

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

W.A.No. 33 of 2012 () IN W.P.(C) NO.5022/2011 & RP.365/2011

AGAINST THE JUDGMENT IN W.P.(C) NO.5022/2011 DATED 17.02.2011 & ORDER IN R.P. NO. 365/2011 OF HIGH COURT OF KERALA DATED 12.10.2011.

APPELLANT(S)/PETITIONERS:

1. JAYASREE,
W/O SATHYARAJAN, KAILAS, PANAYAM,
YEROOR VILLAGE, PATHANAPURAM TALUK.
2. SATHYARAJAN,
S/O KARUNAKARAN, KAILAS, PANAYAM,
YEROOR VILLAGE, PATHANAPURAM TALUK.
3. THULASEEDHARAN,
S/O KESAVAN, SREE BHAVAN, PANAYAM
YEROOR VILLAGE, PATHANAPURAM TALUK.
4. SATHYASOBHANA
W/O THULASEEDHARAN, SREE BHAVAN, PANAYAM,
YEROOR VILLAGE, PATHANAPURAM TALUK.
5. BABU RAJAN,
S/O SREEDHARAN, VARSHA BHAVAN, PANAYAM,
YEROOR VILLAGE, PATHANAPURAM TALUK.
6. SHEELA,
W/O SOMARAJAN, NISHA BHAVAN, PANAYAM,
YEROOR VILLAGE, PATHANAPURAM TALUK.

BY ADVS. SRI.S.SREEKUMAR (SR.)
SRI.MANOJ RAMASWAMY

P.T.O.

RESPONDENT(S)/PETITIONER:

1. RAJAN, AGED 60 YEARS,
S/O KESAVAN, RAJAMALLY, N.T.V. NAGAR
KADAPPAKKADA, KOLLAM. PIN 673 304.
2. THE VILLAGE OFFICER,
YEROOR VILLAGE OFFICE, YEROOR, ANCHAL
KOLLAM 673 307.
3. THASILDAR,
O/O THASHILDAR, PATHANAPURAM TALUK, KOLLAM-673301.
4. THE REVENUE DIVISIONAL OFFICER,
KOLLAM-673 301.

R1 BY ADVS. SMT.S.KARTHIKA

SRI.DILEEP P.PILLAI

R2 TO R4 BY SENIOR GOVERNMENT PLEADER, SRI. SHYSON P. MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-08-2015, THE COURT
ON 12.08.2015 DELIVERED THE FOLLOWING:

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.No.33 of 2012

Dated this the 12th day of August, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is preferred by the Petitioners in R.P.No.365 of 2011, which was filed seeking review of the judgment in W.P.(C) No.5022 of 2011 dated 17.02.2011. By the judgment in the writ petition, to which the appellants were not parties, the learned Single Judge directed the 2nd Respondent herein to effect change in the registry and accept tax from the legal heirs of the deceased original owner and it was further directed that steps shall be finalized within one week from the date of receipt of a copy of the judgment. Thereafter, the appellants herein approached the learned Single Judge by filing R.P.No.365 of 2011, seeking to review the judgment passed in the writ petition, which was dismissed holding that no interference is called for in the judgment. At the same time, it was observed that it would be open to the parties to approach the concerned Civil Court to establish their

rights over the properties and that it will not be fettered consequent on the transfer of registry so effected by the appropriate statutory authority. It is aggrieved by the judgment and the order passed in the Review Petition, the appellants have filed this appeal.

2. Brief facts for the disposal of the appeal are as follows:

3. The 1st Respondent's father was the owner of some landed property in Yeroor Village and consequent on the death of the title holder, the 1st Respondent herein along with his brother and sisters approached the 2nd Respondent herein for effecting mutation and payment of land revenue tax. The 2nd Respondent denied the request on the ground that the property is presently in the possession of some others.

4. It was the further case of the 1st Respondent that his father was regularly paying tax till his death and during his life time no other person had claimed right over the property. Thus being apprehensive of the attitude of the 2nd Respondent, they preferred a complaint before the 3rd Respondent Tahsildar, Pathanapuram Taluk, Kollam, who did not take any action pursuant to the complaint. In such circumstances, he

was compelled to approach the 4th Respondent, Revenue Divisional Officer, Kollam. Thereupon, the 4th Respondent called for reports from 2nd and 3rd Respondents and after ascertaining that the 1st Respondent and three others were the only legal heirs of deceased Kesavan, directed the 2nd Respondent to take necessary action on the representation made by the 1st Respondent and others as per Ext.P1 order dated 07.05.2010.

5. It was the further contention of the 1st Respondent that in spite of the direction issued by the 4th Respondent, the 2nd Respondent had not cared to take any action to effect transfer of registry, but, on the other hand, the 2nd Respondent had issued Ext.P2 notice dated 25.11.2010, inviting objections against effecting mutation and receiving tax from the 1st Respondent and others. It was under that circumstances, the 1st Respondent had to approach this Court by filing the writ petition.

6. The learned Single Judge, after appreciating the facts and circumstances of the case, directed the 2nd Respondent to effect transfer of registry and to accept tax from the legal heirs of the deceased original owner. It was

also found by the learned Single Judge that the property had devolved upon the 1st Respondent and other legal heirs on the demise of their father and therefore, the application had to be considered enabling the parties concerned to remit the basic tax as per Ext.P1 order passed by the 4th Respondent.

7. Be that as it may, the appellants herein filed the review petition and contended that the judgment in the writ petition passed by the learned Single Judge directing the 2nd Respondent to effect mutation and to accept tax from the legal heirs of the deceased original owner caused irreparable loss and hardships to the review petitioners, who, allegedly, are enjoying the property for the last several years by effecting necessary improvements in the property. It was also contended that the 1st Respondent had approached this Court without impleading the review petitioners and other similarly situated persons who were enjoying the property and thus obtained the order to have the mutation effected. It was further contended that the proceedings pursued by the 1st Respondent were contrary to the rules and provisions of law which has virtually defeated the right of the review petitioners to enjoy the property effectively.

8. The learned Single Judge while considering the review petition on the basis of the submissions made by the 1st Respondent has found that pursuant to the direction contained in the impugned judgment, the respondents 2 and 3 have complied with the directions, effected necessary changes in the revenue records, which enabled the 1st Respondent and others to remit the basic tax. The learned Single Judge, after appreciating the facts and circumstances of the case and the law involved in the subject, dismissed the review petition holding that the rival contentions as to the title over the property or such other rights of the parties concerned were not gone into and further made clear that the judgment impugned or further steps pursued by the revenue authorities would not affect the rights and liberties of the parties over the properties concerned. Thus, the civil rights of the parties were left open to enable the parties to establish their ownership, title, possession and such rights and liberties over the properties. This is the background in which this appeal is filed.

9. Heard the learned Senior Counsel appearing for the appellants, learned counsel for the 1st Respondent and the learned Senior Government Pleader appearing for the official

respondents.

10. We have gone through the impugned judgment and the order in the review petition passed by the learned Single Judge. Perused the pleadings and the documents produced.

11. The learned Senior Counsel for the appellants contended that under the Transfer of Registry Rules, 1966, (for short, 'the Rules') a procedure is prescribed by which the Tahsildar is the authority to consider and take decisions on applications filed under the said Rules and necessarily the Tahsildar had to conduct the enquiries prescribed thereunder and orders passed thereon. It was further contended that if and when such an order is passed, the appellants are left with remedy prescribed under Rule 18 of the Rules. So also, it was contended that the 1st Respondent has suppressed the filing of Annexure-A objection filed by them pursuant to Ext.P2 notice issued by the 2nd Respondent, by which they have claimed their rights over the properties, the transfer of which was sought by the 1st Respondent and the pendency of the civil suit. It is his complaint that in view of the judgment of the learned Single Judge to transfer the registry in favour of the 1st Respondent and accept tax, these remedies are lost.

12. It was also contended by the learned Senior Counsel that as per Annexure-B order of the 2nd Respondent dated 16.12.2009, it was found that the appellants were in possession of the property for the last several years and therefore the 1st Respondent was not entitled to get the registry transferred in favour of the legal heirs of late Kesavan. He has also pressed into service Annexure-C report of the Village Officer dated 12.01.2010 and also the report of the State Public Information Officer dated 19.02.2010 contained under Annexures 'C' and 'D'. Thus, the learned Senior Counsel contended that taking into account all these circumstances, the learned Single Judge should not have passed the judgment impugned and ought to have allowed the review petition.

13. So also, it was contended by the learned Senior Counsel that Note-(ii) to Rule 10 of the Rules enable the appellants to submit objection to an application submitted under the Rules seeking transfer of registry. For a proper evaluation of the said rule, we think it is only appropriate to extract the same:

"10. Uncontested cases may be of two kinds--

(1) those which can be disposed of without further enquiry.

(2) those in which a decision cannot be taken without conducting a further enquiry by the Deputy Tahsildar or Tahsildar.

Note. x x x x

Note.--(ii) The cases coming under the second category are transfers due to inheritance acquisition of title by adverse possession etc. for which the parties might have applied under Rule 4. Most of such cases are usually uncontested but in all such cases notices should be issued to the parties interested, if any, inviting objections, to the transfer of registry. The objection should be preferred within 15 days of the service of the notice. Copies of the notice shall also be published on the Notice Board of the concerned Village, Panchayat and Taluk Offices. Such cases shall also be disposed of by the Deputy Tahsildar on merits, after giving the parties concerned an opportunity of being heard. A Revenue Inspector after making personal enquiry in the village where the land situated may dispose of such of the petitions, presented to him and also such of the cases of transfer ascertained by him as do not involve the formation of new sub-divisions and about which there is no dispute."

14. On the other hand, learned counsel for the 1st Respondent has contended that the appellants are only the legal heirs of the supervisor of the property ('Karyasthan') and

their father was entrusted to look after the property and carry on the agricultural activities as instructed by their father late Kesavan. The learned counsel thus contended that the appellants who are strangers were not entitled to object to the transfer of registry and there is no provision under the Rules enabling the appellants to object to an application filed by the legal heirs who have succeeded to the property by inheritance. She has also brought to our attention Rule 3(c) and contended that whenever a pattadar dies that fact was to be reported to the Tahasildar with the names of the legal heirs so far as can be ascertained by the Village Officer and the procedure prescribed thereunder is to be followed. The 2nd Respondent having not done so, the legal heirs of the owner are entitled to file an application under Rule 4 of the Rules and it was under that circumstances, they had filed the application, which ought to have been considered as per the procedure contemplated under the provisions of Transfer of Registry Rules. In order to counter the contention of the learned Senior Counsel for the appellants regarding the arguments advanced by him under Note-(ii) of Rule 10 cited *supra*, the learned counsel contended that by virtue of Note-(ii), the appellants are entitled to make

the application only if they succeed in acquisition of title by adverse possession.

15. Having due regard to the facts of the case and considering the rival submissions advanced by the learned counsel, we are of the considered opinion that so far as the right of the legal heirs of the pattadar is concerned, the competent authority after making due enquiries as contemplated under Rules 4 to 14 shall take a decision in accordance with the rules prescribed thereunder. The learned Senior Counsel relied on Note-(ii) of Rule 10 and canvassed the proposition that since they have filed suits before the Court for declaration of their rights perfected on the basis of alleged adverse possession and therefore, the competent authority was duty bound to hear the appellants and having not done so, the procedure prescribed under the Transfer of Registry Rules is completely violated. The learned Senior Counsel also contended that when modalities and procedures are prescribed under the Rule, the authority competent was bound to follow the same and it is also a well settled proposition.

16. Having appreciated the rules under Transfer of Registry Rules, we are of the considered opinion that the 1st

Respondent and other legal heirs of late Kesavan were entitled to file application seeking transfer of registry under Rule 4 of the Rules and as provided in the succeeding Rules, and the competent authority was entitled to pass an order transferring registry in favour of the 1st Respondent and other legal heirs. So far as Note-(ii) of Rule 10 is concerned, the appellants were not accrued with any right to claim under the same because Note-(ii) enable the appellants to apply for transfer of registry only after acquisition of title by adverse possession in a properly constituted civil suit. Even according to the appellants, suits are pending before the Civil Court, where declaration of title on the basis of adverse possession against the 1st Respondent and other legal heirs of late Kesavan is sought. So also, the learned counsel for the 1st Respondent has brought to our notice Rule 16 of the Rules by which any decision on the basis of summary enquiry under the Transfer of Registry Rules, was only an arrangement for fiscal purposes and does not affect the legal rights of any person in respect of the lands covered by the decision in transfer of registry cases and further that the question of legal rights was always subject to adjudication by civil Courts and pattas will be revised from

time to time in accordance with judicial decisions.

17. In this regard, the Hon'ble Apex Court had occasion to consider the consequences of transfer of registry under the rules vis-a-vis the civil right claimed by other persons in the judgments reported in '**Jattu Ram v. Hakam Singh and Others**' [(1993) 4 SCC 403], '**Suraj Bhan and Others v. Financial Commissioner and Others**' [(2007) 6 SCC 186], '**Gurunath Manohar Pavaskar and Others v. Nagesh Siddappa Navalgund and Others**' [(2007) 13 SCC 565] and '**State of Andhra Pradesh and Others v. Star Bone Mill and Fertilizer Company**' [(2013) 9 SCC 319] and held that a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act.

18. So also, one among us (Antony Dominic, J.) in '**Kuriakose Elias Trust for Communication and Development v. Principal Secretary, Department of Revenue and Others**' [2009 (2) KHC 602] held that in view of Rule 16 of the Rules, what is involved is a summary enquiry and a decision thereon and it is only an arrangement for fiscal

purposes and would not affect the legal rights of any persons in respect of the land covered by the decision in Transfer of Registry cases. Again in '**Thulasibhai v. State of Kerala**' [2010 (4) KLT 215] in paragraph 6 it was held as follows:

"6. However, even if mutation is effected in pursuance to the provisions of Transfer of Registry Rules, such mutation can have no impact either on the proceedings initiated by the Government nor will it improve the title of the petitioner over the property in question."

19. So also, we have come across a Division Bench judgment of this Court in '**Abdul Majeed v. Shareefa**' [2014 (2) KLT 265], wherein the Transfer of Registry vis-a-vis the commercial transactions and civil suits were considered. There, the Division Bench after evaluating the facts and circumstances involved in the case including fabrication, forgery, coercion etc. etc. and held in the facts of the case, transfer of registry may not be an innocent transaction and if the registry is transferred, ultimately, it may affect the case pending before the Civil Court. The judgment of the Division Bench referred *supra* was rendered by taking into account the peculiar facts and circumstances and high level of corruption suspected in those cases. Here, in this case, transfer of

registry was sought consequent to inheritance of the property. Moreover, we are bound to follow the judgments of the Hon'ble Apex Court referred *supra* which are governing the field with regard to the transfer of registry vis-a-vis the civil rights of the parties and which held that the pendency of civil suit or any other proceedings will not disable granting transfer of registry.

20. Therefore, we are of the considered opinion that the learned Single Judge was right in issuing the directions contained in the impugned judgment and we do not find any illegality or other legal infirmities in the judgment impugned. Further the order dismissing the review petition also did not suffer any infirmity or other legal disabilities warranting our interference in this appeal.

Appeal fails and accordingly, it is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

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P.S. to Judge

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