

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 7508 of 2014 (K)

PETITIONER(S):

1. THOMASKUTTY EMMANUEL (MINOR),
AGED 16 YEARS, S/O.EMMANUEL,
CHITTAKATTU HOUSE, KURICHITHANAM P.O.,
REPRESENTED BY HIS MOTHER AND NATURAL
GUARDIAN, SMT.JANCY EMMANUEL,
CHITTAKATTU HOUSE, KURICHITHANAM P.O.
2. ROY EMMANUEL (MINOR), AGED 13 YEARS,
S/O.EMMANUEL, CHITTAKATTU HOUSE,
KURICHITHANAM P.O. REPRESENTED BY HIS
MOTHER AND NATURAL GUARDIAN,
SMT.JANCY EMMANUEL, CHITTAKATTU HOUSE,
KURICHITHANAM P.O.

**BY ADVS.SRI.V.PHILIP MATHEW
SRI.GIBI C.GEORGE
SRI.JEPH JOSEPH**

RESPONDENT(S):

1. THE DISTRICT COLLECTOR, KOTTAYAM.
2. THE REVENUE DIVISIONAL OFFICER,
PALA, KOTTAYAM DISTRICT - 686 575.
3. TAHSILDAR, MEENACHIL TALUK,
KOTTAYAM DISTRICT - 686 577.
4. MEENACHIL CO-OPERATIVE AGRICULTURAL RURAL
DEVELOPMENT BANK LTD.NO.K.197, PALA,
KOTTAYAM DISTRICT, PIN - 686 577.
5. STATE OF KERALA, REPRESENTED BY
ITS PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

**R2 & 5 BY GOVERNMENT PLEADER SRI.M.MUHAMMED SHAFI
R4 BY ADVS. SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: COPY OF PARTITION DEED NO.2310/1972 OF RAMAPURAM SRO.**
- EXT.P-2: COPY OF THE JUDGEMENT DATED 30.3.2001 PASSED BY THE MUNSIF COURT, PALA IN O.S.NO.663/97.**
- EXT.P-3: COPY OF THE JUDGEMENT DATED 31.1.04 PASSED BY THE MUNSIF COURT, PALA IN O.S.NO.168/02.**
- EXT.P-4: COPY OF THE PLAINT IN O.S.NO.57/2007.**
- EXT.P-5: COPY OF THE DECREE DATED 25.1.2012 PASSED BY THE SUB COURT, PALA IN O.S.NO.57/2007.**
- EXT.P-6: COPY OF PARTITION DEED NO.1361/2006 OF KURAVILANGADU S.R.O.**
- EXT.P-7: COPY OF WILL NO.93/06 DATED 3.6.2006 EXECUTED BY SMT.ROSAMMA IN FAVOUR OF PETITIONERS.**
- EXT.P-8: COPY OF SALE PROCLAMATION DATED 18.1.2013 PUBLISHED BY THE 3RD RESPONDENT BANK.**
- EXT.P-9: COPY OF THE INTERIM ORDER DATED 4.3.2013 PASSED BY THIS HON'BLE COURT IN WPC NO.5782/2013.**
- EXT.P-10: COPY OF THE ORDER DATED 25.4.07 PASSED BY THE 2ND RESPONDENT.**
- EXT.P-11: COPY OF THE ORDER DATED 17.8.2013 PASSED BY THE SECOND RESPONDENT.**
- EXT.P-12: COPY OF THE JUDGEMENT DATED 14.12.2012 PASSED BY THIS HON'BLE COURT IN WPC NO.26565/12.**
- EXT.P-13: COPY OF THE COMMUNICATION DATED 24.10.2013 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.7508 of 2014

Dated this the 20th day of February, 2015

JUDGMENT

The petitioner has approached this Court being aggrieved of the refusal on the part of the 2nd respondent in effecting mutation in respect of the property covered by Ext.P7. The refusal on the part of the 2nd respondent to effect the mutation is on the ground that the 4th respondent Bank has initiated steps against the property concerned, in connection with a financial transaction.

2. Heard the learned Government Pleader as well, who points out with reference to the contents of the Counter Affidavit filed by the 2nd respondent that, the only reason for not effecting the mutation is with reference to the pendency of WP(C) No.5782 of 2013 preferred by the petitioner, challenging Ext.P8 proclamation of sale of the property concerned. There is an interim order of stay passed by this Court on 04.03.2013. The matter is still pending. No Counter Affidavit has been filed by the Bank in the present case, nor is there any counter in WP(C)

No.5782 of 2013.

3. The law has been declared by this Court on many an occasion to the effect that, Transfer of Registry is to be effected on the basis of the relevant provisions of the Transfer of Registry Rules and that mutation is only an exercise to effect such change in Registry, which by itself does not confer or divest title. In so far there is no dispute with regard to the title over the property, if any petition is filed by the petitioner seeking to effect mutation, the same has to be considered and necessary steps shall be taken in this regard. This will be without prejudice to the rights and interests of the Bank to proceed against the property, if at all it is having any relation to the financial assistance given to the party concerned. Mutation cannot be denied even if there is an attachment ordered by the Court in view of the law declared by this Court in **Kuriachan Chacko Vs. State of Kerala [2012(3) KLT 600].**

4. In the said circumstances, the 3rd respondent is directed to take necessary steps to cause to effect mutation in respect of the property covered by Ext.P7, subject to satisfaction of all the legal requirements by the petitioner in accordance with law. This

exercise shall be done at the earliest, at any rate, within 'one month' from the date of receipt of a copy of this judgment. It is also made clear that, this is without prejudice to the rights and liberties of the Bank to proceed with further steps against the property, if it is sustainable in accordance with law.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 3rd respondent, for further steps.

The writ petition is disposed of.

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

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