

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 30993 of 2013 (Y)

PETITIONER(S):

1. **ABDUL JALEEL, AGED 57,
S/O.MUHAMMED, THASNIM MANZIL, ALUVA EAST VILLAGE,
PIN - 683 101.**
2. **ABDUL HAMEED,
S/O.K.K.MOHAMMED, KALLUNGAL HOUSE, ULIYANNOOR KARA,
KADUNGALLOOR VILLAGE, PIN - 683 108.**

**BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR**

RESPONDENT(S):

1. **THE REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE, FORT KOCHI, PIN - 682 001.**
2. **K.K.MUHAMMED,
S/O.KOCHU HAJI, GRATE WATERS APPARTMENTS,
ALUVA EAST VILLAGE, PIN - 683 101.**
3. **V.M.LIYAQUAT ALI,
H.NO.141, FRIENDS COLONY, KATTOL ROAD,
NAGPUR - 440 013, MAHARASHTRA.**

**R1 BY GOVERNMENT PLEADER SRI.RAFEEK V.K.
R2 BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
R3 BY ADV. SRI.T.P.RAMACHANDRAN (THACHETH)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 30993 of 2013 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1. TRUE COPY OF THE MAGISTRATE CERTIFICATE DATED 03.01.2012
ISSUED BY KARIMAKKAD JUMA MASJID.**

**EXHIBIT P2. TRUE COPY OF THE LETTER DATED 28.04.2012 DULY SIGNED BY THE
2ND RESPONDENT.**

EXHIBIT P3. TRUE COPY OF THE GIFT DEED NO.763//2013 DATED ON 19.02.2013.

**EXHIBIT P4. TRUE COPY OF THE PETITION DATED 25.09.2013 WITH COVERING
LETTER NUMBERED AS S-7891/2013 OF THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.30993 of 2013

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Dated this the 18th day of March, 2015

JUDGMENT

Ext.P4 petition submitted by the second respondent and pending before the first respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is under challenge in this writ petition.

2. The petitioner in Ext.P4 is none other than the father of the petitioners herein. The petitioners allege that he is financially well, having properties worth several crores. Certain items of properties owned by the father of the petitioners were conveyed to them as gift. The petitioners further allege that though they as male members and legally to be inherited double the share of their sisters, due to undue influence, coercion and fraud played by the 3rd respondent, the son-in-law of the petitioner in Ext.P4 and the brother-in-law of the petitioners herein, major shares were set apart to his wife Jameela,

the elder sister of the petitioners and two other sisters. The petitioners further allege that the third respondent is a hard core criminal involved in several notorious activities, including the murder of the husband of former municipal chairperson of Aluva municipality,

3. The petitioners further allege that at the instance of the 3rd respondent, the second respondent remarried one Tahira at the fag end of his life. Tahira was very young lady working as housemaid abroad. According to the petitioners, the second marriage of the petitioners' father is at the instance of the third respondent in order to grab the properties owned by the petitioners' father. Now, Ext.P4 petition was filed before the first respondent stating that though life time interest was given in the properties conveyed to the petitioners as their shares, the petitioner in Ext.P4 was prevented from entering into the properties set apart to the petitioners.

4. According to the petitioners, in the absence of averment in Ext.P4 that he is being denied the basic amenities and physical needs, Ext.P4 cannot stand. It is with this background, the petitioners have come up before this Court.

5. Respondents 2 and 3 filed separate counter affidavits denying the allegations in the writ petition.

6. Arguments have been heard.

7. Admittedly, Ext.P4 petition is pending before the first respondent. The question whether Ext.P4 has to be allowed or not is a matter which has to be considered by the first respondent. This Court in exercise of powers under Article 226 of the Constitution of India cannot curtail the right of the petitioner in Ext.P4 in approaching the first respondent. It shall be open to the petitioners as well as the contesting respondents to submit their rival claims before the first respondent with all supporting documents, oral as well as documentary.

Therefore, the first respondent is directed to pass appropriate orders on Ext.P4. The second respondent who instituted the petition as well as the petitioners and other affected parties, if any, shall be afforded an opportunity of being heard and to adduce evidence in support of their claim. This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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