

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No.14095 of 2015 (J)

PETITIONERS :

1. MERCY CHACKO, AGED 65 YEARS,
W/O.CHACKO MATHAI, THADATHIL PURAYIDAM,
KOOTHRAPALLY PO, KARUKACHAL, KOTTAYAM DISTRICT.
2. CHACKO MATHAI,
THADATHIL PURAYIDAM, KOOTHRAPALLY PO, KARUKACHAL,
KOTTAYAM DISTRICT.

BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS

RESPONDENTS :

1. STATE OF KERALA,
DEPARTMENT OF REVENUE, REP. BY ITS SECRETARY,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE DISTRICT COLLECTOR,
KOTTAYAM-686 001.
3. THE TAHSILDAR,
TALUK OFFICE, CHANGANACHERRY, KOTTAYAM DISTRICT,
PIN-686 121.
4. THE VILLAGE OFFICER,
KARUKACHAL, KOTTAYAM DISTRICT, PIN-686 540.
5. ALEYKUTTY THOMAS, AGED 58 YEARS,
W/O.THOMAS JOSEPH, NADUVILEDATH, PANTHAMAKAL,
KOOTHRAPALLY PO, KARUKACHAL,
KOTTAYAM DISTRICT-686 540.
6. THOMAS JOSEPH, AGED 64 YEARS,
S/O.CHACKO THOMAS, NADUVILEDATH, PANTHAMAKAL,
KOOTHRAPALLY.P.O, KARUKACHAL,
KOTTAYAM DISTRICT-686 540.

R6, R5 BY ADV. SRI.V.PHILIP MATHEW
R6 BY ADV. SRI.N.K.THANKACHAN
BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :-

- EXT P1 : THE TRUE COPY OF THE JUDGMENT IN OS.NO.189/1992 FILED BY THE RESPONDENTS 5 AND 6 AGAINST THE PETITIONERS BEFORE THE HON'BLE MUNSIF COURT, CHANGANACHERRY.
- EXT 2 : TRUE COPY OF THE JUDGMENT IN OS.NO.312/1986 FILED BY THE 2ND PETITIONER BEFORE THE HON'BLE MUNSIF COURT, CHANGANACHERRY.
- EXT P3 : THE TRUE COPY OF THE JUDGMENT IN AS.NO.63/94 IN OS.NO.189/1992.
- EXT P4 : TRUE COPY OF THE ORDER IN IA.NO.1335/93 IN OS.NO.501/86 PASSED BY THE MUNSIF COURT, CHANGANACHERRY.
- EXT P5 : THE TRUE COPY OF THE JUDGMENT IN SA.NO.836/2000 OF THIS HON'BLE HIGH COURT.
- EXT P6 : TRUE COPY OF THE JUDGMENT IN OP.NO.9812/93 OF THE HON'BLE HIGH COURT.
- EXT P7 : TRUE COPY OF THE PETITION FILED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT ON 6-8-2014.
- EXT P8 : TRUE COPY OF THE PETITION FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.
- EXT P9 : TRUE COPY OF THE PETITION FILED BY THE PETITIONERS BEFORE THE REVENUE DIVISIONAL OFFICER, KOTTAYAM.
- EXT P10 : TRUE COPY OF THE PETITION DATED 5-12-2006 FILED BY THE PETITIONERS BEFORE THE ADDITIONAL DISTRICT MAGISTRATE, KOTTAYAM.
- EXT P11 : TRUE COPY OF THE JUDGMENT DATED 2-12-2014 IN WRIT PETITION NO.32316/2014 PASSED BY THIS HON'BLE COURT.
- EXT P12 : TRUE COPY OF THE ORDER DATED 27-3-2015 PASSED BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.14095 of 2015

Dated this the 16th day of July, 2015

JUDGMENT

The petitioners have filed this writ petition seeking a writ of certiorari to quash Ext.P12 order dated 27.3.2015 passed by the Village Officer, Karukachal, the 4th respondent herein and also seeking a writ of mandamus commanding the 3rd respondent to take a decision on Ext.P7 application filed by the petitioners for effecting transfer of registry in their name, at the earliest.

2. Going by the averments in the writ petition the petitioners claim right over certain extent of land at Karukachal Village in Changanacherry Taluk. They have made applications for effecting transfer of registry under the Transfer of Registry Rules, 1966. Ext.P7 is that application filed in this regard before the 3rd respondent. It is borne out from the pleadings and documents on record that there are disputes between the petitioners and respondents 5 and 6 about the extent of land owned/possessed by the petitioners. But, in this Writ Petition I do not propose to go into the merits of the rival contentions raised by both sides, since the effect of an order of mutation, going by Rule 16 of the Transfer of Registry Rules, 1966, is only an arrangement for fiscal purposes and

does not affect the legal rights of any person in respect of the lands covered by the decision in transfer of registry cases. The question of legal rights is always subject to adjudication by civil courts and pattas will be revised from time to time in accordance with judicial decision.

3. From the pleadings on record it is seen that, subsequent to the finding of Ext.P7 application by the petitioners for effecting transfer of registry, respondents 5 and 6 have approached this Court in W.P.(C) No.32316 of 2014, which was disposed of by Ext.P11 judgment, by which the 3rd respondent was directed to consider the objections raised by them as well while considering Ext.P7 application submitted by the petitioners.

4. Now, the grievance of the petitioners is that, while Ext.P7 was pending consideration, the 4th respondent has issued Ext.P12 order of injunction by which the petitioners are restrained from cutting and removing the trees in Survey Nos.56/1 and 56/4 in block No.16 having an extent of 1.60.30 hectares and 02.20 Are respectively. A reading of Ext.P12 order would indicate that it is on receipt of a lawyer notice issued at the instance of respondents 5 and 6, under Section 80 of the Code of Civil Procedure, 1908, the 4th respondent has issued Ext.P12.

5. I heard the arguments of the learned counsel for the petitioners, the learned Senior Government Pleader appearing for respondents 1 to 4 and also the learned counsel appearing for

respondents 5 and 6.

6. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P12 prohibition order issued by the 4th respondent.

7. A bare reading of Ext.P12 order issued by the 4th respondent would make it explicitly clear that, the 4th respondent has issued that order on the basis of a lawyer notice caused to be issued by respondents 5 and 6. The specific case of the petitioners is that, Ext.P12 order was issued by the 4th respondent is without any notice to them and further the said respondent has absolutely no authority to issue any such order.

8. The transfer of registry that has to be effected on the basis of the application submitted by the petitioners is regulated by the provisions under the Transfer of Registry Rules, 1966. Going by Rule 2, the transfer of revenue registry takes place either (i) by voluntary action of the owners (ii) by virtue of decrees of Civil Courts or by Revenue sales or (iii) by succession. Rule 3 deals with the procedure that has to be followed for effecting the transfer of registry and Rules 10 and 11 deal with the procedure to be followed in uncontested cases and contested cases, respectively.

9. A reading of the statutory provisions, which I have referred to above, makes it explicitly clear that, the 4th respondent who has issued

Ext.P12 order has absolutely no authority to issue such an order. He is not even the authority who is competent to deal with Ext.P7 application for transfer of registry in terms of the Rules. Further, Ext.P12 order was issued by the 4th respondent, even without any notice to the petitioners. Since Ext.P12 order issued by the 4th respondent is absolutely without any authority of law it can only be set aside.

10. By Ext.P11 judgment, this Court has directed the 3rd respondent to consider Ext.P7 application submitted by the petitioners, after hearing the objections raised by respondents 5 and 6 as well. In view of Ext.P11 judgment of this Court it is for the 3rd respondent to consider and pass appropriate orders on Ext.P7 application, in accordance with law, with notice to the petitioners and respondents 5 and 6.

11. In such circumstances this Writ Petition is disposed of setting aside Ext.P12 order passed by the 4th respondent and directing the 3rd respondent to consider and pass appropriate orders on Ext.P7 application submitted by the petitioners, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment, with notice to the petitioners and also to respondents 5 and 6.

It is made clear that I have not expressed anything on the merit of the rival contentions raised by the petitioners and respondents 5 and 6

regarding the ownership or possession of the property in question and that this judgment will not stand in the way of any of the parties approaching an appropriate forum for appropriate reliefs.

ANIL K.NARENDHAN, JUDGE

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