

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

W.P.(C).No.11852 of 2015 (F)

PETITIONER(S):-

MUTHU @ NISHA @ ELISABETH, AGED 46 YEARS,
W/O. WILSON KUZIVILA PUTHANVEEDU, NEAR H.S. KARIPOOR,
KARIPOOR, NEDUMANGAD.

BY ADV. SRI.M.R.SARIN.

RESPONDENT(S):-

1. THRESYA,
VIJAY MANDIRAM, N.S.P.LANE-195, NORTH BLOCK ,
KESAVADAPURAM - 695 001.
2. SUNITHA
VIJAY MANDIRAM, N.S.P.LANE-195, NORTH BLOCK
KESAVADAPURAM. 695 001
3. SUBIN
VIJAY MANDIRAM, N.S.P.LANE-195, NORTH BLOCK ,
KESAVADAPURAM - 695 001
4. WILSON, KUZHIVILA
PUTHANVEEDU, NEAR H.S. KARIPOOR,
KARIPOOR, NEDUMANGAD - 699 901.
5. THE SUB COLLECTOR,
MAINTENANCE TRIBUNAL (MAINTENANCE AND WELFARE OF
PARENTS AND SENIOR CITIZENS ACT, 2007),
THIRUVANANTHAPURAM - 695 001

R5 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.11852 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF AGREEMENT EXECUTED BETWEEN THE
 PETITIONER AND 1ST RESPONDENT DATED 5.4.10.
- EXT.P2 TRUE COPY OF THE 1A NO 523/13 IN OS NO32/13 PENDING
 BEFORE THE SUB COURT NEDUMANGAD.
- EXT.P3 TRUE COPY OF THE ORDER IN 1A NO 523/13 IN OS NO 32/13
 PENDING BEFORE THE SUB COURT NEDUMANGAD.
- EXT.P4 TRUE COPY OF THE ORDER IN MC NO 95/12 OF THE
 JFCM COURT-1-NEDUMANGAD.
- EXT.P5 TRUE COPY OF THE ORDER PASSED BY THE PRESIDING
 OFFICER OF THE MAINTENANCE TRIBUNAL,
 THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.11852 of 2015-F

Dated this the 27th day of July, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P5 order passed under the Maintenance and Welfare of Parents and senior Citizens Act, 2007 [for brevity "Act of 2007"]. The application before the Tribunal was filed by the 1st respondent against the respondents 2 to 4 and the petitioner herein. The petitioner is the wife of the 4th respondent and admittedly they have absolutely no relationship with the 1st respondent herein. The allegation before the Tribunal, even as per Exhibit P5, was that the petitioner and the 4th respondent have illegally retained possession of the 1st respondent's house.

2. Admittedly there was some money transaction between the 1st respondent and the petitioner and the 4th respondent, upon which there was a conveyance made of the house, which is evident from Exhibit P5. An application was filed by the 1st respondent, alleging domestic violence under the Protection of Women from Domestic Violence Act, 2005

before the Judicial First Class Magistrate of Nedumangad. The 4th respondent herein, who is the husband of the writ petitioner, was impleaded. Before the learned Magistrate, similar contentions were taken. However, the learned Magistrate found that there was no relationship between the petitioner, 4th respondent and the 1st respondent and, hence, the same was rejected, by Exhibit P4.

3. In Exhibit P5 there is a reference to O.S.No.32 of 2013, pending before the Sub Court, Nedumangad. Purportedly the Tribunal had passed an order at Exhibit P5, allowing the 1st respondent to continue in the petitioner's house till the suit is decided. That is an order which could be obtained by the 1st respondent in the suit and not in an application under the Act of 2007, which could only be against the relatives as defined under the Act.

4. Despite issuance of notice, none of the respondents have appeared. In fact, before the Magistrate and the Tribunal also the respondents submitted that they have no complaint against the daughter and son-in-law, who are also respondents herein. In such circumstance, a civil dispute is

sought to be settled by the Tribunal on the ground that the 1st respondent is a senior citizen. The Tribunal has acted beyond the jurisdiction conferred on it under the Act of 2007. Exhibit P7 would stand set aside.

The writ petition is allowed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]