IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No.13672 of 2015 (H)

PETITIONER:

MOHAMMED ALI JINNAH,S/O.KHADER MOIDEEN,
DNO,262/B1,NEW YORK AVENUE,PODANNUR MAIN ROAD,
COIMBATORE SOUTH,TAMIL NADU,PIN:641023.

BY ADVS.SRI.P.N.SANTHOSH
SMT.K.P.GEETHA MANI
SRI.P.N.APPUKUTTAN
SMT.ASWATHI APPUKUTTAN

RESPONDENT'S:

1. THE SUB-REGISTRAR,
OFFICE OF THE AGALI SUB-REGISTRAR,
MANNARKKADU,PALAKKADU DISTRICT,
KERALA,PIN:678581.

<u>*ADDITIONAL 2ND RESPONDENT IMPLEADED</u>

ADDL.R2:MANIKANDAN,AGED 43 YEARS,
S/O.LATE PAZHANISWAMI GOUNDER,
AGALI AMSOM DESOM,MANNARKKAD TALUK,
PALAKKAD DISTRICT.

***ADDITIONAL 2ND RESPONDENT IMPLEADED AS PER ORDER DATED 1.7.2015 IN I.A. NO.7984/2015.**

R1 BY GOVT. PLEADER SRI.BIJU MEENATTOOR.
ADDL.R2 BY ADV.SRI.P.JAYARAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PK

WP(C).No.13672 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:A TRUE COPY OF THE DOCUMENT NO.708/2011 DATED 17.5.2011 EXECUTED IN THE OFFICE OF THE AGALI SUB-REGISTRAR.

EXHIBIT P2:A TRUE COPY OF THE PATTAYAM IN RESPECT OF EXHIBTI P1 PROPERTY ISSUED TO THE SELLER OF THE PROPERTY.

EXHIBIT P3:A TRUE COPY OF THE LAND TAX RECEIPT DATED 16.2.2015 IN RESPECT OF EXHIBIT P1 PROPERTY.

EXHIBIT P4:A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 4.5.2015 IN RESPECT OF EXHIBIT P1 PROPERTY.

EXHIBIT P5:A TRUE COPY OF THE REPORT DATED 25.2.2015 SENT BY THE VILLAGE OFFICER, AGALI TO THE RESPONDENT.

EXHIBTI P6:A TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 4.7.2014 ISSUED BY THE RESPONDENT IN RESPECT OF EXHIBIT P1 PROPERTY.

RESPONDENT'S ANNEXURES:

ANNEXURE R1(a):TRUE COPY OF THE SCHEDULE DATED 4.7.2014 FILED ALONG WITH THE APPLICATION FOR ENCUMBRANCE CERTIFICATE.

//TRUE COPY//

P.S. TO JUDGE

pk

K. VINOD CHANDRAN, J.

W.P.(C) No. 13672 of 2015 (H)

Dated this the 1st day of July, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the Sub Registrar is not determining the stamp duty payable with respect to an intended sale of the property covered by Ext.P1 document.

2. The Sub Registrar has refused to carryout the same only for reason of there being an encumbrance on the property as is seen from Ext.P6. The petitioner specifically contends that there is no encumbrance in the property of the petitioner covered by Ext.P1 deed and that the encumbrance is with respect to other properties comprised in the same survey number.

3. In any event, the fact that there is an encumbrance, cannot detain the Sub Registrar from not determining the value of the stamp duty for an intended sale or from registering a document presented

appropriately and in accordance with the Registration Act, 1908. Ext.P6 is the encumbrance certificate and the purchaser also is said to be aware of the same and is still ready to purchase the property.

4. The additional respondent, who is impleaded herein, is the defendant in a suit in which the attachment was made. The additional respondent contends that the property sought to be registered by the petitioner is part of the property attached in O.S. No.95/2012 pending before the Sub Court, Ottapalam. However, admittedly the petitioner is not a party in the aforesaid suit. Nothing is stated as to the nature of the suit nor is the nature of the order passed in the suit, clear.

5. If a sale is made and the purchaser has agreed to purchase the property even with the encumbrances, then the Sub Registrar need not be detained from carrying out registration only on the ground of an encumbrance existing. The encumbrance will run with the property and

the same would be subject to the decision of the civil court.

Writ Petition is allowed, directing the 1st respondent to carryout the registration, if a proper sale deed is presented before him.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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