

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 27058 of 2007 (U)

PETITIONER:

SAJU A.I., LABOURER,
S/O.ARACKATHOTTATHIL ITHAPPIRI,
MUCHIKKANKOLUMBIL KANAKKANTHURUTHY P.O.,
VADAKKANCHERY DESOM, ALATHUR TALUK.

BY ADVS.SRI.JOHN JOSEPH(ROY),
SRI.JEFRIN MANEL.

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, TRIVANDRUM.
2. DISTRICT REGISTRAR (GENERAL), PALAKKAD.
3. SUB REGISTRAR, VADAKKANCHERY,
PALAKKAD DIST.

BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Prv/2.

WP(C).No. 27058 of 2007 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
DATED 14-6-2007.

EXT.P2: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN AN
IDENTICAL MATTER IN W.P.(C).26196/04 DATED 3-8-2004.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv/2.

K. VINOD CHANDRAN, J

W.P(C) No. 27058 of 2007

Dated this the 20th day of July, 2015

J U D G M E N T

The petitioner executed a sale deed bearing registration No. 4170/2003 on 17.12.2003 in favour of his younger brother. The petitioner however, claims that he has executed a cancellation deed on 16.06.2006 by canceling the earlier deed without the junction of his brother. The petitioner now seeks registration of the deed as a cancellation deed relying on Ext.P2. Ext.P2 found that the registration of a cancellation deed can be made however, the legality of such cancellation left to challenge by anybody disputing the title. It was also clearly held that the court was not pronouncing on the validity of the cancellation and merely directed registration.

2. This Court does not find any binding precedent on the subject. The only precedent discernible is that the registration of such a cancellation deed would not confer any title. If that is so

there is no reason why this Court should permit registration of a sham document. True a deed of cancellation when executed is exigible to stamp duty only to the extent of Rs.250/-. However, the sale deed itself was executed in 2003 and the cancellation is sought to be effected in the year 2006. The petitioner's specific contention in the writ petition is that no delivery of the property was effected. However, to verify that the petitioner has not impleaded the brother to whom the property was transferred by directing registration of the same. This Court would be perpetrating an illegality since it would only lead to further litigations if at all the brother challenges the same.

3. The conveyance was effected by the petitioner to his brother by execution of a sale deed for valid consideration and the same registered too. The cancellation, if not challenged by the vendee in the earlier document, the brother, that would result in transfer inter-vivos and would then be a “conveyance” proper

under the Kerala Stamp Act, 1959. Definitely, it leads to a re-conveyance. This Court would not permit the petitioner to do indirectly in collusion with vendee of the earlier document; what the petitioner is not permitted to do directly as per the provisions of the Kerala Stamp Act, 1959.

Writ petition would stand dismissed.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge