

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 216 of 2015 (B)

PETITIONER(S):

- 1. SREE POORNATHRAYEESA VRIDHASADANAM
CHARITABLE TRUST, REG. NO. 525/IV/2013,
NEAR OLD BUS STAND, TRIPUNITHURA P.O.,
PIN - 682 301, NADAMA VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING TRUSTEE
MR.T.D.GOPALAKRISHNAN.**
- 2. T.D.GOPALAKRISHNAN, S/O. DAINYAN, AGED 45 YEARS,
RESIDING AT E.W.S 520, GANDHI NAGAR,
KOCHI - 20, MANAGING TRUSTEE,
SREE POORNATHRAYEESA VRIDHASADANAM
CHARITABLE TRUST, NEAR OLD BUS STAND,
THRIPUNITHURA, PIN - 682 301.**

**BY ADVS.SRI.NOBLE MATHEW
SRI.JESTIN MATHEW**

RESPONDENT(S):

- 1. THE VILLAGE OFFICER,
MULAKKULAM VILLAGE, VAIKOM - 686 641.**
- 2. THE TAHSILDAR,
TALUK OFFICE, VAIKOM - 686 141.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - TRUE COPY OF THE LEAFLET EVIDENCING THE CHARITABLE ACTIVITIES BEING PROVIDED BY THE PETITIONERS.
- P2 - PHOTOSTAT COPY OF THE DEED OF VILL EXECUTED BY S MT. SUMATI AMMA.
- P3 - PHOTOSTAT COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER MULAKKULAM VILLAGE EVIDENCING THE OWNERSHIP AND POSSESSION OF THE WILL SCHEDULED PROPERTY BY SMT. SUMATI AMMA.
- P4 - PHOTOSTAT COPY OF THE AFFIDAVIT SWORN IN BY THE 2ND PETITIONER ON 23.10.2014 EVIDENCING THE FILING OF APPLICATION BEFORE HIM FOR MAKING THE POKUVARAVU IN FAVOUR OF THE FIRST PETITIONER.
- P5 - PHOTOSTAT COPY OF THE DEATH CERTIFICATE ISSUED BY THE CORPORATION OF COCHIN DATED 08.10.2014.
- P6 - PHOTOSTAT COPY OF THE RECEIPT ISSUED BY THE FIRST RESPONDENT TOWARDS REMITTANCE FOR AN AMOUNT OF RS. 150/- AS POKUVARAVU FEES BY THE SECOND PETITIONER DATED 20.12.2014.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.216 of 2015

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Dated this the 20th day of January, 2015

JUDGMENT

The 1st petitioner is an organisation which is a charitable trust registered under the Charitable and Religious Trust Act, 1920 and the 2nd petitioner is stated as the Managing trustee of the 1st petitioner. It is stated that the trust has been formed to look after senior citizens, aged above sixty years, who are having no other person to take care of and the old age home has been started providing accommodation, food, clothing, cultural and social unfoldment facilitating to the inhabitants medical care.

2. In the course of such operation, a person by name Sumati Amma was also accommodated therein and the petitioner was taking care of the said person as well, to her satisfaction. While she was resident of the old age home, she executed Ext.P2 'Will' on 26.08.2014, whereby the properties having an extent of 25.49 Ares of land comprised in Sy.No/132/3 and 131/3 respectively of Mulakkulam village at Vaikom Taluk, came to be executed in the name of the 1st petitioner-trust. The testator of

the 'Will' was enjoying the property based on a clear title and exclusive possession, also satisfying tax payable under the Kerala Land Taxation Act by way of Ext.P3. The executor of the will took her last breath on 29.09.2014, as evident from Ext.P5 Death Certificate issued by the Corporation of Cochin dated 8.10.2014. By virtue of this, the Ext.P2 'Will' has come into operation, whereby the property came into the hands of the 1st petitioner trust. It was accordingly, that the revenue authorities were contacted by filing necessary application to effect the change in registry in terms of the Transfer of Registry Rules and to accept the tax from the 1st petitioner. The requisite fee in this regard was also satisfied as per Ext.P6. In spite of satisfying all the requirements under the relevant provisions of law, the request made by the petitioner is still to be acted upon and hence the writ petition.

3. Heard the learned Government Pleader as well. He points out that, a complaint was raised on some strangers stating that they are having some rights and interests over the property and they sought for 'three weeks' time to produce the relevant documents. That period is obviously over for the reason that the

petitioner satisfied the requisite fees as per Ext.P6 as early as on 20.12.2014. Even otherwise, the question to be considered is whether a stranger is having any right to dispute the transfer of Registry in terms of Transfer of Registry Rules and also whether the revenue authorities are entitled to dispute the title, once the document is duly registered through the concerned authority.

4. After going through the pleadings and prayers, this court finds that, as a matter of fact, Ext.P2 is a registered Will having registered in the Sub Register Office, Tripunithura dated 26.08.2014. It is also stated in paragraph 3 that the petitioner has produced all relevant documents including Encumbrance Certificate issued by the concerned Sub Registry along with the site plan of the property prepared by the Retd.Deputy Tahsildar and Surveyor, Peruva, Vaikom Taluk for effecting the mutation.

5. The learned Government Pleader points out that copy of the encumbrance certificate has not been produced along with writ petition. Be that as it may, if the original of the title deed is produced along with the encumbrance free certificate and also an affidavit as to the flow of title, to the effect that it was the 'last Will', the revenue authorities are bound to effect the registration

in terms of the Transfer of Registry Rules.

6. Ext.P4 dated 23.10.2014 is the affidavit sworn by the 2nd petitioner so as to cater to the need as aforesaid. If at all any property is having any objection with regard to the genuineness of the Will, it is always open for such party to approach the competent Civil court and obtain necessary reliefs by raising specific pleadings that letting in evidence. Since no such instances have been brought to the notice of the respondents, there is no justification in refusing to accede to the request made by the petitioner by effecting mutation to the property.

7. In the above circumstances, there will be a direction to the respondent to effect mutation of the property in terms of the Transfer of Registry Rules, once the original of Ext.P2, title deed, affidavit and encumbrance certificate are produced. The proceedings as above shall be finalised after hearing at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment.

8. It is made clear that the change in Registry causing the mutation to be effected will not by itself confer the title or will divest the title from anybody else, in view of the law declared by

the Court as per the decision rendered in **Thulasibhai C.C v. State of Kerala** (2010(3) KLT 215 and 2010(4) KHC 142).

The writ petition is disposed of.

**P.R.RAMACHANDRA MENON,
JUDGE**

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