not complied, it could not be said that the lease created is one in accordance with law so as to be saved under the provisions of the Madras Marumakkattayam Act.

24. The learned counsel for revision petitioners may be justified in his submission that the reason given by the Land Tribunal to non-suit the claimants is not correct. However, from the discussion above, it can be clearly seen that even assuming the reasoning of the lower authority is found to be wrong, even on other grounds, the claimants are not entitled to fixity of tenure. Apart from the infirmities contained in Ext.A1, which sets an independent oral lease in favour of Narayanan Nambiar, who assigned the leasehold right to B party, the very claim now set up cannot be countenanced.

25. At the risk of repetition, one may notice that even though oral lease may be possible in certain circumstances, what is contended in the present case is transfer of leasehold right and not subleasing of property or creation of fresh leasehold rights. There is an ocean of difference between leasing out a property and transfer of a leasehold right. When that distinction is borne in mind, the tracing of rights in the present form i.e. the initial oral tenancy in favour of Narayana Poduval and his transfer to Kunhikanna Poduval becomes invalid. If that be so, Kunnikanna Poduval could not have assigned any right to Narayanan Nambiar also.

26. The learned counsel appearing for the respondents pointed out that it is interesting to note that the case now set up is that Narayanan Nambiar assigned the properties to applicant Nos. 3 and 4. An extent of 1.75 acres were assigned as per Ext.A2 in 1988 to the children of Damodara Poduval, who is none other than the brother of Kunhikanna

Poduval. The other document is Ext.A21, which is also of the year 1988, whereby, the balance property was assigned to K.P. Balakrishnan, who is none other than the son of Kunhikanna Poduval. The learned counsel pointed out that it will be abundantly clear from the above facts that this arrangement has been connived to knock off the property belonging to Tarwad and to deprive the members of the tarwad their legitimate rights over the property. It is not necessary in this case to go into those questions at all. It has already been found that the lease set up, as now contended before this Court, cannot be accepted. If that be so, even though the reasoning given by the lower authorities may not be justified, their conclusion is proper and correct. Applicants are not entitled to fixity of tenure.

These revisions are without merits and they are accordingly dismissed.

**P.BHAVADASAN
JUDGE**

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