IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

RP.No. 372 of 2015 IN CRP.657/2007

AGAINST THE ORDER CRP 657/2015 of HIGH COURT OF KERALA
DATED 17.10.2014

REVIEW PETITIONER/RESPONDENT No.12:

G.CHANDRANMOHAN (IN CRP WRONGLY SHOWN AS K. CHANDRAN)
'NABBAS', NEAR CHITRA NAGAR THALIYIL KARAMANA P.O
THIRUVANANTHAPURAM
PRESENTLY RESIDING AT TC 21/1990/1, PREMSHREE
ARASUMMOODU, THALIYAL, KARAMANA P.O,
VAVACAUD VILLAGE, THIRUVANANTHAPURAM 695 002.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.SAIBY JOSE KIDANGOOR

RESPONDENTS/REVISION PETITIONERS 1 TO 11/RESPONDENTS IN CRP 657/2007:

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1. DEENAMMA @ ELIKUTTY
RESIDING AT TC.11/812, MANCHADIVILAYIL
NANTHANCODE KOWDIAR VILLAGE
THIRUVANANTHAPURAM - 695 037.

2. MABLE DENNIS
TC 12/1296, VIKAS LANE, KUNNUKUZHI
THIRUVANANTHAPURAM - 695 037.

3. ANITHA DENNIS
TC 12/1296, VIKAS LANE, KUNNUKUZHI
THIRUVANANTHAPURAM - 695 037.

4. JOSE DENNIS
TC 12/1296, VIKAS LANE, KUNNUKUZHI
THIRUVANANTHAPURAM - 695 037.

5. CLEMENT ANTONY
TC 11/312, MANCHADIVILAYIL
NANTHANCODE KOWDIAR VILLAGE
THIRUVANANTHAPURAM - 695 037.

6. MARYKUTTY
D/O.PLASSY, TC 11/312, MANCHADIVILAYIL
NANTHANCODE KOWDIAR VILLAGE
THIRUVANANTHAPURAM - 695 037.

7. THRESYAMMA
D/O.PLASSY, TC 11/312, MANCHADIVILAYIL
NANTHANCODE KOWDIAR VILLAGE
THIRUVANANTHAPURAM - 695 037.

8. SOBHA B
D/O.PLASSY, TC 11/312, MANCHADIVILAYIL
NANTHANCODE KOWDIAR VILLAGE
THIRUVANANTHAPURAM - 695 037.

9. STATE OF KERALA- 695 001.

10. SARADHA
W/O.KOLAPPAN ASARI, VARUVILAKATHU VEEDU,
NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

11. VISWAMMA
D/O.KUTTAN ACHARI, VARUVILAKATHU VEEDU, NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

12. PREMA
D/O.KUTTAN ACHARI, VARUVILAKATHU VEEDU, NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

13. AMBIKA
D/O.KUTTAN ACHARI, VARUVILAKATHU VEEDU, NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

14. GIRIJA
D/O.KUTTAN ACHARI, VARUVILAKATHU VEEDU, NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

15. RAJAN
S/O.KUTTAN ACHARI, VARUVILAKATHU VEEDU, NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

16. MURALI
S/O.KOLAPPAN ACHARI, VARUVILAKATHU VEEDU,
NANTHANCODE,
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

17. RAMACHANDRAN
S/O.KOLAPPAN ACHARI, VARUVILAKATHU VEEDU,
NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

18. SIVDAS
S/O.KOLAPPAN ACHARI, VARUVILAKATHU VEEDU,
NANTHANCODE
KOWDIAR VILLAGE, THIRUVANANTHAPURAM - 695 037.

BY ADVS. SRI.L.MOHANAN
BY SRI.NAIR AJAY KRISHNAN
BY SRI.R.T.PRADEEP
BY SRI.G.SUDHEER
R9 BY GOVERNMENT PLEADER SMT. LILLY LESLIE

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 17-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Review Petition No.372 OF 2015 IN
Civil Revision Petition No.657 OF 2007

Dated this the 17th day of June, 2015.

O R D E R

Relying on the definitions contained in the Kerala Land Reforms Act as stated in Sections 2(7), 2(8), 2(57) and Section 13 regarding fixity of tenure and also Sections 72B and 103, learned Senior Counsel appearing for the review petitioner contended that only a cultivating tenant is entitled to assignment as per Section 72B of the Land Reforms Act. Though a tenant may be entitled to fixity of tenure under Section 13, it is not necessary that a tenant who has fixity of tenure under Section 13 can be an applicant under Section 72B unless he is a cultivating tenant. Further contention is that two of the authorities below did find that Thankamma was in actual possession of 11 and odd cents of land and that being essentially a question on fact, interference under Section 103 of Kerala Land Reforms Act is not warranted since that provision permits the High Court to interfere

with orders of authorities only in a matter in which question of law has been wrongly decided. Section 103 of Kerala Land Reforms Act does not warrant interference with findings on fact. Supplementing the above argument, learned counsel also pointed out that Exts.A16 and A17 which were marked by this Court under Order 41 Rule 27 of the Code of Civil Procedure were only photostat copies and they could not have been received in evidence.

2. Replying to the above contentions, learned counsel appearing for the respondents relied on the decision in ***Mammu*** *vs.* ***Hari Mohan*** (2000 (1) KLT 835(SC)) wherein it was held that the jurisdiction of this Court exercising its power under Section 103 of Kerala Land Reforms Act is very wide and can in appropriate cases interfere with the findings of fact also. It was therefore contended that if it is found that the findings on fact are either perverse or contrary to the evidence on record, it will not preclude this Court from interfering under Section 103 of Kerala Land Reforms Act. Support was drawn for the above proposition from the decision in ***Baby*** *vs.* ***Travancore***

Devaswom Board (1999 (1) KLT SC SN 1(C.No.1)). Therein the Apex Court held that even if the power under Section 103 is restricted, nothing prevents the court from exercising its power under Article 227 of the Constitution of India. Replying to the contentions based on Order 41 Rule 27 CPC, learned counsel relied on the decision in ***Narayanan Nair*** *vs.* ***Kerala State Electricity Board*** (2013 (3) KLT 688) and contended that there was nothing wrong in this Court having received documents as additional documents and entered into a finding on the basis of those documents.

3. To begin with, it was not Exts.A16 and A17 which were produced before this Court which weighed with this Court. There were many other facts also. It may be recalled that before Thankamma filed a suit for partition, there was a suit for redemption by two of the mortgagors without making other mortgagors as parties and that the very same mortgagees pointed out that they are entitled to fixity of tenure which was accepted by the court and suit was dismissed. Obviously all the mortgagors are bound by the said decision. It is in that context

the claim of Thankamma that she obtained possession by the partition suit will have to be considered. Obviously Thankamma had only equity of redemption. Any right which she get from partition suit can only be with reference to her share in equity of redemption. This is fortified by the fact that there was a land acquisition proceedings in which Thankamma received amount on behalf of the mortgagors and she never received any single pai as a person in actual possession of the property. If that be so, it is clear that the claim that in the partition suit delivery was given to her share cannot be accepted. Those were the main factors which persuaded this Court to come to the conclusion that Thankamma could not have been in possession of the property.

4. True, this Court also directed the petitioners to produce photostat copies of two documents which were marked as Exts.A16 and A17. Of course, they are secondary evidence which are admissible only under certain circumstances. For example, when a person who is in possession of the original document has been given notice and sought production and if he has not produced the same, then only secondary evidence can be

accepted. By seeking production of certain additional documents, the attempt of the court was to see what is the correct state of affairs. The contention in that regard therefore fails. The contention that Order 41 Rule 27 CPC cannot be applied may not be correct. It is clear from a reading of Section 102 of the Kerala Land Reforms Act that the appellate authority has to follow the same procedure which the court follows in deciding appeals against a decree under the Code of Civil Procedure. The contention that under Section 103 of the Kerala Land Reforms Act, High Court cannot follow the provision of the Code of Civil Procedure may not be acceptable.

5. In the light of the decision in ***Mammu*** *vs.* ***Hari Mohan*** (2000 (1) KLT 835(SC)) and in ***Baby*** *vs.* ***Travancore Devaswom Board*** (1999 (1) KLT SC SN 1(C.No.1)) which are heavily relied on by the learned counsel for the respondents, it is clear that the High Court can go far beyond what is contemplated under Section 103 and if it is satisfied that issues of fact have been erroneously decided to the prejudice of one of the parties, the court may be justified in interfering with the decision of the

authorities below exercising its revisional jurisdiction.

For the above reasons, this Court finds no reason to review the order dated 17.10.2014 in CRP No.657/2007. This review petition is without merits and it is liable to be dismissed. I do so.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A. to Judge.