IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WP(C).No. 19765 of 2015 (U)

PETITIONER(S):

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1. SREE POORNATHRAYEESA VRIDHASADANAM CHARITABLE TRUST, REG. NO. 525/IV/2013, NEAR OLD BUS STAND, THRIPUNITHURA P.O., PIN - 682 301, NADAMA VILLAGE, KANAYANOOR TALUK, ERNAKULAM DISTRICT, REPRESENTED BY ITS MANAGING TRUSTEE, MR.T.D. GOPALAKRISHNAN.

2. T.D. GOPALAKRISHNAN,S/O. DAINYAN,AGED 45 YEARS, RESIDING AT E.W.S 520, GANDHI NAGAR, KOCHI -20, MANAGING TRUSTEE, SREE POORNATHRAYEESA VRIDHASADANAM, CHARITABLE TRUST, NEAR OLD BUS STAND, THRIPUNITHURA, PIN - 682 301.

BY ADVS.SRI.NOBLE MATHEW
SRI.JESTIN MATHEW

RESPONDENT(S):

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1. THE VILLAGE OFFICER, MULAKKULAM VILLAGE, VAIKOM.PIN-686 141

2. THE ADDITIONAL TAHSILDAR, TALUK OFFICE, VAIKOM. PIN-686 141

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 19765 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1- TRUE COPY OF THE LEAFLET EVIDENCING THE CHARITABLE ACTIVITIES BEING PROVIDED BY THE PETITIONERS.

EXHIBIT-P2- TRUE COPY OF THE DEED OF WILL EXECUTED SMT. SUMATI AMMA.

EXHIBIT-P3- TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER MULAKKULAM VILLAGE EVIDENCING THE OWNERSHIP AND POSSESSION OF THE WILL SCHEDULED PROPERTY BY SMT. SUMATI AMMA.

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 20/01/2015 IN W.P(C) 216/2015.

EXHIBIT-P5- TRUE COPY OF THE PARTITION DEED REGISTERED AS 1852/1953 OF THE SUB REGISTRAR OFFICE, THEREBY SMT. SUMATI AMMA GOT TITLE TO THE PROPERTY.

EXHIBIT-P6- TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 06/06/2015.

EXHIBIT-P7- TRUE COPY OF THE RELEVANT PAGE OF THE THANDAPER REGISTER ISSUED BY THE VILLAGE OFFICER, MULAKKULAM.

EXHIBIT-P8- TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. VINOD CHANDRAN, J

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W.P(C) No. 19765 of 2015

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Dated this the 08th day of July, 2015

<u>J U D G M E N T</u>

The 1st petitioner is a trust, who is aggrieved with the refusal to effect mutation of certain properties, bequeathed to the Trust. The petitioner has been carrying on an old age home, in which one Sumati Amma was an inmate. The said Sumati Amma executed a "Will" in favour of the Trust as is indicated at Ext.P2 on 26.08.2014. She bequeathed her property, which she obtained as per the allotment made on a partition effected by Deed No.1852/1953. The deceased by the said deed was alloted the properties shown in Schedule "F".

2. It is also clear from Ext.P2 that the deceased had been paying tax with respect to the said property as is indicated at Ext.P3. The Survey numbers of the property indicated were 132/3 and 131/3 and the properties are said to be lying contiguously. Ext.P3, the receipt evidencing payment of tax by the deceased was

also shows the survey numbers as 132/3-4 and 131/3-2. When the petitioner sought for mutation by production of the Will, it was refused on the ground that there are some objections to the said transfer, on the basis of an alleged claim of right and interest over the said properties.

3. The petitioner was hence before this Court. This Court by Ext.P4, categorically found that, if at all any person has a dispute with respect to the Will or claims an interest in the property; then it is for that person to approach the appropriate Civil Forum. This Court directed the respondent to effect mutation of the property in terms of the Transfer of Registry Rules, 1966, once the original of the Will and encumbrance certificate are produced.

4. The encumbrance certificate earlier produced also shows the property to be comprised in Sy. No. 131/2 and 131/3. However, when the prior deed was examined, on the documents

being presented for registration, it was revealed that the revenue records and the prior deed shows the properties being comprised in Sy. Nos.431/3 and 431/4. Obviously the mistake occurred due to Ext.P5 showing the figures in the vernacular Malayalam. It is also very clear that the revenue authorities also proceeded on a wrong premise since the receipt of payment of tax at Ext.P3 also indicate the properties to be were comprised in 131/2 and 132/3. The mistake committed by the deceased insofar as showing the survey numbers in the Will was only a bonafide mistake. A reading of the Will would indicate that what she intended to bequeath was the property alloted to her by “F” Schedule in document No. 1852/1953 of Kaduthuruthy SRO.

5. In such circumstance, de hors the wrong survey numbers shown in the Will; which this Court find to be a bonafide mistake, mutation shall be effected, since the prior deed as also revenue records show the property to be comprised in survey Nos.

431/2 and 432/3. It is also submitted that the encumbrance certificate also stands corrected with the correct survey numbers as of now. The extent and boundaries also does not brook any dispute. In such circumstance the petitioner shall produce the documents as directed in Ext.P4 and de hors the bonafide mistake committed by the deceased in Ext.P2 Will, mutation shall be carried out. Objections raised shall not stand in the way of such transfer of registry being effected since it is for the objectors to approach the appropriate civil forum and in any event by mere transfer of registry none could legally assert a title nor would a valid claimant be divested of title.

Writ petition is allowed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge