

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY ,THE 31ST DAY OF JANUARY 2019 / 11TH MAGHA, 1940

WP(C).No. 2869 of 2019

PETITIONER/S:

- 1 LINOY JOHN
AGED 39 YEARS
S/O. C.T. YOHANNAN, CHOONDAL HOUSE, UNITED STREET,
ANCHERY THRISSUR.
- 2 STEFFY WILSON
D/O. WILSON, CHERIKKALAKATHU HOUSE, RESIDING AT
CHOONDAL HOUSE, UNITED STREET, ANCHERY, THRISSUR.
- 3 SUKUMARAN
S/O. SANKURU, THEKKUTPAZHATTI, KOZHUKULLY VILLAGE,
THRISSUR.

BY ADVS.

SRI.K.B.GANGESH
SMT.ATHIRA A.MENON
SMT. FARHA BEEGUM K.M.
SMT.SMITHA CHATHANARAMBATH
SRI.AMAL S KUMAR

RESPONDENT/S:

- 1 SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, KUTTANELLUR, THRISSUR-
680 014
- 2 NADATHARA GRAMA PANCHAYAT
KOZHUKULLI P.O, THRISSUR-680 752, REP. BY ITS
SECRETARY.

OTHER PRESENT:

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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W.P.(C).No. 2869 of 2019

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Dated this the 31st day of January, 2019

J U D G M E N T

The petitioners are stated to be aggrieved by the impugned stand of the 1st respondent Sub Registrar in demanding that for registering Ext.P-4 rectification deed in respect of Ext.P-1 sale deed, the petitioners are liable to pay stamp duty by treating it as a conveyance and not as a deed of rectification, etc. The prayers in the above Writ Petition (Civil) are as follows:

- “i) a Writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to register Ext.P-4 as rectification deed and levy stamp duty applicable for registration of rectification deed;*
- ii) a Writ of mandamus or any other appropriate writ or order direction commanding the 2nd respondent to issue ownership certificate for the residential building in the property conveyed to petitioners 1 and 2 by the 3rd petitioner vide Ext.P-1 document without insisting for rectification deed;*
- iii) Any other appropriate writ, order or direction as this Hon'ble Court may deem fit on the facts and in the circumstances of the case and allow this petition with all costs.”*

2. Heard Sri.K.B.Gangesh, learned counsel appearing for the petitioners and Sri.Saigi Jacob Palatty, learned Senior Govt. Pleader appearing for R-1. In the nature of the order that is proposed to be passed in this petition, notice to R2 Grama Panchayat will stand dispensed with.

3. Petitioners 1 and 2 have purchased 1.62 Acres of property with a residential building in Sy.No.69/3 of Kozhukulli Village, Thrissur Taluk, in Thrissur Revenue District, from the 3rd petitioner as per Ext.P-1 registered sale deed dated 1.1.2014 of SRO, Kuttanellur. On the basis of Ext.P-1 sale deed, mutation of the said property was also effected in favour of petitioners 1 & 2 and basic land tax has also been accepted from them by the competent revenue officials concerned as evident from Ext.P-2 land tax receipt dated 4.12.2012. That later when petitioners 1 and 2 had approached the 2nd respondent Panchayat for issuance of formal ownership certificate in respect of the residential building in the said property covered by Ext.P-1 deed, then the said request has been denied by the 2nd respondent Panchayat on the ground that the door number/house number of the building is wrongly shown in Ext.P-1 as 2/268-A as against the correct number 2/226-A and that the 2nd respondent can consider the issuance of ownership certificate only after the said mistake in Ext.P-1 registered sale deed is corrected by an appropriate rectification deed. That accordingly the petitioners prepared Ext.P-4 draft rectification deed for correcting the said mistake in Ext.P-1 sale deed and that when they had approached the 1st respondent for taking steps for registration of the same, they were informed by the 1st

respondent that, for the purpose of registering Ext.P-4 they will have to pay stamp duty as if it is stamp duty for conveyance.

4. It has been held by this Court in a series of cases as in ***P.A.Jihas v. the District Registrar & anr.***, reported in 2012 (3) KHC 146 = 2012 (3) KLT 194 that for correction of mistake in the sale deed, even if it is with regard to flat number, stamp duty payable is as per the duty applicable for rectification deed and even if there is an extinguishment of a right and creation of a new right, by changing the identity of the flat, that will not alter the nature of the rectification deed. Moreover, it has been clearly delineated in item No.(s) of clause 3(i) of the Table of Registration fees notified by the State Government in exercise of the enabling powers conferred under Sec. 78 of the Registration Act, 1908 that for a deed of rectification, which does not create transfer or limit, extend, extinguish or record any right or liability shall be the same as the fee leviable on the original document subject a maximum of Rs. 500/-. It is also not in dispute that the provisions of the Kerala Stamp Act, 1959 and the Articles to the Schedule do not envisage any stamp duty for registration of a rectification deed. In the instant case, it is not in dispute that the door number/house number of the residential building situated in the immovable property covered by Ext.P-1 sale deed is door No.2/268A.

Now the 2nd respondent Nadathara grama Panchayat has informed that the correct door number of the said building is 2/226A and that they can issue the formal ownership certificate to the petitioners concerned only in respect of the said correct door number and that the petitioners should produce a rectification deed so as to correct the said mistake in Ext.P-1 sale deed. Since that is the position it is evident that the said deed of rectification does not create, transfer, limit extent, extinguish or record any right or liability of the subject property and what is intended to be done is only correct the door number of the building which has been wrongly shown in Ext.P-1 sale deed. Such a correction is certainly within the permissible contours of the deed of rectification for which only registration fee alone is to be paid as stated above and the Kerala Stamp Act does not provide for any levy of stamp duty thereon. Accordingly, it is only to be ordered and declared that the abovesaid impugned stand of the respondents that the petitioners should necessarily pay stamp duty for conveyance for registration of Ext.P-4 deed for rectification of the mistake of the door number in Ext.P-1 sale deed is illegal and ultra vires. The petitioners concerned may immediately present Ext.P-4 deed of rectification before the 1st respondent Sub Registrar for registration upon which he shall register the same, if it is otherwise in order.

However, it is made clear that the 1st respondent cannot insist that the petitioners should necessarily pay stamp duty meant for conveyance for the registration of Ext.P-4 deed and only registration fee leviable for a deed of registration need be paid by the petitioners.

With these observations and directions, the above Writ Petition (Civil) stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE DOCUMENT NO. 5/2014 DATED
01/01/2014 OF SUB REGISTRAR OFFICE,
KUTTANELLUR.
- EXHIBIT P2 TRUE COPY OF TAX RECEIPT DATED 04.12.2017
ISSUED BY VILLAGE OFFICER, KUZHUKULLI TO
PETITIONERS 1 AND 2.
- EXHIBIT P3 TRUE COPY OF CERTIFICATE DATED 08.02.2018
ISSUED BY THE 2ND GRAMA PANCHAYATH.
- EXHIBIT P4 TRUE COPY OF THE DRAFT RECTIFICATION DEED
PREPARED FOR CORRECTING EXT. P1 SALE DEED.