

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Ex.SA.No. 28 of 2015

**AS 48/2014 OF ADDITIONAL DISTRICT COURT - II, KASARAGOD
EA.NO.104/2013 IN EP.113/2012 OF PRINCIPAL MUNSIF COURT, KASARAGOD**

APPELLANT/APPELLANT IN AS/PETITIONER IN EA/3RD PARTY IN EP:

**VARADARAJA PRABHU, AGED 71 YEARS,
S/O.LATE KESHAVA PRABHU,
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.BENGRAMANJESHWAR,
KASARAGOD-671323.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

RESPONDENT(S)/RESPONDENTS IN AS/CR.PETITIONERS IN EA:

- 1. NALINI SHENAI, AGED 77 YEARS,
W/O.M.NARASIMHA SHENOY (LATE),
D/O.LATE A.UMANATHA RAO,
RESIDING AT LOWER CAR STREET, MANJESHWAR,
HOSABETTU VILLAGE, MANJESHWAR TALUK, P.O.MANJESHWAR
KASARAGOD-671323.**
- 2. SUBRAYA HEGDE, AGED 74 YEARS,
S/O.VASUDEVA HEGDE,
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.**
- 3. GANAPATHI HEDGE, AGED 72 YEARS,
S/O.VASUDEVA HEGDE,
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.**
- 4. SARASWATHI HEDGE, AGED 74 YEARS
WIDOW OF LATE DEVARAYA HEGDE
RESIDING AT BENGRAMANJESHWAR VILLAGE
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.**

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5. RAVICHANDRA HEGDE, AGED 54 YEARS,
S/O.LATE DEVARAYA HEGDE,
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.
 6. VASUDEVA HEGDE, AGED 56 YEARS,
S/O.LATE DEVARAYA HEGDE
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.
 7. SRINIVASAN HEGDE, AGED 47 YEARS,
S/O.LATE DEVARAYA HEGDE,
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.
 8. SANDHYA, AGED 46 YEARS,
D/O.LATE DEVARAYA HEGDE,
(WRONGLY STATED AS S/O.IN THE CAUSE TITLE IN THE JUDGMENT OF THE
LOWER APPELLATE COURT),
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.
 9. VIDYA, AGED 51 YEARS,
D/O.LATE DEVARAYA HEGDE
(WRONGLY STATED AS S/O.IN THE CAUSE TITLE IN THE JUDGMENT OF THE
LOWER APPELLATE COURT),
RESIDING AT BENGRAMANJESHWAR VILLAGE,
MANJESHWAR TALUK, P.O.MANJESHWAR, KASARAGOD-671323.
- R1 BY ADVS. SRI.V.V.ASOKAN (SR.)
SRI.K.I.MAYANKUTTY MATHER
SRI.P.RAHUL (CAVEATORS)

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

Ex.S.A.No.28 of 2015

Dated this the 14th day of December, 2015

JUDGMENT

This second appeal arises from the proceedings in execution of the order in R.C.P.No.44 of 1989 on the file of the Munsiff Court, Kasargod.

2. R.C.P No.44 of 1989 was filed by the predecessor of the first respondent for eviction of the second respondent from the petition schedule building. The case of the landlord in the above rent control petition was that the petition schedule building was leased out to one Manjunatha Kamath on 14.9.1936 as per Ext.A1 lease deed and that on the death of Manjunatha Kamath, his wife Kamala and her sister Sanjivi executed a fresh lease deed in favour of the

then landlord on 27.10.1950 and continued as tenants of the petition schedule building. According to the landlord, on the death of Kamala and Sanjivi, since Kamala died issueless, the leasehold right over the petition schedule building devolved on the children of Sanjivi. It is also the case of the landlord that the petition schedule building has thus come under the occupation of respondents 2 to 9 who are the legal representatives of Sanjivi. The rent control petition was resisted by respondents 2 to 9 on various grounds. The rent control court accepted the contentions of respondents 2 to 9 and dismissed the rent control petition. The matter was taken up by the landlord in appeal. The appellate authority, on a reappraisal of the materials on record, reversed the decision of the Rent Control Court and ordered eviction. Respondents 2 to 9 though took up the matter before this Court in revision, this Court confirmed the decision of the Rent Control Appellate Authority. The

matter was again taken up by the said respondents before the Supreme Court and the Special Leave Petition filed by them was dismissed by the Supreme Court.

3. Thereupon, the landlord filed E.P.No.113 of 2012 to execute the order of eviction. In the said execution petition, the execution court ordered delivery of the petition schedule building on 3.7.2013. The Amin deputed by the execution court to execute the delivery warrant, however, returned the delivery warrant, stating that the appellant herein has obstructed the execution of the delivery warrant. Immediately thereupon, the appellant has filed E.A.No.104 of 2013, stating that on the death of Manjunatha Kamath, the leasehold rights over the petition schedule building devolved on his wife Kamala and on the death of Kamala, the leasehold rights over the suit property devolved on the appellant and others and that the appellant is in occupation of the petition schedule building. According to the

appellant, in the aforesaid circumstances, the order of eviction is not binding on him and cannot be enforced against him. E.A.No.104 of 2013 was resisted by the landlord contending, among others, that the appellant has no connection whatsoever with the wife of the original tenant, Kamala. The execution court dismissed E.A.No.104 of 2013 and the said decision of the execution court has been confirmed in appeal. The appellant, who is aggrieved by the decision in E.A.No.104 of 2013, as confirmed in appeal, has thus come up in this second appeal.

4. Heard the learned Senior Counsel for the appellant as also the learned Senior Counsel for the first respondent.

5. The case of the appellant is that the wife of the original tenant, Kamala, who continued as the tenant of the premises on the death of the original tenant died on 23.12.1951 and on her death, the leasehold right in respect of the petition schedule building devolved on her five

brothers. It is also his case that two among the brothers of Kamala died unmarried and consequently, the estate of Kamala devolved on the children of the remaining brothers of Kamala. It is his further case that being one of the children of one of the brothers of Kamala, he has acquired a fractional leasehold right in respect of the petition schedule building on the death of his father as per the custom prevailing in their community and that he is in possession of the petition schedule building. As noted above, going by the case set up by the appellant, Kamala died prior to the Hindu Succession Act, on 23.12.1951. Though it is pleaded by the appellant in the application filed by him that a fractional leasehold right over the petition schedule building devolved on him on the death of his father as per the customs prevailing in their community, the particulars of the custom, on the basis of which the appellant claims fractional interest in the leasehold right over the petition schedule building,

has not been pleaded or established by him. It is in the said circumstances, E.A.No.104 of 2013 was dismissed by the trial court holding that the appellant has not established his case. In so far as the appellant has not established the case set up by him in the application, the courts below cannot be faulted for having rendered the impugned decisions. Further, as noted above, the rent control petition which was instituted as early as in the year 1989 was stoutly resisted by the respondents 2 to 9. Despite the resistance, when they were ordered to be evicted, they took up the matter upto the Supreme Court and it is due to the said reason that the order of eviction could not be executed till date. If respondents 2 to 9 were not in fact in occupation of the petition schedule building, I do not find any reason for them to contest the eviction petition and take up the matter upto Supreme Court. The appellant is a close relative of respondents 2 to 9. The case set up by the

appellant that he is in possession of the petition schedule building and he was not aware of the rent control petition, cannot therefore, be believed at all. On an evaluation of the entire materials on record, I am of the view that the appellant is a person set up by respondents 2 to 9 to delay the execution of the order of eviction.

In the aforesaid facts and circumstances, I do not find any reason to interfere with the impugned decisions and the execution second appeal is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm