

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 2312 of 2015 (L)

PETITIONER(S):

**FASILUDHEEN A., S/O ALIYARU KUNJU,
VELIYIL VEEDU, KILIKOLLUR, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL.

RESPONDENT(S):

- 1. THE TAHSILDAR, TALUK OFFICE,
KOLLAM-691 001.**
- 2. THE VILLAGE OFFICER,
MANGAD VILLAGE, MANGAD P.O.,
KOLLAM, PIN:691 015.**
- 3. SRI. NASARUDHEEN,
S/O. ALIYARU KUNJU, MUKULUVILA THEKKETHIL,
THATTARKONAM P.O., PEROOR, KOLLAM,
(FROM VELIYIL VEEDU, KANNIMEL CHERRY,
MANGAD VILLAGE, KOLLAM). PIN:691 005.**
- 4. SRI. SULFIKAR, S/O. ALIYARU KUNJU,
VELIYIL VEEDU, MUSALIYAR NAGAR,
KALLUMTHAZHAM P.O., KILIKOLLUR,
KOLLAM, PIN:691 004.**

R1 & R2 BY GOVT. PLEADER SRI.K.C. VINCENT.

**R4 BY ADVS. SRI.NAGARAJ NARAYANAN,
SRI.SAIJO HASSAN,
SRI.BENOJ C AUGUSTIN,
SRI.PRATHAP PILLAI,
SRI.SEBIN THOMAS,
SRI.VIVEK V. KANNANKERI,
SMT.J.KASTHURI,
SRI.VISHNU BHUVANENDRAN.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1: THE TRUE COPY OF THE POWER OF ATTORNEY NO:R-2264/1995 DATED 12.12.1995 ATTESTED BY THE INDIAN EMBASSY, RIYADH EXECUTED BY THE 3RD RESPONDENT TO THE PETITIONER.**
- EXHIBIT P2: THE TRUE COPY OF THE SALE DEED NO:1226/1995 DATED 10.04.1995 OF KILIKOLLUR SUB REGISTRY EXECUTED BY THE PETITIONER IN FAVOUR OF THE 4TH RESPONDENT.**
- EXHIBIT P3: THE TRUE COPY OF THE SETTLEMENT DEED NO:1227/1995 DATED 17.04.1995 OF KILIKOLLUR SUB REGISTRY.**
- EXHIBIT P4: THE TRUE COPY OF THE POSSESSION CERTIFICATE NO:3699/2004 DATED 26.11.2004 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXHIBIT P5: THE TRUE COPY OF THE THANDAPER ACCOUNT NO:6075 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXHIBIT P6: THE TRUE COPY OF THE LOCATION PLAN AND CERTIFICATE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXHIBIT P7: THE TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 30.01.2002 ISSUED FROM THE SUB REGISTRAR OFFICE, KILIKOLLUR TO THE PETITIONER.**
- EXHIBIT P8: THE TRUE COPY OF THE INTERIM INJUNCTION ORDER DATED 13.10.2014 IN O.S.NO.1181/2014 OF THE MUNSIFF COURT, KOLLAM.**

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 2312 of 2015

Dated this the 10th day of February, 2015

JUDGMENT

The prayers raised in the writ petition are in the following terms:

"i. To call for the records leading to the details of the property of the petitioner from the 2nd respondent.

ii. To issue a writ of mandamus or other appropriate writ order of direction commanding the 2nd respondent to issue Possession Certificate, Location Sketch and Certificate and to accept Tax in respect of 4.45 Ares of property comprised in Re-Sy. No. 673/6-2 in Block No.15 of Mangad Village to the petitioner within a stipulated time as directed by this Hon'ble Court in the light of 2009(2) KHC page-602, 2010(4) KHC Page-142 in Thulasibhai C.C. V. State of Kerala and 2010(3) KLT Page 278 in Haseena v. Thahsildar and 2010(3) KLT page-251.

iii. To declare that the petitioner is entitled to get Possession Certificate, Location Sketch and Certificate and to accept Tax in respect of 4.45 Ares of property comprised in Re-Sy. No. 673/6-2 in Block No.15 of Mangad Village in the light of 2009(2) KHC page-602, 2010(4) KHC Page-142 in Thulasibhai C.C. V. State of Kerala and 2010(3) KLT Page 278 in Haseena v. Thahsildar and 2010(3) KLT page-251."

2. The petitioner is the owner of the property having an extent of 4.45 Ares of property comprised in Re-Sy No.673/6-2 in Block No.15 in Thandaper No. 6075 of Managad Village covered

by Ext.P3 settlement deed. By virtue of Ext.P1 power of attorney executed by the 3rd respondent, who is one of the brothers of the petitioner, Ext.P2 sale deed was executed in favour of the 4th respondent, another brother and it was thereafter, that the said property came to the hands of the petitioner as per Ext.P3 settlement deed along with other properties concerned. Mutation of the property has been effected and the petitioner is enjoying the same, also remitting tax. Exts. P4 to P6 are Possession Certificate, Thandaper Account and Location Plan respectively, issued by the 2nd respondent, while Ext.P7 is the Encumbrance-free Certificate. It is also stated that, the petitioner has constructed a residential building in the property, making use of the funds procured from the District Co-Operative Bank, Kilikollur, creating mortgage in respect of the financier.

3. While so, about 19 years after execution of the settlement deed in favour of the petitioner, the 3rd respondent has moved the Munsiff's Court, Kollam by filing O.S. No. 1181/2014 to set aside Ext.P2 and P3 documents and to declare his alleged co-ownership rights over the property. Ext.P8 is a copy of the interim injunction ordered by the Munsiff's Court, Kollam on 13.10.2014, whereby further alienation of the property

has been intercepted. Referring to the existence of said injunction order, tax is not being collected from the petitioner for the subsequent period and the request to issue Possession Certificate and Location Sketch is not acceded to. This made the petitioner to approach this Court for immediate interference.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents 1 and 2. Despite the completion of service of notice, respondents 3 and 4 have not chosen to appear before this Court.

5. After going through the pleadings and proceedings, it is seen that, the flow of title as on date makes the petitioner to enjoy the property with ownership, possession and such other rights, also by satisfying the tax, more so when, mutation of the property has already effected in favour of the petitioner. It has been made clear by this Court on many an occasion, including as per **Joseph Kurian v. Village Officer** (2010 (3) KLT 251) that, attachment, if any, will not be a bar to accept tax under the Kerala Land Tax Act.

6. In the said circumstance, there will be a direction to the 2nd respondent to accept tax in respect of the property covered by Ext.P3 and to issue Possession Certificate and Location Sketch

of the property, subject to satisfaction of legal requirements in accordance with law. It is made clear that, this shall be without prejudice to the effect of Ext.P8 injunction order passed by the Civil Court, which shall not be violated in any manner.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

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

kp/-