
(2010) 04 KL CK 0031
In the High Court Of Kerala
Case No : WA. No. 2374 of 2002

J. Saraswathy Amm

APPELLANT

Vs

N. Sreedharan Nair and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Succession Act, 1956 — Section 17, 4, 5, 8
Kerala Joint Hindu Family System (Abolition) Act, 1975 — Section 7
Kerala Land Reforms Act, 1963 — Section 7D
Kerala Service Inam Lands (Vesting and Enfranchisement) Act, 1981 — Section 12, 13, 2, 3, 5
Viruthi Rules, 1074 — Rule 10, 11
Viruthi Rules, 1945 — Rule 10, 3, 3(1), 3(3), 9

Citation : (2010) 04 KL CK 0031

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : S.V. Balakrishna Iyer, for the Appellant; State Attorney, for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The appellant is the 8th respondent in O.P. No. 18798 of 1995. The first respondent is the petitioner and respondents 2 to 9 are respondents 1 to 7 and 9 respectively therein. By judgment delivered on 22.7.2002, in N. Sreedharan Nair v. State of Kerala 2002 (3) KLT 307, the learned single Judge allowed the original petition. The 8th respondent in the original petition has, aggrieved thereby, filed this writ appeal. For the sake of convenience, the parties are referred to as they are arrayed in the original petition. The brief facts of the case are as follows:

2. A parcel of land, 91 cents in extent, comprised of 15 cents in Survey No. 1026, 34 cents in Survey No. 1342 and 42 cents in Survey No. 1421 of Ulloor Village, Trivandrum Taluk, was outstanding in the occupation of Viruthicars who

were obliged to perform Oozhiyam services in Sree Padmanabhaswamy Temple, Trivandrum and Sree Balasubramanya-swamy Temple, Ulloor. The lands described above were in the occupation of Sri. Kumaran Velayudhan of Arakkal Veedu Tarwad, in whose favour the holding had been registered under the provisions of the Viruthi Proclamation 1061 (Travancore). Sri. Kumaran Velayudhan passed away in the year 1934 and thereafter, Sri. Madhavan Pillai Velayudhan Pillai, a near relative of late Kumaran Velayudhan and the senior most male member of Arakkal Veedu Tarwad was holding the lands though it had not been registered in his name under the Viruthi Proclamation 1061 (Travancore). Sri. Madhavan Pillai Velayudhan Pillai passed away in the year 1954. Thereupon, two brothers, Sri. Parameswaran Pillai Narayanan Pillai and Sri. Parameswaran Pillai Krishna Pillai of Arakkal Veedu Tarwad of which the registered holder late Kumaran Velayudhan was a member, moved the Tahsildar, Trivandrum for transfer of the patta of the lands in their favour. Sri. Govinda Pillai Narayana Pillai of Kannaruputhen Veedu, a nephew of Sri. Madhavan Pillai Velayudhan Pillai also moved for transfer of the patta in his favour. The rival claims were considered by the Revenue Divisional Officer, Trivandrum who by Ext.P1 order passed on 31.12.1959 transferred the patta in respect of the lands to Sri. Parameswaran Pillai Krishna Pillai, the husband of the 8th respondent and father of the 9th respondent. On the strength of Ext.P1, Sri. Parameswaran Pillai Krishna Pillai was in possession and enjoyment of the lands.

3. Sri. Parameswaran Pillai Krishna Pillai passed away on 2.1.1981. Within one week thereafter, Sri. N.Sreedharan Nair, the petitioner in the original petition, who is the nephew of late Parameswaran Pillai Krishna Pillai, submitted Ext.P2 application dated 8.1.1981 before the Tahsildar, Trivandrum seeking transfer of the patta in his favour. Along with Ext.P2, he had enclosed Ext.P2 (a) consent letter dated 8.1.1981 from his brother Sri. N. Ramakrishna Pillai wherein his brother had stated that he has no objection in the patta being transferred in favour of the petitioner. Late Parameswaran Pillai Krishna Pillai had raised paddy crop in the above lands held by him. The 8th respondent and her son, the 9th respondent, who are the legal heirs of late Parameswaran Pillai Krishna Pillai under the provisions of the Hindu Succession Act, 1956 resisted the claim made by the petitioner for possession of the lands. The petitioner thereupon filed an application before the Revenue Divisional Officer, Trivandrum for an order of injunction restraining the legal heirs of late Parameswaran Pillai Krishna Pillai from entering into the lands in respect of which he had filed Ext.P2 application for transfer of patta. The Revenue Divisional Officer forwarded the said application to the Village Officer, Ulloor Village. On that application, the Village Officer, Ulloor Village passed Ext.P3 order of injunction dated 17.1.1981, restraining the legal heirs of late Parameswaran Pillai Krishna Pillai from entering into the lands. In view of the scramble for possession, the Revenue Divisional Officer passed an order dated 5.2.1981 appointing the Village Officer, Ulloor Village, as the Receiver of the lands. The Village Officer took possession of the lands in his capacity as the Receiver on 16.2.1981 and submitted Ext.P4 report

of even date to the Revenue Divisional Officer. The Revenue Divisional Officer thereafter issued Ext.P5 notice to the petitioner and the legal heirs of late Parameswaran Pillai Krishna Pillai calling upon them to appear for a hearing scheduled to be held on 27.2.1981 on Ext.P2 application submitted by the petitioner. The Village Officer, Ulloor Village, thereafter submitted Ext.P6 report dated 27.4.1981 to the Revenue Divisional Officer stating that on the death of Parameswaran Pillai Krishna Pillai, the senior most member of Arakkal Veedu Tarwad is entitled to transfer of the patta. He also reported that the children of late Parameswaran Pillai Krishna Pillai are not entitled to apply for transfer of the patta and that after the death of Parameswaran Pillai Krishna Pillai, his legal heirs were not in possession of the lands.

4. While matters stood thus, the State Legislature enacted the Kerala Service Inam Lands (Vesting and Enfranchisement) Act, 1981 and it came into force with effect from 6.8.1981. Thereafter, the Tahsildar, Trivandrum submitted Ext.P7 report dated 7.11.1981 to the Sub Collector, Trivandrum to the effect that the petitioner is the rightful claimant for transfer of the patta. After the Kerala Service Inam Lands (Vesting and Enfranchisement) Act, 1981 (hereinafter referred to as "the Act" for short) came into force, the petitioner filed O.A. No. 650 of 1982, the 9th respondent filed O.A. No. 1065 of 1982, Sri. Vasudevan Pillai filed O.A. No. 929 of 1982 and 8th respondent filed O.A. No. 412 of 1983 (Ext.P8) for assignment of the disputed lands under the provisions of the Act before the Special Tahsildar, Trivandrum, the Settlement Officer appointed under the Act. The Settlement Officer considered the rival claims and passed Ext.P9 order dated 31.12.1983 allowing the application filed by the petitioner. The applications filed by the 9th respondent and Sri. Vasudevan Pillai were rejected. The application filed by the 8th respondent as O.A. No. 412 of 1983 was not considered. The 8th respondent had in the meanwhile filed O.P. No. 11079 of 1983 in this Court complaining that though she had filed an application in O.A. No. 650 of 1982 filed by the petitioner, seeking impleadment as a respondent therein, the Settlement Officer is taking hasty steps to dispose of O.A. No. 650 of 1982 and connected cases without affording her an opportunity of being heard. In that original petition this Court passed an interim order on 30.12.1983 staying further proceedings in the original applications pending before the Settlement Officer. The Settlement Officer however passed Ext.P9 order dated 31.12.1983 allowing the application filed by the petitioner. By judgment delivered on 7.2.1984 in O.P. No. 11079 of 1983, this Court directed the Settlement Officer to consider the application for impleadment filed by the 8th respondent in O.A. No. 650 of 1982 and pass orders thereon on the merits, after hearing the concerned parties. This Court also observed that the 8th respondent can move for consideration and disposal of any other original application pending before the Settlement Officer in relation to the very same lands.

5. Aggrieved by Ext.P9 order, the 9th respondent and Sri. Vasudevan Pillai filed appeals u/s 12 of the Act before the District Collector. The 8th respondent thereafter filed O.P. No. 3620 of 1984 in this Court. By judgment delivered on

9.9.1985 this Court disposed of the said original petition with a direction to the District Collector, Trivandrum before whom the petitioner and Sri. Vasudevan Pillai had filed appeals, to hear the 8th respondent also while passing orders on the appeals. Pursuant to the said direction, the District Collector heard all the parties and passed Ext.P10 order dated 23.4.1987 remanding the applications filed by the petitioner and others to the Settlement Officer for fresh consideration. O.A. No. 929 of 1982, the application filed by Sri. Vasudevan Pillai was dismissed as withdrawn.

6. The petitioner filed a revision petition u/s 13 of the Act before the Board of Revenue challenging Ext.P10 order passed by the District Collector. By Ext.P11 order passed on 29.7.1988, the Board of Revenue rejected the revision petition. The petitioner thereupon filed a petition dated 2.1.1989 before the Government challenging the orders passed by the District Collector and the Board of Revenue. On that petition, the Government passed an interim order staying further proceedings before the Settlement Officer pending disposal of the said petition. The 8th respondent thereupon filed O.P. No. 9750 of 1989 in this Court challenging the order of stay passed by the Government. This Court disposed of the said original petition by judgment delivered on 27.11.1989 with a direction to the Government to pass final orders after hearing all the parties and after examining whether the petition filed by the petitioner is maintainable and whether it is referable to any provision of law. The Government was directed to pass final orders in the matter within six weeks from 27.11.1989. Even thereafter, when orders were not passed by the Government and steps were taken to hand over possession of the lands to the petitioner, the 8th respondent filed O.P. No. 8243 of 1992 in this Court, inter alia, seeking a direction to the Government to pass final orders on the petition filed by the petitioner. The petitioner filed O.P. No. 8878 of 1992 challenging Exts.P10 and P11 orders passed by the District Collector and the Board of Revenue respectively and seeking a direction to the Government to pass final orders on the revision petition filed by him. By Ext.P21 judgment delivered on 13.10.1993, this Court disposed of the said original petitions with a direction to the Government to dispose of the revision petition filed by the petitioner within eight weeks from the date of receipt of a copy of the judgment. The Government thereafter heard the parties and passed Ext.P22 order dated 28.10.1995 holding that the 8th respondent and her children are the rightful claimants for the disputed lands under the provisions of Section 5 of the Act. The Settlement Officer was directed to take further steps to assign the lands in their favour. O.P. No. 18798 of 1995 was thereupon filed challenging Ext.P22 and seeking the following reliefs:

(i) to issue a writ of certiorari or other appropriate writ, order or direction, quashing Exts.P22, P10 and P11.

(ii) issue such other appropriate writ, order or direction as this Hon"ble Court deems fit and proper including stay of operation of Ext.P22 order till the disposal of the Original Petition.

7. The petitioner contended, relying on Rule 10 of the Viruthi Rules 1945, that as late Parameswaran Pillai Krishna Pillai was governed by the Marumakkathayam law, he is entitled to have the patta in respect of the lands transferred to him as he is the senior male member in the family of late late Parameswaran Pillai Krishna Pillai. He further contended that the lands were not the individual or family property of late Parameswaran Pillai Krishna Pillai, that no law other than the Viruthi Proclamation 1061 and Viruthi Rules 1945 were applicable to the disputed lands till the Act came into force on 6.8.1981 and that as he was in possession of the disputed lands after the death of late Parameswaran Pillai Krishna Pillai, in his capacity as the next senior male member of the family of the last registered holder, he is entitled to hold the lands in terms of Rule 10 of the Viruthi Rules 1945. He also contended that the words "next senior male member in the family" occurring in Rule 10 of the Viruthi Rules, 1945 does not denote the son of the registered holder for the reason that the heir of the registered holder has been defined as the next senior male member in the family, meaning thereby, the next senior male member in the family of late Parameswaran Pillai Krishna Pillai. Respondents 8 and 9 resisted the original petition contending, inter alia, that with the enactment and bringing into force of the Hindu Succession Act, 1956 and the Kerala Joint Hindu Family System (Abolition) Act, 1976; the Travancore Nair Act, 1100 and the Marumakkathayam system of inheritance ceased to exist and therefore, the wife and children of the last registered holder constitute his heirs, thereby entitling them to obtain transfer of the holding in their favour and also to apply for settlement in terms of the Act. It was also contended that late Parameswaran Pillai Krishna Pillai was not a member of a Marumakkathayam Tarwad for the reason that the Marumakkathayam Tarwads were abolished by the Travancore Nair Act, 1100 and the Kerala Joint Hindu Family System (Abolition) Act, 1976.

8. The learned single Judge considered the rival contentions and held that the disputed land was transferable from the registered holder to the next senior male member in his family and that the said right, recognised in Rule 10 of the Viruthi Rules, 1945 remained unaffected even after the Kerala Joint Hindu Family System (Abolition) Act, 1976 was enacted and brought into force. The learned single Judge held that the "next senior male member in the family" was the petitioner, one among the two nephews of late Parameswaran Pillai Krishna Pillai and that the said term does not denote his son. It was also held that the petitioner, a male member of the family referred to in Rule 10 of the Viruthi Rules, 1945 was entitled to transfer of the holding in his favour. The learned single Judge also held, interpreting the explanation to Section 2(c) of the Act, that though the the possession referred to therein can only be lawful possession as on 6.8.1981, the date on which the Act came into force, as the possession of the petitioner was lawful in its origin; his right traceable to Rule 10 of the Viruthi Rules, 1945, he is entitled to have the lands assigned in his favour. The original petition was accordingly allowed, Exts.P10 and P22 were set aside and the Settlement Officer was directed to take steps to assign the lands in favour of the

petitioner. The 8th respondent, the wife of late Parameswaran Pillai Krishna Pillai (the last registered holder), aggrieved thereby, has filed this writ appeal.

9. We heard Sri. S.V. Balakrishna Iyer, learned Senior Advocate appearing for the appellant/8th respondent, Sri. A.M. Shafique, learned Senior Advocate appearing for the first respondent/petitioner, Smt. R. Bindhu, learned Government Pleader appearing for respondents 2 to 8 and Sri. P.R. Venkitesh, learned Counsel appearing for the 9th respondent. We have also gone through the pleadings and the materials on record. The learned Senior Counsel appearing for the appellant/8th respondent contended that the Marumakkathayam system of inheritance or the Marumakkathayam law ceased to exist when the Hindu Succession Act, 1956 came into force on 17.6.1956 and in any case on 1.12.1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1976 came into force and therefore, the expression "heir" referred to in Rule 10 of Viruthi Rules, 1945 has to be understood as the legal heir of late Parameswaran Pillai Krishna Pillai in terms of Section 8 of the Hindu Succession Act, 1956. Reliance was placed on Sections 4 and 17 of the Hindu Succession Act, 1956 in support of the said contention. The learned Senior Counsel for the appellant, relying on the decision of a Larger Bench of this Court in Chellamma Kamalamma v. Narayana Pillai 1993 (1) KLT 174 contended that though with the enactment and coming into force of the Kerala Joint Hindu Family System (Abolition) Act, 1976, those persons who were governed by the Marumakkathayam law continue to be governed by Section 17 of the Hindu Succession Act, 1956, Section 17 only modifies the rule of succession in Section 8 thereof and that even applying Section 8 read with Section 17 of the Hindu Succession Act, when Class I and II heirs of the deceased registered holder are available, his other relatives cannot be termed as his legal heirs.

10. Per contra, the learned Senior Counsel appearing for the first respondent/petitioner Sri. A.M. Shafique contended that a woman cannot be a Viruthicaran, that the rights of parties are not governed by the laws of succession but by Rule 10 of the Viruthi Rules, 1945 and that on the death of the last registered holder, the next senior male member in his family becomes entitled to be the Viruthicaran. The learned Senior Counsel contended that the appellant/8th respondent who is the wife of the last registered holder cannot therefore claim that she or her children are entitled to have the holding transferred to them applying the laws of succession. He also contended that the first respondent/petitioner was in possession of the lands as on 6.8.1981 when the Act came into force and therefore, as the person in lawful possession, the right to possession being traceable to Rule 10 of Viruthi Rules, 1945, the first respondent/petitioner was entitled to apply for assignment of the right, title and interest in respect of the holding. The learned Senior Counsel for the first respondent/petitioner also contended that the Hindu Succession Act, 1956 does not apply to lands to which the Viruthi Proclamation 1061 (Travancore) and Viruthi Rules, 1945 apply. The learned Senior Counsel contended that the disputed land is an estate which descends to a single heir by virtue of the provisions in Rule 10 of the Viruthi

Rules, 1945 and therefore, the Hindu Succession Act, 1956 does not apply to the said land. Reliance was placed on Section 5(ii) of the Hindu Succession Act, 1956 and the decision of the Division Bench of the Bombay High Court in *Balwant and Others Vs. Annasaheb Bapusaheb Patil and Others*, in support of the said contention. Sri. P.R. Venkitesh, learned Counsel appearing for the 9th respondent adopted and reiterated the contentions raised by the learned Senior Counsel appearing for the appellant/8th respondent.

11. We have considered the rival submissions made at the Bar by the learned Counsel appearing on either side. We have also gone through the pleadings and the materials on record. The disputed lands are lands governed by the Viruthi Proclamation, 1061 (Travancore) which was issued on 4th Edavom 1061 M.E. corresponding to 16.5.1886. Para 8 of the Viruthi Proclamation 1061 (Travancore) reads as follows:

8. No Viruthicar shall be at liberty to alienate, by sale, gift, mortgage or otherwise, the Inam given to him for the Viruthi Service. All such alienation shall be null and void and the Government shall have the power of resuming any such alienated Viruthi Inam and restoring it to the holder or otherwise disposing of it as to them may seem fit. No action shall lie respecting any such land in any Court of Law.

It is thus evident that a Viruthicaran had no right to alienate by sale, gift, mortgage or otherwise or to transfer possession of the lands given to him for viruthi service. Any such alienation or transfer of possession was declared to be null and void and the Government was empowered to resume the land and restore it to the holder or otherwise dispose of it as the Government deems fit. Later, the Viruthi Proclamation 1068 (Travancore) was issued on 24th Karkatakam 1068 M.E. corresponding to 7.8.1893 amending the Viruthi Proclamation 1061 (Travancore). The provisions thereof are not relevant for the purpose of this case. The Viruthi Rules, 1074 were issued on 4th Thulam 1074 M.E. corresponding to 19.10.1898. Rules 10 and 11 thereof which are relevant for the purpose of this case read as follows:

10. The registered holder of a personal service Viruthi is at liberty to relinquish it by a statement in writing before the Tahsildar and the Viruthi may then with the permission of the Division Peishkar, be transferred to any other member of the family if available or, in the absence of any such person, to any other competent person willing to perform the service.

11. If a registered holder dies, the holding shall be transferred to his heir. In the event of the registered holder dying heirless, the holding may be transferred to any other competent person, provided that if such registered holder is a Marumakkathayee and has sons, the holding shall be transferred to such of his sons as may be willing to perform the services, preference being given to the senior one among them.

No transfer under this Rules shall be made without the previous sanction of the

Division Peishkar.

Rule 11 of the Viruthi Rules, 1074 stipulated that the registered holder is not entitled to transfer the holding to any other person without the previous sanction of the Division Peishkar. It was stipulated that in the event of death of the registered holder, the holding may be transferred to his heir. It was also stipulated that if the registered holder dies, his land holding may be transferred to any other competent person also. This was however subject to the stipulation that if the registered holder is a Marumakkathayee and has sons, the holding shall be transferred to such of his sons as may be willing to perform the services and preference may be given to the senior one among them. The Viruthi Rules, 1074 were revised by issuing the Viruthi Rules, 1945 with effect from 9.7.1945. Rules 3, 9 and 10 thereof read as follows:

3.(1) A Viruthicar has no rights over his viruthi holding except its enjoyment during the regular performance of the services imposed on him, and he shall not alienate by sale, gift, mortgage or otherwise or encumber the property in any manner without the sanction of Government. All such alienations shall be null and void.

(2) No Viruthicar shall commit acts of waste in his Viruthi holdings or divide the lands among the several members of the family.

(3) On the Viruthicar acting in contravention of the provisions of this rule, it shall be competent to the Government to resume the lands and re-attach them to the service or to deal with the resumed lands and the services connected therewith in any manner they may deem fit. Any loss sustained by the Government on account of waste or any other default committed shall be recoverable from the holders concerned under the provisions of the Revenue Recovery Act.

9. A registered holder of a Viruthi is at liberty to relinquish it by a statement in writing before the Tahsildar; and the Viruthi land and service, may then, with the permission of the Assistant Peishkar be transferred to any other member of the family, if available, or in the absence of any such person, to any other competent person willing to perform the services.

10. If a registered holder dies, the holding may with the sanction of the Assistant Peishkar be transferred to his heir, viz., the next senior male member in the family. In the event of the registered holder dying heirless, the holding may be transferred to any other competent person willing to perform the services, provided that if such a registered holder is a Marumakkathayee and has sons the holding shall be transferred to such of his sons as may be willing to perform the services, preference being given to the senior one among them. If the land so transferred is found to be in the possession of any person other than the one in whose name transfer of registry is ordered and if the latter applies for delivery of possession, surrendering his rights over the land in favour of Government so as to enable them to proceed under the Land Conservancy Act against the occupant, he may, under the orders of the Assistant Peishkar, be proceeded

against under the Land Conservancy Act and evicted and the land handed over to the person in whose name Viruthi is transferred by the Assistant Peishkar, and the land shall thereafter become a Viruthi holding as before.

12. In Rule 3(1) of the Viruthi Rules, 1945, it was specifically stipulated that a Viruthicaran has no right over his viruthi holding except its enjoyment during the regular performance of the services imposed on him. He had also no right to alienate the holding by sale, gift, mortgage or otherwise or to encumber the property in any manner without the sanction of the Government. It was also stipulated that all such alienations shall be null and void. The Viruthicaran was also restrained from committing acts of waste in his viruthi holdings or to divide it among the several members of his family. As per Sub-rule (3) of Rule 3, the Government was competent to resume the lands and to deal with it in any manner as they may deem fit. Rule 9 of the Viruthi Rules, 1945 enabled the registered holder to relinquish the holding by filing a statement before the Tahsildar and upon such relinquishment being made, it can be transferred to any other member of the family available or in the absence of any such person, to any other person willing to perform the services with the permission of the Assistant Peishkar. Rule 10 provides that on the death of a registered holder the holding may with the sanction of the Assistant Peishkar be transferred to his heir, namely the next senior male member in the family. It was also stipulated that in the event of the registered holder dying heirless, the holding may be transferred to any other competent person willing to perform the services. It was also stipulated that if the registered holder is a Marumakkathayee and has sons, the holding shall be transferred to such of his sons as may be willing to perform the services, preference being given to the senior one among them. It was further stipulated that if the land so transferred is found to be in the possession of any person other than the one in whose name transfer of holding is ordered and if the latter applies for delivery of possession, surrendering his rights over the land in favour of the Government so as to enable the Government to proceed under the Land Conservancy Act against the occupant, he may, under the orders of the Assistant Peishkar, be proceeded against under the Land Conservancy Act and evicted and the land handed over to the person in whose name the viruthi is transferred by the Assistant Peishkar.

13. A reading of the Viruthi Proclamation and the Viruthi Rules makes it evident that the registered holder of a viruthi had no right over the land except to enjoy it during his life time. The holding of a Viruthicaran who was governed by Marumakkatham law could not have been transferred to his legal heirs under the Marumakkathayam law or to his sons except with the sanction of the Assistant Peishkar. He could not have also alienated the land by sale, gift, mortgage or otherwise or encumbered it. It is thus evident from the Viruthi Proclamation and the rules that the right of the Viruthicaran was a personal right and on his death there was no automatic devolution of his right over the holding in favour of his legal heirs under the Travancore Nair Act, 1100. Rule 10 in our opinion only stipulates that if the registered holder dies, the holding may with the sanction of

the Assistant Peishkar be transferred to his heir, namely the next senior male member in the family. In the absence of such a legal heir under the Marumakkathayam law, it can be transferred to the son of the registered holder who is willing to perform the services, preference being given to the senior one among them. In the absence of both categories of persons, it may be transferred to any other competent person willing to perform the services. Thus, on a reading of the Viruthi Proclamation and the Viruthi Rules, it is evident that on the death of the Viruthicaran, there is no devolution of the viruthi holding on the legal heir of the registered holder. The legal heir only had the right to apply to have the holding transferred to him with the sanction of the Assistant Peishkar.

14. We shall now consider the question whether the first respondent/petitioner was by virtue of the provisions in the Viruthi Proclamation/Viruthi Rules entitled to have the holding transferred to him. The learned single Judge has in the judgment under challenge held that late Parameswaran Pillai Krishna Pillai was a member of a Marumakkathayam Tarward. The learned single Judge has also repelled the contention of the appellant/8th respondent that the last registered holder was governed by the Travancore Nair Act, 1100. Those findings are not under challenge before us. We are therefore, proceeding on the basis that the last registered holder, namely late Parameswaran Pillai Krishna Pillai was a member of a Marumakkathayam Tarward. The Hindu Succession Act, 1956 came into force on 17.6.1956. Section 4 thereof stipulates that unless otherwise expressly provided in the Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act. It is also stipulated that any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. Marumakkathayam law was a rule of Hindu Law which governed succession among Hindus in the State of Kerala. By virtue of Section 4 of the Hindu Succession Act, 1956, the Marumakkathayam law which was in force in the State of Kerala on 17.6.1956 ceases to have effect with respect to any matter for which provision is made the Hindu Succession Act. Section 8 of the Hindu Succession Act lays down the rules of succession in the case of a male Hindu who dies intestate. It is stipulated that the property of a male Hindu dying intestate shall devolve firstly upon the heirs being the relatives specified in Class I of the Schedule, secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule, thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased and lastly, if there is no agnate, then upon the cognates of the deceased. Section 17 of the Act makes special provisions as regards persons governed by Marumakkathayam and Aliyasantana laws. It is stipulated that in respect of such persons, Sub-clauses (c) and (d) of Section 8 shall be substituted and in such cases, where a male Hindu who was governed by Marumakkathayam law dies intestate, the property shall devolve upon his relatives, whether agnates or cognates, if there is no heir

of any 2 classes, namely Classes I and II. Thus, with the enactment and coming into force of the Hindu Succession Act, 1956, the Marumakkathayam system of law ceased to have effect with respect to any matter for which provision is made in the Hindu Succession Act. Therefore, it has to be necessarily held that with effect from 17.6.1956 when the Hindu Succession Act, 1956 came into force, only a person who is a legal heir in terms of Section 8 of the Act can apply for transfer of the holding in his favour. In other words, on and with effect from 17.6.1956 the senior male member in the family of the registered holder ceased to be the legal heir of the registered holder of the viruthi lands.

15. As noticed earlier, the Kerala Joint Hindu Family System (Abolition) Act, 1976 came into force on 1.12.1976. With the enactment and coming into force of the said Act, the Marumakkathayam law stood totally abolished by virtue of the provisions contained in Section 7 thereof as held by a Larger Bench of this Court in *Chellamma Kamalamma v. Narayana Pillai* 1993 (1) KLT 174. However, the Larger Bench held that Section 17 of the Hindu Succession Act, 1956 would continue to operate notwithstanding the abolition of the Marumakkathayam law. We accordingly hold that on the death of late Parameswaran Pillai Krishna Pillai, the last registered holder on 2.1.1981, his wife and children who constitute Class I heirs u/s 8 of the Hindu Succession Act became entitled to apply for transfer of the holding in their favour. We therefore reverse the finding of the learned single Judge that on the death of late Parameswaran Pillai Krishna Pillai on 2.1.1981, the first respondent/petitioner was entitled to have the holding transferred to him as provided under Rule 10 of the Viruthi Rules, 1945.

16. We shall now advert to the contention of the learned Senior Counsel for the first respondent/petitioner that the Viruthi Rules, 1945 is a law as per which the holding descends to a single heir and therefore, the provisions of the Hindu Succession Act, 1956 do not apply to the viruthi lands in question. We are afraid, there is no merit in the said contention. Section 5(ii) of the Hindu Succession Act states that the said Act shall not apply to any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of the Act. The lands in question are not governed by any covenant or agreement entered into by the Ruler of any Indian State with the Government of India. The Viruthi Rules is not an enactment passed before the commencement of the Hindu Succession Act, 1956 as per which any estate descends to a single heir. The Viruthi Proclamation and the Viruthi Rules confer only limited right over the holding in the Viruthikaran. As a matter of fact, Rule 3 of the Viruthi Rules, 1945 states in express terms that a Viruthikaran has no right over his viruthi holding except its enjoyment and that he shall not alienate it by sale, gift, mortgage or otherwise or encumber it without the previous sanction of the Government. Rule 10 of the Viruthi Rules, 1945 is also not a rule of succession. Rule 10 only stipulates that in the event of death of the registered holder, the holding may with the sanction of the Assistant Peishkar be transferred to his heir who was described as the next senior male

member in the family. The rule is only an enabling provision which enabled the legal heir of the deceased registered holder or in their absence his son, to have the holding transferred to them. There is no automatic devolution of the holding on the legal heir of the registered holder. We, therefore find no merit in the contention raised by the learned Senior Counsel for the first respondent/petitioner that the Hindu Succession Act, 1956 does not apply to the lands in question. The decision of the Division Bench of the Bombay High Court in *Balwant and Others Vs. Annasaheb Bapusaheb Patil and Others*, has no application to the facts of this case.

17. The Act came into force on 6.8.1981. Section 2(c) of the Act defines the term "land holder" to mean a person holding Service Inam land. u/s 3 of the Act, the right, title and interest of the land holder in Service Inam lands held by the land holder vests in the Government free from all encumbrances and any service or obligation attached to Service Inam lands stands abolished. Section 5 enables the land holder of any holding to apply for assignment of the right, title and interest in respect of the holding, which is vested in the Government u/s 3. The first respondent/petitioner applied for assignment of the disputed lands u/s 5 of the Act contending that he is a land holder as defined in Section 2(c) of the Act. He claimed that he came into possession of the lands immediately on the death of late Parameswaran Pillai Krishna Pillai on 2.1.1981. He claimed to be in possession as the legal heir of late Parameswaran Pillai Krishna Pillai. He is admittedly residing away from the holding. He, however relies on the report prepared by the Village Officer when the latter took over possession of the lands to contend that he was in possession of the lands. Under the provisions of the Viruthi Proclamation/Viruthi Rules, no person can enter into possession of the viruthi holding otherwise than with the permission of the Assistant Peishkar. The holder also had no right to transfer possession thereof. No materials have also been produced either before this Court or before the authorities to show that the first respondent/petitioner was in actual physical possession of the lands or that he had exercised acts of possession therein. Sri. Parameswaran Pillai Krishna Pillai died on 2.1.1981. The Village Officer took possession of the lands on 16.2.1981. The first respondent/petitioner has no case that he was in possession of the holding even before the death of late Parameswaran Pillai Krishna Pillai. No material is produced before us to show that during the period from 2.1.1981 to 16.2.1981 the first respondent/petitioner was in actual physical possession of the disputed lands or that he had exercised any act of possession therein. The lands are paddy fields wherein there was a standing crop at the time when Sri. Parameswaran Pillai Krishna Pillai died. It is not disputed that the legal heirs of late Parameswaran Pillai Krishna Pillai had harvested the crop. That is certainly an act of possession by the legal heirs of the deceased registered holder. On the other hand, apart from the assertion made by the first respondent/petitioner, there is total absence of any evidence to show that he was in actual physical possession of the disputed lands or that he had exercised any act of possession therein. So, the statement in the report of the Village Officer in favour of the

petitioner cannot be relied upon.

18. As noticed earlier, Sri. Parameswaran Pillai Krishna Pillai passed away on 2.1.1981. Immediately thereafter, the first respondent/petitioner submitted Ext.P2 application dated 8.1.1981 before the Tahsildar, Thiruvananthapuram for transfer of the patta in respect of the disputed holding in his favour. Along with that application he had submitted Ext.P2(a) letter from his brother Sri. N. Ramakrishna Pillai consenting for the transfer of patta in his favour. The reason stated by Sri. N. Ramakrishna Pillai in Ext.P2(a) consent letter was his inability to render Oozhiyam service. But, during the hearing before the Government, it was revealed that Sri. N. Ramakrishna Pillai who has given Ext.P2(a) consent letter was holding another parcel of Service Inam land which was surrendered to him by late Sri. Narayana Pillai Krishna Pillai, the registered holder of the said holding. The Government therefore held that by submitting Ext.P2(a) consent letter, he was only intending to favour the first respondent/petitioner. The Government have in Ext.P22 also considered the question whether the first respondent/petitioner was in possession of the disputed holding on 6.8.1981. After considering the materials available before it, the Government have in Ext.P22 held as follows:

11. ...On 8.1.1981 Shri. Sreedharan Nair applied to the Tahsildar, Thiruvananthapuram for assignment of the Uzhiyam service and the property in his favour. This was not sanctioned since the Bill for enfranchisement of Uzhiyam services was introduced in the Assembly on 31.7.1980 and was referred to the Select Committee the same day. The Bill was also published in the Gazette Extra Ordinary dated 16.7.1980. Virtually the contents of the bill came to the knowledge of the public by its publication. The Village Officer, Ulloor also might have been aware of the Bill. But he hastily prepared a Mahazar in favour of Shri. Sreedharan Nair stating that the property was under his possession. In fact there was no chance to get the property in the possession of Shri. Sreedharan Nair at that time since there was paddy crop in the field raised by the deceased patta holder and this was harvested by the legal heirs of the deceased on 17.1.1981 only. There was also no chance for Shri. Narayana Pillai Sreedharan Nair to take possession of the property in between 17.1.1981 and 16.2.1981 and no service was assigned to him during that period by the competent authority. So the assumption made by the Village Officer, Ulloor that the property was in the possession of Shri. Narayana Pillai Sreedharan Nair as on 16.2.1981 is totally baseless, and cannot be accepted. This only affirms that the property in question was in the possession of none other than the legal heirs of the late Shri. Parameswaran Pillai Krishna Pillai as on the date of its take over by the Receiver under orders of R.D.O. Thiruvananthapuram on 16.2.1981.

The said finding is a finding of fact which cannot be said to be a perverse finding warranting interference by this Court exercising jurisdiction under Article 226 of the Constitution of India.

19. The learned single Judge has held that possession referred to in Section 2(c)

of the Act has to be lawful possession and that the intention of the Legislature was to grant protection to persons who are in lawful possession and not to rank trespassers. In *Bhudan Singh and Another Vs. Nabi Bux and Another*, the Apex Court construing the terms "belonging to" and "held" occurring in Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 held as follows:

9. Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the law-makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words, as observed by Crawford in his book on Statutory Constructions that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently, where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the Legislature, there is little reason to believe that it represents the legislative intent.

11. It is true that according to the dictionary meaning the word "held" can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. But the real question is as to what is the legislative intent? Did the Legislature intend to settle the concerned building with a person who was lawfully holding or with any person holding lawfully or otherwise? Mr. Misra contended that there is no justification for us to read into the Section the word "lawfully" before the word "held". According to him, if the Legislature intended that the holding should be a lawful one, it would have said "lawfully held". He wanted us to interpret the section as it stands.

12. It is true that the Legislature could have used the word "lawfully held" in place of the word "held" in Section 9 but as mentioned earlier, one of the dictionary meanings given to the word "held" is "lawfully held". In Webster's New Twentieth Century Dictionary (2nd Edn.), it is stated that in legal parlance the word "held" means to possess by "legal title". In other words, the word "held" is technically understood to mean to possess by legal title. Therefore, by interpreting the word "held" as "lawfully held", we are not adding any word to the section. We are merely spelling out the meaning of that word. It may further be seen that the section speaks of all buildings...within the limits of an estate, belonging to or held by an intermediary or tenant or other person.... The word "belonging" undoubtedly refers to legal title. The words "held by tenant" also refer to holding by legal title. In the sequence mentioned above, it is proper to construe the word "held" in Section 9 when used in relation to the words "other person" as meaning "lawfully held" by that person. That interpretation flows from the context in which the word "held" has been used. We have earlier mentioned

that the said interpretation accords with justice.

It was held that the word "held" in Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 means lawfully held and that persons who were within the contemplation of the Act are those who were in possession of the land or building on the basis of legal title.

20. In K.M. Mathew and Another Vs. Hamsa Haji and Others, the Apex Court interpreting Section 7D of the Kerala Land Reforms Act, 1963 which stipulated that any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another situate in Malabar, to which the provisions of the Madras Preservation of Private Forests Act, 1949 (XXVII of 1949), were applicable on the 11th day of April, 1955 or which was unsurveyed on that date shall be deemed to be a tenant if he or his predecessor-in-interest was continuously in occupation of such land for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1967, held as follows:

5. On a careful scrutiny of the aforesaid provisions, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bona fide believed the lands to be Government's lands of which they could later seek assignment or had taken the lands on lease from persons whom they bona fide believed to be competent to grant such cases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a leasehold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons who had willfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. The expression "in occupation" occurring in Section 7D must be construed as meaning "in lawful occupation".

21. Section 2(b) of the Act defines the term "holding" to mean any parcel or parcels of Service Inam land held by a single landholder. Section 2(c) of the Act defines the term "land holder" to mean a person holding Service Inam land. The explanation to Section 2(c) states that where any Service Inam Land is in the possession of a person, other than the person to whom the land was granted for performing services or any of his successors-in-interest, the person in possession of the land shall be deemed to be the landholder for the purpose of the Act. It is relying on the explanation to Section 2(c) of the Act that the petitioner contends that as he was in possession of the land on 6.8.1981, he is a landholder within the meaning of the Act and therefore, entitled to apply for assignment u/s 5 thereof. Section 5 of the Act enables the land holder of any holding or part thereof, the right, title and interest in respect of which is vested in the Government u/s 3, to apply for assignment such right, title and interest. The interpretation to be placed on the expression "the person in possession of the land" arose for consideration before a Division Bench of this Court in O.P. No.

5395 of 1989. T.V. Ramakrishnan, J. held that only a person in lawful possession of the lands can be treated as a land holder within the meaning of Section 2(c) of the Act. B.N. Patnaik, J. disagreed and held that there is no reason to restrict the meaning of the term land holder to persons in lawful possession and that even rank trespassers would be entitled to seek assignment of holding. In view of the difference of opinion, the matter was referred to a third Judge. P.K. Balasubramanian, J. (as His Lordship then was) before whom the original petition was placed for opinion, concurred with T.V. Ramakrishnan, J. and held that the expression "to hold" occurring in Section 2 means "to lawfully hold" and would not take in the wrongful possession of a trespasser or a person who had already been dispossessed in execution of a decree. The learned Judge in the decision in *Chandramohanan Nair v. Board of Revenue* 1998 (1) KLT 1 held as follows:

9. Learned Counsel for the respondents relying on the decision in *U.N. Namboodiri v. State of Kerala* 1988 (2) KLT 928 argued that in that case, it had been held that an alienee from an inam holder, though the alienation was illegal, would be entitled to the protection of the Act, to contend that the same principle should apply even in a case where a person has trespassed into the property. With respect, I am not able to accept the correctness of the decision in *U.N. Namboodiri v. State of Kerala* 1988 (2) KLT 928. It was clear on the facts that, that was a case where transactions were effected by a service inam holder which were invalid in terms of the Act. An action which is against the terms of a statute is clearly void in law and cannot be recognised by a court of law administering justice. The Act clearly contemplates that there should be sanction from the Government before effecting transfers of the Inam lands and any transfer in contravention of a provision will have to be held to be void and if held void, there would be no question of such alienees acquiring any right over the property taken assignment of by them in the teeth of the statute. Moreover, in the present case, the alienees are not claiming an assignment from the original Viruthi holder. What respondent No. 4 claimed was based on a lease said to have been granted by his father which had been found to be invalid by the civil court in a properly contested litigation. Respondent No. 5 claims only to have got into possession of the property which claim he is yet to establish. In either case, the ratio of the decision in *U.N. Namboodiri v. State of Kerala* 1988 (2) KLT 928 cannot come to the rescue of the respondents.

10. On the scheme of the Act, I do not see any reason to hold that even a rank trespasser into the service inam land could be conferred the benefit of assignment under the Act as against the service inam holder himself. Such a construction would pay a premium on illegal entry into the property and there is no jurisdiction for giving such a meaning to the expression "to hold" occurring in the Act. If the contention of the respondents were to be accepted, a person who had trespassed into the property the day previous to the coming into force of the Act would also be entitled to claim an assignment on the ground that on the day of the coming into force of the Act he had got into possession of the property though it might be by way of trespass. Acceptance of such a contention would

lead to absurd results and will go against all settled norms of law and justice recognised by the Courts. As I noted, there is no compelling circumstance which leads the court to come to such a conclusion. I am therefore of the view that the expression "to hold" contained in Section 2 of the Act means "to lawfully hold" and would not take in the wrongful possession of a trespasser or a person who had already been dispossessed in execution of a decree.

11. Counsel for respondents 3 and 4 relies on the explanation to Section 2(c) of the Act defining a "landholder". A person in possession shall be deemed to be a land holder, emphasises counsel. I see nothing in the explanation which precludes the court from understanding the expression "possession" as "lawful possession". With respect, I am in full agreement with the view expressed by brother Ramakrishnan, J. on this aspect. The explanation cannot carry the case of the respondents further.

22. In *Chandramohan Nair v. Board of Revenue* (supra) it was held that as the Inam land could not have been transferred without the sanction of the Government and any transfer in contravention of the provisions of the Viruthi Proclamation/Viruthi Rules will have to be held to be void and if held void, there would be no question of such alienees acquiring any right over the property taken assignment of by them in the teeth of the statutory provisions. In the instant case, the first respondent/petitioner has no case that the holding was transferred to him by the Tahsildar or by any other officer of the Government under the provisions of the Viruthi Proclamation/Viruthi Rules. His case is that he entered into possession of the lands. As noticed earlier in the light of the stipulations in Viruthi Proclamation/Viruthi Rules, even assuming that the first respondent/petitioner had entered into possession of the lands, such possession cannot be treated as lawful in its origin and content. Even if the first respondent/petitioner had taken over possession, such possession would have been illegal and he would have been liable to be evicted as a rank trespasser. As held by the Division Bench in *Chandramohan Nair v. Board of Revenue* (supra) the expression "possession" occurring in the explanation to Section 2(c) of the Act can only be "lawful possession" and not the wrongful possession of a rank trespasser. We accordingly hold that the first respondent/petitioner who is not a legal heir of the last registered holder and was not in lawful possession of the disputed lands on 6.8.1981, has no right to apply for assignment of the holding under the provisions of the Act. We accordingly hold that the challenge to Exts.P10, P13 and P22 is without any merit.

For the reasons stated above, we allow the writ appeal, reverse the judgment of the learned single Judge and dismiss O.P. No. 18798 of 1995. The parties shall bear their respective costs.