

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C). No.4027 of 2014 (C)

PETITIONER(S):

**K.K.SUSHEELA, AGED 78,
W/O. LATE KUNJUNNI, MADATHINKAL HOUSE,
NEAR BHAJANAMADOM, NEDUMPARAMBU, KOOLIMUTTAM,
KOOLIMUTTAM VILLAGE, KODUNGALLUR TALUK,
THRISSUR DISTRICT.**

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENT(S):

- 1. STATE OF KERALA,
SECRETARIAT, TRIVANDRUM - 695 001.**
- 2. THE ADDL. TAHSILDAR, KODUNGALLUR TALUK, KODUNGALLUR-680 189.**
- 3. THE VILLAGE OFFICER, EDATHURUTHY VILLAGE, CHENDRAPPINNI,
KODUNGALLUR TALUK 680 189.**
- 4. M.S.SANGEETH, AGED 42 YEARS,
S/O.LATE M.R.SRINIVASAN,
KOVIL THEKKEVALAPPIL HOUSE, IX/440,
SOUTH OF GOVT. HIGH SCHOOL, CHAMAKKALA,
CHAMAKALA P.O., THRISSUR DISTRICT - 680 687.**

R4 BY ADVS. SRI.V.V.SURENDRAN

SRI.P.A.HARISH

R1 TO R3 BY GOVERNMENT PLEADER SHRI NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13.2.2015,
THE COURT ON 10-04-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:-

- P1 : TRUE PHOTOSTAT COPY OF THE JUDGMENT IN WP(C) NO.26470/2011 DATED 25.11.2011 PASSED BY THIS HONOURABLE COURT**
- P2 : TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S.NO.488/2011 HAD BEEN BEFORE THE SUB COURT, IRINJALAKUDA**
- P3 : TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S.NO.996/2011 BEFORE MUNSIFF'S COURT, KODUNGALLUR ON 26.09.2011**
- P4 : TRUE PHOTOSTAT COPY OF THE APPLICATION SUBMITTED BEFORE THE 2ND RESPONDENT DAETD 20.08.2011**
- P5 : TRUE PHOTOSTAT COPY OF THE APPLICATION ALONGWITH INTERIM ORDER GRANTED BY HON'BLE SUB COURT, IRINJALAKUDA**
- P6 : TRUE PHOTOSTAT COPY OF THE JUDGMENT IN WP(C) NO.31865/2013 DATED 20.12.2013 PASSED BY THIS HONOURABLE COURT**
- P7 : TRUE PHOTOSTAT COPY OF THE ORDER PASSED BY THE VILLAGE OFFICER ON 04.02.2014**

RESPONDENT(S)' EXHIBITS:-

- R4(A):- PHOTOCOPY OF THE JUDGMENT IN W.P(C) NO.10075/2013 DATED 9.4.2013 OF THIS COURT.**
- R4(B):- PHOTOCOPY OF THE ORDER IN IA 2883/2012 IN O.S NO.488/2011 DATED 21.7.2012 OF ADDITIONAL SUB COURT, IRINJALAKUDA.**
- R4(C):- PHOTOCOPY OF BASIC TAX RECEIPT DATED 22.9.2011 ISSUED BY THE VILLAGE OFFICER, VALAPPAD.**
- R4(D):- PHOTOCOPY OF FINAL REPORT IN FIR NO.1016/CR/HHWII/EKM/II SUB DIVISIONAL MAGISTRATE COURT, THRISSUR.**

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/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4027 of 2014

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Dated this the 10th day of April, 2015

JUDGMENT

Ext.P7 passed by the third respondent is under challenge in this writ petition on the ground that the same was passed without affording the petitioner an opportunity of being heard.

2. The petitioner, a senior citizen, alleges that after the death of her brother Sri.K.K.Subramanian, the petitioner along with other legal representatives of the deceased filed O.S No.488 of 2011 for partition before the Sub Court, Irinjalakuda as evidenced by Ext.P2. The aforesaid Subramanian died on 2.8.2011. The petitioner further alleges that by producing documents allegedly executed on 29.7.2011, i.e., two days before the death of Subramanian, the 4th respondent filed another suit for injunction against the petitioner as O.S No.996 of 2011 (Ext.P3) before the Munsiff's Court, Kodungallur. Thus, according to the petitioner, the issue regarding the validity of documents with respect to the ownership over the property which originally belonged to late Subramanian is pending consideration of the competent civil courts.

3. According to the petitioner, she was given to understand that the 4th respondent was trying to get the mutation effected in relation to the property left by late Subramanian which is situated within the local limits of Edathuruthy village. Therefore, she filed Exts.P4 and P5 objections before respondents 2 and 3 along with court orders and the authorities have withheld the proceedings.

4. The grievance of the petitioner is that the 4th respondent suppressing all material facts and without making the petitioner a party, approached this Court with W.P(C) No.31685 of 2013 wherein Ext.P6 order has been passed. On account of Ext.P6, without issuing notice for hearing to the petitioner, who is an objector, the 3rd respondent, the Village Officer of the Edathuruthy village, has passed Ext.P7 order. The copy of which has been obtained by the petitioner. By Ext.P7 order dated 1.2.2014, the 3rd respondent had proposed to effect mutation of the property in the name of the 4th respondent. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the 4th respondent, it was contended that the 4th respondent is having absolute title to the

property left by deceased Subramanian. The definite stand taken by the 4th respondent is that the pendency of the civil suits need not be linked with the mutation of the property. Therefore, according to 4th respondent, the pendency of O.S No.488 of 2011 before the Sub Court, Irinjalakkuda and O.S No.996 of 2011 before the Munsiff's Court, Kodungallur do not prohibit the mutation of the property. According to the 4th respondent, the person who is liable to pay tax is the land holder, as defined under the Kerala Land Tax Act. Therefore, the 4th respondent prayed for a dismissal of the writ petition.

6. I have heard Mr. Varghese Kuriakose, the learned counsel for the petitioner and Sri. P. A. Harish, the learned counsel for the 3rd respondent.

7. Admittedly, the issue revolves round certain properties left by the deceased Subramanian. It is an admitted fact that the matter is now pending consideration before the competent civil courts. The petitioner's case is that as the 4th respondent with a view to gain advantage in the civil suits was trying to get mutation effected in his name. The petitioner has submitted objection before

the 2nd respondent along with the interim orders passed by the civil courts and on the basis of that, the application for mutation by the 4th respondent was kept on hold by respondents 2 and 3.

8. According to the learned counsel for the petitioner, the matter took a violent turn on the production of Ext.P6 judgment passed by this Court in W.P(C) No.31685 of 2013. According to the learned counsel for the petitioner, the said writ petition was filed by the 4th respondent without impleading the petitioner. When the writ petition came up for hearing, the 4th respondent through his lawyer canvassed for a direction to consider Ext.P5 representation referred to in that writ petition. Accordingly, Ext.P6 order was passed by this Court directing to consider and pass appropriate orders on the representation. According to the learned counsel for the petitioner, when this was informed, the petitioner requested for an opportunity of hearing. However, the 3rd respondent without informing the petitioner heard the 4th respondent and passed orders proposing to effect mutation in the name of the 4th respondent.

9. As the title relating to the property is pending consideration before the competent civil courts, the petitioner should have been

given an opportunity by the 3rd respondent before passing Ext.P7 order. However, it is well settled that the mutation of the property by itself will not confer any title. The advantage that would be gained by the 4th respondent on the basis of Ext.P7 is that he would be able to pay land tax. It cannot be said that the mere collection of tax from the 4th respondent and issuance of receipt would take the 4th respondent to an advantageous position. As the question relating to title is yet to be adjudicated by the competent civil courts before which the civil suits are pending, the cancellation of Ext.P7 and reconsideration of the same by the 3rd respondent would be an exercise in futility.

10. If ultimately, it is found that one of the parties in the suit is entitled to the property, he/she can approach the 3rd respondent on the strength of the decree to effect mutation in his/her name. Therefore, it is hereby made clear that Ext.P7 will not confer any valid title on the 4th respondent.

In the result, the writ petition is dismissed making it clear that Ext.P7 will not confer any additional advantage to the 4th respondent as the right with respect to the properties covered by

Ext.P7 is yet to be decided by a competent civil court. It is also made clear that the party who gets favourable verdict can approach the 3rd respondent to getting the mutation effected in his/her name on the strength of the decree obtained.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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