

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 21594 of 2015 (Y)

PETITIONER(S):

**AMBIKA @ LAKSHMIKUTTY, AGED 59,
D/O.EDAPILLY NANIKUTTIAMMA, AGED 59 YEARS,
AYYANTHOLE P.O., THRISSUR-680 003.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF REGISTRATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT REGISTRAR, THRISSUR-680 001.**
- 3. THE SUB REGISTRAR, AYYANTHOLE SUB REGISTRY,
THRISSUR-680 003.**

BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 21594 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: A TRUE COPY OF THE APPROVED DRAFT PARTITION DEED,
 APPROVED AS ORDER DATED 26.3.2014 OF THE DISTRICT COURT,
 THRISSUR IN G.O.P.NO.90 OF 03.**

**EXT.P2: A TRUE COPY OF THE JUDGMENT IN W.A.NO.1697 OF 2012 DATED
 29.11.2012 OF THIS HON'BLE COURT.**

**EXT.P3: A TRUE COPY OF THE JUDGMENT IN W.A.NO.2222 OF 2012 DATED
 1.3.2013 OF THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P(C). No.21594 of 2015

Dated this the 31st day of July, 2015.

JUDGMENT

The petitioner had executed Ext.P1 deed along with her deceased brother's wife and minor daughter, partitioning the properties, which devolved on the petitioner and her deceased brother from their parents. The petitioner submits that, when Ext.P1 Deed was produced before the Registrar, he refused to register the same as a Partition Deed, on the ground that the parties to the Deed do not come under the explanation of 'family' as defined under Serial No.42 of the Schedule to the Kerala Stamp Act, 1959 [for brevity, the Act of 1959].

2. The issue is no longer *res integra* and is covered by Ext.P3 judgment of the Division Bench of this Court, specifically paragraph 6, which is extracted hereunder:

"6. On a reading of the amendment, the word "family" includes father, mother, son, daughter, brother, sister, legal heirs of

deceased children and so on and so forth, as extracted above. It cannot be gainsaid that only if a father and mother are alive, the children could be considered as having the status of sons and daughters and otherwise they would only be brothers and sisters. Any permutation and combination of the persons mentioned in the definition of 'family' would be entitled to have a partition claiming the benefit of lesser Stamp duty as is provided in Serial No.42(i) of the Schedule to the Stamp Act."

3. In such circumstances, it cannot be said that the petitioners and her deceased brother's legal heirs do not come within the explanation of 'family'. The learned Government Pleader would contend that the Deed has not at all been presented before the 3rd respondent. The petitioner also submits that execution has not been completed. Before executing the same, the petitioner had approached the Sub Registrar for determining the stamp duty and it was only on his direction that it cannot be treated as a Partition Deed, the petitioner has approached this Court.

4. The petitioner shall execute the Deed and present the same before the 3rd respondent and if the parties to the document are the petitioner and her deceased brother's legal

heirs, necessarily, the same should be considered as 'family' and exigible to duty as per Serial No.42 of the Schedule of the Act of 1959.

The writ petition is allowed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp