

(1992) 01 KL CK 0048
In the High Court Of Kerala
Case No : A.S. NO. 198 of 1987

Narayana Kamath and Others

APPELLANT

Vs

M/s. S.N. Govinda Prabhu and Bros.

RESPONDENT

Date of Decision : 02-01-1992

Acts Referred:

Citation : (1992) 1 KLJ 533

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker and B. Krishnamani, for the Appellant;
T.R.G. Warriyar and R. Raya Shenoi, for the Respondent

Final Decision : Allowed

Judgement

K.P. Balanarayana Marar, J.—Tenancy right over an area of 50 cents together with the building thereon is the subject-matter of dispute in this appeal and civil revision petition. The suit from which the appeal arises is for recovery of possession of the plaint A Schedule property in the suit O. S. 36/1980 before Sub Court, Irinjalakuda excluding the building thereon which is described in the B Schedule. Recovery of possession of the C schedule properties is also claimed after demolition of a shop building alleged to have been constructed by the defendants. The revision is against the order of Appellate Authority (LR), Trichur in A A. 96/1982, the appeal preferred against the common order of the Land Tribunal, Kodungallur in O. A. Nos. 151 of 1976 and 87 of 1980. Plaint A schedule property in O. S. 36/1980 belonged to the 2nd plaintiff and his brothers. First plaintiff obtained an assignment of the rights of 2nd plaintiff and thereafter got a release of the rights of the others. Defendants are alleged to be in possession of the house in the plaint A schedule which is described in the B schedule on the strength of an ntrustment by 2nd plaintiff in favour of the 1st defendant on 1-12-1970. Defendants 2 and 4 are the brothers of 1st defendant and 3rd defendant, their mother. Fifth defendant is the wife of 1st defendant. Defendants are alleged to have put up a shop building in a portion of the property by

trespassing upon the same. That portion is described as plaint C schedule.

2. Second plaintiff had instituted a suit as O. S. 136/1973 against defendants 1 to 3 for a prohibitory injunction seeking to restrain them from entering the plaint A schedule property as well as from putting up any building thereon, Plaint A schedule therein is the entire property including the residential building, of which the building excluding a lean-to alleged to have been entrusted to the 1st defendant on 1-12-1970 on a monthly rent of Rs. 25/-. The B schedule therein is the area where the shop building was constructed. That suit was resisted and separate written statements were filed by the 3rd defendant and defendants 1 and 2. It appears that a petition was filed by 3rd defendant herein as O. A. 45/1976 for purchase of landlord's rights claiming herself to be a tenant of the property. That petition was dismissed for default on 16-2-1976. The suit was subsequently withdrawn with permission to file a fresh suit. It was thereafter that O. S. 36/1980 was filed for recovery of possession. In the meantime the 3rd defendant had filed O. A. 151/1976 for purchase of the landlord's rights. That petition was allowed on 19-8-1976 and a copy of the order was produced in O. S. 136/1973. It was thereafter that permission to withdraw the suit was requested for. An appeal was filed against the order in O. A 151/1976 before the appellate authority as A. A. 2400/1976. The appeal was allowed and the petition was remanded for fresh disposal. An original petition is also seen filed before this Court as O. P. 3402/1979 by 2nd plaintiff and others to quash all the proceeding in O. A. 151/1976 and to prohibit the respondent therein from proceeding with that case and in the alternative to direct the appellate authority to take back A. A. 2400/1976 and dispose of O. A. 151/1976 on its merits. That petition was dismissed.

3. In the suit filed by the 2nd plaintiff defendants raised a plea of tenancy and the dispute was referred to the Land Tribunal where it was registered as O. A. 87/1980. The original application filed by the 3rd defendant as O. A. 151/1976 had also reached the Tribunal by that time on remand. As agreed to by the parties both these petitions were tried jointly and by a common order passed by the Tribunal on 31-12-1981 the petitioner therein was found not entitled to tenancy rights. The O A filed by the 3rd defendant was dismissed and the finding rendered by the Tribunal was submitted to Sub Court, Irinjalakuda along with the records. The court below proceeded to consider the other issues involved in the suit after adducing oral evidence. Accepting the finding of the Land Tribunal on the question of tenancy referred to it and after rendering findings on the other issues the court below decreed the suit and directed recovery of possession of the A and C schedule properties from the possession of defendants as well as the "Chaippu" portion of the B schedule building. The shop building constructed in the plaint C schedule was directed to be demolished within two months from the date of the decree. First plaintiff was also found entitled to get profits at the rate of Rs. 1000/- per year apart from the costs of suit. Aggrieved by that decision defendants have come up in appeal.

4. Against the order of the Land Tribunal in O. A. 151/1976 the petitioner therein preferred an appeal before the Appellate Authority (LR) as A. A. 96/1982. After hearing both sides the appellate authority reversed the finding of the Tribunal and held the appellant therein to be a tenant entitled to fixity of tenure. That order is challenged in the revision filed by respondents 1 and 2 therein who are the plaintiffs in the original suit. Respondents 3 to 6 therein are defendants 1, 2, 4 and 5 in the suit. Since the dispute in the appeal and the revision is the same and since the common order of the Land Tribunal in O. A. 87/1980 and O. A. 151/1976 is under challenge in these two proceedings, the appeal and the revision were heard jointly and are being disposed of by this common judgment. Reference to the parties will hereafter be made in accordance with their description in O. S. 36/1980.

5. The main aspect to be considered is whether defendants are tenants entitled to get fixity of tenure.

6. The suit is for recovery of possession on the strength of title. Plaintiff A schedule property is claimed by 2nd plaintiff on the strength of the assignment Ext. A1 in suit (Ext. B4 before the Land Tribunal is the original). That is an assignment executed by perumpillil vasudeva Kammath and others in favour of Gopala Kamath, father of 2nd plaintiff. The assignors are alleged to have obtained the rights over the property in partition. The property assigned is an area of 48 cents in Sy. NO. 482/3 of Lokamaleswaran Village which is admittedly the plaintiff A schedule property. It is the common case of both parties that the property claimed by the plaintiffs is the one purchased by Gopala Kammath under Ext. A1. That Sy.No. 482/3 shown therein is a mistake for Sy. NO. 482/5 is also admitted. Patta is seen to have been obtained by Gopala Kammath as per Ext. A2 (Ext. B50 before the Tribunal) is the original). The patta contains two items of properties of which one is the plaintiff A schedule property and the other is the property comprised in Sy, NO. 482/3 having an area of 30 cents. Gopala Kammath had three sons, namely, Vamana Kammath (2nd plaintiff), Narasimha Kammath and Kesava kammath. The rights of Gopala Kammath devolved on his sons. They jointly executed an assignment of a portion of Sy. NO. 482/3 as per Ext. A3 (original Ext. B8) to one Venkiteswara Kamath of Cochin. The document mentions about the purchase by Gopala Kammath. The assignment is for the purpose of "Dharmadevatha" and for raising funds to repair the house belonging to the family. The northern boundary of the property assigned is shown as "Dharmadaiva Paramba". 1st plaintiff obtained assignment of the undivided share of 2nd plaintiff and thereafter obtained release of the rights of others. He has thus become the absolute owner of the plaintiff A schedule property Though title is denied in the written statement filed in the earlier proceedings, that plea is not pursued by the defendants and they seek relief only as a tenant of the property. The documents produced by plaintiffs conclusively establish the title of plaintiffs. The only question that falls for consideration is whether the lease set up by defendants had been proved.

7. Defendants claim to be members of Perumpilli family settled at Kodungallur. The plaint schedule property is alleged to have been set apart for the purpose of deriving income for the upkeep and maintenance of the temple situated in the adjacent property. The written statement alleges that Anantha Kammath, elder brother of Gopala Kammath, had been in management and was in possession of the property. After his death the husband of 3rd defendant and father of defendants 1, 2 and 4 by name Venkiteswara Kammath took possession of the plaint schedule properties as a lessee with a liability to pay Rs. 84/- as rent. The amount stipulated to be paid has to be utilised for expenses in the temple. Venkiteswara Kammath began to reside in the B schedule building along with his family. He died on 25-10-1970. Tenancy right was inherited by defendants. They claimed to have been in continuous possession as tenants. Fixity of tenure is claimed on that basis.

8. On the other hand, it is the case of the plaintiffs that the property was possessed by Gopala Kammath and after his death by his sons. The building described in the B schedule is alleged to have been entrusted to the 1st defendant as per the rent deed Ext. B9 dt. 1-12-1970. Defendants question the genuineness of this document. They had also produced Ext. A36 (Ext. X31) which purports to be an agreement of lease entered into between 1st plaintiff and Venkiteswara Kammath. That document is disputed by the plaintiffs. Apart from these two disputed documents both parties have produced large number of documents. Witnesses were also examined on their side before the Land Tribunal. The Tribunal found that the tenancy set up by the defendants has not been proved. But the appellate authority on appeal held otherwise. The documents and evidence are now to be analysed in order to see whether the lease set up by the defendants has been established.

9. Sri. Govinda Warriar, learned counsel for the plaintiff, would point out that defendants have no definite case regarding the lease set up by them. He points out the development of the plea in various proceedings between the parties. The earliest is the suit O. S. 136 /1973. In that suit for injunction filed by 2nd plaintiff defendants 1 to 3 alone were parties. Two written statements were filed, one by 3rd defendant and the other by defendants 1 and 2. In the written statement of 3rd defendant, a copy of which is Ext. A7,

(permanent tenancy right) is claimed by her. Her husband Venkiteswara Kammath is alleged to have been in possession as a tenant from 1st Dhanu 1132. The entrustment was on condition to pay an yearly rent of Rs. 84/-. It was made in the presence of Anantha Kammath, 2nd plaintiff and Venkiteswara Kammath of Cochin. As pointed out by the learned counsel, the name of the person who granted the lease has not been mentioned in the written statement. The rent stipulated to be paid is adjusted towards the temple expenses. After the death of 3rd defendant's husband defendants 1 to 3 had inherited his rights and continued possession. On the other hand defendants 1 and 2 in their separate written statement contended that the property belonged to Perumpilli family and

was kept in common for the purpose of the temple. 2nd plaintiff's father's brother Anantha Kammath was in management. After he fell ill there was a discussion among Anantha Kammath, Venkiteswara Kammath of Cochin and other members of Perumpilli family including the father of defendants 1 and 2. Mention is also made about the astrological findings during "prasnam" in 1130 Makaram by which Anantha Kammath has to reside in the house and manage the property till his death and thereafter the property has to be entrusted to the father of defendants 1 and 2. In accordance with the astrological findings and the discussions among the family members, the father of defendants 1 and 2 had taken possession of the plaint schedule property as well as the property on its west along with the temple compound in

rights. The house in the property is alleged to have been put up by Anantha Kammath, It is also contended therein that the property belonged to Perumpilli family and not the joint family of the plaintiffs A further contention is raised that the document was taken in the name of Gopala Kammath as benami and that he was never in possession of the property. Dispute is also seen raised regarding Ext. B9 lease deed alleged to have been executed by 1st defendant. As per the contentions raised then possession of the property was obtained by the husband of 3rd defendant even during the life time of Anantha Kammath and he, along with the members of his family, had shifted residence to that house. But it is in evidence that Anantha Kammath died only one year later. He died on 14th Kumbham 1133 corresponding to 26 February 1958.

10. The next stage is the earlier proceeding initiated by 3rd defendant for purchase of landlord's rights. 3rd defendant alone filed O.A.45/1976 wherein 2nd plaintiff alone was the respondent. The entrustment is alleged to have been made on 1st Dhanu 1132 in

rights. 2nd plaintiff is shown as the land owner. The existence of the building does not find a place in that petition. Mention is made only about one Elanji tree though there were several coconut trees in the property. Admittedly the lease was of the property and the building. Defendants have no case that the B Schedule house was constructed by them. Since the lease is of the property and the building, the tenant is bound to pay the value of the building in case he is entitled to purchase the landlord's rights. The existence of the house had been suppressed in O. A. 45/1976. Even in that petition the name of the person who granted the lease had not been mentioned. That petition was dismissed for default.

11. The next proceeding is O. A. 151/1976, the petition filed by 3rd defendant which also is for purchase under sec. 72 of the Land Reforms Act. Therein the lease is alleged to have been granted before 1st Dhanu 1132. A counter affidavit was filed by 3rd defendant in O. P. 3402/1979 wherein it is averred that the property was leased to her husband after the death of Anantha Kammath in pursuance to discussions among her husband, 2nd plaintiff and Venkiteswara Kammath of Cochin. Here itself it has to be said that this Venkiteswara Kammath

of Cochin has not been shown to be a member of the family of either the 2nd plaintiff or the defendants. He had no doubt obtained assignment of a portion of the adjacent property from defendants 1 to 3. That alone will not clothe him with any right over the plaint schedule property which admittedly belonged to 2nd plaintiff and his brothers. It has to be noted that even in this counter affidavit 3rd defendant has not mentioned the name of the person who granted the lease.

12. The last in the series is the written statement in O. S. 36/1980. Though defendants 1 to 3 filed separate written statements in the earlier suit, a joint written statement by all the defendants is seen filed in the present suit. They reiterated their earlier contentions and denied the title of the plaintiffs. They contended that the property is a family property set apart to the temple. Anantha Kammath is alleged to have managed the property. Since he fell ill, the family members after deliberations decided to entrust the property to the husband of 3rd defendant on an yearly rent of Rs. 84/- Possession of the property is stated to have been taken after the death of Anantha Kammath. Since the rent stipulated was not sufficient to meet the expenses of the temple, one - half of the excess expenditure was agreed to be met by Venkiteswara Kammath of Cochin and the other half to be collected from the members of Perumpilli family. The specific contention is that the husband of 3rd defendant was enjoying the property as a "Verumpattamdar" from 1-5-1132 M. E. Learned counsel for the plaintiffs places considerable reliance on this written statement and points out that two pleas taken in respect of the lease, namely, (1) the entrustment was by the family members, and (2) it was after the death of Anantha Kammath.

13. From the pleas taken in the various proceedings it is clear that defendants have no consistent stand regarding the entrustment. At one stage they would say that the entrustment was made during the life time of Anantha Kammath and in pursuance to the discussions among the family members of whom Anantha Kammath was also a party. At another stage the case appears to be that the entrustment was made after the death of Anantha Kammath though the decision to lease the property was taken during his life time. They have got a third version that the property alone was entrusted to the husband of 3rd defendant and the house in the property continued in the occupation of Anantha Kammath till his death. It was thereafter that 3rd defendant and her children along with her husband shifted their residence to this building. In order to show that the husband of 3rd defendant had not shifted his residence before 1st Dhanu 1132 and also within a reasonable time after the death of Anantha Kammath reliance is placed on the plaint Ext. XII (f) before the Land Tribunal (Ext. B48) in O. S. 208/1958 before Munsiff's Court Kodungallur. That was a suit filed for eviction of 3rd defendant, her husband and their children from the building occupied by them. That suit was filed only in September 1958. As pointed out earlier Anantha Kammath died on 26-2-1958. While examined before the Land Tribunal 3rd defendant as P. W. 1 admitted that she was residing in the house sought to be evicted and shifted only when they were evicted from their

building. She was residing with her father for some time. She has no doubt a case that the land was taken first and the house was occupied only two years thereafter. Defendants have thus no consistent case either regarding the date of entrustment or the year in which they began to occupy the house in the building. In none of the proceedings has mention been made about the person who granted the lease. Admittedly Anantha Kammath was not having any rights over the property though he was permitted to occupy the building. The contention of defendants that the property belongs to the Perumpilli family of the parties has been found to be false. The title deeds produced by plaintiffs conclusively prove the title of Gopala Kammath over this property which had devolved on 2nd plaintiff and his brothers. The question of Anantha Kammath possessing the property as the owner and granting the lease in that capacity does not therefore arise. It is also not clear in what capacity Venkiteswara Kammath of Cochin had participated in the discussions and how he is competent to grant a lease. True, he is in possession of an adjacent property. That itself was sold by 2nd plaintiff and his brothers on the strength of the same title. The property is situated in Kodungallur and no reason has been alleged as to why Venkiteswara Kammath of Cochin had gone to Kodungallur and participated in the discussions among the members of the family. Since the property was acquired by Gopala Kammath while he was a junior member of the family, no claim can be made by the joint family over that property which had devolved on his sons. Since 2nd plaintiff and his brothers were the owners of property in possession, claim to leasehold right can be made only if the lease has been granted by them or some of them. Defendants have no case of an entrustment by 2nd plaintiff and his brothers or any of them. Their only plea is that 2nd plaintiff was also present in the house during the discussions which took place. That will not amount to an entrustment by 2nd plaintiff either on his behalf or on behalf of the family of which he is the seniormost member.

14. No document is also seen produced by defendants to show payment of rent. True, defendants have a case that they were authorised to meet the expenses of the temple. A contention is seen raised in the written statement in O. S. 136/1979 that the lease was granted in pursuance to astrological findings in a "prasnam" conducted with respect to the affairs of the temple and its properties. No documentary evidence is supplied by the defendants to prove that a "prasnam" was conducted. Much less is there any evidence regarding the findings. One fails to understand as to how it has revealed in the prasnam that the property should be leased for raising an amount of Rs. 84/- in order to meet the expenses, of the temple. Defendants have thus failed to establish the lease set up by them in their written statement.

15. It is in this background that the two disputed documents, one produced by plaintiffs and the other by defendants are to be considered. First the document produced by defendants marked as Ext. X31 before the Land Tribunal and Ext. A36 before the court below. That purports to be an agreement executed between 2nd plaintiff and the husband of 3rd defendant on 10-2-1962. Learned counsel

for plaintiffs would point out that the whole case of the defendants is based on this document and when once this document is found to be not genuine, the plea of tenancy has to fail. This document made its appearance for the first time in the High Court along with the counter affidavit filed in O. P. 3402/1979. Various circumstances are pointed out by the learned counsel to doubt the genuineness of this document. The address of the first party, namely, 2nd plaintiff is shown as "C/o. M.R. Prabhu & Sons, P. B. NO. 188, Cochin 2". Various documents are produced in this case to show that the post-box number during the relevant period was 86 and not 186. It appears that changes were made in the box numbers in the zonal delivery system of Cochin city with effect from 1-4-1968. Ext. XI contains a letter sent by the Sub Postmaster, Ernakulam to the Kerala Film Chamber of Commerce, Ernakulam wherein it is mentioned that the department has decided to merge the zonal delivery system of Ernakulam with that of Cochin and changes had been made regarding the areas. It is further mentioned that the number of post-boxes and post-bags assigned to various delivery offices will also be changed from 1-4-1968. The numbers proposed to be allotted are shown therein. The numbers allotted to Cochin-1 are 1 to 100 and Cochin-2 are 101 to 500. Admittedly the residence of 2nd plaintiff is in Cochin 2, and the post-box numbers had been changed to 101 to 500. In consequence the previous post-box number 86 has been changed to 186 This change had come into effect only on 1-4-1968. In many of the letters produced by the plaintiffs the P. B. NO. is shown as 86, and they relate to periods prior to the change introduced by the department. In Ext. XI (d) sent by the husband of 3rd defendant on 28-7-1968 the P. B. NO. is shown as 86. Probably he was not aware of the change of the P. B. NO. since 1-4-1968. But the P. B. NO. could not have been shown as 186 in any document executed prior to 1-4-1968. Curiously enough the post-box number is shown as 186 in Ext. X31 dt. 10-2-1962. Counsel would point out that the change of number could not have been anticipated in 1962 and mention of box-number as 186 in Ext. X31 is a tell-tale circumstance to show that this document was not in existence in 1962. It is also pointed out that the document has been prepared in a casual way. What is the property leased has not been mentioned whereas there is only a bald recital that the second party is in possession of 50 cents of land belonging to the first party on a lease arrangement with the first party. By that agreement the first party agreed that the second party shall continue to use as before and the net income from the property after meeting the maintenance and upkeep charges shall be used for the purpose of the temple No other document has been produced to show that the second party had: been in possession earlier either as a tenant or in any other manner. The non-mention of the property and other details regarding the lease raise considerable suspicion regarding the genuineness of this document especially in view of the mention of a post-box number which had been introduced only six years later.

16. The document is seen attested by two witnesses. It appears that both of them had sworn to affidavits denying the execution of an agreement in 1962 and

swearing to the fact that they were asked to sign the paper at a later date. One such affidavit was produced before this Court in the original petition. He is now no more. The other attestor was examined as a witness on the side of the defendants before the Land Tribunal as P. W. 4. He was confronted with the affidavit sworn to by him. He admitted the same to be his affidavit, but stated that it was given on account of affection towards Prabhu's people. Who that prabhu is, has not been mentioned by him. At the same time he stated that the contents of the affidavit may be true, maybe false. He was asked to give an affidavit and he gave one. He denied having sworn to the fact that the document was attested only three or four months before swearing to that affidavit. P. W. 4 is therefore a person who has spoken against the affidavit given by him earlier. No reliance can therefore be placed on his testimony. In this connection learned counsel for the defendants would point out that the affidavit sworn to by the other attestor Baba Shenoy also cannot be relied on in view of the statement of 2nd plaintiff that Baba Shenoy is not known to him. Defendants have also a case that the affidavits were got attested by one Prabhu who according to them is M.R. Prabhu of Cochin with whom 2nd defendat is residing. One Rajagopala Prabhu was examined as P.W. 2 in the suit, but he does not say anything about the swearing to these two affidavits. Affidavits were no doubt obtained from the two persons who figured as attestors in Ext. X31. But there is no possibility of those two persons signing the document in 1962 in view of the reason mentioned earlier namely that the document would not have been prepared in 1962, at a time when the Post-box Number of 2nd plaintiff was 86 and the new number was introduced only six years later. It has also not been pointed out as to why such a document was executed in 1962 Having found that the entrustment alleged by the defendants has not been proved and for the reasons stated above, Ext. X31 does not appear to be a genuine document. If that be so, the entire case of the defendants regarding, the entrustment of the property fails and as stated by the learned counsel the entire oral evidence adduced on the side of the defendants has only to be discarded as a bundle of lies.

17. The other disputed document is Ext. A4 (Ext. B9 before the Land Tribunal). That purports to be a letter sent by 1st defendant to 2nd plaintiff on 1-12-1970 agreeing to pay a rent of Rs. 25/-per month for house NO. 354 in Ward NO. VI except the room on the southern side. 1st defendant in that letter had also undertaken to pay the electric charges and to keep the house in good condition. The letter is seen attested by two witnesses. The genuineness of this document is quested by defendants and according to them such a document was prepared by the 2nd plaintiff in order to claim rights over the property. It is their contention that there was no occasion for sending such a letter in veiw of the entrusment of the property along with the house much earlier in favour of the husband of 3rd defendant. He died on 25-10-1970. The reason for executing the document, according to plaintiffs, is to have some document to evidence the transaction since the father of 1st defendant who was in occupation died. On behalf of defendants it is pointed out that the letter has been typed on a blank

sheet of paper containing the signature of the 1st defendant and entrusted to the 2nd plaintiff for the purpose of sending applications to get an employment. Attention is drawn to the admission of 2nd plaintiff while examined as P. W. 1 before the court below. He stated that he had made attempts to secure a job for the 1st defendant and for that purpose he had obtained signed papers. One such signed paper has been utilised, according to defendants, for getting the letter typed thereon. It is pointed out that 2nd plaintiff knows to type. The letter contains two signatures of the 1st defendant, one below the name and one above it. If really a blank signed paper was entrusted to 2nd plaintiff, one fails to understand as to why two signatures were taken in that paper, one below the other. One of the attestors to that document was R. W. 2 before the Tribunal has an explanation. He stated that the 1st defendant signed below the name. Since the signature has to be put above the name typed in the document, he was asked to sign again. That accounts for the two signatures in the document. There is no reason to disbelieve the witness on this aspect. Moreover defendants have no definite case regarding the taking of signed papers from the 1st defendant. In the written statement in O. S. 136/1973 the contention was that the signature and thumb impression were taken in three plain papers on 18-2-1973. 2nd plaintiff is stated to have colluded with the uncle of the 1st defendant Rajagopala Pal. The signatures are alleged to have been obtained by force. Some of the account books are also alleged to have been taken away by the 2nd plaintiff. While examined as R. W. 4 before the Tribunal 1st defendant admitted the signatures in Ext. B9 as his. But he would say that he had put his signature in blank paper. According to him the plaintiff had persuaded him to execute a rent deed, which he refused 2nd plaintiff is stated to have promised to arrange for a loan. At another stage he would say that 2nd plaintiff himself had agreed to advance a loan. He would further say that signatures of his brother and himself were taken in some blank papers in 1973. In all those papers he had subscribed his signature at two places and the thumb impression was also put by him His brother has signed only at one place. He is not in a position to say why he was asked to sign at two places while his brother was asked to sign only at one place. Even regarding the obtaining of signatures in blank papers, 1st defendant has no consistent case. The version of 1st defendant that two signatures were taken in all the papers does not appear to be convincing especially in the light of the explanation tendered by R. W. 2 before the Tribunal. In the circumstances the version of 2nd plaintiff that he insisted for a document after the death of Venkiteswara Kammath appears to be more probable. The document Ext. B9 has therefore to be found to be genuine executed by the 1st defendant. Such an inference has to be drawn in the light of other documents produced on the side of the plaintiffs wherein there is indication to show that the 1st defendant was having rights only over the building and not over the adjoining property.

18. In the letter sent by Venkiteswara Kammath to 2nd plaintiff on 19-6-1970 as per Ext. A 13 mention is made about the electrification work in progress. 2nd plaintiff was asked to take the key of the building. Plaintiffs have a case that the

lean-to of the building was retained by the 2nd plaintiff and was in his possession. The key of that portion was with 2nd plaintiff. Request is seen made to take the key of that portion. Incidentally it has to be mentioned that the P. B. NO. is shown as 186. The change was effected in 1968 itself. There is indication in Ext. A13 to suggest that the lean to was in the possession of 2nd plaintiff. That is suggestive of the entrustment of the remaining portion and falsifies the case of lease of the property set up by defendants. After the death of Venkiteswara Kammath 1st defendant sent Ext. A14 letter to 2nd plaintiff Informing him among other "things that he was not able to do the tilling work. The workers engaged told him that tilling work could be done only after rain fall. An amount of Rs. 40/- was sent by 2nd plaintiff to the 1st defendant. By letter Ext. A15 dt. 9-2-1973 2nd plaintiff was informed that the amount had been adjusted towards the expenses of fencing. Defendants have got a case that the fence mentioned is the fence of the temple compound. The case appears to be that the amount was entrusted for putting up a fence to the temple compound. But the temple compound and the plaint A schedule property are separated by a common fence. The amount of Rs 40/- would have therefore been sent for putting up a fence on the boundary of the plaint schedule property. By Ext. A16 dt. 14-3-1968 Kodungallur Panchayat informed the 2nd plaintiff of arrears of house tax payable to his building and he was directed to pay the house tax for the years 1966-67 and 1967-68 for House NO. 354/6 which admittedly is the house described in the B schedule. A letter is seen sent by one Govinda Pai to 2nd plaintiff as per Ext. A17 on 16-11-1956. He was informed that the coconuts had become ripe for plucking and children are afraid to walk through the property. It is further stated that he was not able to thatch his house and it was with much difficulty that he was residing there. He therefore wanted the key of the house on the eastern side for occupation. He required the house atleast till the house occupied by him "is repaired. Unless 2nd plaintiff was in possession of the house, he would not have been in a position to entrust the same to Govinda Pai as required by him. In 1971 1st defendant sent Ext. A18 letter to 2nd plaintiff informing him that the top portion of a coconut tree on the southern side had fallen down. He sought permission for cutting that tree. 2nd plaintiff was also informed that the lineman had consented to give electric connection from the main road. In case the house does not belong to 2nd plaintiff one fails to understand as to why permission to cut a coconut tree was sought by the 1st defendant and how 2nd plaintiff was concerned with the electrification and giving electric connection. Defendants have a contention that the tree mentioned is a tree standing in the temple compound. Even then there is no necessity of obtaining the permission of the 2nd plaintiff who has not been proved to be in any way connected with the management of the temple property. Ext. A18 letter would have therefore been sent with respect to the coconut tree standing in the A schedule property.

19. 2nd defendant had sent a postcard to 2nd plaintiff on 5-1-1970 as per Ext. A19. He was informed about the request of some persons to remove clusters of bamboos on the western side. The intending purchaser had offered Rs. 22/-. In

all these letters sent prior to the commencement of the dispute between the parties there is sufficient indication to show that the plaint A schedule property continued in the possession of the 2nd plaintiff and the lean-to attached to the building was also in his possession. The lease of the property together with the building set up by the defendants does not therefore appear to be true.

20. Reliance was placed by defendants on house tax receipts and revenue receipts. House tax is seen paid by Venkiteswara Kammath on behalf of Anantha Kammath as well as 2nd plaintiff. Exts. A 16, A 17 and B 32 are some of those receipts. These receipts are attempted to be explained by plaintiffs by pointing out that Anantha Kamath had been in possession of the building and after his death Venkitaswara Kammath also had been in possession. The original assessment admittedly stood in the name of Anandha Kammath. But subsequently the house tax was assessed in the name of 2nd plaintiff. Claim for tax was made by the Panchayat against the 2nd plaintiff by way of Ext. A16. The payment of house tax by- Venkiteswara Kammath by itself will not confer tenancy right on him or his successors so long as he has not been proved to be a tenant of the property. Even a building tenant can pay the tax of the building and such payment by itself will not enable him to claim tenancy rights. Similar is the case with the revenue payments. Some of the revenue receipts related to Sy. No 482/9 and are made on behalf of Venkiteswara Kammath of Cochin who admittedly is in possession of the adjoining land. Some payments are seen made by Venkiteswara Kammath on behalf of 2nd plaintiff. Those payments are seen made in 1965 and 3967 vide Exts. A25 and A19. Admittedly defendants and Venkiteswara Kammath were in possession of the building. 2nd plaintiff is permanently residing at Cochin, several kilometers away from Kodungallur where the plaint property is situated. Some of the receipts are seen issued for ground rent. The payment itself is made on behalf of Gopala Kammath who admittedly was the registered holder. These receipts are therefore of no assistance to the defendants either to claim possession over the property or tenancy right.

21. On a careful consideration of the entire evidence, both oral and documentary, the only conclusion possible is that plaint A schedule property was possessed by Gopala Kammath till his death and such possession was continued by his sons who transferred that possession to the 1st plaintiff. The building described in the B Schedule excluding the lean-to was entrusted to the defendants or their predecessor-in-interest Venkiteswara Kammath on monthly rent. They were in possession only as building tenants and not as tenants having fixity of tenure. The Land Tribunal was therefore right in rejecting the case of the defendants and in denying them leasehold rights. The appellate authority has committed a grave error in "reversing that decision and in finding defendants to be tenants. That finding is hereby set aside. It is found that defendants are only tenants of the B schedule building excluding the lean-to. The 3rd defendant herself had admitted that the lean-to is now in the possession of 2nd plaintiff. How he has come into possession has not been explained by her. He would have retained possession of that portion while entrusting the remaining portion on monthly rent. Having

found that defendants are not tenants entitled to fixity of tenure, the decree for recovery of possession passed by the court below has only to be sustained.

22. That defendants have put up a shop building in a portion of the property is not disputed, they are not cultivating tenants, nor are they entitled to possess the property. The construction described in the plaint C Schedule has therefore to be removed by the defendants and the plaintiffs are entitled to recover possession of that portion also.

23. Sri Sivasankara Panicker, learned counsel for the defendants, has raised a plea that the final order is that of the appellate authority and that it covers the matter. According to him that order operates as ouster of the jurisdiction of the civil court. Ordinarily it may be so subject to the power of this court under sec. 103 of the Land Reforms Act. But here is a case where the two proceedings, one on a reference from the civil court under Sec. 125(3) of the Act and the other on a separate application for purchase by the tenant under sec. 72 of the Act, were heard jointly and disposed of by a common order. The defendants preferred an appeal against the decision of the civil court which accepted the finding of the Land Tribunal. Sec. 125 (6) of the Act enables them to question the finding of the Land Tribunal as if it is a finding of the civil court. Defendants have chosen to challenge that finding in the appeal filed by them. Plaintiffs question the legality of the appellate authority's order in the revision filed by them. Under such circumstances the question arises as to whether the appellate authority's order would operate as an ouster of jurisdiction of the civil court.

24. When once a reference has been made under sec. 125 (3) of the Act it is the duty of the Land Tribunal under sub-sec. (4) of that section to decide the question referred to it and to return the records together with its decision to the civil court. On a finding being recorded on the question referred to it by the civil court it is beyond the powers of the Land Tribunal to entertain another application for purchase since the dispute has already been decided on the reference made by the civil court. A reference under sec. 125(3) is necessitated only in cases where a question regarding the rights of a tenant or of a kudikidappukaran arises. Such a reference has to be made only if the Land Tribunal has not rendered a decision on such question earlier. Sec. 101 (3) of the Act empowers the Land Tribunal to decide the question as to whether a person is or is not a tenant. There is a bar of jurisdiction of civil courts under sec. 125 (1) in respect of any matter which is by or under the Act required to be settled, decided or dealt with or to be determined by the Land Tribunal. The question whether a person is or is not a tenant is a matter to be decided by the Land Tribunal and the jurisdiction of the civil court is taken away. In short, the authority to render a decision on such a dispute is the Land Tribunal, be it on a reference under Sec. 125 (3) of the Act in a suit or other proceeding initiated after the commencement of the Land Reforms Act as amended by Act 35/1969 or on an application for purchase filed by the tenant. When the Land Tribunal considers that dispute on a reference made by the civil court, it is not open to

the Tribunal to entertain an application for purchase or to render decision thereon, the reason being that it is obligatory on the part of the Tribunal to decide the question referred to it by the civil court and the decision of the Land Tribunal on such question becomes a finding of the civil court by virtue of the deeming provision contained in sec. 125 (6) of the Act. It is to avoid conflicting decisions by civil courts and Land Tribunals on the question of tenancy or kudikidappu rights that the Legislature introduced Sec 125(3) necessitating a reference to the Land Tribunal and directing the Land Tribunal to decide the question referred to it. If decisions are rendered by the Tribunal on the reference made to it by a civil court and on a separate application presented by the tenant, that may lead to conflicting decisions since the finding of the Land Tribunal on the reference is liable to challenge before the appellate court and that rendered on the petition for purchase before the appellate authority (L. R.) Provision for reference was made to avoid such conflict.

25. In the present case the Land Tribunal heard the reference and the petition for purchase filed by the tenant jointly and they were disposed of by a common order. May be the Tribunal adopted that procedure as agreed to by the parties. But the agreement of the parties will not confer a jurisdiction on the Land Tribunal which it otherwise lacks. The decision on the question of tenancy has no doubt to be rendered by the Land Tribunal. But the civil court having made reference under sec. 125 (3) of the Act, a finding has to be rendered on the question referred by the court and the same has to be submitted to the civil court. When once the Land Tribunal proceeded to enquire into that dispute in the reference made by the civil court, the Tribunal should not have either entertained an application for purchase and if it had already entertained the same should not have proceeded to enquire the dispute in that petition. It is not open to the Tribunal to decide the dispute in the petition presented by the tenant and return the reference without answering the same in view of the mandatory provision contained in sub-sec.(4) of sec. 125. The position that emerges is that the Land Tribunal is not competent to enquire into the dispute of tenancy in a separate application filed by the tenant in case the Land Tribunal has received a reference from the civil court. The only course open to the Land Tribunal is to decide the dispute referred to it by the civil court and return the records together with its decision to that court. So long as the decision on the question of tenancy has become final, the Land Tribunal is not competent to permit the tenancy to purchase the rights of the landlord. The petition for purchase filed by the tenant in such circumstances is not maintainable and has only to be dismissed. That will not put an end to the rights of the tenant to invoke the aid of sec. 72 and obtain a purchase certificate. But that will depend upon the final result of the suit wherein the tenancy is disputed. If ultimately the tenant succeeds, it will be open to him to move the Tribunal for getting the rights of the landlords assigned to him and for the issue of a purchase certificate. The Land Tribunal was therefore not right in clubbing the reference and the petition filed by the defendants together and in passing a common order. That will only result in conflict of

decisions, to avoid which the legislature in all its wisdom has introduced the special provision in sec. 125(3) of the Land Reforms Act. Different remedies are available to the parties in the case of a reference to the Tribunal and on an order of the Tribunal allowing purchase under sec. 72 of the Act. The decision of the Tribunal becomes a finding of the civil court against which the aggrieved party can file an appeal. A second appeal can also be preferred in case a substantial question of law is involved. A revision against the decision of the Tribunal rendered on the reference is not sustainable. On the other hand the order for purchase on the application presented by the tenant can be challenged before the appellate authority. Any person aggrieved by any final order passed by the appellate authority can prefer a revision before the High Court under sec. 103 of the Act on the ground that the Tribunal has either decided erroneously or failed to decide any question of law. The powers of this court in appeal on the decision rendered by the civil court accepting the finding, of the Tribunal are wide whereas the powers under sec. 103 are limited. Parties should not be allowed to challenge the decision of the Tribunal in parallel proceedings, be it an appeal or a revision. Had a decision not been rendered on the reference made by the civil court, the finding of the appellate authority would have operated as *res judicata*. But that plea also is not available in the present case in view of the revision filed against the appellate authority's order. Since the appellate court has all the powers of the trial court in the matter of deciding the appeal, the entire matter is at large in the appeal preferred by the defendants. That being so, the question whether the enquiry under sec. 103 of the Act has to be limited only to any question of law which has been decided erroneously or whether the appellate authority has failed to decide any question of law does not arise. The order of the appellate authority will not therefore operate as an ouster of the jurisdiction of the civil court in this case. The question whether defendants are tenants or not has therefore, to be decided in the appeal preferred by them. On the materials available it has already been found that they are not tenants. The result is that the appellants fail and the revision petitioners succeed.

For the reasons stated above the revision petition is allowed and the order in A. A. 96/1982 of Appellate Authority (LR), Trichur is set aside. The finding of the Land Tribunal that defendants are not tenants is sustained. A. S. 198/1987 is dismissed. In view of the peculiar circumstances of the case I direct both parties to suffer their costs in the appeal and in the civil revision petition.