

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 11980 of 2015 (V)

PETITIONERS:

1. MARY JOSE, AGED 60 YEARS
W/O. LATE JOSE C. CHACKO, CHIRAKKEKARAN HOUSE, VII/250
BISHOP PALACE ROAD, THRISSUR-680 005.
2. BOBBY JOSE, AGED 41 YEARS,
S/O. LATE JOSE C. CHACKO CHIRAKKEKARAN HOUSE, VII/250
BISHOP PALACE ROAD, THRISSUR-680 005.
3. JOSEPH C JOSE, AGED 37 YEARS,
S/O. LATE JOSE C. CHACKO CHIRAKKEKARAN HOUSE, VII/250
BISHOP PALACE ROAD, THRISSUR-680 005.
4. ANTONY C. JOSE, AGED 37 YEARS,
S/O. LATE JOSE C. CHACKO, CHIRAKKEKARAN HOUSE, VII/250
BISHOP PALACE ROAD, THRISSUR-680 005.

BY ADV. SMT. P. KPRIYA

RESPONDENTS:

1. THE SUB REGISTRAR, THRISSUR 680 001.
2. THE VILLAGE OFFICER, VIYYUR VILLAGE,
THRISSUR DISTRICT-680 001.

BY SENIOR GOVERNMENT PLEADER SRI. S. JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.06.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS

- EXT.P1: TRUE COPY OF THE AWARD DATED 17/02/2011 IN A.R.NO.10/2006 ON THE FILES OF HE SOLE ARBITRATOR, N.SUKUMARAN(RETIRED DISTRICT JUDGE).
- EXT.P2: TRUE COPY OF THE LEGAL HEIR CERTIFICATE ISSUED BY THE TAHSILDAR, THRISSUR.
- EXT.P3: TRUE COPY OF THE PROPERTY TAX RECEIPT FOR THE PROPERTY IN RE.SY.NO.21/25 HAVING AN EXTENT OF 0.7330 (HECTOR)SITUATED AT VIYYUR VILLAGE DATED 04/04/2014.
- EXT.P4: TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 16/01/2015 ISSUED BY THE 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF THE REPORT FILED BY THE AMIN OF DISTRICT COURT, THRISSUR IN I.A.NO.4289/2004 IN OS NO.956/2004 DATED 01/11/2004.
- EXT.P6: TRUE COPY OF THE ORDER ALONG WITH E.A.NO.1940/2008 IN E.P.NO.1146/2008 IN O.S.473/2006 ON THE FILE OF THE MUNSIFF'S COURT, THRISSUR.
- EXT.P7: TRUE COPY OF THE RECEIPT DATED 13.4.2015.
- EXT.P8: TRUE COPY OF THE CERTIFICATE OF POSSESSION, LOCATION NON LA AND RR CERTIFICATES AND LOCATION SKETCH DATED 13.4.2015.
- EXT.P9: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT DATED 16.4.2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

W.P.(C) NO.11980 OF 2015 (V)

Dated this the 8th day of June, 2015

JUDGMENT

The petitioners in the Writ Petition state, inter alia, as follows:

An extent of 1.81 acres of land in R.S.No.21/25 of Viyyur Village belongs to the petitioners. That property was allotted to the petitioners as per Ext.P1 award dated 17.2.2011 in A.R.No.10 of 2006 before the Sole Arbitrator Sri.N.Sukumaran, Retired District Judge. As per the award, the said property was allotted to late Chirakkekaran Jose @ C.C.Jose and his children Bobby Jose, Joseph C. Jose and Antony C.Jose (petitioners 2 to 4). Chirakkekaran Jose @ C.C.Jose passed away and the petitioners are his legal representatives, the first petitioner being his widow and petitioners 2 to 4 being his children. The award dated 17.2.2011 was presented before the Sub Registrar's Office, Thrissur and it was entered in Book No.1 Vol.2492 at pages 5 to 15 and it was registered as Document No.2554 of 2011. It is stated that the immovable property, which was the subject matter of arbitration, was divided and

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3/6 share of Chirakkekaran Jose @ C.C.Jose and his children was allotted as 'D' group and it was marked in red colour in the plan attached to the award. Mutation of the property was effected at Viyyur Village and the Thandaper number is 5043. It is stated that the basic tax is being regularly paid at the Village Office, Viyyur. Possession certificate was also issued in favour of the petitioners. However, when the petitioners applied for an encumbrance certificate in respect of the aforesaid property, Ext.P4 encumbrance certificate was issued. Ext.P4 encumbrance certificate shows that the property is the subject matter of Arbitration Award No.10/2006 of the High Court of Kerala. Names of several share holders are also shown in Ext.P4 encumbrance certificate. However, the grievance of the petitioners is that in Ext.P4 encumbrance certificate, it is shown that there is an encumbrance as per attachment orders in six suits on the file of the Sub Court, Thrissur and Munsiff's Court, Thrissur. According to the petitioners, the judgment debtor therein is only Francis Chirakkekaran. It is pointed out that Ext.P5 attachment report as well as Ext.P6 attachment application would show that only Chirakkekaran Francis is the judgment debtor and only his rights have been attached. Still, the encumbrances would give an

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impression that the property belonging to the petitioners is also subject to an encumbrance. It is submitted by the learned counsel for the petitioners that the petitioners are not in a position to alienate the property or to get a loan from a bank, since the encumbrance certificate would show that their property is subject to encumbrance. It is submitted that the petitioners filed Ext.P9 self declaration statement dated 16.4.2015 before the Sub Registrar, Thrissur, providing all the necessary details to ensure that there is no encumbrance with respect to the property belonging to the petitioners. It is also pointed out that in the statement filed by the first respondent in the Writ Petition, it is stated that, as per the report submitted by the Village Officer, group 'D' schedule plot is not under attachment. It is submitted that group 'D' schedule property is the property allotted to the petitioners as per the award.

2. If the grievance voiced by the petitioners is true and if their property is not subject to any encumbrance, they are entitled to get a certificate showing that there is no encumbrance over the property. After showing several encumbrances in the certificate, it would not be a solace to the petitioners to say that the prospective purchasers

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or banks could search for documents to find out whether there is any encumbrance. Therefore, it is necessary for the Sub Registrar to first ascertain whether there is any encumbrance over the property allotted to the petitioners as per the award and if there is any encumbrance, indicate the same in the certificate to be issued to the petitioners. There will be a direction to the Sub Registrar, Thrissur to hear the petitioners, peruse the documents, if any, and arrive at a conclusion as to whether the property claimed by the petitioners is subject to any encumbrance and if the Sub Registrar is satisfied that there is no such encumbrance, issue a certificate to them showing that there is no such encumbrance. The Sub Registrar shall do the needful within a period of one month from the date of receipt of a copy of the judgment.

The Writ Petition is disposed of as above.

(K.T.SANKARAN)
Judge

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