

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 4962 of 2015 (U)

PETITIONER(S) :

**BIJIMOL V.S., AGED 41 YEARS,
W/O.RAJAN G., KRISHNA VIHAR, TC.6/2005,
SRA - 216, VALIYAVILA, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM, PIN - 695 013.**

BY ADV. SRI.K.RAVI (PARIYARATH)

RESPONDENT(S) :

- 1. THE MAINTENANCE TRIBUNAL &
THE REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM - 695 001.**
- 2. VASANTHAKUMARI, AGED 65 YEARS,
D/O.GOMATHIAMMA, RESIDING AT KRISHNA VIHAR, TC.6/2005,
SRA-216, VALIYAVILA, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM, PIN - 695 013.**

**R1 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R2 BY ADV. SRI.S.M.ALTHAF**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE DOCUMENT WITH NO.860/92 OF
SASTHAMANGALAM S.R.O DATED 19.03.1992.**

**EXHIBIT P2: TRUE COPY OF THE PLAINT FILED BEFORE THE MUNSIFF COURT,
THIRUVANANTHAPURAM AT THE INSTANCE OF THE PETITIONER
AGAINST THE BROTHERS WIFE, AS O.S.NO.58/14 DATED 21.01.2014.**

**EXHIBIT P3: TRUE COPY OF THE PLAINT FILED BEFORE THE MUNSIFF COURT,
THIRUVANANTHAPURAM AT THE INSTANCE OF THE PETITIONER'S
BROTHER CLAIMING PARTITION AS O.S.NO.1653/14 DATED 21.08.2014.**

**EXHIBIT P4: TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT IN
PROCEEDINGS NO.J 25106/13 KDS, DATED 13.01.2014.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.a. TO JUDGE

Msd.

K. VINOD CHANDRAN, J.

W.P(C). No.4962 of 2015

Dated this the 16th day of June, 2015.

JUDGMENT

The petitioner is the daughter of the 2nd respondent, who challenges Ext.P4 order passed under the Maintenance and Welfare of Parents and Senior Citizen's Act, 2007 (for brevity, the Act of 2007). The 2nd respondent is said to have submitted an application before the Tribunal constituted under the Act of 2007. The application as such is not produced herein. However, a reading of Ext.P4 would indicate that the complaint was on the ground that the petitioner is attempting to evict the 2nd respondent from the house in the property, which was conveyed in the name of the petitioner by the 2nd respondent and others as per Ext.P1 conveyance.

2. Admittedly, the property was owned jointly by the petitioner and the 2nd respondent. At the time of the marriage of

the petitioner in 1992, the 2nd respondent conveyed her interest in the property to the petitioner. However, Ext.P4 indicates a life interest having been retained with the 2nd respondent. The complaint before the Tribunal was with respect to the alleged eviction and a further request for re-conveyance of 5 cents.

3. In any event, the Tribunal's direction is seen to be one ensuring that the son and daughter-in-law of the 2nd respondent would be permitted to live in the house itself, which property stands in the name of the petitioner with the 2nd respondent having a life interest. The 2nd respondent's son or wife cannot claim any right to reside in the said house, contends the petitioner and in any event that is the subject matter of the suit filed by the petitioner. The jurisdiction of the Tribunal has been invoked as a camouflage to permit the petitioner's brother and daughter-in-law to reside therein, is the argument.

4. The learned counsel for the petitioner however would contend that the definition of maintenance and welfare as indicated in Clause 2(b) and (k) includes provision for food and hence the daughter-in-law, who provides food for the petitioner,

should be permitted to live in the same house as the petitioner. That would be stretching the definition clause and conferring jurisdiction on the Tribunal, which is not available as per the enactment.

5. A report was called for, from the Station House Officer having jurisdiction over the area, in which the petitioner and the 2nd respondent were residing. A report is also seen filed, which even as per Ext.P4 order, indicated the cause of action of the complaint; only on the petitioner refusing to comply with the desire of the 2nd respondent to convey atleast 4 cents of the subject property in the name of her son. These are not issues, which could be agitated under the Act of 2007 before the Maintenance Tribunal.

6. Further it is also to be noticed that there are two suits pending between the petitioner and her brother and sister-in-law, one claiming eviction and recovery of money, as seen from Ext.P2 filed by the petitioner, and the other for partition filed by the brother of the petitioner. The 2nd respondent obviously has filed the complaint with the motive of giving a portion of the

property covered by Ext.P1 deed to the brother of the petitioner.

7. The deed at Ext.P1 also would not be one, which could be looked into by the Tribunal under the Act of 2007 for reason of the jurisdiction of the Tribunal the Act being confined to documents indicated in Section 23; being a document executed after the enactment of the Act of 2007 and which contains a specific provision that the conveyance has been made on the undertaking that the parent/parents would be looked after in their oldage. The document being of the year 1992 and there being no such condition in the recitals, the Tribunal could not have exercised any jurisdiction under the Act, with respect to the deed at Ext.P1. The 2nd respondent is also said to be a family pensioner drawing pension from the State.

8. For all the above reasons, the order at Ext.P4 is found to be not sustainable. However, the life interest as retained by the 2nd respondent in Ext.P1 definitely would have its operation. The dispute between the petitioner and her brother cannot be settled in the manner in which it was done by the Tribunal under the Act of 2007. Ext.P4 order would hence stands set aside leaving open

the contentions of either parties to be addressed before the Civil Court.

The writ petition is allowed; no costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

sp