

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 14591 of 2015 (Y)

PETITIONER(S):

**RANI GOPALAN W/O. GOPALAN, AGED 52 YEARS, RESIDING AT
HARIBHAVANAM, KEEZHCHERIMEL
CHENGANNUR, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SRI.JOSEPH GEORGE**

RESPONDENT(S):

**1. SUB DIVISIONAL MAGISTRATE (RDO)
CHENGANNUR-689 121.**

**2. SRI. RAJAMMAL VENKITAJALAM,
W/O. VENKIDAJALAM, RESIDING AT KUZHIKALA HOUSE,
PALACE WARD, KRISHNAPURAM P.O., KAYAMKULAM,
ALAPPUZHA DISTRICT-690 502.**

**R2 BY ADV. SMT.ASHA ELIZABETH MATHEW
R BY GOVERNMENT PLEADER SMT. C.K.SHERIN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE APPLICATION FILED BY THE 2ND RESPONDENT UNDER SECTION 5 OF THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT 2007 BEFORE THE SUB DIVISIONAL MAGISTRATE COURT AT CHENGANNUR.

EXHIBIT P2 : TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL FOR PARENTS AND SENIOR CITIZENS CHENGANNUR (SUB DIVISIONAL MAGISTRATE) IN MW 1031/15 DTD.28.3.2015.

EXHIBIT P3 : TRUE COPY OF THE ORDER MADE IN MC NO.11/1970 PASSED BY THE FIRST CLASS MAGISTRATE COURT, PATHANAMTHITTA.

EXHIBIT P4 : TRUE COPY OF THE DEATH CERTIFICATE DTD.21.1.1983 ISSUED BY THE PATHANAMTHITTA MUNICIPALITY EVIDENCING THE DEATH SRI.P.VENKIDAJALAM ACHARI.

EXHIBIT P5 : TRUE COPY OF THE BIRTH CERTIFICATE ISSUED BY THE GHSS AND VHSS ON 13.1.2015.

EXHIBIT P6 : TRUE COPY OF THE SALE DEED NO.1173/1997 OF SRO, CHENGANNUR, EXECUTED BY THE YOUNGER SISTER OF THE PETITIONER (DAUGHTER OF THE 2ND RESPONDENT).

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(A): TRUE COPY OF THE WOUND CERTIFICATE DATED 06.04.2014

EXHIBIT R2(B): TRUE COPY OF THE NEWS PAPER REPORT IN THE MALAYALAM MANORAMA DAILY DATED 17.05.2014

EXHIBIT R2(C): TRUE COPY OF THE COMPLAINT DATED 20.05.2015 SUBMITTED BEFORE THE DEPUTY SUPERINTENDENT OF POLICE, CHENGANNUR.

EXHIBIT RS(D): TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.1090/2014 OF CHENGANNUR POLICE

EXHIBIT R2(E): TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.54/2014 OF CHENGANNUR POLICE

EXHIBIT R2(F): TRUE COPY OF THE NEWS PAPER REPORT DATED 06.06.2015 IN THE MANGALAM DAILY.

**EXHIBIT R2(G): TRUE COPY OF THE NEWS PAPER REPORT DATED 06.06.2015 IN THE
KERALA KAUMUDI DAILY.**

**EXHIBIT R2(I): A TRUE COPY OF THE FIRST PAGE OF THE SSLC BOOK OF
MURUKAMMAL M.V.**

//TRUE COPY//

P.A. TO JUDGE

AD

K.VINOD CHANDRAN, J.

W.P.(C).No.14591 of 2015

Dated this the 9th day of July, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P2, passed by the 1st respondent. By Ext.P2 the mutation effected of the property having 5.6 Ares in Sy.No.330/2013 of Block No.7 of Chengannur Village was cancelled. The mutation in fact was effected, as per the Transfer of Registry Rules, 1966 on the basis of Ext.P6 deed.

2. The background facts necessary for the consideration of the case is that, the 2nd respondent is the mother of the petitioner. The 2nd respondent asserts that the subject property was originally purchased in the joint name of her two daughters, the petitioner herein and one Murukammal. The purchase was made by the 2nd respondent, with her husband's money, when the daughters were minors, is the plea. In such circumstances, it is claimed that, the petitioner is entitled to maintenance out of the property as per Section 23(2) of Maintenance

and Welfare of Parents and Senior Citizens Act, 2007 (brevity, the Act of 2007).

2. When there was a valid deed of release, as per Ext.P6, the RDO exercising powers under Section 23 of the Act of 2007, ought not to have cancelled the transfer of registry effected on the basis of that valid deed.

3. The release is said to have been effected in the year 1997 and the transfer of registry was also effected thereon. The transaction also was between the daughters of the 2nd respondent and there was no interest reserved in favour of the 2nd respondent either in the release deed or in the original title deed; that too of a property in which the 2nd respondent has no sustainable legal right or interest. Ext.P2 to that extent would stand set aside.

4. But for the 2nd respondent asserting that, the property was purchased by her husband's money, when the daughters were minors, nothing is produced to evidence that. In any event, even if such property was purchased in the minor's name, on their attaining majority

the same becomes the absolute property of the children unless there is a covenant to the contrary; by which the estate is charged in so far as providing maintenance to the mother.

5. Further, it is to be noticed that Section 23(1) only speaks of transfers made by way of gift or otherwise after the commencement of the Act that too only when the transferee had specifically undertaken that the basic amenities and physical needs of the transferor will be met. There should also be a refusal of failure to provide such amenities and facilities, in the event of which the Tribunal under the Act of 2007 could set aside the deed, which had such condition.

6. Admittedly, the document was executed long before the commencement of the Act in 1997. The 2nd respondent also does not have a claim under Section 23 (1).

7. The claim made under Section 23(2) cannot be also sustained since there is no evidence to show that the purchase made, in the name of minors, was with any

reservation of right to maintenance reserved in favour of the 2nd respondent/mother. The deed at Ext.P6 also does not indicate that any undertaking having been made by the petitioner herein to her sister that the mother will be looked after, at the time of her old age.

8. Definitely it is the responsibility of the petitioner to look after her mother in her old age. But the Tribunal conferred with specific powers to assuage the difficulties of senior citizens and offer mitigation to parents, who are not looked after by their children, should act within the bounds of their authority, as conferred under the Act. Herein, the Tribunal has set aside the transfer of registry effected on the basis of a valid release deed that too executed by a sister.

9. This Court does not find any reason to interfere with the other directions in Ext.P2. The directions for cancelling the transfer of registry alone would stand set aside. The learned Counsel for the petitioner, on behalf of the petitioner, would in fact undertake that the mother will not be dispossessed from

the property and that she will be allowed to take any usufructs from the property also, however, without causing any waste in the property. The said undertaking is recorded.

The writ petition would stand allowed. No costs.

Sd/-
K.VINOD CHANDRAN
JUDGE

AD