

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 13TH DAY OF FEBRUARY 2019 / 24TH MAGHA, 1940

WP(C).No. 39315 of 2015

PETITIONER:

VANNATHI VALAPPIL MAHMOOD  
AGED 62 YEARS  
S/O. ABDURAHIMAN KUTTY, THAVAKKAL HOUSE,  
PAYYOLI (P.O), KOZHIKODE PIN 673 522

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENTS:

- 1 THE STATE OF KERALA  
REPRESENTED BY IT'S SECRETARY TO GOVERNMENT,  
SECRETARIAT, THIRUVANANTHAPURAM, PIN 695 001
- 2 THE SUB REGISTRAR  
OFFICE OF THE SUB REGISTRY OFFICE,  
PAYYOLI, KOZHIKODE DIST), PIN 673 014
- 3 THE DISTRICT REGISTRAR (GENERAL)  
KOZHIKODE, PIN 673 001

BY ADV. GOVERNMENT PLEADER

SRI.SAIGI JACOB PALATY, SR.GOV.T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
13.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

**ALEXANDER THOMAS, J.**

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**W.P(C)No.39315 of 2015**  
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Dated this the 13<sup>th</sup> day of February, 2019

**JUDGMENT**

The prayers in the above Writ Petition (Civil) are as follows:

*“(i) to issue a writ of certiorari or any other appropriate writ order or direction to call for records leading to Ext.P-4, P-6 & P-7 and quash the same and declare that no exigible stamp duty is payable on Ext-P2.*

*(ii) to issue a writ of mandamus or any other appropriate writ order or direction to the respondents to consider Ext.P5 representation and exempt the petitioner from remitting the additional stamp duty and fine with respect to Ext.P2 sale deed.*

*And*

*(iii) to grant such other reliefs and to pass such other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.”*

2. Heard Smt.K.Deepa, learned counsel appearing for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. Pursuant to the agreement for sale of immovable property entered into by the petitioner with the land owners concerned, Ext.P-1 sale deed No.1537/1/2013 dated 17.05.2013 has been duly executed and registered before the SRO, Payyoli. The immediate prior title of the subject property is on the basis of registered sale deed No.1537/1/2013 of SRO,

Payyoli. Pursuant to the agreement for sale entered into by the petitioner with joint land owners concerned, Ext.P-2 sale deed dated 06.05.2015 has been duly executed in favour of the petitioner for the sale of the subject property and the same has been duly registered before the 2<sup>nd</sup> respondent-SRO, Payyoli. The prior title deed in respect of the subject property covered by Ext.P-2 is Ext.P-1 registered sale deed No.1537/1 dated 17.05.2013 of SRO, Payyoli. Pursuant to the registration Ext.P-2 deed, the 2<sup>nd</sup> respondent has issued Ext.P3 duplicate receipt dated 07.05.2015, whereby the petitioner has been instructed to collect the registered document within 15 days from the date of registration. Later, the petitioner has been served with the impugned Ext.P-4 provisionally proposing order dated 11.05.2015 issued by the 3<sup>rd</sup> respondent-District Registrar (General), holding that the petitioner is liable to pay an extra amount of Rs.42,000/-, which is inclusive of additional stamp duty of Rs.41,500/- and ten times the amount, by way of penalty within seven days. The ground for provisionally proposing of additional stamp duty and penalty as stated in Ext.P-3 is that in the prior title deeds, the subject property covered by Ext.P-2 sale deed has been described as “Jenmavakasham Rights/Janmam Rights (ജന്മാവകാശം)”, whereas in Ext.P-2, the description of the nature of the rights of the land of the property is shown as “Kanam Kuzhikkanam” and that therefore there is a material change in regard to the subject

property in Ext.P-2 deed. The title deed prior to Ext.P-1 is stated to be registered document No.1179/1961 of SRO, Payyoli, whereby the property had originally belonged to Asya Umma, who possessed the same only as per “Kanam Kuzhikkanam rights” and not “Jenmavakasham Rights”. That after the death of Asya Umma, the property had devolved upon her legal heirs and her legal heirs had possessed the property as her “Kanam Kuzhikkanam rights” during the year 1986 and later the property was partitioned as per registered partition deed No.319/1986 of SRO, Payyoli, wherein nature of the right on the basis of the property is shown as “Jenmavakasham”. Thus it appears that in Ext.P-1, which is the immediate prior title deed (sale deed No.1537/1 dated 17.05.2013) as well as in registered partition deed No.319/1986 of SRO, Payyoli, the nature of the rights on the basis of the property is shown as “Jenmavakasham”, whereas in the registered document No.1179/1961 of SRO, Payyoli, on the basis of which the aforesaid prior predecessor Smt.Asya Umma has held the property, was shown as “Kanam Kuzhikkanam”.

4. According to the petitioner, the Jenmam rights/Jenmavakasham rights in respect of the subject property has been never assigned to the previous land owner/possessor by the competent statutory authorities under the provisions of the Kerala Land Reforms Act and that therefore, the description of the nature of the rights of the

property has been correctly shown in registered document No.1179/1961 of SRO, Payyoli as “Kanam Kuzhikkanam” and that the description of the said rights as “Jenmavakasham” in Ext.P-1 prior title deed dated 17.05.2013 and the partition deed No.319/1986 as “Jenmavakasham” is factually wrong. Since the petitioner was accordingly advised that the description of the property in the present Ext.P-2 sale deed should be correctly shown as one in relation to “Kanam Kuzhikkanam rights” and not as “Jenmavakasham” and that more so particularly because the nature of the actual rights on the basis of which the property has been held, viz., Kanam Kuzhikaanam rights is inferior to the erroneously claimed “Jenmavakasham rights”. On this basis, the petitioner would contend that the erroneous description of the property rights in Ext.P-1 prior title deed dated 17.05.2013 and the registered partition deed No.319/1986 of SRO, Payyoli should be treated in the category of “Mistake Draftsmen” and that the petitioner is legally entitled to rectify the said mistake by showing the actual nature of the rights on the basis of which the property is held in Ext.P-2 sale deed, in order to reflect the correct state of affairs in the said deed. Thereafter, the petitioner had submitted Ext.P-5 representation before the 3<sup>rd</sup> respondent-District Registrar General as against Ext.P-4 provisional order dated 17.08.2015. However, the 3<sup>rd</sup> respondent has now issued the impugned Ext.P-6 order dated 28.10.2015 rejecting the contentions of the petitioner

and holding that since there is change in the description of the rights as “Kanam Kuzhikkanam rights” from the previous description as “Jenmavakasham”, there is material change in the property rights and that additional stamp duty of Rs.41,500/- and penalty of Rs.1000/- totalling to Rs.42,500/-, should be remitted by the petitioner within seven days. Thereafter, Ext.P-7 letter dated 03.11.2015 has also been issued by the 2<sup>nd</sup> respondent-Sub Registrar directing the petitioner to immediately remit the amounts ordered in Ext.P-6 or otherwise, recovery proceedings may set in motion with these proceedings at Exts.P-6 & P-7 that are under challenge in this W.P(C). Respondents 2 & 3 had filed a counter affidavit dated 14.03.2016. In paragraph 3 of the said counter affidavit, it is stated that in the previous documents, the partition deed No.319/1986 and Ext.P-1 sale deed No.1537/2013 of SRO, Payyoli, it has been described that the properties had “Janmam Rights” and that the subsequent document as per Ext.P-3, it is stated that the property have only “Kanam Kuzhikanom rights” and that therefore, going by the proceedings No.LRA 3-6252/15 dated 08.04.2015 of the Commissioner of Land Revenue, a change in right of the property should be treated as deed of rectification with material change chargeable with stamp duty and that as per Article 21(i) of the Schedule appended to the Kerala Stamp Act, 1959, regarding the transfer of any right related to the immovable property, stamp duty is calculated on

the basis of fair value of the land or amount or value of consideration for that conveyance, whichever is higher. That the 2<sup>nd</sup> respondent is of the opinion that Ext.P-3 document deed is of the same nature mentioned in the abovesaid proceedings of the Commissioner of Land Revenue and hence the document was impounded by the 2<sup>nd</sup> respondent and forwarded to the 3<sup>rd</sup> respondent, for determination of actual stamp duty and penalty. The 3<sup>rd</sup> respondent, considering the said request of the 2<sup>nd</sup> respondent and the abovesaid guidelines of the Commissioner of Land Revenue has issued Ext.P-4 provisional order dated 17.08.2015 demanding the amounts shown therein and later after consideration of Ext.P-5 reply of the petitioner, the impugned Ext.P-6 final order dated 28.10.2015 has been issued.

5. Further, it is contended in paragraph 4 of the said counter affidavit that words in the sale deed showing rectification in the previous registration deed make material change in the previous document and that the sale deed includes another rectification deed with material change. The petitioner is liable to pay stamp duty. That as Ext.P-2 sale deed includes another rectification deed with material change and he is liable to pay stamp duty for two distinct deeds. As Ext.P-2 sale deed includes another deed of rectification, which makes material changes in the previous document, stamp duty is to be calculated on the basis of the nature of the previous deed, so that stamp duty is calculated as per Article 21 of the

schedule, etc. Further, it is contended in paragraph 6 of the counter affidavit that the current document, viz., Ext.P-2 deed is a rectification of the nature regarding the right in relation to the property and a change in the nature of right is treated as new conveyance and stamp duty is calculated accordingly and therefore, it can be assumed that a deed of rectification which is charging the duty for conveyance is included in it and so an additional stamp duty of Rs.41,500/- is required for Ext.P-2 deed, etc.

6. It has been held by this Court in a series of cases as in ***P.A.Jihas v. The District Registrar & another*** [2012(3)KLT 194=2012(3)KHC 146] that for correction of mistake in the sale deed even if it is with regard to flat number, the amount payable is the one applicable for rectification of deed and even if there is an extinguishable right and creation of a new right, by stating the identity of the flat, that will not alter the nature of the rectification deed. This Court has also held in the judgment dated 18.08.2008 in W.P(C)No.21715/2008 that for the execution and registration of a deed of rectification to rectify the mistake, the respondent-registration official cannot demand that the party should pay additional stamp duty for sale/conveyance on the ground that what is sought to be rectified is the mistakes in the sale deed.



7. After having heard Smt.K.Deepa, learned counsel for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for respondents in extenso, this Court has no hesitation to hold that the abovesaid stand of respondents 1 & 3 that the registration of Ext.P-2 sale deed would involve imposition of stamp duty for two conveyances, is nothing but bordering to “wednesbury unreasonableness”, for the reasons stated hereinafter. It is held by this Court in various judgments as in ***The Madras Refineries Ltd. v. The Chief Controlling Revenue Authority, Board of Revenue, Madras*** [(1977) 2 SCC 308] that in order to determine whether any, and if any, what stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial. It is common ground on both sides that the prior documents as per registered partition deed No.319/1986 and Ext.P-1 sale deed dated 17.05.2013, both are of SRO, Payyoli. The description of the property rights is shown as “Jenmavakasham”, whereas in the prior title deed prior to the abovesaid partition deed No.319/1986 and Ext.P-1 sale deed, viz., registered document No.1179/1961 of SRO, Payyoli, the property is described as only in relation to “Kaanam Kuzhikanam” rights and not “Jenmavakasham right”. There is also no dispute that no competent

statutory authority has issued any proceedings, so as to confer “Jenmavakasham right” on the subject property. That apart, the nature of the rights of the property shown in the previous document No. 1179/1961 as well as in the present Ext.P-2 sale deed dated 06.05.2015, is “Kanam Kuzhikanam rights”. That there cannot be any dispute that the quality and nature of the “Kanam Kuzhikanam rights” is inferior to the superior rights of the “Jenmavakasham rights” and what is sought to be done by the petitioner is only to show the correct state of affairs in Ext.P-2 deed, so as to be in consonance with the one in the previous registered document No.1179/1961 of SRO, Payyoli on the premise that the subsequent description of the properties in partition deed No.319/1986 and Ext.P-1 deed dated 17.05.2013 showing it as “Jenmavakasham rights” is erroneous, etc. It is also not in dispute that the property stands conveyed by the execution and registration of Ext.P-2 deed. If that be so, there is no question of any second conveyance. Since that is the position, this Court is not in a position to appreciate the stand taken by respondents 2 & 3 that in the execution and registration of Ext.P-2 sale deed, it amounts to two conveyances and therefore exigible for stamp duty for two conveyances. Once the property is already conveyed by Ext.P-2 by the assignors to the assignee, then there cannot be any question of a second conveyance of the very same subject property by the self-same assignors to the same assignee

in the very same transaction. It is not fathomable to this Court, as to the logical and legal basis on the basis of which respondents 2 & 3 have come to such a strange finding in the impugned orders. That apart, it is clearly stated by respondents 2 & 3 that what is involved there is a deed of rectification, apart from a sale deed. Therefore, even going by the stand of respondents 2 & 3, the execution and registration of Ext.P-2 sale deed could involve not only a conveyance of the property right of the assignors to the assignee but it would also have an element of deed of rectification for rectifying the mistaken previous entries in the abovesaid two previous documents. Therefore, respondents 2 & 3 are fully right in taking the view that what is involved in Ext.P-2 deed is not merely a sale deed, but also a deed of rectification. But it is also too elementary to state that no stamp duty has been prescribed for a deed of rectification, as per the provisions of the Kerala Stamp Act, 1959 and the Schedule appended thereto. Hence, it goes without saying that no stamp duty whatsoever is chargeable as regards the rectification component of Ext.P-2 and certainly stamp duty is chargeable only for the sale/conveyance component of Ext.P-2 deed. It is also not in dispute that by virtue of the powers conferred under Sec.78 of the Registration Act, 1908, the competent authority of the State Government has notified a table of registration fee prescribing the rate of registration fee for different transactions covered therein and sub-clause

(s) of clause (1) of the table of registration fee notified under Sec.78 of the Act reads as follows:

“(1)   xxx   xxx   xxx  
          xxx   xxx   xxx

*(s) The registration fee for a deed of rectification which does not create, transfer, limit, extend, extinguish or record any right or liability shall be the same as the fee leviable on the original document subject to a maximum of Rs.500.”*

8. Therefore, though the legislature and the sub-ordinate legislature has not prescribed the stamp duty rate for a deed of rectification, the rule making authority under the Registration Act has conceived of a deed of rectification as one which does not create, transfer, limit, extend, extinguish or record any right or liability, etc. and in such case, the registration fee shall be the same as the fee leviable on the original document, subject to a maximum of Rs.500/-. So the clear fall out of the provision in clause (1)(s) of Table of Registration Fee is that where the registration fee is one in relation to a sale deed and so long as the deed of rectification is one which does not create, transfer, limit, extend, extinguish or record any right or liability, then such a deed of rectification should be registered, subject to levy of registration fee, which is the same as the one on the original document, but subject to a maximum of Rs.500/-. So in a case where rectification deed is one in relation to a sale deed like Ext.P-1, then the registration fee leviable is the one applicable for registration of a

sale deed, but subject to a maximum of Rs.500/-. It appears that respondents 2 & 3 have read the scope and ambit of clause(1)(s) of Table of Registration Fee, after omitting the words “subject to a maximum of Rs.500” and have also read “registration fee” as “stamp duty”. The stand taken by respondents 2 & 3 in the impugned Exts.P-4, P-6 & P-7 that the petitioner will have to pay stamp duty for two conveyances in relation to Ext.P-2 sale deed is certainly illegal and *ultra vires*. However, as observed by this Court hereinabove, the stand of respondents 2 & 3 in Ext.P-6 that what is involved in Ext.P-2 deed is not merely a component of sale/conveyance, but also a component of rectification of the abovesaid mistaken previous entries is correct. So certainly they are entitled to charge an additional fee of Rs.500/- in relation to the registration of Ext.P-2 deed. In that view of the matter, it is ordered that the impugned proceedings have no legs to stand and accordingly, Exts.P-4, P-6 & P-7 will stand set aside. It is not in dispute that the petitioner has already paid the applicable stamp duty and registration fee in respect of the sale transaction covered by Ext.P-2. However, it is made clear that respondents 2 & 3 could insist that the petitioner should pay an additional registration fee of Rs.500/-, in view of the abovesaid aspects, over and above, the stamp duty and the registration fee already paid by him for Ext.P-2 sale deed. The petitioner may approach the 2<sup>nd</sup> respondent-Sub Registrar and may offer

remittance of the said additional registration fee amount of Rs.500/- and the 2<sup>nd</sup> respondent may take steps to ensure that the said additional registration fee amount of Rs.500/- is duly remitted by the petitioner.

With these observations and directions, this Writ Petition (Civil) will stand disposed of.

Sd/-

**ALEXANDER THOMAS  
JUDGE**

vgd

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1                      TRUE COPY OF THE SALE DEED NO 1537/1 DATED  
17-05-2013 OF S.R.O PAYYOLI, KOZHIKODE
- EXHIBIT P2                      TRUE COPY OF THE SALE DEED ENTERED INTO  
BETWEEN THE PETITIONER AND THE JOINT OWNERS  
OF THE PROPERTY, WHICH WAS PRODUCED BEFORE  
THE 2ND RESPONDENT FOR REGISTRATION
- EXHIBIT P3                      TRUE COPY OF THE DUPLICATE RECEIPT DATED  
07-05-2015 ISSUED TO THE PETITIONER BY THE  
2ND RESPONDENT
- EXHIBIT P4                      TRUE COPY OF THE ORDER NO G.L 4087/2015  
DATED 17-08-2015 OF THE 3RD RESPONDENT
- EXHIBIT P5                      TRUE COPY OF THE REPRESENTATIONS SUBMITTED  
BY THE PETITIONER BEFORE THE 3RD RESPONDENT  
SEEKING EXEMPTION TO REMIT THE ADDITIONAL  
STAMP DUTY AND FINE
- EXHIBIT P6                      TRUE COPY OF THE ORDER DATED 28-10-2015  
ISSUED TO THE PETITIONER BY THE 3RD  
RESPONDENT
- EXHIBIT P7                      TRUE COPY OF THE ORDER DATED 03-11-2015  
ISSUED TO THE PETITIONER BY THE 2ND  
RESPONDENT