

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 4746 of 2013 (P)

PETITIONER:

**NEVIN RAJU
S/O.DR.U.RAJU, 'RAJASHEEL', PAYYAKKODE
OYOOR, P.O.OYOOR, PIN-691510
KOTTARAKARA TALUK.**

BY ADV. SRI.A.A.ABUL HASSAN

RESPONDENT(S):

- 1. S. BASHEER
S/O.SHAHUL HAMEED, 'HARITHA', . ROADUVILA
P.O.CHERIYAVELINALLOOR, PIN-691516
VELINALLOOR VILLAGE, KOTTARAKARA TALUK.**
- 2. SOFIYA BASHEER
ASSISTANT MANAGER
KERALA STATE FINANCIAL ENTERPRISES (KSFE)
KOLLANAZHKATH HOUSE, ROADUVILA, P.O.CHERIYAVELINALLOOR
PIN-691516, KOTTARAKARA TALUK.**
- 3. THE DISTRICT COLLECTOR
CIVIL STATION, KOLLAM, PIN-691013.**
- 4. VILLAGE OFFICER
VELINALLOOR VILLAGE, OYOOR, PIN-691510
KOTTARAKARA TALUK.**
- 5. THE TAHSILDAR
TALUK OFFICE, KOTTARAKKARA, PIN-691506.**
- 6. REVENUE DIVISIONAL OFFICER, CIVIL STATION, KOLLAM
PIN-691013.**

**R1 BY SRI.SYAM J SAM
BY GOVERNMENT PLEADER SRI. REFEEK V.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.1274/2012 OF SUB REGISTRAR'S OFFICE, OYOOR DTD. 23-7-2012 EXECUTED BY R2 IN FAVOUR OF THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE SETTLEMENT DEED NO.1160/199 IN FAVOUR OF R2.

EXHIBIT P3: TRUE COPY OF THE PLAINT IN OS 437/2012 FILED BY R1 BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P4: TRUE COPY OF THE IA 2230/2012 IN OS 437/2012 ALONG WITH THE SUPPORTING AFFIDAVIT FILED BY THE R1 BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P5: TRUE COPY OF THE SAID OBJECTION/COUNTER AFFIDAVIT IN IA 2230/2012 IN OS 437/2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P6: TRUE COPY OF THE PLAINT IN OS 675/2012 FILED BY R1 BEFORE THE MUSIFF COURT, KOTTARAKARA.

EXHIBIT P7: TRUE COPY OF THE IA 3751/2012 INOS 675/2012 ALONG WITH SUPPORTING AFFIDAVIT FILED BY R1 BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P8: TRUE COPY OF THE COUNTER AFFIDAVIT IN IA 3751/2012 IN OS 675/2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P9: TRUE COPY OF THE APPLICATION DATED 9-8-2012 SUBMITTED BY THE PETITIONER BEFORE THE ADDITIONAL TAHSILDAR, KOTTARAKARA.

EXHIBIT P10: TRUE COPY OF THE LETTER NO.G1-28850/12 DTD. 5.2.2013 ISSUED BY THE ADDITIONAL TAHSILDAR, KOTTARAKARA.

EXHIBIT P11: TRUE COPY OF THE PLAINT IN OS 701/2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, KOTTARAKARA.

EXHIBIT P12: TRUE COPY OF THE IA 3898/2012 IN OS NO.701/2012 AND SUPPORTING AFFIDAVIT FILED BY THE PETITIONER BEFORE THE MUSIFF COURT, KOTTARAKARA.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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W.P.(C). No. 4746 OF 2013

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Dated this the 22nd day of May, 2015

JUDGMENT

Petitioner has filed this Writ Petition as against the refusal on the part of the revenue authorities to effect mutation of his property. Petitioner purchased an item of the property as per Ext.P1 sale deed No.1274/2012 from the 2nd respondent. The sale deed was registered on 23.7.2012. The petitioner has produced Ext.P2 settlement deed executed by the mother of the 2nd respondent by which the 2nd respondent became the owner of the property which is the subject matter of Ext.P1. 2nd respondent is the wife of the 1st respondent and they are in strained relationship. Subsequent to the purchase of the property the petitioner submitted Ext.P9 application for mutation of the property before the Additional Tahsildar, Kottarakara pointing out that he requires the same for the purpose of the availing loan for construction of house. But the Additional Tahsildar, Kottarakkara as per Ext.P10 letter dated 5.2.2013 informed

that the mutation could not be effected since the 1st respondent has filed O.S.No.437/2012 before the Munsiff Court, Kottarakara against the petitioner and the 2nd respondent, wherein a temporary injunction is granted in I.A.No.2230/2012. It is further stated that the 2nd respondent has filed another O.S.No.675/2012 against the District Collector, Village Officer, Tahsildar, RDO, petitioner and 2nd respondent and during the pendency of those cases no proceedings can be initiated for mutation.

2. The petitioner is challenging this order Ext. P10 and argues that when he has got a valid title over the property, the refusal on the part of the official respondents to effect mutation on the ground of pendency of cases before the Munsiff Court, is illegal. The petitioner has produced the plaint in O.S.437/2012 filed by the 1st respondent in which the prayer is to restrain the defendants from forceful eviction. He has also produced copy of the I.A.No.2230/2012, referred to in Ext.P10 letter of the Additional Tahsildar. The prayer sought therein is for a temporary injunction restraining the defendants from

evicting the plaintiff by force and from demolishing the shop. Petitioner points out that the claim of the 1st respondent in the 1st suit was only as occupier of a shop room in the property owned by 2nd respondent, as evident from paragraph 4 of the plaint, which reads as follows:-

“The plaint schedule shop room and the property in which it situates belonged to defendant No.2 by virtue of a document executed by her parents”.

3. The petitioner had produced a copy of the counter affidavit filed by him in O.S.No.437/2012 as Ext.P5. Ext.P6 is the copy of the plaint in OS.No.675/2012 filed by the 1st defendant before the Munsiff Court, Kottarakkara for a permanent injunction against the defendants from effecting mutation of the property covered by the sale deed No.1274/2005 (Ext.P1). He has also produced copy of I.A.No.3751/2012 in which the 1st respondent prayed for an order of temporary injunction restraining defendants from effecting mutation of plaint schedule property covered by Ext.P1 sale deed. The petitioner has filed counter affidavit as against the I.A. Further the petitioner has produced

Ext.P11 plaint in O.S.No.701/2012 filed by him praying for declaration of his title to the plaint schedule property as against the defendants – respondents 1 and 2 and for injunction restraining them from committing any wastage of the property. According to the petitioner he is put in trouble in between the fight between the respondents 1 and 2 and the 2nd respondent is taking up new contentions in each case. It is also probable that he may not be able to build a house in case he is to wait for the conclusion of cases between them.

4. Sri. Abul Hassan, the learned Counsel for the petitioner, asserts that there is no impediment for effecting mutation and if at all mutation is allowed that will not in any way affect the adjudication or declaration of title; but it only enables payment of land tax. On payment of land tax, the petitioner will be able to submit application for availing land for construction of house.

5. The 1st respondent has filed counter affidavit disputing the claim of the petitioner and refuting the allegations in the plaint. According to him, the matter is

under consideration of the civil court in several original suits before the Munsiff Court, Kottarakkara.

6. 5th respondent has filed a counter affidavit admitting the sale of the property by 2nd respondent as per Ext. P1 sale deed, in favour of the petitioner. The title of the 2nd respondent on the basis of settlement deed executed by mother of 2nd respondent was also mentioned. On receipt of petitioner's application, report was called for from Village Office and the parties were heard. When it was found that OS No. 437/2012, in which an order of injunction was passed against the forceful eviction of 1st respondent from the property, and OS No.675/2012, both filed by the 1st respondent, were pending before the Munsiff Court, Kottarakkara, they rejected the application for mutation.

7. I heard the learned Counsel appearing on either side. Relying on the judgments in Tulasibhai Vs State of Kerala: [2010(4) KLT 215] , Sudan Vs State of Kerala [2013 (4) KLT 563], and Surney Vs Inder Kaur: [AIR 1996 SC 2823], the learned counsel for the petitioner seeks a direction for effecting mutation, as the pendency of civil

suits cannot be a ground for refusing mutation.

8. In order to decide the issue it is necessary to examine the relevant provisions contained in the Transfer of Registry Rules 1966. Rule 3 provides for the procedure for effecting the transfer of registry. Rule 3(a)(1) provides that in all cases of absolute transfer of title over a land by sale, partition, gift, agreement, etc, the parties shall record the consent for the transfer of registry of the survey numbers involved in the transfer, in form no.1, with a copy of document of the proposed transfer on its reverse side and should be presented to the registering officer. The registering officer shall immediately after registration of the document, give the application for transfer of registry with copies of the documents to the applicant, so that the applicant may move the village officer to effect the transfer of registry. Section 4 provides as follows:

“4. It is open to any party desiring transfer of registry in cases without sub-division or in any case arising out of succession, which is uncontested, to apply in writing in Form 1A to the Village Officer with attested copies of relevant documents. All other documents shall

be in Form no.1A to the Tahsildar in Form 1A with attested copies of relevant documents. “

As per Rule 5 the application received from sub registry office under Rule 3 (a) (viii) shall be registered in form VI (C) and village officer shall effect transfer of registry within 15 days. In case transfer of registry cannot be effected, the village officer shall communicate the same to the parties within one month. Rules 7 provides for the procedure to be followed on receipt of applications for transfer of registry. As per Rule 8, the village officer has to prepare a statement or report under Rule 7 to the Thahsildar within 15 days of receipt of the application from the party.

Rule 9 reads as follows:

“9. The cases received in the Taluk Office with the report of the village officer shall be classified and that the according the following instructions.

- (a) uncontested cases
- (b) contested cases
- (c) cases involving subdivisions

Rule 10 reads as follows:

- (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—Cases of sale and other absolute
transfer of land mentioned under rule 3
(a) and (b) will fall under the 1st category.
In such cases no enquiry is necessary and
they shall be disposed of by the Deputy
Tahsildar of the Taluk."

(Emphasis supplied)

9. In the present case the petitioner submitted application for mutation on the strength of sale deed Ext. P1. As per the Note under Rule 10, no further enquiries are required in the case, as it comes under the 1st category.

10. In this context it is necessary to have a look at the judgments cited by the learned Counsel for the petitioner.

11. In Tulasibhai Vs State of Kerala: 2010 (4) KLT 215, this court held that mutation will not improve the title of the purchaser and it will not have any effect on revenue recovery proceedings. There the property was transferred at a time when the vendor of the property was in default in repayment of the loan availed from the Central bank of India. Since the bank had initiated revenue recovery proceedings against the defaulter the revenue officials

refused to effect mutation. There it was held that even if mutation was effected in accordance with the transfer of registry rules in favour of the purchaser, the claims as against the property will remain unaffected and that there is no provision under the Transfer of Registry rules which prohibits mutation in such circumstances.

12. In the judgment *Sudan Vs State of Kerala* [2013 (4) KLT 563], this court held that pendency of civil suit can never be bar in accepting land tax unless it is specifically restrained by an order of court. The land tax was not received by the officials on account of pendency of suit. In *Vijayarajan v. Tahsildar* : [2013 (2) KLT SN P. 93], this court held that pendency of civil suit is not a bar for accepting land tax. There the suit filed by the financier bank against the holder of the land, towards the loan availed by him, was decreed, against which appeal was pending before this court. The property was attached thereafter by the Deputy Tahsildar (Revenue Recovery). The revenue officials were directed to accept the tax, making it clear that the same would be subject to the result of the appeal.

13. In *Surney Vs Inder Kaur*: [AIR 1996 SC 2823], this court considered the issue regarding title of property, consequent to the death of the owner of the land in question. One of the issues considered and found by the trial court was mutation of the property in the name of the plaintiff and Inder Kaur did not convey any title in favour of said Inder Kaur. There it was held in paragraph 7 that mutation of property in the revenue records does not create or extinguish title, nor has it any presumptive value on title . It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

14. Therefore it is evident from the above decisions as well as the relevant rules, that there cannot be any valid objection for effecting mutation. Once mutation is effected petitioner will be able to submit his application for availing housing loan from the Bank for construction of house,as he will be able to pay land tax.

15. Under the provisions contained in the Land Tax Act, a holder of land is to pay tax. Payment of land tax or mutation in favour of the petitioner will not enable the

petitioner to claim any better title and it will not in any way affect the adjudication of the disputes between the respondents in the pending civil cases, as held in the judgments supra. Going by the provisions contained in Transfer of Registry Rules 1966, there is no impediment for affecting mutation. Therefore there is no meaning in compelling the petitioner to wait till the disposal of the civil suits, for effecting mutation. The right of a bonafide purchaser to enjoy his property cannot be permitted to be defeated merely because somebody files civil suit to settle scores with someone. Petitioner has submitted his application on the strength of Ext.P1 sale deed. Going by the provisions contained in Rule 3 the revenue officials should have effected the mutation immediately after the registration of the sale deed, in which event the petitioner would not have faced with such situations.

In the above circumstances I quash Ext P10. There shall be a direction to the 5th respondent to effect mutation based on Ext.P9 application of petitioner within a period of one month from the date of receipt of a copy of this

judgment. It is made clear that the mutation shall not affect the adjudication of the civil cases pending between petitioner and the respondents in any manner.

Sd/-
P.V.ASHA, JUDGE

SKV