

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 16550 of 2013 (P)

PETITIONER(S) :

SABIRA, AGED 52 YEARS,
S/O.SAFURULLAH, RESIDING AT P.V HOUSE, M.C PRAMB,
FRANCIS ROAD, CHEMMANGAD, NAGARAM AMSOM DESOM,
KOZHIKODE DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN

RESPONDENTS:

1. THE SUB DIVISIONAL MAGISTRATE,
KOZHIKODE, KOZHIKODE DISTRICT, PIN 673 001.

2. IMBICHAMINABI, AGED 85 YEARS,
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD,
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT
PIN 673 001.

3. LATHEEFA, AGED 43 YEARS,
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD,
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT,
PIN 673 001. (*CORRECTED)

4. TAHIRA, AGED 40 YEARS,
RESIDING AT SANAS, 23/1864, KANNANCHERY
KOZHIKODE DISTRICT, PIN 673 001. (**CORRECTED)

*3. LATHEEFA, AGED 43 YEARS, W/O.KHALID AL HOSANI,
P.O.BOX NO.2781, ABUDABI,
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD,
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT,
PIN 673 001.
(*ADDRESS OF R3 IS CORRECTED AS PER ORDER DTD.1.10.13
IN IA 13011/13)

WP(C).No. 16550 of 2013 (P) (2)

**4. TAHIRA, AGED 40 YEARS, D/O. IMBICHAMINABI,
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD,
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT.
(** ADDRESS OF R4 IS CORRECTED AS PER ORDER DT.17.12.13
IN IA 17107/13)

R1 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK
R3,R4 BY ADV. SRI.VAKKOM N.VIJAYAN
R3,R4 BY ADV. SMT.V.RENJU
R3,R4 BY ADV. SRI.P.ANIYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 16550 of 2013 (P)

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1. TRUE COPY OF THE EXTRACT OF RATION CARD.
EXHIBIT P2. TRUE COPY OF THE SALE DEED DT. 13.12.2006.
EXHIBIT P3. TRUE COPY OF THE EXTRACT OF THE SALE DEED DT.
15.11.2008 EXECUTED BY THE 3RD RESPONDENT.
EXHIBIT P4. TRUE COPY OF THE COMPLAINT DT. 24.10.2012 FILED
BEFORE THE IST RESPONDENT AND OTHER AUTHORITIES.
EXHIBIT P5. TRUE COPY OF THE ORDER NO.J-13720/13 OF THE
MAINTENANCE TRIBUNAL AND SUB DIVISIONAL MAGISTRATE
COURT, KOZHIKODE.

RESPONDENT(S) ' EXHIBITS:

EXHIBIT R4(A): TRUE COPY OF THE WEDDING INVITATION CARD OF
SAMIA SHIRIN, DAUGHTER OF THE PETITIONER.

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.16550 of 2013

Dated this the 6th day of November, 2015.

JUDGMENT

The petitioner is aggrieved by Ext.P5 order of the Maintenance Tribunal and Sub Divisional Magistrate Court, Kozhikode, constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, directing her and other family members to vacate themselves from her family house and shift their residence to the property in possession of the 2nd respondent and the husband of her daughter Latheefa at Olavanna Village, within 21 days from the date of order. The 2nd respondent herein is aged 85 years and she is having 9 daughters. She approached the Maintenance Tribunal and Sub Divisional Magistrate, Kozhikode seeking a direction to her children to give an accommodation to her in the family property, which now stands transferred to the respondents 2 to 4, by virtue of sale deed executed in

their favour.

2. Heard the learned counsel for the petitioner and learned counsel for the respondents.

3. Going by the impugned order, it is seen that the petitioner was also heard at the time of hearing, and at that time, the petitioner sought for a direction to the 1st respondent, to accommodate her also in the property at Olavanna Village, in lieu of shifting of her residence from the family house. Admittedly, the property having a total extent of 7.3 cents belongs to the respondents 3 and 4 by virtue of sale deed executed in their favour. So, nobody other than they have any kind of right to enjoy the property. The learned counsel for the petitioner submits that though the petitioner has no title over the property, she has been residing in the said property, since the last more than 50 years. But, going by the impugned order, it is seen that in the second paragraph of the order, there is a specific direction to accommodate the petitioner in the property situating at Olavanna Village, on her request, at the time of hearing. So, the impugned order

cannot be treated as an order passed without hearing the parties including the petitioner. On the other hand, the daughters of the 2nd respondent who were present at the time of hearing have arrived at a common consensus and on that basis the impugned order was passed, considering the interest of the petitioner also. In such circumstances, I find no reason to interfere with the impugned order, particularly, when the petitioner has no title over the property. However, this judgment will not stand in the way of seeking redressal of the petitioner's grievance, by resorting to civil remedies.

This writ petition is disposed of accordingly.

K. HARILAL, JUDGE

okb.