

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 13TH DAY OF MARCH 2018 / 22ND PHALGUNA, 1939

WP(C) .No. 6485 of 2018

PETITIONER(S)

ASHRAF,
S/O.K.M.MUHAMMEDKUTTY, AGED 44 YEARS,
KATTEERI MATHILANCHERRY, ALIYANGAD HOUSE,
PUDUVAKKARA PARAMBU, POST CHELEMBRA,
MALAPPURAM DISTRICT, PIN-673 634.

BY ADV.SRI.R.RAMADAS

RESPONDENT(S) :

1. THE DISTRICT REGISTRAR (GENERAL) ,
OFFICE OF THE DISTRICT REGISTRAR (GENERAL) ,
MALAPPURAM, PIN-676 505.
2. THE SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR, THENHIPALAM,
MALAPPURAM DISTRICT, PIN-673 636.

BY GOVERNMENT PLEADER SRI.S.DILIP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-03-2018, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

06.04.2018

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DEATH CERTIFICATE OF
PETITIONER'S FATHER DATED 21-08-2015 ISSUED BY THE
REGISTRAR OF BIRTHS AND DEATHS,
RAMANATTUKARA GRAMA PANCHAYATH.
- EXHIBIT P2 TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE
DATED 19-11-2016 ISSUED BY THE TAHSILDAR,
KONDOTTY.
- EXHIBIT P3 TRUE COPY OF THE ACKNOWLEDGMENT FOR ONLINE
TOKEN REGISTRATION.
- EXHIBIT P4 TRUE COPY OF THE PAY-IN-SLIP SHOWING THE
REMITTANCE OF RS.1,21,770/-.
- EXHIBIT P5 TRUE COPY OF THE PARTITION DEED DATED 06-01-2018
EXECUTED BY THE CO-OWNERS AND PRESENTED
BEFORE THE 2ND RESPONDENT SUB REGISTRAR.
- EXHIBIT P6 TRUE COPY OF THE PROCEEDINGS DATED 06-02-2018 OF
THE DISTRICT REGISTRAR (GENERAL), MALAPPURAM.

RESPONDENT(S) ' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE

Msd.
06.04.2018

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.6485 of 2018

Dated this the 13th day of March, 2018

JUDGMENT

The property of late K.M.Muhammedkutty is subjected to partition. The parties are children in first wife and widow and children in second marriage. The document presented on a stamp paper on concessional rate as though they could come within the meaning of family as referred under explanation to Article 42 of the Kerala Stamp Act, 1959 (for short, the 'Act'). The Sub Registrar objected it and stating that the parties are coming under two different branches of late K.M.Muhammedkutty and therefore, they are not entitled to concessional rate of stamp duty.

2. The learned counsel for the petitioner relying upon paragraph 25 of the Full Bench judgment of this Court in **Abdul Muneer v. Sub Registrar [2018 (1) KLT 238**

(F.B.) argued in extenso and submitted that when co-owners are related to each other on common lineage, they are entitled to concessional rate of stamp and they come within the meaning of family. The family referred under explanation to Article 42 of the Act as follows:

“Family means father, mother, grandfather, grandmother, husband, wife, son, daughter, grandchildren, brother, sister and legal heirs of the deceased children, if any, as the case may be.”

3. The Full Bench, in fact, after adverting to two Division Bench judgments earlier came to the opinion that all that becomes relevant for the purpose of Article 42(1) of the Act is a relationship of the co-owners at the time of execution and registration of the partition deed and if they are co-owners atleast one of the others in the enumerated categories of relationship described in the explanation, they would become deserving for low stamp duty under sub clause(1) of the said Article.

4. It is to be noted that all categories as referred in the family would stand in relation to each other as referred in the explanation must come within the fold of the family. Two branches of different family come together to effect partition of property inherited from a common lineage, that cannot be treated a partition within a family. Though the right of the property traceable to common lineage as far as the parties are concerned, they are distinct family as they are having separate lineage through two wives of late K.M.Muhammedkutty. That be the position, the petitioner cannot claim concessional stamp duty payable under sub clause (1) of Article 42. Therefore, the Registrar is justified in demanding higher stamp duty from the petitioner. The writ petition, therefore, is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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