IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No.854 of 2012 (F)

PETITIONER:

VIMALA, W/O.CHEKU @ KUNJIMAN,AGED 69 YEARS,
RESIDING AT PUTHANKALAM,KARIMBA VILLAGE,
MANNARKKAD,PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SRI.R.MANIKANTAN
SMT.P.G.BABITHA

RESPONDENTS:
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1. THE THASILDAR,TALUK OFFICE,MANNARKKAD-678101.

2. THE VILLAGE OFFICER,KARIMBA VILLAGE,
MANNARKKAD TALUK,PALAKKAD DISTRICT-678101.

3. CHEKU @ KUNJIMAN,S/O.VELU,KARIMBA VILLAGE,
PRESENTLY RESIDING AT MAMBATTUMOOLA,
POOKKOOTTUMPADAM,MALAPPURAM DISTRICT-676505.

R1 & R2 BY GOVT. PLEADER SRI.RAFEEK V.K
R3 BY ADV.SRI.RAJESH SIVARAMANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

pk

WP(C).No.854 of 2012 (F)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF SETTLEMENT DEED NO.7913/09 OF S.R.O,MANNARKAD.

EXT.P2:TRUE COPY OF BASIC TAX RECEIPT DATED 8.1.2010.

EXT.P3:TRUE COPY OF BASIC TAX RECEIPT DATED 24.8.2010.

EXT.P4:TRUE COPY OF POSSESSION CERTIFICATE DATED 22.8.2011.

EXT.P5:TRUE COPY OF REPRESENTATION DATED 17.11.2011 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P6:TRUE COPY OF THE POSTAL ACKNOWLEDGMENT CARD.

RESPONDENT'S EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 854 of 2012

Dated this the 12th day of March, 2015

J U D G M E N T

Aggrieved by the delay on the part of the 1st respondent in considering Ext.P5 representation submitted by the petitioner before the 1st respondent for a direction to the 2nd respondent to issue possession certificate to her, the petitioner has come up before this Court.

2. The petitioner alleges that as per Ext.P1 gift deed, some property devolved upon her. Ext.P1 was executed by the 3rd respondent, who is none other than the petitioner's husband. The petitioner remitted land tax and she was issued with a possession certificate. When she again approached the 2nd respondent for a possession certificate, it was refused on the ground that Ext.P1 was revoked by the 3rd respondent. The petitioner alleges that such a revocation is having no legal effect. Therefore, the petitioner submitted Ext.P5 request before the 1st respondent seeking for a direction to the 2nd respondent to

issue possession certificate to the petitioner, which also did not evoke any positive response. It is with this background, the petitioner has come up before this Court.

3. Though notice was served on the 3rd respondent and he entered appearance, today, the learned counsel for the 3rd respondent submitted that he has no instruction from the 3rd respondent.

4. In the counter affidavit filed by the State, it was contended that Section 126 of the Transfer of Property Act provides for suspension/revocation of a Settlement Deed; and as such, the mutation affected in favour of the petitioner and the issuance of possession certificate were not proper and correct. According to them, the mutation cannot be effected on the basis of a settlement deed since there is a provision for cacellation/revocation of the same. It was also contended that the revenue officials are not in a position to accept basic tax from the petitioner and the petitioner is not entitled to get a possession certificate in respect of the property in question.

5. Arguments have been heard.

6. There is no dispute regarding the execution of Ext.P1. The stand taken by the respondent State is that they are not in a position to issue possession certificate as the gift deed has been revoked by the 3rd respondent. Section 126 of the Transfer of Property Act, 1882, mandates that where, after the acceptance of the gift, if the donor wants to revoke the same, the remedy open to the donor is to approach the civil court for the same. There is nothing on record to show that a suit is filed by the 3rd respondent in this regard.

7. The question regarding the validity of revocation of a gift deed was considered by this Court in **Gopalakrishnan** v. **Rajamma** [2006 (4) KLT 377], wherein this Court observed that a gift is a gratuitous transfer, which cannot be treated as an agreement for want of mutuality. Therefore, even for revoking a gift, the provisions in the Contract Act pertaining to rescission of contracts will have to be resorted to. There cannot be a rescission of a contract by a unilateral act of repudiation or cancellation without the intervention of the court.

Thus, in a case, where, after the acceptance of the gift, if the donor wants to revoke the same by resorting to Section 126 of the Transfer of Property Act, the donor will have to institute a suit for the same.

8. Viewed in that profile, even if the revocation of Ext.P1 was effected by the 3rd respondent, the same would not stand in the way of State in accepting tax and in issuing possession certificate to the petitioner, in whose favour the property devolved upon as per Ext.P1 gift deed. Therefore, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed.

The 2nd respondent is directed to issue possession certificate to the petitioner in respect of the property covered by Ext.P1. This exercise shall be completed within a period of two weeks from the date of receipt of a copy of this judgment.

Sd/-

A.V. RAMAKRISHNA PILLAI

JUDGE

bka/-