

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

**MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937**

**WP(C).No.6754 of 2014 (T)**  
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**PETITIONER:**  
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**K.A.JAYMON,S/O.ABRAHAM,KODUNTHALAMKUZHI HOUSE,  
PUNNATHARAKARA,ETTUMANNOOR VILLAGE,KATTACHIRA P.O  
686 631,KOTTAYAM DISTRICT,REPRESENTED BY HIS POWER  
OF ATTORNEY HOLDER SRI V.T.THOMAS,S/O.THOMAS,  
VADASSERYKUNNEL,KURUMALLOOR KARA,  
KANAKKARI VILLAGE,MEENACHIL TALUK,KOTTAYAM DISTRICT.**

**BY ADV.SRI.ABRAHAM MATHEW (VETTOOR)**

**RESPONDENT'S:**  
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- 1. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
REVENUE DEPARTMENT,SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT COLLECTOR,KOTTAYAM,PIN-686 001.**
- 3. THE TALUK TAHSILDAR,KOTTAYAM,PIN-686 001.**
- 4. THE ADDITIONAL TAHSILDAR,KOTTAYAM,PIN-686001.**
- 5. THE VILLAGE OFFICER,ETTUMANOOR,  
KOTTAYAM DISTRICT,PIN-686 001.**
- 6. SMT.VALSA GEORGE,W/O.GEORGE J. POOZHIKKALA,  
PUNNATHARA KARA,AYARKUNNAM VILLAGE,  
KOTTAYAM TALUK,KOTTAYAM DISTRICT,PIN-686 001.**
- 7. ADV.STEPHEN CHAZHIKKATTU,S/O.CYRIAC,  
CHAZHIKKATTU HOUSE,THELLAKAM KARA,  
ATHIRAMPUZHA VILLAGE,THELLAKAM P.O-686 016,  
KOTTAYAM TALUK.**
- 8. THE DISTRICT GOVERNMENT PLEADER,  
KOTTAYAM,PIN-686 001.**

**R1-R5 & R8 BY GOVT. PLEADER MR.MUHAMMED SHAFI.  
R6 BY ADV.SMT.M.J.SAJITHA  
R7 BY ADV.SRI.RAJEEV V.KURUP**

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**WP(C).No.6754 of 2014 (T)**  
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**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**pk**

WP(C).No.6754 of 2014 (T)  
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**APPENDIX**

**PETITIONER'S EXHIBITS**  
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**EXHIBIT P1:TRUE COPY OF THE SALE DEED EXECUTED BY THE ADDL.SUB  
JUDGE,KOTTAYAM IN FAVOUR OF THE PETITIONER AND  
REGISTERED AS DOCUMENT NO.3833 OF 2011 OF THE S.R.O,  
ETTUMANOOR DATED 16-11-2011.**

**EXHIBIT P2:TRUE COPY OF THE AGREEMENT FOR SALE EXECUTED BY THE  
6TH RESPONDENT IN FAVOUR OF THE PETITIONER  
DATED 28-05-1999.**

**EXHIBIT P3:TRUE COPY OF THE COMPROMISE PETITION FILED IN O.S  
NO.194/2001 OF THE HON'BLE COURT,KOTTAYAM DATED 30-01-2009.**

**EXHIBIT P4:TRUE COPY OF THE DECREE PASSED BY THE HON'BLE SUB COURT,  
KOTTAYAM IN O.S NO.194/2001 DATED 31-01-2009.**

**EXHIBIT P5:TRUE COPY OF THE SALE DEED NO.208/07 OF THE S.R.O,  
ETTUMANOOR EXECUTED BY THE 6TH RESPONDENT IN FAVOUR  
OF THE 7TH RESPONDENT DATED 12-01-2007.**

**EXHIBIT P6:TRUE COPY OF THE ORDER NO E3 3320/09 PASSED BY THE 4TH  
RESPONDENT DATED 27-02-2010.**

**EXHIBIT P7:TRUE COPY OF THE APPLICATION FOR MUTATION MADE BY THE  
PETITIONER BEFORE THE 5TH RESPONDENT DATED 10-01-2012.**

**EXHIBIT P8:TRUE COPY OF THE RECEIPT NO.3183064 FOR REMITTANCE OF  
MUTATION FEE ISSUED BY THE 5TH RESPONDENT  
DATED 10-01-2012.**

**EXHIBIT P9:TRUE COPY OF THE REPRESENTATION ALONG WITH THE POSTAL  
RECEIPT DATED 10-02-2014.**

**RESPONDENT'S EXHIBITS:** **NIL**  
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**//TRUE COPY//**

**P.S. TO JUDGE**

pk

**A.M.SHAFFIQUE, J**

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**W.P.C.No.6754 of 2014**

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Dated this the 30<sup>th</sup> day of March 2015

**J U D G M E N T**

Petitioner has approached this Court challenging Ext.P6 order passed by the Tahsildar exercising jurisdiction under the Transfer of Registry Rules.

2. The short facts involved in the writ petition would disclose that the petitioner purchased an extent of 56 Sq.meters of land and building therein situated in re-survey No.90/3 by virtue of court sale. Ext.P1 dated 16/11/2011 is the sale deed. On that basis, petitioner applied for mutation of property in his name. In the meantime, it seems that the 7<sup>th</sup> respondent had purchased certain item of property from the very same assignor as per Ext.P5. While effecting mutation in favour of the 7<sup>th</sup> respondent, this property was also included. The Tahsildar therefore, in Ext.P6 order, based on an opinion given by the learned Government Pleader in the matter, formed an opinion that the property cannot

be mutated in favour of the petitioner.

3. Counter affidavits have been filed by respondents 4 and 7. The 4<sup>th</sup> respondent supported the stand taken in the impugned order. According to the 7<sup>th</sup> respondent, the property was purchased by him in accordance with the procedure prescribed and the petitioner cannot have any right. It is contended that the 7<sup>th</sup> respondent is a bona fide purchaser for valuable consideration and his right cannot be taken away by mutation in registry. It is also pointed out that certain portion of the aforesaid 56 sq.meters of property has already been acquired for widening of M.C road and the amount is deposited in court.

4. Having regard to the aforesaid factual situation, it is apparent that civil suit O.S.No.194/01 was filed seeking specific performance of the contract for sale of property. It is, pursuant to the decree passed in the said suit, that the sale deed had been executed. It is further apparent that Ext.P5 sale deed had been executed by the owner of the

property in the year 2007. If at all the aforesaid 56 sq.meters of property is included as part of Ext.P5 sale deed, definitely the sale will be hit by lis pendens. However, it is pointed out that 56 sq.meters is not mentioned in Ext.P5 sale deed. But, it is only while effecting mutation that the said property was included as part of the property in Ext.P5 sale deed on the premise that the right of the petitioner is only in respect of building and not in respect of land.

5. On a perusal of Ext.P6 order, it is clear that the respondents have not considered the valid contentions urged on behalf of the petitioner. The claim of the petitioner has to be looked into in the light of the sale deed executed on his behalf with reference to the suit filed as early as in the year 2001. The Tahsildar will have to consider the question as to whether the aforesaid 56 sq.meters is covered by Ext.P5 sale deed and if not, definitely the petitioner is entitled for mutation of the property in his name. If for any reason, the aforesaid 56 sq.meters comes

within the sale deed Ext.P5, it is for the authority to consider whether the property could have been assigned in the name of the 7<sup>th</sup> respondent on account of lis pendens. In such an event, the parties shall be at liberty to approach the proper forum in accordance with law.

In the result, this writ petition is disposed of as under:

- i) Ext.P6 is set aside.
- ii) There will be a direction to the Tahsildar to consider the matter afresh and in accordance with law. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

(sd/-)

**(A.M.SHAFFIQUE, JUDGE)**

jsr



