

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 15469 of 2013 (G)  
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PETITIONERS:  
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1. VIJAYAMMA AGED 63 YEARS  
D/O.KALYANI AMMA, JAYABHAVANAM, MYNAGAPPALLY P.O.  
KOLLAM.
2. JAYALATHA, D/O.VIJAYAMMA, -DO- -DO-

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:  
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1. THE DISTRICT COLLECTOR, KOLLAM, PIN - 691 001
2. THE REVENUE DIVISIONAL OFFICER, KOLLAM, PIN - 691 001
3. THE ADDITIONAL TAHSILDAR, KUNNATHOOR TALUK,  
SASTHAMKOTTA P.O., KOLLAM PIN - 690 521
4. SINDHUKUMARI, RANI BHAVANAM, KADAPPA MURI,  
MYNAGAPPALLY P.O., KOLLAM, PIN - 690 519.
5. MOHANAN PILLAI, KAMBAKAD PADINJATTATHIL, -DO- -DO-

R1 TO R3 BY SRI.NOUSHAD THOTTATHIL,GOVERNMENT PLEADER  
R4,R5 BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS

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EXT.P-1        A TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER,  
MYNAGAPPALLY, DATED 23-8-2011.

EXT.P-2        A TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER,  
MYNAGAPPALLY, DATED 29-9-2011.

EXT.P-3        A TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT DATED  
31-10-2011

EXT.P-4        A TRUE COPY OF THE ORDER DATED 2-3-2012 OF THE 2ND  
RESPONDENT.

EXT.P-5        A TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED  
12-3-2012.

EXT.P-6        A TRUE COPY OF THE TAX RECEIPT ISSUED TO THE FIRST  
PETITIONER DATED 3-4-2012.

EXT.P-7        A TRUE COPY OF THE TAX RECEIPT ISSUED TO JAYASREE DATED  
13-4-2012

EXT.P-8        A TRUE COPY OF THE TAX RECEIPT ISUED TO THE 2ND PETITIONER.

EXT.P-9        A TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DATED  
8-2-2013.

EXT.P-10      A TRUE COPY OF THE PLAINT IN O.S.NO.125/2011

EXT.P-11      A TRUE COPY OF THE WRITTEN STATEMENT OF THE DEFENDANTS ONE  
AND TWO IN O.S.NO.125/2011.

RESPONDENT(S) ' EXHIBITS: NIL

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TRUE COPY

PA TO JUDGE

**P.V.ASHA, J.**

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**W.P.(C) No.15469 of 2013**  
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**Dated this the 29<sup>th</sup> day of July, 2015**

**JUDGMENT**

The petitioners herein are challenging Ext.P9 order passed by the District Collector, on a revision petition filed by respondents 4 and 5 against Ext.P4 order passed by the Revenue Divisional Officer-2<sup>nd</sup> respondent, cancelling the order issued by the Revenue Divisional Officer, by which mutation was ordered based on title deeds.

2. The first petitioner's husband had an extent of 8.09 ares of property in Re.Sy.No.159/9 of Mynagappally Village, on the strength of sale deed No.1737/1975. The said property was part of 19.35 Ares in Re.Sy.No.157/9 and the same was included in Tandapper No.2159 belonging to Karthiyayini Amma, Bhargavi Amma, Gopala Pillai and Vijayamma. Out of the 8.09 Ares of property, the first petitioner's husband assigned 2.02 Ares of property to his daughter by way of gift deed executed in the year 1991. Later the said property was transferred to her mother- the

first petitioner. Accordingly mutation was effected in respect of the said 2.02 ares of property in the name of the first petitioner. On the death of petitioner's husband Soman Pillai, the legal representatives wanted to effect mutation in respect of the property which remained in his name. In order to see that mutation is effected, the petitioners approached the Revenue Divisional Officer -2<sup>nd</sup> respondent. On the basis of the reports received after inspection of the site, it was found that the actual extent of property remaining under Tandapper No.2159 was not sufficient for effecting mutation, on account of certain mistakes occurred while effecting mutation in the name of respondents 4 and 5, who are owners of neighboring property. Thus out of the balance extent of 6.07 Ares, it was found that the extent of property actually in possession of the legal heirs of first petitioner's husband was only 5.95 Ares, apart from the property in the name of the first petitioner based on the gift deed. The Village Officer after inspection reported that mutation can be effected in favour of the legal heirs of Soman Pillai by reducing an equal extent of property from the Tandapper of respondents 4

and 5. It was also reported that respondents 4 and 5 obstructed him from taking out measurement at the time of inspection of the site.

3. On the basis of the report of the Village Officer, the second respondent heard all the parties including respondents 4 and 5 and seeing that there was mistake in effecting mutation from the original Tandapper, the second respondent ordered cancellation of previous mutation, with direction to the additional Tahsildar, Kunnathur Taluk, the 3<sup>rd</sup> respondent, as per Ext.P4 order dated 2.3.2012.

4. On the basis of Ext.P4, the additional Tahsildar, Kunnathur Taluk cancelled mutation and directed the Village Officer to effect mutation of the property in accordance with the title deed and possession. The Village Officer thereupon effected mutation in favour of the legal heirs of Soman Pillai- in the name of the first petitioner.

5. Respondents 4 and 5 took up the matter in appeal before the District Collector. In the meanwhile, the first petitioner and her daughter Jayasree had filed a civil suit before the Munsiff's

Court, Sasthamkotta as O.S.No.125 of 2011 against respondents 4 and 5 praying for injunction against them from trespassing into the property in question. The District Collector, seeing that a civil suit is pending between the petitioners and respondents 4 and 5, cancelled the order passed by the Revenue Divisional Officer and directed status quo, till the disposal of the suit pending before the civil court.

6. The petitioners have approached this Court challenging the order of the District Collector, in the above background.

7. According to the petitioners, the mutation has to be effected in accordance with title deed and the second respondent had only directed to effect mutation on the basis of title deed. It is alleged that the District Collector ought not have cancelled mutation, when there was a mistake found in effecting mutation. It is pointed out that the District Collector did not consider any of the aspects regarding the right of the petitioners or the respondents to get the mutation effected on the basis of their title deeds, while passing Ext.P9 order. It is pointed out that the District Collector did not enter into any finding on merits merely

because of the pendency of the civil suit.

8. Respondents 4 and 5, though did not file any counter affidavit, opposed the prayers for setting aside the order passed by the District Collector pointing out the pendency of the civil suit.

9. The second respondent filed a counter affidavit, explaining various mutations effected under Tandapper No.10479 and Tandapper No.2159 in respect of lands in Re.Sy.No. 159/9 of Block No.9 of Mynagappally Village. It was stated that there is a boundary dispute between the petitioners and respondents 4 and 5. In the counter affidavit of the 2<sup>nd</sup> respondent, the proceedings leading to Ext.P4 order has been explained and the mistakes found out in effecting mutation as well as the deficiencies of actual extent of land under the Tandapper No.2159 with reference to the title in the name of late Soman Pillai was also explained.

10. After hearing the learned counsel for the petitioners, respondents 4 and 5 and the learned Government Pleader, it is clear that there is dispute regarding the extent of property

actually in possession and that covered by the title deed as well as mutation effected, otherwise than on the strength of title deed. As per the Transfer of Registry Rules, mutation can be effected on the strength of title deed. In the event of a dispute, that has to be resolved by the authorities after hearing either side in a summary proceedings.

11. It is settled law that mutation will not enable a person to claim better title over the property. In my judgment in W.P.(C) No.4746 of 2013 - **Nevin Raju V. Basheer** [2015 (3) KLT SN 4], I have held that pendency of a civil suit shall not stand in the way of the proceedings for mutation by the statutory authorities. No party will acquire any special right on account of mutation alone.

In the above circumstances, Ext.P9 order passed by the District Collector is quashed. In view of the fact that the District Collector has not considered the matter on merits, there will be a direction to the District Collector to reconsider the appeal filed by respondents 4 and 5 and to pass orders on merits, in accordance with the provisions contained in the Transfer of Registry Rules, after hearing all affected parties. The District Collector shall pass

W.P.(C) No.15469 of 2013

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fresh orders within a period of two months from the date of receipt of a copy of the judgment.

The writ petition is disposed of accordingly.

Sd/-  
**P.V.ASHA,**  
**JUDGE.**

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