

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 9TH DAY OF JANUARY 2019 / 19TH POUSHA, 1940

WP(C).No. 41002 of 2018

PETITIONER:

K.V.ABDULRAHIMAN
S/O.MUHAMMED MUSALIYAR, KARUVEETIL HOUSE,
P.O.PUNNAYOORKULAM, THRISSUR DISTRICT,
PIN - 679 561.

BY ADV. SRI.V.C.MADHAVANKUTTY

RESPONDENTS:

- 1 SUB REGISTRAR
ANDATHODE SUB REGISTER OFFICE, ANDATHODE P.O.,
THRISSUR DT., PIN - 679 564.
- 2 SECRETARY TO GOVERNMENT
REGISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

SRI.SAIGI JACOB PALATY,SR.GOV'T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(C.R.)

ALEXANDER THOMAS, J.

W.P.(C) No.41002 of 2018

Dated this the 9th day of January, 2019

J U D G M E N T

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

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- I. *Direct the respondents to permit the petitioner for incorporating his signature in Exhibit P1 or to ratify the deed for the completion of Exhibit P1 partition deed, by the registration of which the entire stamp duty and registration fee has already been paid.*
 - II. *Delcare that the petitioner is not entitled to pay the stamp duty and registration fee for the entire property involved in Exhibit P1, since the persons involved in Exhibit P1 partition deed has already paid the entire stamp duty and registration fee prevailed in the year 1980, at the time of registration of Exhibit P1.*
 - III. *Issue such other writ, direction or order as this Hon'ble Court may deems fit and proper in the circumstances of the case. "*

2. Heard Sri.V.C.Madhavankutty, learned counsel appearing for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. From the pleadings and materials on record, it is seen that the petitioner is arrayed as the 2nd party in Ext.P-1 partition deed No.985/1980 of SRO Andathode, Thrissur District. Ext.P-1 partition deed was in relation to the partioning of the properties of late Muhammed Musaliyar, the deceased father of the petitioner. The legal heirs of the deceased Muhammed Musaliyar, consisted

of his wife and 5 children including the petitioner. The petitioner has been arrayed as 2nd party in Ext.P-1 partition deed. Except the petitioner, all other parties have duly signed and executed Ext.P-1 partition deed. However the share of all the co-owners/co-sharers including that of the petitioner has been specifically allotted in the said partition deed. Ext.P-1 partition deed was duly registered before the SRO, Andathode on 10.10.1980. There does not appear to be any dispute that the entire stamp duty and registration fee payable for the registration of Ext.P-1 partition deed was duly paid by the parties concerned and even if the petitioner had also signed and executed the said deed, the stamp duty and registration fee payable was sufficient for its registration. According to the petitioner, he was then employed abroad and therefore he could not take steps to come to India, to sign and execute the said document.

4. It is averred that, after registration of Ext.P-1 partition deed certain transactions are made on the basis of that document and the document has also been duly acted upon by the parties concerned. Now some of the executants in Ext.P-1 had attempted to create mortgage in respect of their respective shares, there was

some objections raised that the document is incomplete in the absence of the signature and execution by the petitioner in the said document. So also it is stated that against the properties of certain sharers, mutation has been denied on that fault. Immediate grievance of the petitioner is that, his attempts to mortgage the property and to get the property mutated in respect of his share mentioned in Ext.P-1 cannot be acted upon as he has not so far signed and executed the document.

5. In order to complete the formalities of execution and registration of the document to the extent it is concerning with the petitioner's share, the petitioner had made enquiries and the officials of the 1st respondent Sub Registrar had informed that the petitioner will have to pay stamp duty considering the present fair value in respect of the entire property covered by partition deed. The 1st respondent has now issued Ext.P-4 letter dated 6.3.2018 addressed to the petitioner on the abovesaid matters. The relevant portion of paragraph 2 & 3 of Ext.P-4 letter reads as follows.

“ആധാരങ്ങളുടെ റീജിസ്ട്രേഷനുമായി ബന്ധപ്പെട്ട ഉണ്ടായിട്ടുള്ള കോടതി ഉത്തരവുകൾ, റീജിസ്ട്രേഷനുമായി ഹാജരാക്കിയിട്ടുള്ള അധരങ്ങളിൽ മതിയായ മുദ്ര സല ഇല്ലാത്തതിനാൽ ബന്ധവസ്തു ചെയ്യു മുദ്ര സല നിർണ്ണയിക്കുന്നതിനുമുമ്പെ റിപ്പോർട്ട് ചെയ്തിട്ടുള്ളത് പ്രകാരം ബഹു. റെജിസ്ട്രേഷൻ ഇൻസ്പെക്ടർ ജനറൽ , ലാൻഡ് റെവന്യൂ കമ്മീഷണർ എന്നിവർ ആധാരങ്ങളുടെ റീജിസ്ട്രേഷനുമായി ബന്ധപ്പെട്ടു പുറപ്പെടുവിച്ചിട്ടുള്ള ഉത്തരവുകൾ എന്നിവ പരിശോധിച്ചതിൽ ഒന്നിലധികം ആൾകാർ ഒപ്പിടേണ്ട ആധാരം രജിസ്റ്റർ ചെയ്യുന്നതിനുമുമ്പെ ഹാജരാക്കി രജിസ്റ്റർ ചെയ്യുമ്പോൾ ഒപ്പിടേണ്ടവർ എല്ലാവരും ഒപ്പിടാതെ രജിസ്റ്റർ ചെയ്യുകയും എന്നാൽ റെജിസ്ട്രേഷനിന്റെ

പൂർത്തീകരണത്തിനായി ഒപ്പിട്ടിട്ടില്ലാത്തവർ പിന്നീട് ഒപ്പിട്ട റീറെജിസ്ട്രേഷനുവേണ്ടി ഹാജരാക്കുകയും ചെയ്യുമ്പോൾ ഒപ്പിട്ട പൂർത്തീകരിച്ച തീയതിയിൽ നിലവിലുള്ള മുദ്ര സലയും റെജിസ്ട്രേഷൻ ഫീസും ഒടുക്കേണ്ടത് ആവശ്യമാണെന്നുള്ള വിവരം അറിയിക്കുന്നു. ഹൈക്കോടതി വിധി (1991(2) കെ. രു. ജെ.723) ബഹു . ലാൻഡ് റെവന്യൂ കമ്മീഷണറുടെ 10/01/2011 തീയതിയിലെ എൽ. ആർ. (എ) 3-41961/2010 നമ്പർ കത്ത് ബഹു. രജി. ആ. ജി . യുടെ 30.11.2012 തീയതിയിലെ ആർ. ആർ 2-6934/2011 നമ്പർ ഉത്തരവ് എന്നിവ മേൽവിവരിച്ച കാര്യങ്ങൾക്കു സാധൂകരണം നൽകുന്നവയിൽ ചിലതാണ് റീറെജിസ്ട്രേഷൻ നിലവിലുള്ള സ്റ്റാമ്പും ഫീസും ആവശ്യമാണെന്ന് വ്യക്തമാക്കിക്കൊണ്ടുള്ള 13/06/2001 തീയതിയിലെ 11834/E2/2001/TD നമ്പർ ഗവണ്മെന്റ് കത്തിലെ പരാമർശവും മേൽ പ്രസ്താവിച്ചിട്ടുള്ള വസ്തുതകൾക്ക് വ്യക്തയുംആധികാരികതയും നൽകുന്നതാണ്.

കുടുംബാംഗങ്ങൾ നിർവചനത്തിന്റെ അടിസ്ഥാനത്തിൽ തമ്മിലുള്ള ഭാഗപത്രത്തിനു കൂടിയമുദ്ര ആയിരം രൂപയും ഭാഗം ചെയ്യുന്ന വസ്തുവിന്റെ ഫെയർവാല്യൂ പ്രകാരമുള്ള വിഭാഗസല കണക്കാക്കി അതിനു ഒരു ശതമാനം രജിസ്ട്രേഷൻ ഫീസും ഈടാക്കിയാണ് നിലവിൽ ഭാഗപത്രം രജിസ്റ്റർ ചെയ്യുന്നത്.. ഈ നിരക്കിൽത്തന്നെ ഭാഗപത്രത്തിന്റെ റീറെജിസ്ട്രേഷനും സ്റ്റാമ്പ് ഡ്യൂട്ടിയും റെജിസ്ട്രേഷൻ ഫീസും ഈടാക്കേണ്ടതുണ്ടെന്നു മേൽവിവരിച്ച ഉത്തരവുകൾ വ്യക്തമാകുന്നുണ്ടെന്നുള്ള വിവരം അറിയിക്കുന്നു.. "

(emphasis applied)

It is in the light of these factual averments that the petitioner has filed the instant writ petition with the aforementioned prayers.

6. It can be seen from a reading of Ext.P-4 that the 1st respondent Sub Registrar has made mention about a judgment of Division Bench of this Court in the case in **M.Manohar Kammath v. M.Ram Mohan Kammath (1991 (2) KLJ 723)**, as can be seen from paragraph 2 of Ext.P-4. At the outset it has to be stated that the matter in issue raised and decided in the abovesaid judgment of Division Bench in **M.Manohar Kammath's** case supra does not have any direct bearing or application to the facts and circumstances of the instant case. The main issued posed before the Division Bench in **M.Manohar**

Kamath's case supra was as to whether a mortgage deed which is otherwise compulsorily registrable and which is insufficiently stamped could be subjected to impounding and penalty proceedings as envisaged in Sec.33 and other related provisions of the Stamp Act when it is found that such a document is insufficiently stamped.

7. The Division Bench of this Court held in the said judgment that the Stamp Act held therein more particularly in paragraphs 17 and 25 thereof, that *the Stamp Act provides at what point of time, a document falls to be chargeable with duty and the time is before or at the time of execution of the instrument and when once the document purporting to be a mortgage is executed, at once it invites and attracts by virtue of Sec.17 of the Stamp Act, the liability to be charged with stamp duty and there is no escape from it. But if a document is per se invalid, on account of the fact that it has not been properly executed, then it cannot be said that even though it is not a valid document in law, stamp duty has to be paid. But in cases where a document is executed and that document requires further formalities to be completed like compulsory registration etc, for making it an enforceable*

document, then it cannot be said that it is not a valid document for the purposes of stamp duty and initiation of such impounding and penalty proceedings are envisaged in the provisions of the Stamp Act. It is further held that a document can be valid document but it may not be a enforceable document and all valid documents at all times may not be enforceable and nevertheless they may be included in the category of the document in question perhaps continued to be a valid document. So the issues raised and decided in the said judgment of the Division Bench in **M.Manohar Kammath's** case supra are not really germane or relevant to the facts and circumstances of this case. Secs.2, 2(b), 2(f) & 17 of the Kerala Stamp Act reads as follows.

“ 2 Definitions:- In this Act, unless the context otherwise requires,--

...

...

(b) “chargeable” means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and as applied to any other instrument chargeable under the law in force in the territories of the State of Kerala when such instrument was executed, or, where several persons executed the instrument at different times, first executed.

...

...

...

(f) “executed” and “execution” used with reference to instruments, means “signed” and “signature”

...

...

...

17. Instruments executed in the State of Kerala – All instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution. ”

8. The Division Bench of this Court in paragraph 24 of the judgment in **M.Manohar Kammath's** case supra has referred to a larger bench decision of the Andhra Pradesh High Court rendered by 5 Judges in the case in **Hazrami Gangaram v. Kamlabai (AIR 1968 AP 213)** wherein it was held that *for the purpose of Stamp Act, the crucial time for determining whether an instrument chargeable with duty and is duly stamped or not is before or at the time of its execution, in view of the provisions contained in Stamp Act and no other formalities under any law need be satisfied.* Moreover in view of the specific provisions contained in Sec.2(c) the document is chargeable for the purpose of stamp duty when it is executed or first executed after the commencement of the Act, chargeable under the said Act it has applied to any other instrument chargeable under the law in force in the territories of the State of Kerala and said to be executed or where persons executed the instrument, at different times, first executed. Therefore it is clear from the specific provisions contained in Secs .2(b) & 17 of the Kerala Stamp Act that in a case where more than one executants are involved in the execution of

the document concerned which is sought to be registered, then the instrument is chargeable for stamp duty when it is first executed and the instrument chargeable with stamp duty and executed by the person concerned shall be stamped before or at the time of such execution.

9. Sec. 23 & 24 of the Registration Act, 1908 reads as follows.

"23. Time for presenting documents.-Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

24.Documents executed by several persons at different times.-Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution."

10. Sec. 23 stipulates the time for presentation of document for the purpose of registration and it is stipulated therein subject to provisions contained in Secs. 24, 25 & 26 of the said Act, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. The proviso is also enrafted to that Section regarding the time

limit for presentation of copy of decree or order etc. Sec.24 conceives of documents executed by several persons at different times and it stipulates that where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution. In the judgment reported in **4 IND APP 166 (PC)**, the Privy Council had dealt with the case where 3 vendors living in different places who were called upon at different times to execute deed of sale and 1st & 2nd parties among them attended the registration of deeds and admitted execution of deed and it was registered. But the third party afterwards came and denied the execution and it was held that the registration as regards the parties Nos.1 & 2 is not thereby rendered invalid. The Division Bench of the Calcutta High Court in the case in **J.&D. Eziekeil Co. v. Annoda Charan Sen** reported in **AIR 1923 CAL 35** has held that registration upon the appearance and admission of some of the executants is not effective registration as against persons who neither appear nor admit execution. In the

judgment in the case **Natesa Iyer v. Subramania Iyer & Others** reported in **AIR 1918 MAD 323 (DB)** the Division Bench of the Madras High Court dealt with the case of a partition deed executed between a Hindu father and his sons which was registered only at the instance of father alone and it was held that the registration was valid as regards father and that if he subsequently devised his share under deed to one of his sons the other sons could not question the same.

11. In the judgment in the case in **Dr.Kumari Shantha Arogyadas v. G.C.Kamala Sri Hari & others** reported in **(1999) 3 MLJ 577**, it was held by the Madras High Court that *if there are more executants than one, it is not law that all the executants shall sign with time and date and they must sign within four months and the document comes into effect only as regards those persons who signed it and regarding others, it cannot be said that the document is executed. In such cases, the date for presentation for registration is the date on which last of the persons executed it.*

12. In the judgment in the case in **Raja Nazari v.**

Bhachandas reported in **AIR 1928 Nag. 239** , the Nagpur High Court held that *Execution mentioned in Sec.23 is the complete execution of the document, and where a document is executed by several persons the section contemplates registration within four months of the last execution in respect of all previous executions, whether they were within the four months or not. Sec.24 merely provides a safeguard for the case of a document never executed at all by one or more of the people by whom it was to have been executed, when each execution is good to the extent of the executant's interest in the subject matter.*

13. Going by the facts in this case, there are 6 parties to Ext.P-1 partition deed out of which the petitioner alone has not signed and executed the document. Therefore in view of the legal position, the petitioner can certainly take shelter under the provisions of Sec.24 of the Registration Act, 1908 and can execute the document and seek its re-registration within 4 months of such execution as conceived in Sec.24. Hence therefore there cannot be any doubt that the petitioner is entitled for

the beneficial provision contained in Sec.24 of the Registration Act, 1908. In the facts of this case, the original of Ext.P-1 partition deed is with the custody of 1st respondent Sub Registrar and therefore the petitioner can execute it only in the Registrar's office and the time line of 4 months is to be counted from the date of such execution. Therefore there is no question of time bar in respect of the registration/re-registration of the document as far as the petitioner is concerned in the facts of this case. Then the next question is as to whether the petitioner is liable to pay stamp duty on such execution and re-registration of Ext.P-1 registered partition deed. There is no dispute that stamp duty applicable and payable at the time of registration of Ext.P-1 has already been paid by the parties concerned and the stamp duty so paid was sufficient even if the petitioner had also duly signed and executed the document. In view of the specific provisions contained in Sec.2(b) and Sec.17 of the Kerala Stamp Act, 1959, the chargeability of stamp duty was

at the time of the execution by the first executant of the document, as there are more than one executants for a deed like Ext.P-1 which is a partition deed for 6 co-sharers. Since stamp duty was already paid at the time of the registration of Ext.P-1 partition deed as on 10.10.1980, there is no question of the petitioner who is the last executant as far as the said document is concerned, having to again bear the liability of pay stamp duty. The insistence of payment of stamp duty by the petitioner as directed in impugned Ext.P-4 memo will stand quashed and further it is ordered and declared that no stamp duty is payable by the petitioner for the re-registration of Ext.P-1 partition deed.

14. The next and the last issue is as to the registration fee payable by the petitioner. The petitioner would contend that since the entire registration fee payable has already been paid at the time of registration of Ext.P-1 deed on 10.10.1980 and the said registration fee so paid was sufficient even if the petitioner had duly signed and executed the said document, etc. The said contention raised by the petitioner is logically fallacious and untenable. There cannot be any doubt that in the facts of this case, the petitioner has not so far executed Ext.P-1 deed. So also there

cannot be any doubt that the document has not been re-registered as conceived in Sec.24 of the Registration Act after such execution by the petitioner. Sec.80 of the Registration Act, 1908 deal with fees payable on presentation and it mandates that *all fees for the registration of document under this Act shall be payable on the presentation of such documents.* Sec.78 of the Registration Act, 1908 further deals with *“fees to be fixed by State Government”* and Clause (a) of Sub Section (1) of Sec.78 mandates that *“the State Government is empowered to prepare a table of fees payable for the registration of documents.”* Therefore since the document has no so far been registered as far the petitioner is concerned, there cannot be any doubt that he is liable to pay the registration fee as mandated in Sec.80 r/w Sec.78(1)(a) of the Registration Act as and when he wants the benefit of re-registration of Ext.P-1 deed as conceived in Sec.24 of the Registration Act, 1908.

15. The State Government has duly notified and published the table of registration fee payable in terms of Sec.78 of the Registration Act, 1908. Item (c) of Clause (1) of the table of registration fee stipulate that, unless otherwise directed, value usually adopted for calculating stamp duty shall be the basis for

the purpose of determining the registration fee. The proviso thereto stipulates that a document so framed has to come within two or more descriptions shall where the fee chargeable thereunder are different, be chargeable only with the highest of such fee. Further item (i) of Clause (1) of the said table stipulates that in the case of deeds of partition, the value of separated share or shares on which the stamp duty is payable (that is excluding debts or other encumbrances) shall be taken as a value of consideration and property which the co-owners agree to divide in severally at a future date shall be included in the calculation.

16. The learned Government Pleader was earlier requested by this court to make available the latest rates of registration fee prescribed for various deeds including partition deeds based on the amendments made with effect from 1.4.2018. The learned Senior Government Pleader has made available a copy of the said table and it is seen that where it is a deed for partition among all or any of the members of the family and legal heirs of the deceased family member, if any, then registration fee should be paid @ 1% of the fair value or market value. In view of the specific provisions in item (c) of Clause (1), unless otherwise directed, the value usually

adopted for calculating stamp duty shall be basis for the purpose of determining the registration fee. Since stamp duty rates are now fixed with reference to the fair value as per the amendments introduced as per Sec. 28A of the Kerala Stamp Act, the criteria of the value for the purpose of registration fee of a partition deed should be taken with reference to the fair value of the property concerned. In view of the specific provisions contained in item (i) of Clause (1) of the table of registration fee, in the case of partition deeds, the value of the separated share or shares on which stamp duty is payable (excluding debts and other encumbrances) shall be taken as a value of consideration etc. Hence the petitioner will be liable to pay the registration pay for re-registration of Ext.P-1 partition deed @ 1% of the market value of the property which is allotted as a share of the petitioner in the said partition deed. It appears that the said view has also been taken by the 1st respondent Sub Registrar in the last paragraph of the impugned Ext.P-4 memo dated 6.3.2018. The petitioner's apprehension that he will have to pay registration fee @ 1% of the fair value of the entire properties covered by Ext.P-1 partition deed is thus without any foundation. Accordingly, it is ordered that the

petitioner may approach the 1st respondent and the 1st respondent should make opportunity for making available the original of Ext.P-1 partition deed on a suitable day and may notify the same to the petitioner and thereupon the petitioner will present himself before the 1st respondent Sub Registrar and may duly sign and execute Ext.P-1 partition deed in respect of the share allotted to him thereunder, and thereafter the 1st respondent will take steps to re-register the said document as conceived in Sec. 24 of the Registration Act, 1908 subject to the payment of registration fee @ 1% of the fair value of the share of the property allotted to the petitioner as per Ext.P-1. It is made clear and declared that the petitioner will not have the liability to pay stamp duty for such re-registration of Ext.P-1 partition deed.

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

Sd/-

ALEXANDER THOMAS,
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PARTITION DEED NUMBER
985 OF 1980 DATED 10/10/1980.
- EXHIBIT P2 TRUE COPY OF THE PETITION FILED BY THE
PETITIONER BEFORE THE REVENUE MINISTER
DATED 29/01/2018.
- EXHIBIT P3 TRUE COPY OF THE INTIMATION DATED
16/02/2018 RECEIVED BY THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE REPLY SL.NO.19/18
ISSUED BY THE 1ST RESPONDENT REGISTRAR
DATED 06/03/2018.
- EXHIBIT P5 TRUE COPY OF THE PETITION SENT BY
PETITIONER TO THE 1ST RESPONDENT DATED
09/07/2018.
- EXHIBIT P6 ACKNOWLEDGMENT DATED 12/07/2018
RECEIVED FOR EXHIBIT P5 FROM THE 1ST
RESPONDENT.