

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF JUNE 2014/28TH JYAISHTA, 1936

CRP.No. 260 of 2009 (B)

**AA 79/2002 of APPELLATE AUTHORITY (LR), KANNUR
SMC 375/1995 of DEPUTY COLLECTOR (ILR) KOZHIKODE**

REVISION PETITIONER(S):

**KOKKANANCHATH KOMATH KANDIYIL KUNHIKRISHNA KURUP,
S/O. SANKARA KURUP, AASARINTE KANDIYIL HOUSE,
MANIYOOR AMSOM, CHERENDATHOOR DESOM, VATAKARA.**

**BY ADVS.SRI.V.VASOKAN
SMT.S.AMINA**

RESPONDENT(S):

- 1. POYILIL KALYANI, D/O. KELU, POYILIL HOUSE,
VATAKARA AMSOM DESOM, NUT STREET (POST)
VATAKARA.**
- 2. PULPADI CHANDU, S/O. KELU, PULPADI HOUSE
MANIYOOR AMSOM DESOM, MANIYOOR POST, VATAKARA.**
- 3. TRICHAMBARAM DEVASWOM, MANIYOORMADAM,
TRICHAMBARAM, THALIPARAMBA.**
- 4. THIRUVALA, W/O.KELAPPAN, KIZHUKUNI HOUSE
MANIYOOR AMSOM DESOM, VATAKARA.**
- 5. RAJAN, S/O. KELAPPAN, KIZHUKUNI HOUSE,
MANIYOOR AMSOM DESOM, MANIYOOR POST, VATAKARA TALUK.**
- 6. JANU, W/O. KUNHIRAMAN,
CHERIYATTIL HOUSE, MOORAD, IRINGAL POST.**
- 7. CHIRUTHA, W/O. CHATHU,
CHETTIAMKANDY HOUSE, MANIYOOR POST.**
- 8. KAMALA, W/O. CHATAPPAN, MEETHALEMUNDALIHOUSE,
THURAYOOR, PAYYOLI POST.**
- 9. SOBA, W/O.RAJAN, KURUNTHIYODU HOUSE,
AYANIKKADU POST.**

(...2)

**10. RAJEEVAN, S/O. KELAPPAN, KIZHUKUNI HOUSE
MANIYOOR AMSOM DESOM, VATAKARA.**

**11. STATE OF KERALA, REP. BY CHIEF
SECRETARY TO GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**

**R11 BY GOVERNMENT PLEADER
R3 BY ADV. SMT PRABHA R. MENON
R3 BY ADV. SRI. M. KRISHNAKUMAR
R4 TO R10 BY ADV. SRI. B. KRISHNAN
R4 TO R10 BY ADV. SRI. R. PARTHASARATHY**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18-06-2014,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

okb

K.HARILAL, J.

C.R.P.No.260 of 2009

Dated this the 18th day of June, 2014

ORDER

The revision petitioner is the appellant in A.A.No.79/2002 on the files of the Appellate Authority (LR), Kannur, as well as B party in S.M.C.No.375/95 on the files of the Land Tribunal (LR), Kozhikode. Suo Moto proceedings were initiated by the Land Tribunal on the report of the Authorised Officer under Section 72(c) of the Kerala Land Reforms Act, 1963, r/w Rule 5 of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970, in respect of 44 cents of land comprised in Re-Sy.No.50/1 of Maniyoor Desom of Vatakara Taluk. The owner of the said land was Trichambaram Devaswam. The said Devaswam leased the property to Aana Kelu and others as per registered document. Aana Kelu and others leased their property in 1922 to Nelloli Sankara Kurup, the father of the revision petitioner herein. Thus, Sankara Kurup was in possession of the property as a tenant. Now he is no more and the revision petitioner is the legal heir of the said

Sankara Kurup. According to the revision petitioner, he is the cultivating tenant. Sankara Kurup continued to be in possession of his land till his death. On his death, the property was inherited by his widow Ammalu Amma, children Kunhikrishna Kurup and others. At that time, the land was uncultivated. The land was handed over to the occupying tenant Kelappan by Sankara Kurup by way of an oral lease. Thus, the land was handed over to occupying tenant Kelappan 50 years back. He was paying 60 Edangazhies of paddy and 25 Edangazhies of paddy as pattam to Sankara Kurup as intermediary. After the death of Sankara Kurup, the legal heirs claimed only intermediary right in the property. Kelappan paid land rent to Anachanthu and Kalyani, the legal heirs of Aana Kelu. Thus, the respondents have been in possession and enjoyment of the property as cultivating tenants. This is the case of the respondents.

2. But, it is the case of the revision petitioner herein that the property originally belonged in Janmam possessory right to Thrichambaram Devaswam. The Devaswam leased the property to Aana Kelu and others as per registered document. Thereafter, Aana Kelu and others leased the property in the

year 1922 as per the original of Ext.B1 to Nelloli Sankara Kurup, the father of Kunhikrishna Kurup. The said Sankara Kurup was in actual possession and enjoyment of the property as a tenant. The alleged lease in favour of Kelappan is an utter false story and the property was never orally leased by Sankara Kurup to Kelappan and his father continued to be in possession till his death. On the death of Sankara Kurup, the property was inherited by his widow Ammalu Amma and her children, the petitioner and others. Kelappan made an attempt to trespass over the property, whereupon the petitioner filed a suit, O.S. No.52/94 before the Sub Court for a decree for permanent prohibitory injunction and that suit was decreed. In that suit, Kelappan raised a contention of oral tenancy and urged for referring the question of tenancy to Tribunal; but the Tribunal rejected the said prayer. SMC proceedings caused to be initiated subsequent to the above said order as an attempt to see whether he could obtain an order in his favour from the Land Tribunal, so as to defeat the civil suit.

3. In support of the contentions, the revision petitioner produced Ext.B1 to B27 and the respondents produced Exts.A1 to A37. P.Ws.1 to 4 as well as R.W.1 were examined. After

considering the evidence on record, the Tribunal found that the respondents are cultivating tenants of the land and Certificate of Purchase has been granted to them with respect to 44 cents of land in Re-Sy.No.50/1 of Maniyoor Desom. Feeling aggrieved, the revision petitioner had preferred the above appeal before the Appellate Authority. After considering the rival contentions, the Appellate Authority also confirmed the findings of the Land Tribunal and dismissed the appeal. This Revision Petition is filed challenging the legality and propriety of the findings by which the Appellate Authority dismissed the appeal.

4. The learned counsel for the revision petitioner advanced arguments challenging the findings of the Tribunal as well as the Appellate Authority. The learned counsel for the respondents advanced arguments justifying the findings of the authorities below.

5. The short question that arises for consideration in this Revision Petition is, whether the Appellate Authority has decided erroneously or failed to decide any question of law?

6. Going by the impugned order passed by the Appellate Authority, apparently, I find that the Appellate Authority

miserably failed to discharge the jurisdiction vested in it. As per Section 102(3) of the Kerala Land Reforms Act, the statutory mandate is that in deciding the appeals under sub-section (1), the Appellate Authority shall exercise all the powers which a court has and follow the same procedure which the court follows in deciding the appeal against the decree of an original court under the Code of Civil Procedure, 1908. But, unfortunately, the impugned order is seen passed in defiance to the statutory mandate referred above. None of the documents have been adverted to while passing the order. In fact, the impugned order was passed perfunctorily without application of mind over Exts.A1 to A37 and Exts.B1 to B27.

7. In **Mohammed Shafi Vs. Mohammed Haji (1986 KHC 466)**, this Court held as follows:-

“7. I am not at all satisfied with the style and method of the disposal of the appeal by the appellate authority. The appellate authority, constituted under the Kerala Land Reforms Act, should always remember that it has got a very serious responsibility in the matter of disposing of the appeals that come up before it under S.102 of the Kerala Land Reforms Act. They have got the power and obligation to re-value

the evidence and all the circumstances involved in the case and to examine the correctness of the order of the Tribunal. These authorities - the quasi judicial Tribunals and the appellate authorities constituted under the Kerala Land Reforms Act, have got a vital and significant role in the present day administration of justice. They are entrusted with vast and important adjudicatory powers in regard to property rights, which the citizens hold as very dear and precious. The appellate authority as well as the Tribunal are bound to formulate the points in dispute and thereafter to consider the circumstances and evidence bearing on those points. They have to discuss the rival contentions. Appellate authority should give its own reasons for accepting or rejecting the findings of the Tribunal. If the Tribunal has not entered findings on relevant issues, the appellate authority has necessarily to record its own findings on vital issues in the case on a proper assessment of the evidence and relevant contentions. I need not say that the appellate authority's function never stops with a review or an overseeing of the Tribunal's order. It is the final fact finding forum. It has to re-appreciate and re-value the circumstances and evidence in the case, since it is exercising an appellate

power. Both the land tribunal and appellate authority are bound to give a reasoned decision. Reasoned decisions are not only important for the purpose of showing the citizen that he is receiving justice; they are also a valuable discipline for quasi judicial tribunals themselves. If the appellate authority declines to give a reasoned decision it amounts to a denial of justice and is itself a serious error of law.”

8. In view of the proposition laid down by this Court referred above, I find that the order under challenge is, per se, unsustainable and liable to be set aside at the threshold and I do so. The Appellate Authority is directed to pass order afresh, keeping in view of the judgment of this Court referred above, after affording an opportunity of being heard to both parties, within a period of two months from the date of receipt of a copy of this order.

The Revision Petition is disposed of accordingly.

Sd/-
(**K.HARILAL, JUDGE**)

okb.