

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMMED MUSTAQUE

TUESDAY, THE 6TH DAY OF OCTOBER 2015 14TH ASWINA, 1337

WP(C), No. 17351 of 2015 (F)

PETITIONER(S):

1. NEELANKOL KARTHIYAYANIL,
W/O.LATE SRILGOVINDAN, AGED 52 YEARS,
NEELANKOL HOUSE, EZHOME AMSOM &
DESOM, P.O.KOTTILA, EZHOME (VIA)
KANNUR TALUK, KANNUR DISTRICT.
2. NEELANKOL KAMALA, W/O.KRISHNAN,
AGED 60 YEARS, PUTHUVAKKAL HOUSE,
EZHOME AMSOM & DESOM, P.O.KOTTILA,
EZHOME (VIA), KANNUR TALUK, KANNUR DISTRICT.
3. NEELANKOL DEVI, W/O.BALAKRISHNAN,
AGED 58 YEARS, MADAYI AMSOM, PUTHIYANGADI DESOM,
KOZHI BAZAR P.O., MADAYI, KANNUR DISTRICT.
4. NEELANKOL SATHI, W/O.BALAKRISHNAN,
AGED 51 YEARS, PUTHUKKUDIAN HOUSE,
CHERUTHAZHAM AMSOM DESOM, P.O.SPEESTHA,
VIA. PAYANGADI, KANNUR DISTRICT.
5. NEELANKOL INDIRA, W/O.CHANDRAN, AGED 48 YEARS,
MADAI AMSOM, PUTHIYANGADI DESOM,
KOZHI BAZAR, P.O.MADAYI, KANNUR DISTRICT.

BY ADVS.SRILEN,VISHNU NAMBOODIRI
SRI.P.P.NARAYANAN
SRI.R.PEYIKUMAR

RESPONDENT(S):

1. THE SUB REGISTRAR,
PAYANGADI SUB REGISTRAR'S OFFICE,
PAYYANNUR, KANNUR DISTRICT.
2. THE DISTRICT REGISTRAR,
KANNUR, THALASSEERY.
3. THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM - 695 001.

WP(C).No. 17651 of 2015 (F)

4. STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF REGISTRATION
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

5. ADDITIONAL 5TH RESPONDENT

THE VILLAGE OFFICER, EZHOME VILLAGE,
KANNUR DISTRICT.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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A.MUHAMED MUSTAQUE, J.

W.P.(C).No.17651 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

The petitioners along with others presented a partition deed for registration. This was returned by the Sub Registrar of Pazhayangadi as per Ext.P4 stating that there is a difference in the extent of land shown in the partition deed, when compared to back documents.

2. The petitioner challenges the order of Sub Registrar in this writ petition.

3. In the order, the Sub Registrar referred the judgment of this Court in W.P.(C) Nos. 34367/09 and 37105/09 to return the documents presented by the petitioner. It is to be noted that, the above judgment was rendered in the context when there are a large number of malpractices involved relating to the registration of documents to claim property by illegal methods, by taking advantage of the Kerala Registration Act and Rules. This Court in fact elaborately considered various provisions of

Act and Rules and ordered that the Sub Registrar is legally obliged to reject or refuse the registration of a deed. This Court dealt upon various provisions of the Registration Act and Rules to remind the authority to exercise their power while registering a document. Those power in fact vested with the registering authority to conduct an enquiry as to the competency of the person registering a document.

4. Apparently the finding discrepancy in extent of land; the registering authority refused to register the documents as per Ext.P4. The description of extent shown in a document is different from determining competency of a person in registering a document in accordance with the Registration Act, at the instance of persons who are otherwise competent to present such documents, though instrument may vary in description, extent or boundaries in comparison with the earlier documents.

5. The Sub Registrar is duty bound to find out the competency of the persons who are presenting the

documents. That may not go beyond to make such enquiry to find out what is the extent of the land involved in a document. This Court is of the view that exercise of power is beyond the jurisdiction of Sub Registrar.

6. The petitioner is a party to a partition deed. It is possible to partition a immovable property based on the possessory right even though the persons may not have title or ownership with them. The right of a person in respect of the immovable property is a matter to be decided in a proper manner before a civil court and not by a decision by the Sub Registrar as his duty is only to register the documents in accordance with the Registration Act and Rules, and based on the competency of the person, who presents the documents.

7. Therefore, this Court is of the view that there is no other infirmity with the document presented by the petitioner and the Sub Registrar is bound to register the documents in accordance with law. Accordingly the Ext.P4

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is set aside. Needful shall be done by the Sub Registrar on presentation of the document for registration.

The writ petition is disposed of as above.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: TRUE COPY OF GIFT DEED NO.2132/1986 OF PAYANGADI SUB REGISTRAR'S OFFICE.
- EXT.P-2: TRUE COPY OF THE BASIC TAX RECEIPTS ISSUED BY THE VILLAGE OFFICER DATED 20.2.2015 AND 13.4.2015.
- EXT.P-3: TRUE COPY OF THE PARTITION DEED SCRIBED AND EXECUTED BY THE PETITIONERS.
- EXT.P-4: TRUE COPY OF THE ORDER REPORT OF THE 1ST RESPONDENT.
- EXT.P-5: TRUE COPY OF THE APPEAL DATED 21.4.2015 FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.
- EXT.P-6: TRUE COPY OF THE ORDER DATED 26.5.2015 OF THE 2ND RESPONDENT.
- EXT.P-7: TRUE COPY OF THE CIRCULAR NO.RP3/16535/12 OF THE 2ND RESPONDENT.
- EXT.P-8: TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE PETITIONERS BEFORE THE SUB REGISTRAR'S OFFICE, PAYANGADI.
- EXT.P-9: TRUE COPY OF THE PLAN PREPARED BY THE 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//


P.S. TO JUDGE

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