IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

CRP.No. 1341 of 2002 F/B

AGAINST THE JUDGMENT IN AA 124/1996 of APPELLATE AUTHORITY (LAND REFORMS), KANNUR DATED 28-03-2001

OA 23168/1976 of LAND TRIBUNAL, KANNUR

REVISION PETITIONERS/RESPONDENTS 3 TO 6:
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1. POTHEERA VALAPPIL CHEMMARATHI,
D/O.KUNHI MADHAVI, AGED 58 YEARS, VELLUR AMSOM,
KANDOTH DESOM, PAYYANNUR(VIA), KANNUR DISTRICT.

2. POTHEERA VALAPPIL LAKSHMI,
D/O.KUNHI MADHAVI, AGED 55 YEARS, RESIDING AT DO.

3. POTHEERA VALAPPIL NARAYANI,
D/O.KUNHI MADHAVI, AGED 52 YEARS, RESIDING AT DO.DO.

4. POTHEERA VALAPPIL LAKSHMANAN,
S/O.KUNHI MADHAVI, AGED 50 YEARS, RESIDING AT DO.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS/APPELLANTS 1 TO 5 & 1ST RESPONDENT:
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1. KANADA KUNHIRAMAN, S/O.POTHEERA
VALAPPIL KUNHAMBU, VELLUR AMSOM, KANDOTH DESOM
PAYYANNUR(VIA), KANNUR DISTRICT. (DIED. LRs IMPLEADED)

2. KANNADA SREEDHARAN, S/O.-DO-. RESIDING DO.

3. KANNADA NARAYANI, D/O.-DO-. RESIDING DO.

4. KANNADA RAGHAVAN, S/O.-DO-. RESIDING DO.

5. KANNADA NARAYANAN, S/O.-DO-. RESIDING DO.

6. MANAGER, THIRUVARKKAT DEVASWOM,
MADAI.

7. STATE OF KERALA, REP. BY
CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

SUPPLEMENTAL RESPONDENTS 8 TO 14

8. LAKSHMI, W/O. KUNHIRAMAN, KANNADA KUNHIKARAYIL HOUSE, P.O. KANDOTH, VIA. PAYYANNUR, KANNUR DISTRICT.

9. PRAKASAN, S/O. KUNHIRAMAN -DO-

10. BALAKRISHNAN, S/O. KUNHIRAMAN -DO-

11. BABU, S/O. KUNHIRAMAN -DO-

12. PRADEEPAN, S/O. KUNHIRAMAN -DO-

13. PRAMOD, S/O.KUNHIRAMAN -DO-

14. PRASEEDA, D/O. KUNHIRAMAN -DO-

(SUPPL. RESPONDENTS 8 TO 14 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 1ST RESPONDENT VIDE ORDER DTD.14.9.12 IN I.A.428/2007 IN CRP.1341/2002)

R2, R3, R5, R8, R9, R11, R13 & R14 BY ADV. SRI.KALEESWARAM RAJ
R6 BY ADV. SRI.MAHESH V RAMAKRISHNAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25-06-2015, ALONG WITH CRP. 1358/2002, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition Nos.1341 & 1358 OF 2002

Dated this the 25th day of June, 2015.

O R D E R

A perverse order which was obviously pre-intended and pre-conceived has given rise to these Civil Revision Petitions. The facts which are absolutely necessary for the disposal of these petitions are as follows:

2. One Kunhimadhavi filed O.A No.13332/1975 seeking assignment of 86 cents of property which belonged to Thiruvarkat Devaswom Madai. According to her, one Kannan had taken the property from Devaswom on lease and his leasehold right happened to be sold in court auction which was purchased by Potheera Valappil Kannan who took delivery of the property and thereafter assigned the same in favour of Kunhimadhavi who is none other than his sister. Kunhimadhavi thus came into possession of the property and she thereafter executed a marupattam deed. She later on executed a simple mortgage in favour of one Koran and later got it redeemed. She further

alleged that a portion of the property was acquired for construction of a road for which compensation was given to her. During the pendency of the proceedings, she died and her legal heirs were brought on the party array.

3. On the basis of the above pleadings, it is claimed that Kunhimadhavi is entitled to assignment of land. In respect of the same property, one Kunhambu had also claimed assignment and he filed O.A.No.23168/1976. He set up an oral lease with Devaswom and his main evidence was regarding occupation of the building in the property.

4. Before the Land Tribunal, both the applications were tried together and O.A.No.13332/75 was treated as leading case and evidence was adduced in the said case. Evidence consists of the testimony of PW1 and the documents marked as Exts.A1 to A14 on the side of the applicant in O.A.No.13332/75. The rival claimant examined RWs 1 to 3 and had Exts.B1 to B46 marked. Ext.C1 was the report of the Revenue Inspector.

5. The Land Tribunal, on a fair consideration of the materials before it, found the claim of Kunhimadhavi to be more

probable, justifiable and convincing and therefore allowed her application and dismissed the application of the rival claimant i.e. O.A.No.23168/76.

6. The aggrieved rival applicants took up the matter in appeal as A.A.No.124/1996 as against the order in O.A.No.23168/76 and A.A No.125/1996 as against the order in O.A.No.13332/75. The appellate authority for strange and curious reasons came to the conclusion that the finding of the Land Tribunal cannot be sustained mainly on the basis that the Revenue Inspector's report and tax receipts which were produced by the applicants in O.A.No.23168/76 are sufficient to justify their claim, reversed the finding of the Land Tribunal allowing the application O.A.No.23168/76 and dismissing O.A.No.13332/75.

7. CRP No.1358/2002 is directed against the order in A.A.No.125/1996 and CRP No.1341/2002 is directed against the order in A.A.No.124/1996.

8. On a cursory scrutiny of materials available, it can be seen that the order passed by the appellate authority is perverse and contrary to the evidence on record and it has not taken into

consideration the relevant aspects and was guided on totally irrelevant factors.

9. Kunhimadhavi traced her title to an assignment in her favour from her brother who obtained it under a court auction and got delivery of the same after bidding in the court sale. She had produced documents to show that she mortgaged the property and subsequently got it redeemed. She had also produced documents to show that a portion of the property was acquired by the Government and she was awarded compensation for the same. She did produce few tax receipts also.

10. The rival claimant, that is the applicant in O.A.No.23168/76, relied on Ext.C1 report. There is nothing to show that any rent has been paid nor is there any evidence of the same. On the other hand, what greatly impressed the appellate authority was few receipts in the form of Exts.B1 to B28 followed by Ext.B38 order.

11. This Court is not forgetful of the fact that Ext.C1 Revenue Inspector's report is in favour of the applicant in O.A.No.23168/76. The Revenue Inspector's report though a

statutory one is not conclusive of the matter. The parties have adduced oral evidence and produced number of documents which ought to have been considered by the appellate authority before reaching a conclusion. The act of the appellate authority in simply brushing aside the documents of the applicant in O.A.No.13332/75 cannot be countenanced. The reasons given are not sustainable both on facts and in law.

12. The appellate authority will be better advised to consider the matter afresh after adverting to the evidence adduced by both sides in accordance with law.

For the above reasons, these revision petitions are allowed. The impugned orders of the appellate authority are set aside and the matter is remanded to the appellate authority for fresh consideration in accordance with law and in the light of what has been stated above making it clear that the appellate authority shall decide the appeals untrammelled by any of the observations made by this Court while disposing of these petitions.

Sd/-

P.BHAVADASAN
JUDGE

smp