

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 28544 of 2015 (P)

PETITIONER(S):

1. JOHN, S/O.OUSEPH, AGED 64 YEARS,
MUDAVASSERI HOUSE, KARUTHEDAM DESOM,
ELAMKUNNAPPUZHA VILLAGE, KOCHI TALUK,
ERNAKULAM DISTRICT-682 511.
2. XAVIER, S/O.OUSEPH, AGED 57 YEARS,
MUDAVASSERI HOUSE, KARUTHEDAM DESOM,
ELAMKUNNAPPUZHA VILLAGE, KOCHI TALUK,
ERNAKULAM DISTRICT-682 511.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S):

1. THE DISTRICT COLLECTOR, CIVIL STATION,
KAKKANAD, ERNAKULAM-682 030.
2. THE REVENUE DIVISIONAL OFFICER,
REVENUE DIVISIONAL OFFICE,
FORT KOCHI, ERNAKULAM DISTRICT-682 001.
3. THE TAHASILDAR, KOCHI TALUK,
ERNAKULAM DISTRICT-682 001.
4. THE VILLAGE OFFICER, ELAMKUNNAPPUZHA VILLAGE,
ERNAKULAM DISTRICT-682 511.

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 28544 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE PARTITION DEED BEARING NO.982/2001 DATED
 20.03.2001.**

**EXT.P2: TRUE COPY OF THE APPLICATION OF THE PETITIONER DATED
 15.12.2014.**

**EXT.P3: TRUE COPY OF THE WRITINGS OF THE 3RD RESPONDENT IN THE
 EXT.P2.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.28544 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

Petitioners are executants to a partition deed produced as Ext.P1. The petitioners have approached this Court on account of non-effecting transfer of registry based on the partition deed.

2. It is submitted that one of the brothers of the petitioners, whose whereabouts are not known for last more than 35 years and his share was also partitioned as per Ext.P1 as if he is not alive. Therefore, the revenue officials insist production of the death certificate of his brother or court order to effect transfer of registry.

This Court is of the view, in view of the assertion made by the petitioner, being a close relative, the presumption under Section 107 of the Evidence Act would enure to the benefit of the petitioners and the burden is on the person who otherwise assert contrary. In such circumstance, an affidavit sworn by a nearest relative would be sufficient to act upon. Further, it is to be noted

that the transfer of registry is for fiscal purposes and even if the person, who has been considered as dead returns back, his right will not be lost merely because of the execution of the partition deed. Therefore, the revenue officials are directed to effect transfer of registry in accordance with the partition deed.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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