

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

CRP.No. 419 of 2010 ()

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AGAINST THE ORDER/JUDGMENT IN AA 34/2004 of APPELLATE AUTHORITY
(LAND REFORMS), ALAPPUZHA DATED 04-03-2010**

**AGAINST THE ORDER/JUDGMENT IN SM 24/1987 of LAND TRIBUNAL,
PATHANAMTHITTA**

REVISION PETITIONER(S)/REVN. PETITIONER.:

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- 1. PAPPY JANAKI, THEKKEKALLIMALA,
EAST OTHERA P.O., THIRUVALLA (DIED)**
 - 2. T.S.RAJAN, THEKKEKALLIMALAYIL,
OTHERA EAST P.O., ERAVIPEROOR VILLAGE
THIRUVALLA TALUK.**

BY ADV. SRI.R.GIREESH VARMA

RESPONDENT(S)/RESPONDENT:

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- 1. GEEVARGHESE CHERIAN, PAROOR PEEDIKAYIL
EDANADU, CHENGANNUR P.O, CHENGANNUR PIN-689 121.(DIED)**
 - 2. GEEVARGHESE THOMAS,PAROOR PEEDIKAYIL
EDANADU, CHENGANNUR P.O, PIN-689 121.(DIED)**
 - 3. KUNJUCHERUKKAN,THALAKKOTTUMoola,
WEST OTHERA P.O., PIN-689 551.**
 - 4. NINA EAPEN, VALLAPPALLIL,
ARATTUPUZHA P.O., PIN-689 123.**
 - 5. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, COCHIN - 31.**

***ADDL.R6. K.C. THOMAS @ SAJAN,
PAROOR PEEDIKAYIL, EDANADU,
CHENGANNUR P.O.**

***ADDL.R7. SALI,
PAROOR PEEDIKAYIL,
PUTHENCavu P.O.,
CHENGANNUR.**

CRP No. 419 of 2010 ()

***ADDL.R8. JEEMOL,
PAROOR PEEDIKAYIL,
PUTHENCAVU P.O.,
CHENGANNUR.**

***ADDL.R9. JAYA,
PAROOR PEEDIKAYIL,
PUTHENCAVU P.O.,
CHENGANNUR.**

***ADDL.R10. JEEMON,
PAROOR PEEDIKAYIL,
PUTHENCAVU P.O.,
CHENGANNUR.**

***(ADDITIONAL R6, IMPEADED AS LRS OF THE DECEASED R1 AND ADDL. R7 TO
R10, ARE IMPEADED AS LRS OF THE DECEASED R2, AS PER ORDER DT. 16.10.2014
IN I.A. 992/2012 AND I.A. 993/2012, RESPECTIVELY IN CRP 419/2010.)**

**R5 BY GOVERNMENT PLEADER SMT. LILLY LESLIE
R-3 BY ADV. SRI.P.VIJAYAKUMAR**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

C.R.P. No. 419 of 2010

Dated this the 28th day of May, 2015

ORDER

The applicant in S.M.No. 24/1987, who applied for assignment of 29 ½ cents of property comprised in Sy. No. 394/3 of Eraviperoor Village and failed to succeed in her attempt, is the revision petitioner.

2. According to the applicant, she is a cultivating tenant of the above property having obtained it on oral lease from the second respondent 30 years ago. She claimed to have effected valuable improvements in the property and claimed to be in absolute possession and enjoyment of the same. Claiming the status of a cultivating tenant, she sought for assignment under Section 72B of the Kerala Land Reforms Act.

3. The first respondent pointed out that she has nothing to do with the property over which the claim is laid. According to him, the land in question forms part of the

property having a total extent of 79 cents from which 39 ½ cents on the eastern side was given to the second respondent. The claim now put forward by the applicant is with respect to a portion on the eastern side set apart to second respondent. He therefore claimed to be an unnecessary party to the proceedings.

4. The second respondent through the power of attorney holder who was shown as 4th respondent disputed the oral lease set up by the applicant and pointed out the she was not a cultivating tenant. According to him, the family of the applicant i.e. her parents and she were residing in the property and for shifting their residence, she was given a parcel of land at the instance of the second respondent. It is after having benefited this that the petitioners have come forward with the present claim and it is without any bonafides. They therefore, prayed for a dismissal of the application.

5. For the purpose of the disposal of application, evidence was adduced by both sides. On an appreciation of the materials before it, the Land Tribunal found that there was absolutely no evidence to establish the oral lease and therefore dismissed the application. On appeal by the applicant, the lower appellate court took the same view.

6. The learned counsel appearing for the petitioners before this court pointed out that there has not been a proper appreciation of the evidence in the case and that has resulted in gross miscarriage of justice. The applicant before the court below had examined the witness to show that she had paid rent for the property and she also had produced her ration card etc. to show that she has been residing in a portion of the property. The learned counsel went on to point out that Ext.X1 document on which reliance was placed by the court below, shows that the document is inadmissible in evidence and it was not put to the petitioner that either herself or her parents had received any amount

as shifting charges. It is also pointed out that Ext.X1 was not legally proved. There is nothing to show that there was a shifting as contended by the respondents. The courts below were not therefore justified in placing reliance on the same. They therefore prayed for dismissal of the petition.

7. The learned counsel appearing for the respondents on the other hand contended that there is concurrent finding against the petitioners and unless it is shown that the decision is erroneous or that the authorities concerned are failed to decide any question of law, a revision is not maintainable.

8. The decision has been rendered by both the courts below on appreciation of facts and it could not be said that the findings are perverse or any question of law is involved. It is pointed out referring to the evidence by the respondents that in the chief examination of DW3, he had mentioned that the amount has been received for shifting purposes and that statement made by the witness has not been challenged in

the cross examination. There is absolutely no evidence of any pattam has ever been paid and the oral evidence to that effect cannot be accepted. At any rate, according to the learned counsel, it is not possible to show that the findings are so perverse that it warrants interference.

9. After having heard the learned counsel on both sides and after having perused records and also after having gone through the orders of the authorities concerned, there seems to be some substance in the contentions raised by the learned counsel for the respondents.

10. The year of oral lease is not specified. There is absolutely no evidence to show that any rent has ever been paid except for the oral testimony furnished by the applicant.

11. It must be remembered that in the case on hand, the applicant admits the title of respondents 1 and 2 and then claims a lease from them. The burden is entirely on the applicant to prove the lease.

12. It is true that the authorized officer has reported that the plaintiff is in possession of the property for a long time. He has not mentioned that she is a cultivating tenant. He only says that she is residing in the property. The fact that DW3 in his chief examination has spoken to about the shifting charges and that aspect has not been challenged in the cross examination. This fortifies the case put forward by respondents.

13. Further, there is no consistency regarding the lease. Respondents 1 and 2 have pointed out that the property over which the claim is laid belonged to the second respondent. In one place, the applicant would say that the lease was made by both respondents 1 and 2 and in another portion, it was by the second respondent alone. She has no explanation to offer regarding the lack of evidence on payment of rent. She examined two witnesses claiming that the applicant had borrowed amount for paying rent. One must remember that the claim of petitioners is that she has

been the tenant for the last 30 years and if that be true, there would have been some documents to show that she is a cultivating tenant. The ration card produced is not of much help to show that she is a cultivating tenant.

14. It is here that the case put forward by the respondents will have to be taken note of. They admit petitioners' presence in the property. They say that she and her parents had been residing in the property, in fact, located in the centre of property. Thereafter, the second respondent sought shifting of place of residence and the definite contention is that going by Ext.X1, amount was received by the inhabitants to shift from the place they were residing. Of course, Ext.X1 has not been put to the petitioners and their explanation sought for. However, it is not a case where respondents totally deny the presence of the petitioners in the property. They offer an explanation. It is seen from the order of the land tribunal that the above fact could be seen from the statement said to have been

filed by the brother of the petitioner also. Whatever that be, it could not be said that the appreciation of the materials before the court below and the finding reached by the authorities below are so very perverse that it warrants interference under Section 103 of the Kerala Land Reforms Act. It could not be said that the finding is based on no evidence at all. The views taken by the authorities below are all possible view. If that be so, it could not be said that that this is a fit case where interference is called for under Section 103 of the Kerala Land Reforms Act.

This Revision is without merits and it is accordingly dismissed.

**P.BHAVADASAN
JUDGE**

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