

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 7100 of 2013 (J)

PETITIONER(S):

- 1. MADHAVI NARAYANAN AGED 46 YEARS
W/O.NARAYANAN, KUNNIKOMBIL VEEDU, VAZHITALA
IDUKKI DISTRICT.**
- 2. SUDARSANAN
W/O.MADHAVI NARAYANAN, KUNNIKOMBIL VEEDU, VAZHITALA
IDUKKI DISTRICT.**

**BY ADVS.SRI.P.V.JAYACHANDRAN
SRI.RAIZ KOCHERY**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR
COLLECTORATE, IDUKKI. 685 531.**
- 2. THE SUB COLLECTOR
COLLECTORATE, IDUKKI DISTRICT-685 531.**
- 3. THE ADDITIONAL TAHSILDAR
OFFICE OF THE TAHSILDAR, TODUPUZHA
IDUKKI DISTRICT-685 584.**
- 4. THE VILLAGE OFFICER
PURAPPUZHA, THODUPUZHA, IDUKKI-685 583.**
- 5. N.K.KUTTAPPAN
NADUPARAMBIL HOUSE, VAZHITHALA, TODUPUZHA
IDUKKI DISTRICT-685 583.**

**RR-R5 BY ADV. SRI.P.P.THAJUDEEN
BY ADV. SMT.C.SEENA
R1 BY ADV. GOVERNMENT PLEADER SRI.P.K.SOYUZ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).No. 7100 of 2013 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIPIT P1- TRUE COPY OF THE EXCHANGE DEED NO.3242/58 DATED
22.8.1958.**

**EXHIPIT P2- TRUE COPY OF THE OWNERSHIP CERTIFICATE DATED
26.11.2012.**

EXHIPIT P3- TRUE COPY OF THE JUDGMENT IN O.S.NO.295/92 DATED 21.9.95.

**EXHIPIT P4- TRUE COPY OF THE PROCEEDINGS NO.H.1.21974/10 DATED
21.06.2011.**

EXHIPIT P5- TRUE COPY OF THE ORDER NO.B2-3135/11 DATED 20.12.2011.

EXHIPIT P6- TRUE COPY OF REVISION PETITION DATED 28.1.2012.

EXHIPIT P7- TRUE COPY OF THE ORDER NO.C6-4117/2012 DATED 23.2.2013.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

ANU SIVARAMAN, J

W.P.(C) No.7100 of 2013

Dated this the 15th day of July, 2015

JUDGMENT

This writ petition is filed with the following prayers.

“i. Issue a Writ of Certiorari or appropriate writs directions or orders calling for the records leading up to Ext.P7, quash Ext.P5 and Ext.P7.

ii). Declare that the 5th respondent is not entitled to get the mutation effected in respect of the properties in Survey No.TP 1946 and TP 1405 of Purappuzha Village [Re-Survey Block No.12 in Survey No.86/6 of Purappuzha Village] possessed by the petitioners,

iii). To issue an order restraining the 5th respondent and their men from taking forcible possession of the properties in Survey No.TP 1946 and TP 1405 of Purappuzha Village [Re-Survey Block No.12 in Survey No.86/6 of Purappuzha Village] from the petitioners,

iv). Grant such other relief as this Hon'ble Court deem fit to grant in the interest of justice.”

2. The petitioner claims title to 1 acre and 31 cents of property in Re-Survey No.86/6 in Block No.12 of Parappuzha village, by virtue of Ext.P1 title deed. She claims that she is residing in the property and has produced Ext.P2 ownership certificate, issued in respect of a building by the Secretary,Parappuzha Grama Panchayat. It is stated that the registry with respect of the properties stood in the name of one, Lakshmi Amma Parvathy

Amma, and others who was the predecessor in interest of the parties whom the petitioner claims to have derived title by Ext.P1 title deed. It is further stated that the father of the 5th respondent had tried to trespass into the properties and O.S.No.295/92 had been filed by the petitioner and others seeking a permanent prohibitory injunction. The suit was dismissed and a decree of permanent prohibitory injunction against the petitioners in favor of the 5th respondent was granted in terms of the counter claim. Ext.P3 is the judgment. Though the judgment was taken in appeal before the District Court and later in second appeal before this Court, Ext.P3 stood confirmed.

3. It is submitted that the 5th respondent had thereafter approached respondents 3 and 4 seeking transfer of registry in respect of one acre and nine cents of property to his name. By Ext.P4 order dated 21.6.2011, the Additional Tahasildar, Thodupuzha held that the 5th respondent did not produce any documentary evidence to show the title over the disputed property and refused to effect mutation of the property in favor of the 5th respondent. However, in appeal by Ext.P5 order, the Sub Collector, Idukki verified the back records in respect of the properties in question and found that the Ext.P1 was executed while O.S.24/55 filed by the successors of Ittiyadi Ittindan, the original owner and mortgager of the property, for redemption of mortgage was pending and that

later, by virtue of compromise decree of the Munsiff Court, Thodupuzha in O.S.No.194/1966, the petitioners had title in respect of only 22 cents of land pursuant to that decree. The right and title in respect of 1.09 acres, which is the balance of the property left over after the compromise decree assigning 22 cents to the petitioners was with the 5th respondent. It was also found that the judgment and decree of the Munsiff Court, Thodupuzha in O.S.No.295/92, dismissing the suit laid by the petitioner & others for prohibitory injunction and allowing the counter claim of the 5th respondent & others had attained finality by dismissal of all appeals against the same. An order of police protection had also been issued in W.P.(C).No.2239/2004 by this Court in favor of the 5th respondent and others, as against the petitioner.

4. It is seen from Ext.P5, that the petitioner as well as the 5th respondent were heard in person and the 5th respondent had produced the judgment and decree in O.S.No.56/2005 as well as other documents to prove that he had uninterrupted possession over the property. The authority therefore, in view of the fact that Ext.P1 is seen executed when O.S.No.24/55 was pending and relying on the compromise decree in O.S.194/1966, held that the petitioner cannot be said to be entitled to anything over and above right and title to 22 cents of property. Ext.P5 was again taken in revision by the petitioners. Their specific

case in the revision was that they had title over the entire extant of 1.31 acres by virtue of Ext.P1 and that they were still in possession of the properties. However, the revisional authority also found that the petitioners had failed to prove that they had title to the entire property and that the possession was with them. In the above view, the revision is also dismissed. It is challenging these orders, the present petition is filed.

5. Heard Sri.P.V.Jayachandran, learned Counsel appearing for the petitioners, Sri.P.P.Thajudeen, learned Counsel appearing for the 5th respondent and Sri.P.K.Soyuz., the learned Government Pleader appearing for respondents 1 & 2.

6. It is contended by the learned counsel appearing for the petitioners that their right and title to the entire extent of 1.31 acres of land stands confirmed by Ext.P1 document and in the absence of any challenge to the same, the mutation of registry carried out in favor of the 5th respondent in respect of a portion of the same is invalid and illegal. They claim that the 5th respondent had lost whatever right he had to claim transfer of registry by the efflux of time. The 5th respondent has filed a counter affidavit. It is stated therein that Ext.P3 was taken in appeal and second appeal by the petitioner and by judgment of this Court in S.A.166/07, it stood confirmed. It is therefore stated that after the attainment of finality of Ext.P3 judgment, he was perfectly justified in seeking mutation

and transfer of registry on the basis of the same. He contends that since the decree in Ext.P3 is one of permanent prohibitory injunction, Article 136 of the Limitation Act provides no period of limitation for implementing the same. He further contends that, from the documents and decrees produced by him, his title and possession of 1.09 cents of property stands proved.

A counter affidavit has been filed on behalf of the 1st respondent also. It is stated on behalf of the 1st respondent as follows:-

"3. It is submitted that there was an extent of 42.80 acres of land in Sy.No.86/6 and .08.80 acres of land in Sy.No.86/5 in Block No.12 of Purappuzha village in Thodupuzha Taluk. The above said 42.80 acres of land in Sy.No.86/6 belonged to the joint Thandaper of Vithayathil, Parvathyamma Sumathiyamma, Minor Chandrikakutty, Nadupparambil, Narayanan Nair, Chandrasekharan nair under TP 1945 and .08.80 acre land in Sy.No.86/5 belongs to the joint Tandaper of Pandarapparambil Kumari.Madhavan Nadupparambil, Narayanan Nair, Chandrasekharan Nair under TP – 1405. These properties belongs to old Sy.numbers 205/81,206/4A and 206/4B of Purappuzha Village. No tax was paid for the above land. The property originally belonged to one Ittiyathi Ittindan. He was the grandfather of K.Kuttappan, Nadupparambil. He mortgaged to Kunnumpurath Lakshimiyamma, Parvathiyamma and others in Malayalam era 1103 by document No.3478. After her death, her son by name Chandrasekharan Nair, his wife Vasumathiyamma and their minor children obtained the property by virtue of the settlement deed so executed by them in they year 1946. Later Ittindan Kela, Nadupparambil filed an O.S.24/55 before the Hon'ble Munsiff's Court, Thodupuzha SRO. The above suit was decreed on 14.01.1961 and the entire plaint schedule property was delivered over to Kela on 25.01.1965. the dispute regarding this property starts from 1955 onwards between Kunnikkombil and Nadupparambil families. There were other suits also in

the subject matter. Those suits are O.S.154/64.O.S.194/66,O.S.30/93 etc. Out of them O.S.154/64 and O.S.30/93 were dismissed. O.S.194/66 was decreed on compromise and the plaintiff was entitled for 22 cents and Sri.Kela, Nadupparambil and his legal heirs were entitled for remaining 1.09 acres of land."

It is therefore contended that, the order effecting mutation in favor of the 5th respondent was perfectly legal and valid.

7. From a careful consideration of the pleadings and the materials produced, it is evident that Ext.P1 was executed during the pendency of the suit filed as O.S.24/55 before the Munsiff's Court, Thodupuzha by Ittindan Kela for redumption of mortgage. The suit was decreed in 1961 and the property was delivered to Kela on 25-1-1965. Later, O.S.194/1966 was filed for partition. That suit was compromised between the parties and a compromise decree was passed by the Munsiff's Court, Thodupuzha. An extent of 22 cents out of 1 acre and 31 cents of property was assigned to the share of the petitioners as 1/6th share in the property. Therefore, the claim of the petitioner with regard to 1 acre and 9 cents of the remaining property stood extinguished by the operation of the compromise decree. These aspects have been noticed by the Civil Court which rendered Ext.P3 judgment also. It was in the above circumstances that, the petitioner's suit was dismissed and the counter claim was allowed and the permanent prohibitory injunction restraining the plaintiffs therein from trespassing into the

property scheduled in the written statement or committing any act of waste or mischief thereon was issued by the competent Civil Court. This decree having become final, I have no hesitation to hold that the petitioner in the instant writ petition has no subsisting right or title to the 1.09 acres of property. Her right and title is confined to the 22 cents of property, to which she is entitled by virtue of the compromise decree. In the above circumstances, she cannot be said to be legally aggrieved by Ext.P7 order transferring the registry in favor of the respondent. Writ petition fails and is accordingly dismissed. No costs.

**Sd/-
ANU SIVARAMAN
JUDGE**

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PA TO JUDGE

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