

(2017) 08 KL CK 0024
In the High Court Of Kerala
Case No : 82 of 2016

ALIKUTTY GURUKKAL

APPELLANT

Vs

STATE OF KERALA

RESPONDENT

Date of Decision : 22-08-2017

Acts Referred:

Transfer of Property Act, 1882, Section 54, Section 53A - "Sale defined" - Part performance
Kerala Land Reforms Act, 1963, Section 7E

Citation : (2017) 08 KL CK 0024

Hon'ble Judges : P.Somarajan

Bench : SINGLE BENCH

Advocate : K.MOHANAKANNAN, A.R.PRAVITHA

Judgement

1. One Alikutty Gurukkal and another, who are the original petitioners in CR No.527/1973 of Taluk Land Board, Tirur, came up with this revision challenging the order dated 21.12.2015 passed by the Taluk Land Board, Tirur, rejecting the claim of petitioners. Earlier, the matter was taken up before this Court against the order of the Taluk Land Board, in CRP (LR) No.101/2014 (D) and this Court set aside the order passed by the Taluk Land Board and remanded the matter back for fresh consideration. Thereafter, the Taluk Land Board considered the matter, after issuing notice to the parties, and passed the impugned order which is under challenge.

2. The claim of the petitioners is that they had entered into a contract for sale with respect to 4.22 acres of property owned by one P.V. Alavi, the son of declarant P.V.Veerali Haji, on 24.04.1981. It is an unregistered agreement for sale. Based on the above said unregistered agreement for sale, a claim was raised by the revision petitioners over an extent of 4.22 acres of land comprised in Re Survey No.507/01 belonged to P.V.Alavi, the son of declarant. Admittedly, the said property was obtained by P.V.Alavi from his mother, Smt. Kadiyamu Umma, the wife of declarant P.V.Veerali Haji. An advance amount of

Rs.1,32,500/- is alleged to have been given to the owner of the property at the time of agreement.

3. The claim of petitioners is on the basis of Section 7E of the Kerala Land Reforms Act, 1963 (for short "the Act") which is extracted below for reference. "7E. Certain person who acquired lands to be deemed tenants - Notwithstanding anything to the contrary contained in Section 74 or Section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any Court, Tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant.].

4. The wording used under Section 7E of the Act "acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration" stands for transfer of an immovable property for consideration. Transfer of an immovable property can be done, if its value exceeds Rs.100/-, only by way of a registered document. Section 54 of the Transfer of Property Act, 1882, is also extracted below for reference. 54. "Sale" defined - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. [In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale - A contract for the sale of immovable property is a contract that a sale of such property shall C.R.P.(LR) No. 82 of 2016 4 take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

5. A mere unregistered contract for sale cannot be substituted in the place of transfer of a property. Section 54 of the Transfer of Property Act itself says that a contract for sale will not create any interest or any charge on such property, which is the subject matter of the contract for sale. Of course, there may be an exemption under Section 53A of the Transfer of Property Act, wherein the right to possess the property is recognized, provided that the party should be permitted to do some work in the property under the authority given under the contract for sale and had done something in pursuance of the authority so given over the property. No such case is either advanced or let in. Section 7E of the Act would

come into play only when a person is in possession of any land either acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration. Purchase or otherwise on payment of consideration stands for transfer of an immovable property either by way of sale, mortgage or the like. An agreement for sale will not create any right, title or interest over the property except under Section 53A of the Transfer of Property Act. The possession as embodied under Section 7E of the Act should be construed and understood as the possession by a lawful person who acquired right either by way of purchase or otherwise on payment of consideration. In any view of the matter, a mere contract for sale, that too an unregistered contract for sale, will not come into play under Section 7E of the Act.

6. This Court, on an earlier occasion, had considered the application of Section 7E of the Act in *Chellappan Nair v. Taluk Land Board* [2008 (1) KLT 650] and the following conditions were formulated in order to bring the matter within the sweep of Section 7E of the Act. "In order to attract Section 7E and consider that a person is a deemed tenant, the following conditions must be satisfied.

- a) At the commencement of the amendment Act, 2005, the person concerned is in possession of land not exceeding 4 acres of land.
- b) The said land was acquired by him or by his predecessor in interest from a person holding land in excess of ceiling area.
- c) Such acquisition by him was by way of purchase or otherwise.
- d) Such acquisition must be on payment of consideration and
- e) The acquisition must be between the date of commencement of the KLR Act, 1963 (Act 1 of 1964) and the date of commencement of Amendment Act, 2005 (Act 21 of 2006)".

None of these conditions were satisfied by the petitioners herein. Hence, there is no reason for any kind of interference with the order passed by the Taluk Land Board and this revision deserves only dismissal and I do so, but without costs.