

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. 13635 of 2015 (D)

PETITIONER:

ASSANKOYA, AGED 75 YEARS
S/O. MOIDEEN KUTTY, VALIYAPADAM HOUSE,
CHETTIPPADI POST, NEDUVA, PIN 676 319,
MALAPPURAM DISTRICT.

BY ADVS. SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENTS:

1. THE STATE OF KERALA
REP BY THE SECRETARY TO GOVERNMENT
REGISTRATION DEPARTMENT,
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001
2. THE DISTRICT REGISTRAR GENERAL,
MALAPPURAM 673 001.
3. THE SUB REGISTRAR
MALAPPURAM SUB REGISTRY,
MALAPPURAM DISTRICT.

BY SENIOR GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN

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

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE PARTITION DEED DTD 8/8/2012 OF MALAPPURAM SRO.
- EXT.P2: TRUE COPY OF THE ORDER NO G1-6448/2012 PASSED BY THE 2ND RESPONDENT DATED 3/10/2012.
- EXT.P3: TRUE COPY OF THE COMMUNICATION OF THE 3RD RESPONDENT DATED 30/7/2013.
- EXT.P4: TRUE COPY OF THE CHALLAN RECEIPT ISSUED BY THE 3RD RESPONDENT DATED 11/10/2013.
- EXT.P5: TRUE COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN WPC NO 29218 OF 2014 DATED 11/11/2014
- EXT.P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 10/8/2012.
- EXT.P7: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE INSPECTOR GENERAL OF REGISTRATION DATED 13/12/2012.
- EXT.P8: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTER OF KERALA DATED 22/7/13.
- EXT.P9: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 13/8/2013.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

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Dated this the 8th day of June, 2015

JUDGMENT

The petitioner (Assankoya) and his brothers, namely, Aboobakkar and Kunhahammad, acquired an extent of 28.5 cents of land in Parappanangadi amsom as per document No.64/1972 of the Sub Registrar's Office, Parappanangadi. Later Kunhahammad died. The petitioner, his brother Aboobakkar and the legal representatives of Kunhahammad entered into a partition deed dated 8.8.2012 and it was submitted for registration before the Sub Registrar's Office, Malappuram. The Sub Registrar took the view that two brothers and the legal representatives of a deceased brother would not constitute a family within the definition of the Stamp Act 1959 (Kerala) and, therefore, the fixed stamp duty of ₹1,000/- is not enough and stamp duty at the rate of 6% of the value is required. The District Registrar, thereafter, impounded the document as per Ext.P2 order dated 3.10.2012 and directed the petitioner and other executants of the document to remit a sum of ₹71,500/-, the amount being the deficit

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stamp duty of ₹71,000/- and fine of ₹500/-. The petitioner and others were constrained to remit the amount.

2. The reliefs prayed for in the Writ Petition are to quash Ext.P2 order and to issue a writ of mandamus commanding respondents 2 and 3 (District Registrar General and the Sub Registrar) to refund the amount collected from the petitioner and others.

3. It is submitted that the issue involved in the case is covered by a decision of a Division Bench as well as two decisions of a learned single Judge of this Court. In **State of Kerala v. Manuel (2013 (1) KLT 825)**, a Division Bench of this Court held thus:

“6. On a reading of the amendment, the word “family” includes father, mother, son, daughter, brother, sister, legal heirs of deceased children and so on and so forth, as extracted above. It cannot be gainsaid that only if a father and mother are alive, the children could be considered as having the status of sons and daughters and otherwise they would only be brothers and sisters. Any permutation and combination of the persons mentioned in the definition of 'family' would be

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entitled to have a partition claiming the benefit of lesser Stamp duty as is provided in Serial No.42(i) of the Schedule to the Stamp Act.”

The same view was taken by a learned single Judge of this Court in **Rukmini Bai @ T.N.Rukmini v. District Registrar and another (2012 (4) KHC 650)** and **Bahuleyan and others v. District Registrar, Thrissur and another (2012 (4) KHC 268)**. In view of the settled legal position, Ext.P2 order is liable to be quashed.

Accordingly, the Writ Petition is allowed, Ext.P2 order dated 3.10.2012 (No.G1.6448/2012 of the District Registrar, Malappuram) is quashed. The petitioner and other co-owners are liable to remit only ₹1,000/- as stamp duty for registration of the partition deed mentioned above. The amount remitted in compliance of Ext.P2 order shall be refunded to the petitioner as expeditiously as possible and, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

(K.T.SANKARAN)
Judge

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