

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 34384 of 2014 (W)

PETITIONER(S):

THANKAM PAUL AGED 84 YEARS
W/O.LATE PAYYAPPILLY DEVASSY PAUL
PAYYAPPILLI (H) NAYATHODU P.O., ANKAMALI
ERNAKULAM DISTRICT- 683572, NOW RESIDING AT NO.94
LINTANG PARK, 93200 KUCHING, SARAWAK
MALASIA REPRESENTED BY HER POWER OF ATTORNEY HOLDER
SRI.SEBASTIAN DAVIS PAUL
S/O.LATE PAYYAPPILLY DEVASSY PAUL
RESIDING AT 18/257, NAYATHODU P.O., ANKAMALI
ERNAKULAM DISTRICT - 683 572.

BY ADVS.SMT.P.RANI DIOTHIMA
SRI.IGNATIOUS PHILIP

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. ADDITIONAL TAHSILDAR, ALUVA - 683 101.
3. THE VILLAGE OFFICER,
ANKAMALI - 683 572.

R BY ADV. GOVERNMENT PLEADER SRI.P.K.ABDUL RAHMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE LAST AND FINAL WILL EXECUTED BY
SRI.PAYYAPPILLY DEVASSY PAUL**

**EXHIBIT P2: TRUE COPY OF TEH PROBATE ISSUED BY THE PROBATE
OFFICER, KUCHING MALASIA DATED 11TH OCTOBER 2013.**

**EXHIBIT P3: TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT IN THE MONTH OF
DECEMBER 2013.**

**EXHIBIT P4: TRUE COPY OF THE ORDER NO.E2-6014/14 ISSUED BY THE 2ND
RESPONDENT DATED 5/12/2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

A.M.SHAFIQUE, J.

W.P.(C).No. 34384 of 2014

Dated this the 12th day of November, 2015

JUDGMENT

The petitioner challenges Ext.P4 by which her request for effecting mutation of property having an extent of 18.21 ares in Re-Survey No.322/2/3 in Block No. 12 of Angamaly Village was rejected on the ground that she will have to produce an Ancillary Grant from an Indian Court.

2. The short facts in the writ petition disclose that the petitioner being a Christian by birth and person of Indian origin was resident of Malaysia. Her husband was also an Indian Christian who died on 1.10.2012 after executing a will. The will dated 25.4.2006 was probated by the Probate Officer, Kuching, Malaysia on 11.10.2013. As per the will, all his movable and immovable properties have been bequeathed in the name of the petitioner.

3. The petitioner submitted Ext.P3 application to the Village Officer to effect mutation of the property in her name on the basis of the will which has been probated by the Probate Officer of Malaysia. However, by

Ext.P4 the petitioner was asked to produce an ancillary grant. According to the petitioner the probate of the will is not applicable to Christians, which is clear from Section 213 (2) of the Indian Succession Act. Counter affidavit has been filed by the second respondent inter alia stating that since the will was registered in a foreign country an Ancillary Grant is necessary to carry out mutation. Section 213 reads as under:-

“Right as executor or legatee when established-

- (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in [India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.
- (2) This section shall not apply in the case of Wills made by Munhammadans [or Indian Christians], and shall only apply -
 - (i) in the case of Wills made by any Hindu, Budhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and
 - (ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the [ordinary civil jurisdiction] of the

High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situated within those limits].

4. It is apparent from the above provision that the requirement of the probate is dispensed with as far as the will executed by Indian Christians are concerned. Under such circumstances, calling upon the petitioner to produce an ancillary grant was totally unnecessary. It shall always be open for the officer to rely upon the Will and make necessary entries in the mutation certificate.

5. In fact, no specific provision of law is mentioned in Ext.P4 nor any statutory provision has been brought to the notice of this Court by the learned Government Pleader while supporting the stand taken by the Tahasildar in order to content that being a Will executed in a foreign country, an ancillary grant is required to confer title on the legatees. In so far as the legatee has claimed right on the basis of the Will which is probated by the Probate Officer in Malaysia, I am of the view that the respondents 2 and 3 are bound to rely upon the Will which has been duly probated by the Malaysian Agency

and take appropriate steps to mutate the property in favour of the petitioner. In the result, this writ petition is allowed, Ext.P4 is set aside and respondents 2 and 3 are directed to effect mutation of the property after complying with all other formalities based on the Will produced by the petitioner.

**Sd/-
A.M.SHAFFIQUE
JUDGE**

//TRUE COPY//

PA TO JUDGE

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