

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 924 of 2015 (M)

PETITIONER(S):

- 1. SUKUMARAN N.,
S/O.NAGAN ASARY, KIZHAKKEMANDAPAMKUTAM
KUZHALMANNAM P.O., PALAKKAD DISTRICT.**
- 2. ARUMUGHAN K.V.
S/O.VASU, PADINJARE VEEDU, KINASSERY PO,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENT(S):

**THE SUB REGISTRAR,
THE SUB REGISTRY OFFICE, KODUVAYUR
KODUVAYUR PO, PALAKKAD DISTRICT-678501.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

WP(C).No. 924 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE WILL DATED 30-3-2002 EXECUTED BY LATE VESU
 IN FAVOUR OF THE PETITIONER NO.1**
- EXT.P2 - TRUE COPY OF THE DEATH CERTIFICATE ISSUED IN RESPECT OF
 VESU**
- EXT.P3 - TRUE COPY OF THE TAX RECEIPT DATED 27-11-2013 ISSUED TO THE
 PETITIONER NO.1**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.924 of 2015

Dated this the 21st day of January, 2015

JUDGMENT

The petitioners have approached this Court with the following prayers:

- "i) Call for records relating to Exhibits P1 to P3;*
- ii) Issue a writ of mandamus or other appropriate writ or order or direction, directing the respondent to register the sale deed or other deeds, in respect of the properties covered in Exts.P1 & P2 in favour of the petitioner No.2 or anybody else by the petitioner No.1 without having insisted to probate Ext.P1 will;*
- iii) Issue a writ of mandamus or other appropriate writ or order or direction, declaring that the stand taken by the respondent that the assignment and other deeds in respect of the properties covered in Ext.P1 cannot be registered, unless Ext.P1 will is probated, is illegal and unsustainable in law;*
- and*
- iv) Pass such other and further orders as are deemed fit and necessary in the interest of justice."*

2. The property originally belonged to the husband of the testator, who took his last breath on 20.08.1983. As there was no children and no other legal heir than the widow, the entire property came to be vested with her. The widow of the original owner, by name 'Vesu' expired on 26.08.2002 as evident from Ext.P2 Death Certificate. By virtue of the Will executed by the

deceased Vesu, the property devolved upon the 1st petitioner herein, who started enjoying the same with absolute ownership, exclusive possession and clear marketable title deed. Pursuant to the steps taken, mutation was effected, making necessary entries in the Revenue Records under the Transfer of Registry Rules and tax was being satisfied by the 1st petitioner as borne by Ext.P3. But, when the 1st petitioner wanted to convey the property to the 2nd petitioner and the relevant deed executed in this regard was taken to the respondent, it was refused to be registered, stating that Ext.P1 Will was to be probated. This made the petitioners to approach this Court by filing this writ petition.

3. Heard the learned Government Pleader as well.

4. No long or binding precedent is brought to the notice of this Court from the part of the respondent to the effect that the 'Will' requires to be probated. On the other hand, it is settled law that the Will does not require any such exercise and if this be the sole reason, the stand taken by the respondent is not correct or sustainable and the petitioner is entitled to succeed.

In the above circumstances, the respondent is directed to register the conveyance sought to be effected by the 1st

petitioner in favour of the 2nd petitioner, in respect of the property covered by Exts.P1 and P3, if no other impediment is there, than the one mentioned above, subject to satisfaction of all the relevant requirements under the relevant provisions of the Registration Act/Rules.

Petitioners shall produce a copy of this judgment, along with a copy of the writ petition, before the respondent, for further steps.

The writ petition is disposed of.

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

sp