IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C). No.12504 of 2012 (K)

PETITIONER(S):
----

1. N.P.RAMAN KUTTY,
   SON OF LATE KESAVAN NAMBIAR, NALISSERY PATTATH,
   VADAKKUM MURI P.O., THRISSUR, PIN-680 570.

2. N.P.NARAYANAN KUTTY,
   SON OF LATE KESAVAN NAMBIAR,
   XXX/140/12, SREE MUKAMBIKA APARTMENTS,
   NEXT TO POST OFFICE POONKUNNAM,
   TRISSUR-680 002. (DECEASED) LRS IMPLEADED.

ADDITIONAL PETITIONER IMPLEADED:-

3. SUSHAMA SUNDAR,
   W/O.LATE N.P.NARAYANAN KUTTY, XXX/140/12,
   SREE MUKAMBIKA APARTMENTS, NEXT TO POST OFFICE,
   POONKUNNAM, TRISSUR -680002.
   (ADDL. 3RD PETITIONER IS IMPLEADED AS THE LEGAL HEIR OF THE DECEASED 2ND PETITIONER AS PER ORDER DATED 27.08.2013 IN IA 11444/2013.

BY ADVS.SRI.L.RAM MOHAN
SRI.M.AUBREY ABRAHAM ISAAC

RESPONDENT(S):
----

1. STATE OF KERALA
   REPRESENTED BY THE SECRETARY, DEPARTMENT OF TAXES,
   GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. SUB REGISTRAR OFFICER,
   ANTHIKKADU, TRISSUR-680 001.

3. DISTRICT REGISTRAR (GENERAL),
   THRISSUR-680 001.

4. COMMISSIONER LAND REVENUE,
   THIRUVANANTHAPURAM-695 001.

**5. THE DISTRICT COLLECTOR,
THRISSUR-680 001.**

R1 TO R4 BY GOVERNMENT PLEADER SRI. RAFEEK V. K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C). No.12504 of 2012 (K)

APPENDIX

PETITIONER(S) EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE WILL NO.75/1973 OF ANTHIKAD SUB REGISTRY OFFICE EXECUTED BY THE PETITIONERS LATE FATHER.

EXHIBIT P2: TRUE COPY OF THE WILL NO.76 OF 1973 OF ANTHIKAD SUB REGISTRY OFFICE EXECUTED BY THE PETITIONERS MOTHER.

EXHIBIT P3: TRUE COPY OF PARTITION DEED NO.1307/1961 OF ANTHIKKADU SUB REGISTRY OFFICE.

EXHIBIT P4: TRUE COPY OF PARTITION DEED NO.P3/2010 OF THE ANTHIKAD SUB REGISTRY OFFICE, IMPOUNDED BY 3RD RESPONDENT.

EXHIBIT P5: TRUE COPY OF ORDER DATED 3/9/2010 PASSED BY THE 3RD RESPONDENT IMPOUNDING THE DOCUMENTS.

EXHIBIT P6: TRUE COPY OF APPEAL SUBMITTED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT LAND REVENUE COMMISSIONER.

EXHIBIT P7: TRUE COPY OF ORDER DATED 7/4/12 PASSED BY THE LAND REVENUE COMMISSIONER.

EXHIBIT P8: TRUE COPY OF NOTICE DATED 4/5/12 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:- NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

= = = = = = = = = = = = = = = = = = =

W.P(C) No.12504 of 2012

= = = = = = = = = = = = = = = = = = = =

Dated this the 25th day of February, 2015

<u>JUDGMENT</u>

Ext.P8 notice by which the petitioners were directed to remit an amount of ₹6,06,950/- with a fine of ₹1,000/- within 15 days of receipt of notice is under challenge in this writ petition.

2. Petitioners are brothers. They are the co-owners and are in joint possession of the property having an extent of 3.25 acres of land comprised in Sy. No.1037/2 of Anthikad SRO which devolved upon them by virtue of Exts.P1 and P2 Will executed by their late father and mother respectively. While preparing Ext.P4 partition deed, due to an inadvertent error/mistake, the property individually owned by the first petitioner was included in Ext.P4 deed.

3. The third respondent vide Ext.P5 order impounded Ext.P4 partition deed stating that since Ext.P4 partition deed consists of property individually owned by the first petitioner, the same cannot

be treated as a partition under Section 2(k) of the Kerala Stamp Act and the same has to be treated as a conveyance under Section 2(d) of the Act. Even though mistakenly the property owned by the first petitioner is included in Ext.P4 partition deed, it can be said that, neither any exchange or transfer nor any consideration was there in order to make the deed fell under a conveyance.

4. The petitioners allege that they *bona fide* believing that the statutory appeal against Ext.P5 order lies to the Land Revenue Commissioner, submitted Ext.P6 appeal. The Land Revenue Commissioner vide Ext.P7 passed an order on merits without having any jurisdiction. Now, the second respondent issued Ext.P8 directing the petitioners to remit an amount of ₹6,06,950/- with a fine of ₹1,000/- within 15 days of receipt of notice. It is with this background, the petitioners have come up before this Court.

5. The fourth respondent filed a counter affidavit contending as follows:

A partition deed executed by Sri.Ramankutty, S/o. Kesavan Nambiar, Nallissery Pattath, Vadakkummuri P.O., Thrissur and Sri.N.P.Narayankutty, S/o.(Late) Kesavan Nambiar, XXX/140/12 Sree Mookambika Apartments was presented before the Sub Registrar, Anthikkad on 14.07.2010 for registration. The Sub Registrar after admitting the execution of the executants, impounded the document giving a pending number as P3/1/2010 and submitted the document to the District Registrar (General), Thrissur for determination of Stamp Duty as per Section 33, Section 37(2) of Kerala Stamp Act. The District Registrar having the delegated powers of the District Collector issued a notice to the party asking their representations, if any, in this matter and one of the parties appeared before the District Registrar (General), Thrissur on 28.8.2010. After thorough perusal of the documents, the details submitted by the party and the relevant provisions of the Stamp Act and Rules, the District Collector issued an order dated 3.9.2010.

They contended that Ext.P5 order is legal and in-accordance with the relevant provisions of Kerala Stamp Act and Rules. It was stated that the party has submitted an appeal against Ext.P5 in accordance with the provisions of the Stamp Act and rejected the appeal application of the party as per Proceedings No. LR(A3)-48584/10 dated 07.4.2012.

It was further stated that Ext.P5 order issued by the third respondent was after hearing the petitioner and thorough perusal of the document, prior documents, and relevant provisions of the Stamp Act. The petitioner had filed an appeal against Ext.P5 order before the Land Revenue Commissioner voluntarily and the same was dismissed by Ext.P7 order. The Land Revenue Commissioner is the appellate authority of the District Registrar/Collector as per G.O No.48785/G3/68-2/RD. dated 8th May, 1970 published in Gazette No.20 dated 19th May, 1970 under Section 54(1)(2) of Kerala Stamp Act, 1959 and Ext.P7 order is in accordance with the provisions of the Stamp Act.

In the document produced for registration, it is mentioned that the property to be partitioned devolved upon them separately by virtue of "C" Schedule of Partition Deed No.1307/1961 of Sub Registry Office Anthikkad (Ext.P3). However, in the writ petition, the petitioners allege that the property comprised in Sy. No.1037/12 did not devolve upon the second petitioner by virtue of Ext.P3. The wrong narration in the document was a deliberate effort to confuse the Sub Registrar.

It was stated that the contention in the writ petition is unbelievable and the same can be treated as a deliberate effort to evade stamp duty and registration fees my misleading the Government Authorities and this Court. The document writer who prepared the document is an experienced retired Sub Registrar of the Registration Department and it is incredible for him to commit such a big mistake. The determinations of the stamp duty is based upon the narration of the document. Therefore, according to the respondent, this interpretation cannot be accepted. The action of the Sub Registrar was in accordance with Section 33 of the Kerala Stamp Act and his opinion about the stamp duty was correct.

Ext.P5 order issued by the third respondent is legally correct and in accordance with the relevant provisions of Kerala Stamp Act, 1959. It was issued after thorough verification of the document, prior documents and relevant provisions of the Kerala Stamp Act. It is crystal clear that the property partitioned between the petitioner is not having co-ownership over the property. The petitioners have admitted themselves by paras '3' and '4' of the writ petition that the property portioned is not at all having co-ownership. The document by which a property without co-ownership is partitioned, cannot be treated as 'partition' as defined under Section 2 (k) of the Kerala Stamp Act. The argument of the petitioner that the inclusion of a document bearing No.1307/1961 is by mistake, is not at all acceptable. In the document, it is clearly mentioned that the whole property was under joint possession of the petitioners. So this is a deliberate effort to cause loss to the Government and the same should be prevented. The petitioner has not produced any evidences before the District Registrar to prove his arguments.

The stamp duty was levied for the impounded document as per Schedule Article 42(II) of Kerala Stamp Act. If the partition is among all or some of the family members, the levy or stamp duty is under Article 42(1) and in other cases it is under 42(II). The partition of Ext.P3 document is between brothers and they are included in the definition of 'family'. The stamp duty for the partition among family members has to be levied as per Schedule 42(1).

It was further stated that Ext.P4 document will never fall under 2(k) of Kerala Stamp Act as there is no co-ownership over the property. The stamp duty remitted by the petitioner are not sufficient. The partition among other than family members, is to be levied as per Article 42(II). The petitioners are in the category of family but not having co-ownership over the property partitioned. If the argument of the petitioners is correct, the stamp duty for a partition deed between family members has to be levied as per Schedule 42(1). But they remitted the stamp duty as per Schedule 42(II), even though the executants belongs to 'family'.

It was further stated that the consideration is not compulsory in order to levy an document at conveyance rate as per Section 2(d) of Jkerala Stamp Act and Section 5o of Transfer of Property Act. The determination or the stamp duty is purely based upon the narration of the document.

6. Arguments have been heard.

7. Impounding has been made by the respondents under the impression that there has been transfer of interest as per the document registered by the petitioners. It was alleged that for the welfare and prosperity of their family the petitioners have decided to partition the property having an extent of 3.25 acres of land

comprised in Sy. No.1037/2 of Anthikad SRO which was devolved upon them by virtue of Exts.P1 and P2. Thus, the petitioners executed Ext.P4 partition deed. Unfortunately, due to an inadvertent mistake occurred at the time of preparing Ext.P4 the property owned and possessed by the 1st petitioner which devolved upon him by virtue of Ext.P3 partition deed having an extent of 2 acres 23 cents comprised in Sy. No.1037/2 of Anthikad SRO also included in Ext.P4 executed by the petitioners. It has to be noted that even though the said property was included in Ext.P4 partition deed, the same was retained in the name of the 1st petitioner himself and no exchange conveyance or transfer has taken place in Ext.P4 document.

8. It is settled that the consideration must be there to bring the transaction under the caption 'conveyance'. A perusal of Exts.P1 to P4 would reveal that there is no consideration at all and no property is exchanged or transferred in Ext.P4 partition deed. It is submitted that Ext.P5 order is passed without adverting to the facts of the case.

The petitioners *bona fide* believing that the statutory appeal filed against Ext.P5 lies to the Land Revenue Commissioner wrongly submitted an appeal before the Land Revenue Commissioner (Ext.P6). However, the Land Revenue Commissioner instead of dismissing the appeal, for want of jurisdiction passed an order confirming Ext.P5 order passed by the 3rd respondent by Ext.P7. It is crucial to note that the petitioners have already remitted sufficient stamp duty as per Schedule 42(ii) of the Kerala Stamp Act. Unless and until the impounded document is released enabling the petitioners to executed a ratification deed, they would be put to irreparable hardship and injury.

9. The 3rd respondent ought to have considered the fact that even though Ext.P4 partition deed consists of property individually owned by the petitioners, the same was not transferred or exchanged mutually. It was only due to an inadvertent error or mistake that the petitioners' property was not included in the partition deed.

Therefore, as the petitioners are not liable to pay any amount as demanded in Ext.P8 notice, they are entitled to succeed.

In the result, the writ petition is disposed of. Exts.P5 and P8 are quashed. The third respondent is directed to release the partition deed impounded enabling the petitioners to register a ratification deed if they choose.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj