

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 30TH DAY OF NOVEMBER 2020 / 9TH AGRAHAYANA, 1942

WP(C).No.16810 OF 2020(A)

PETITIONER:

HARIDAS K., AGED 66 YEARS,
S/O.LATE MANIYAN NAIR, KONGATTU HOUSE,
VANDAZHY VILLAGE-I, VANDAZHY AMSOM, ALATHUR TALUK,
VANDAZHY.P.O, PALAKKAD DISTRICT-678706.

BY ADVS.

SRI.P.R.VENKATESH
SMT.ASHA P.KURIAKOSE
SRI.G.KEERTHIVAS
SMT.REJITHA RAJAN

RESPONDENT:

THE SUB REGISTRAR,
VADAKKENCHERRY, PALAKKAD DISTRICT-678682.

SRI BIMAL K NATH, SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner and a certain Sri. Krishnan Kutty are brothers. They are the owners in title and possession of property having an extent of 1.873 Hectares of land comprised in Re-Sy. No. 72/11, 59/1 in Block No.48 of Vandazhy-1 village. They state that they have effected mutation in their favour and have been remitting tax as is evident from Exts.P1 to P4. They state that the property was originally owned by the father of the petitioner and his brother and they were holding the same on the cover of a Verumpattam leasehold right.

2. The petitioner states that he and his brother decided to partition the property among them for which purpose, they prepared a partition deed and presented the same before the respondent. However, the respondent is stated to have refused to register the document on the ground that the petitioner did not produce documents to show the derivation of title. The petitioner contends that the said stand taken by the respondent cannot be sustained in the light of the judgment of this Court in **Eshaque v. Sub Registrar** [2002 (1) KLT 330], which ratio is consistently being followed by this Court as is evident from Exts.P7 and P8 judgments. The petitioner also refers to the judgment of a learned Single Judge reported in **Thambayama E. v. Sub Registrar, Kasaragod and Another** [2020 (2) KLT 423].

3. The learned Government Pleader was also heard and I have considered the submissions advanced.

4. Relying on the judgment in **Ezhaque** (supra), this Court in judgment dated 16.2.2018 in W.P.(C) No. 2871 of 2018 has held that even possessory rights can be conveyed. It was further held that whether the possession is based on a lease or under a title deed is not a matter of enquiry by the Sub Registrar. The rights which the petitioner is having alone can be conveyed to the transferee. The revenue records produced by the petitioner shows that they are in possession and have been remitting tax. The name of the petitioner as well as his brother finds a place in the BTR Register as well. In that view of the matter, the stand taken by the respondent that the petitioner should establish the derivation of his title in respect of the property cannot be sustained.

5. Resultantly, the petitioner is directed to present the partition deed in question before the respondent concerned by following the procedure upon which the respondent shall register the same if it is otherwise in order.

With the above direction, this writ petition is disposed of.

sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE TANDAPER ACCOUNT NO.7191 OF THE PETITIONER AND HIS BROTHER.
- EXHIBIT P2 TRUE COPY OF THE LAND TAX RECEIPT DATED 27.07.2020.
- EXHIBIT P3 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 27.07.2020.
- EXHIBIT P4 TRUE COPY OF EXTRACT OF BASIC TAX REGISTER ISSUED ON 24.7.2020 IN RELATION TO THE PROPERTY OF THE PETITIONER AND HIS BROTHER
- EXHIBIT P5 TRUE COPY OF THE PARTITION DEED DATED 30.07.2020 PREPARED BY THE PETITIONER AND HIS BROTHER.
- EXHIBIT P6 TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED IN 2002(1)KLT 330.
- EXHIBIT P7 TRUE COPY OF THE JUDGMENT DATED 16.2.2018 IN W.P.(C)NO.2871/2018 OF THIS HON'BLE COURT
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 24.10.2018 IN W.P(c)NO.34514/2018 AND W.P(C)NO.34552/2018 OF THIS HON'BLE COURT.
- EXHIBIT P9 TRUE COPY OF THE REPLY DATED 30.07.2020 ISSUED BY THE SUB REGISTRAR.

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE