

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

RSA.No. 267 of 2014

**JUDGMENT DATED 25-10-2013 IN AS 89/2008 OF ADDITIONAL DISTRICT COURT-II,
MAVELIKARA**

JUDGMENT DATED 30-11-2007 IN OS 277/1993 OF MUNSIFF COURT, KAYAMKULAM
.....

APPELLANT(S)/ASSIGNEES FROM THE PLAINTIFF :

- 1. S.MAHESH,
S/O. SOMASEKHARAN PILLAI, VETTATHETHU VEEDU,
CHERAVALLY P.O., KAYAMKULAM-690 502.**
- 2. MAYA JAYAKUMAR,
D/O. SOMASEKHARAN PILLAI, VETTATHETHU VEEDU,
CHERAVALLY P.O., KAYAMKULAM-690 502.**

BY ADV. SRI.ROY CHACKO

RESPONDENT(S)/ADDL. RESPONDENTS/ADDITIONAL DEFENDANTS 2 TO 5:

- 1. N.MOHAN KUMAR (DIED),
ILLIKULATHU VEEDU, CHERAVALLY MURI, KAYAMKULAM P.O. 690 502,
(PRINCIPAL INDUSTRIAL TRAINING CENTRE)(DIED) LEGAL HEIRS.**
- 2. M.VIJAYALEKSHMI
W/O. MOHAN KUMAR, ILLIKULATHU VEEDU, CHERAVALLY MURI,
KAYAMKULAM P.O. - 690 502.**
- 3. M.VIJAYA MOHANAN
S/O. MOHAN KUMAR, ILLIKULATHU VEEDU, CHERAVALLY MURI
KAYAMKULAM P.O. - 690 502.**
- 4. SHILPA DINESH
D/O. BINDHU, ILLIKULATHU VEEDU, CHERAVALLY MURI
KAYAMKULAM P.O. - 690 502.**
- 5. ARUN DINESH
S/O. BINDHU, ILLIKULATHU VEEDU, CHERAVALLY MURI
KAYAMKULAM P.O. - 690 502.**

R2 & R3 BY ADV. SRI.MILLU DANDAPANI

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

RSA.No. 267 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE 1: COPY OF GIFT DEED DTD.25.4.2012.

ANNEXURE 2: COPY OF THE GIFT DEED DTD.25.4.2012.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.267 of 2014.

= = = = =

Dated this the 25th day of November, 2015.

J U D G M E N T

The assignees of the plaintiff in a suit for mandatory injunction are the appellants in this second appeal.

2. The plaint schedule item No.1 property belonged to one Krishnapillai Narayanapillai. The plaintiff is the nephew of Krishnapillai Narayanapillai. Krishnapillai Narayanapillai executed a will in respect of the plaint schedule item No.1 property as also other properties in the year 1103 M.E, reserving a life interest over the same in favour of the father of the plaintiff. On the strength of the said life interest, the father of the plaintiff permitted one Kesavan Channar Balagangadharan Channar to occupy a portion of the plaint schedule item No.1 property on 23.7.1964 on a ground rent basis for industrial purpose.

Later, on 3.7.1975, the father of the plaintiff permitted the defendant to occupy the plaint schedule item No.1 property for the purpose of running an institute. According to the plaintiff, there was a partition in the meanwhile among the persons who obtained properties as per the will referred to above and the plaint schedule item No.1 property was obtained by the elder brother of the plaintiff named Somasekharan as per the terms of the said partition. It is the case of the plaintiff that he obtained plaint schedule item No.1 property later from his brother Somasekharan on 26.8.1972 by virtue of a gift executed by him. It is alleged by the plaintiff that the defendant who is in permissive occupation of the plaint schedule item No.1 property is not surrendering vacant possession of the said property to the plaintiff. Hence the suit for mandatory injunction directing the defendant to surrender vacant possession of the plaint schedule item No.1 property, after removing the sheds constructed therein. Consequential reliefs were also sought

in the suit. The defendant resisted the suit contending mainly that he is entitled to the protection of Section 106 of the Kerala Land Reforms Act. According to the defendant, he got the rights of Kesavan Channar Balagangadharan Channar assigned in his favour and the said assignment has been acknowledged by the father of the plaintiff by providing an additional extent of land measuring 10 cents also based on ground rent basis.

3. The trial court referred the claim for protection raised by the defendant under Section 106 of the Kerala Land Reforms Act for decision by the Land Tribunal. The Land Tribunal accordingly, answered the claim in favour of the defendant. The trial court accepted the decision of the Land Tribunal and dismissed the suit. The plaintiff, though took up the matter in appeal, the appellate court confirmed the decision of the trial court. The appellants who got the rights of the plaintiff assigned in their favour after the decision of the trial court, are aggrieved by the decision of

the courts below and hence this second appeal.

4. Heard the learned counsel for the appellants as also the learned counsel for the legal representatives of the defendant.

5. As noticed above, the case of the defendant is that Kesavan Channar Balangadharan Channar erected structures in the property leased out to him before 20th May, 1967 and he got the rights of Kesavan Channar Balangadharan Channar assigned in his favour. It is also his case that thereafter, he approached the father of the plaintiff and the father of the plaintiff acknowledged the assignment of the rights of Kesavan Channar Balangadharan Channar in his favour and provided him an additional extent of land measuring 10 cents also on ground rent basis. Ext.A1 is the agreement entered into between the father of the plaintiff and Kesavan Channar Balangadharan Channar dated 23.7.1964. Ext.A1 contains an endorsement dated 3.8.1974 on its bottom to

the effect that the rights of Kesavan Channar Balagangadharan Channar as per the said agreement have been assigned in favour of the defendant. Both the parties to the original agreement as also the defendant are seen signed on the bottom of the aforesaid endorsement. The defendant does not dispute the endorsement dated 3.8.1974 in Ext.A1. Ext.A1 does not, however, indicate that any additional property has been given to the defendant, as claimed by him. But, as noticed above, it is categorically stated by the defendant in the written statement that the assignment of the original tenancy was acknowledged by the father of the plaintiff by providing him an additional extent of 10 cents of property also. In the circumstances, it can only be taken that the additional extent of land referred to in the written statement has been obtained by the defendant from the father of the plaintiff after 1974. If that be so, the defendant cannot claim protection of Section 106 of the Kerala Land Reforms Act in respect of the said

additional extent of land. If the defendant cannot claim protection of Section 106 of the Kerala Land Reforms Act in respect of the said additional extent of land obtained after 1974, the impugned decisions dismissing the suit cannot be accepted as correct. A close reading of the impugned decisions indicates that no issue was formulated in relation to the said aspect nor the same was considered by the courts below while rendering the impugned decisions. Further, in respect of the remaining part of the plaint schedule item No.1 property, the defendant is claiming the protection of Section 106 of the Kerala Land Reforms Act on the basis that he got the rights of Kesavan Channar Balangadharan Channar assigned in his favour. The learned counsel for the appellants asserts that the defendant, who claims possession of the suit property on the strength of the endorsement in Ext.A1 document, cannot be treated as an assignee of Kesavan Channar Balangadharan Channar. On the other hand, the learned

Senior Counsel for the respondents contended that Ext.A1 itself recites that the defendant has got the rights of Kesavan Channar Balagangadharan Channar assigned in his favour. The issue whether there has been a valid assignment of the alleged lease arrangement in favour of the defendant is also not seen formulated or considered by the courts below while rendering the impugned decisions. Since separate issues were not formulated as aforesaid, evidence is also not seen let in by the parties on the said aspects. According to me, the issues referred to above are relevant in the context of deciding the disputes between the parties, for, if the said issues are answered in favour of plaintiff, the defendant cannot claim protection of Section 106 of the Land Reforms Act. In so far as the trial court has omitted to frame all the relevant issues and in so far as the evidence on record are not sufficient to decide the said issues in this appeal, I deem it appropriate to remit this matter for fresh trial, in exercise of my power under Rule 25

of Order 41 of the Code of Civil Procedure.

In the result, the impugned decisions are set aside and O.S.No.277 of 1993 is remitted to the trial court for fresh disposal. It is made clear that in the light of the decision in **Govinda Panicker v. Sreedhara Warriar** (2000(2) KLT 43), the issue relating to the claim raised by the defendant can be decided by the civil court without reference to the Land Tribunal. The parties are directed to appear before the trial court on 15.1.2016.

Sd/-

**P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

// true copy //

P.A. TO JUDGE.