

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

RFA.No. 769 of 2009

O.S.NO.211/1992 OF SUB COURT, KOTTARAKKARA

APPELLANT(S)/PLAINTIFFS :

1. ABRAHAM SALAMMA, W/O.T.V.ABRAHAM, AGED 49 YEARS,
SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA,
PULAMON.P.O, KOTTARAKKARA, NOW RESIDING AT BOTHUTHATSWANA,
MAMBATHO 8681, P.B.6238, AFRICA,
REPRESENTED BY HER POWER OF ATTORNEY HOLDER, C.K.ALEXANDER
AGED 49 YEARS, SON OF KUNCHANDY, SALEM MANDIRAM,
KOTTAPPURAM, KIZHAKKEKARA, PULAMON.P.O, KOTTARAKKARA.
2. T.V.ABRAHAM, SON OF OUSEPH VARKEY, AGED 56 YEARS,
SALEM MANDIRAM, KOTTAPPURAM, KIZHAKKEKARA,
PULAMON.P.O, KOTTARAKKARA, NOW RESIDING AT BOTHUTHATSWANA,
MAMBATHO 8681, P.B.6238, AFRICA,
REPRESENTED BY HER POWER OF ATTORNEY HOLDER, C.K.ALEXANDER,
AGED 49 YEARS, SON OF KUNCHANDY, SALEM MANDIRAM,
KOTTAPPURAM, KIZHAKKEKARA, PULAMON.P.O, KOTTARAKKARA.
3. ABRAHAM LOVELY, AGED 45 YEARS,
WIFE OF C.K.ALEXANDER, SALEM MANDIRAM, KOTTAPPURAM,
KIZHAKKEKARA, PULAMON.P.O, KOTTARAKKARA.

BY ADVS.SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.SOBHAN GEORGE

RESPONDENT(S)/DEFENDANT:

G.VISWANATHAN, AGED 68 YEARS,
SABITHA HOUSE, LIONS COLONY, MUNDAKKAL,
KOLLAM.

BY ADVS. SRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN
SRI.K.RAVI (PARIYARATH)

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1 IN I.A.NO.1386 OF 2012:** **TRUE COPY OF LETTER
DATED 31.12.2009 ISSUED TO
THE PETITIONER BY THE
KOTTARAKKARA GRAMA PANCHAYAT.**
- ANNEXURE A1:** **TRUE COPY OF THE APPLICATION DATED 17.11.2012 ALONG
WITH THE COVERING LETTER DATED 21.11.2012 SUBMITTED
BY THE PETITIONER BEFORE THE SECRETARY OF
KOTTARAKKARA GRAMA PANCHAYAT.**
- ANNEXURE A2:** **TRUE COPY OF THE INTIMATION NO.E2-14154/12
DATED 15.12.2012 ISSUED FROM THE OFFICE OF
THE KOTTARAKKARA GRAMA PANCHAYAT AND ADDRESSED
TO THE PETITIONER.**
- ANNEXURE A3:** **TRUE COPY OF LETTER DATED 27.12.2012 ADDRESSED TO
THE SECRETARY OF KOTTARAKARA GRAMA PANCHAYAT
BY PETITIONER.**
- ANNEXURE A4:** **TRUE COPY OF THE LETTER DATED 03.01.2012 ISSUED BY
PETITIONER AND ADDRESSED TO THE SECRETARY OF
KOTTARAKARA GRAMA PANCHAYAT.**
- ANNEXURE I:** **TRUE PHOTOCOPY OF POWER OF ATTORNEY
DATED 24.02.1978 EXECUTED BY K.M.CHERIAN IN FAVOUR OF
G.VISWANATHAN, MARKED AS EXHIBIT A2 BEFORE THE LAND
TRIBUNAL, KOLLAM IN RC NO.3/1997.**
- ANNEXURE II:** **TRUE PHOTOCOPY OF AGREEMENT DATED 18.02.1982
EXECUTED BY G.VISWANATHAN IN FAVOUR OF GEEVARGHESE
ABRAHAM, MARKED AS EXHIBIT A3(1) BEFORE THE LAND
TRIBUNAL, KOLLAM IN RC NO.3/1997.**
- ANNEXURE III:** **TRUE PHOTOCOPY OF AGREEMENT DATED 01.08.1984
EXECUTED BY G.VISWANATHAN IN FAVOUR OF GEEVARGHESE
ABRAHAM, MARKED AS EXHIBIT A3(2) BEFORE THE LAND
TRIBUNAL, KOLLAM IN RC NO.3/1997.**
- ANNEXURE IV:** **TRUE PHOTOCOPY OF THE AGREEMENT DATED 01.11.1986
EXECUTED BY G.VISWANATHAN IN FAVOUR OF GEEVARGHESE
ABRAHAM, MARKED AS EXHIBIT A3(3) BEFORE THE LAND
TRIBUNAL, KOLLAM IN RC NO.3/1997.**
- ANNEXURE V:** **TRUE PHOTOCOPY OF AGREEMENT DATED 01.01.1989
EXECUTED BY G.VISWANATHAN IN FAVOUR OF GEEVARGHESE
ABRAHAM, MARKED AS EXHIBIT A3(4) BEFORE THE LAND
TRIBUNAL, KOLLAM IN RC NO.3/1997.**

ANNEXURE VI: TRUE PHOTOCOPY OF SALE RECEIPT DATED 11.12.1979
EXECUTED BY K.M.CHERIAN IN FAVOUR OF G.VISWANATHAN,
MARKED AS EXHIBIT A1 BEFORE LAND TRIBUNAL, KOLLAM IN
RC NO.3/1997.

RESPONDENT(S)' ANNEXURES :

ANNEXURE I: A TRUE COPY OF THE COMPLAINT LODGED BY ME BEFORE
THE CIRCLE INSPECTOR OF POLICE, KOTTARAKKARA POLICE
STATION DATED 25.01.2013.

ANNEXURE II: A TRUE COPY OF THE RECEIPT ISSUED TO THE PETITIONER
DATED 25.01.2013.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.B. SURESH KUMAR, J.

R.F.A. No.769 of 2009

Dated this the 30th day of January 2015

J U D G M E N T

The plaintiffs in OS.No.211 of 1992 on the file of the Court of Subordinate Judge, Kottarakkara are the appellants in this appeal. The sole defendant in the suit is the respondent.

2. OS.No.211 of 1992 is a suit for recovery of possession and damages. The plaint schedule property is a property measuring 23 cents and a temporary cinema theatre. The suit property originally belonged to one Geevarghese Abraham. He transferred the suit property in favour of the plaintiffs as per two settlement deeds executed by him on 2.08.1982 and on 2.12.1986. While Geevarghese Abraham was holding the property, he leased out the same to one K.M.Churian for the purpose of running a cinema theatre. On surrender of the property by the lessee, the property was leased out to the defendant for the very same purpose on 18.02.1982 for a period of two years and the lease was renewed from

time to time till 1.01.1989. Geevarghese died on 08.05.2009 and on his death, the lease was terminated and the suit was filed seeking the aforesaid reliefs.

3. The defendant filed written statement contending inter alia that he is entitled to the protection of Section 106 of the Kerala Land Reforms Act (for short, 'the Act'). He has also filed an interlocutory application seeking an order to refer the claim raised by him for adjudication by the Land Tribunal as provided for under Section 125(3) of the Act. On the said application, the trial court had referred the said issue for adjudication by the Land Tribunal. Pursuant to the said order of reference, the Land Tribunal decided the claim of the defendant in the affirmative and forwarded the finding to the trial court. The trial court thereupon dismissed the suit based on the said finding. The plaintiffs are aggrieved by the said decision of the trial court and hence this appeal.

4. Heard the learned counsel for the appellants and the learned counsel for the respondent.

5. The materials on record indicate that the plaintiffs have not appeared before the Land Tribunal pursuant to the reference made by the trial court. The decision of the Land Tribunal, in the circumstance, was ex parte. Though the learned counsel for the appellants submitted the reasons for their absence before the Land Tribunal, I am not referring to those reasons, as I am convinced that the impugned order is liable to be set aside on a point of jurisdiction. It is settled that there is no ouster of jurisdiction for the civil court to decide a claim for protection under Section 106 of the Act and that the said claim, if raised shall be decided by the civil court itself. It is so held by this Court in **Govinda Panicker v. Sreedhara Warriar** (2000 (2) KLT 43). The decision of the Land Tribunal, based on which the impugned judgment was rendered by the trial court is, therefore, without jurisdiction. The impugned judgment, in the circumstances, is liable to be set aside.

6. In the result, the impugned judgment and decree are set aside and the suit is remitted to the trial

court for decision on merits. The suit being one of the year 1992, I feel it appropriate to direct the trial court to dispose of the suit on merits, as expeditiously as possible, at any rate, on or before 30.06.2015 and it is ordered accordingly. The interim order passed by this Court on IA.No.1386 of 2012 dated 7.8.2012 will continue until a final decision is taken in the suit.

Sd/-
P.B. SURESH KUMAR,
JUDGE

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