

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 30TH DAY OF MARCH 2017/9TH CHAITHRA, 1939

WP(C).No. 21739 of 2011 (N)  
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PETITIONER(S) :  
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ASSANARU KHAN,  
S/O.PEERUKANNU,  
T.C.39/1145 (1) ,SEENA MANZIL,  
ATTAKULANGARA,  
THIRUVANANTHAPURAM.

BY ADV. SRI.SREELAL N.WARRIER

RESPONDENT(S) :  
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1. THE SUB REGISTRAR,  
CHALAI,  
THIRUVANANTHAPURAM.
2. THE DISTRICT REGISTRAR (GENERAL) ,  
EAST FORT ,  
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. MABLE C. KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
30-03-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

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- P1            A TRUE COPY OF THE SETTLEMENT DEED DATED 13.5.2011
- P2            A TRUE PHOTOCOPY OF THE ORDER DATED 13.6.2011 PASSED BY  
DISTRICT REGISTRAR
- P3            A TRUE COPY OF THE LETTER THE DATE 2.7.2011 ISSUED TO THE  
PETITIONER BY THE 1ST RESPONDENT
- P4            A TRUE COPY OF THE REPRESENTATION DATED 26.7.2011
- P5            A TRUE COPY OF THE ORDER DATED 28.7.2011 PASSED BY THE  
1ST RESPONDENT

RESPONDENT(S) ' EXHIBITS

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NIL

TRUE COPY

P.S. TO JUDGE

EL

**CR**

Devan Ramachandran, J.

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W.P.(C)No.21739 of 2011 N  
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Dated this the 30<sup>th</sup> day of March, 2017

**JUDGMENT**

The dialectical interplay of two provisions, namely, Section 33 of the Kerala Stamp Act, 1959 ('the Act' for short) and Rule 207 of the Registration Rules (Kerala) ('the Rules' for short), when an insufficiently stamped document is presented for Registration before the competent Registrar, present for examination and assessment in this writ petition.

2. The issue is short but of some importance. When an insufficiently stamped document is presented for registration before the Registering Authority, can he immediately order impounding it on the ground that it is insufficiently stamped invoking Section 33 of the Act or is he obliged to follow due procedure under Rule 207 of the Rules to first determine the value of the fee and notify the

presenter of the document before issuing any further orders leading to impounding - this is what is called upon to be considered in this writ petition.

3. The constitutive facts involved in this case will place this question in perspective and they are as under.

4. The petitioner executed a settlement deed with respect to a property in favour of his daughter and granddaughter out of his affection for them. He was advised that under the provisions of Article 51A of the Kerala Stamp Act, 1959 ('the Act' for brevity) he would be eligible to a lesser stamp duty because the assignment is in favour of very close relatives. He had, therefore, valued the property correctly and had paid the stamp duty under the provisions of Article 51 of the Act.

5. However, when it was presented for registration before the Sub Registrar, he raised an objection that since the granddaughter is not a beneficiary shown under Article 51A, the petitioner will be obliged to remit the full

stamp duty applicable for such a settlement deed. The petitioner relies on the provisions of Article 51A and maintains that the stand of the Sub Registrar was not proper.

6. While so, the Sub Registrar impounded the document and sent it to the District Registrar for valuation, which led to Exhibit P2 order to be issued against the petitioner. As per this order, the District Registrar, invoking powers presumably under Article 33 of the Act, ordered that the document be impounded unless the petitioner pays the stamp duty at the ad valorem rate as indicated in the said order. The petitioner has impugned Exhibit P2 as being issued without jurisdiction and contrary to the provisions of the various Statutes that cover the filed.

7. I have heard Sri.Sreelal Warriar, the learned counsel for the petitioner and the learned Government Pleader for the respondents.

8. The learned counsel for the petitioner points to the specific contents of Exhibit P3 and says that, in fact, no due process for impounding the document was even initiated by the authorities because, as is discernible therefrom, all that the Sub Registrar has asked the District Registrar is in the nature of a clarification as to the correct fees to be paid. The learned Government Pleader refutes this and says that what was done was not merely seeking a clarification but to impound the document.

9. Therefore, the question before me now is whether the authorities have acted correctly in impounding the document and then refusing to return the document on the ground that it stand impounded.

10. Section 33 of the Act provides for examination and impounding of instruments. It says as under:

**“Examination and impounding of instruments.-**  
(1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an Officer of Police,

before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.”

11. A reading of Section 33 then opens up the issue as to whether a Sub Registrar, before whom a document is presented for registration, can invoke the powers thereunder to impound the document before considering what is the actual duty to be paid. I deem this examination necessary because I see that the Registration Rules (Kerala) provide for Rule 207 which reads as under:

“It is for the Registering Officer, who is responsible for levying the fee, to determine in the first instance what fee should be paid. After it has been paid the presenting party may, if he is dissatisfied, apply to the Inspector General of registration who shall if he thinks there has been an overcharge order the Sub Registrar to refund any excess. The Inspector General shall not take any notice of any such application, if presented after six months from the date of the levy of fees or fine.”

12. The procedure under the Registration Rules, therefore, appears to be very lenient. When a person

presents a document for registration, it is for the registering officer to determine at the first instance as to what is the fee to be paid. Once such determination is made and the presenting party is dissatisfied, he has an option to apply to the Inspector General of Registration who shall have the power to refund the excess.

13. The afore provisions are extremely vital and critical in evaluation of the issues in this writ petition. This is because when a document is presented before the Registering Authority, he cannot unilaterally invoke the powers under Section 33 of the Act being purblind to the imperative procedural requirements under Rule 207 of the Registration Rules.

14. Section 33 of the Act relates to instruments that are produced as evidence or for such purposes before public authorities and which are not sufficiently stamped. The presentation of a document for registration stand on a completely different footing. It is possible that



a person presenting a document has not been properly advised of the actual stamp duty to be paid. It is, therefore, that Rule 207 provides that the Registering Authority will have to first determine the fee. It would then be upon the person presenting the document either to pay that fee or to seek return of the document without getting it registered. Obviously when a document remains unregistered for more than 120 days, it ceases to have any legal sanctity.

15. In the case at hand, very interestingly the Registering Authority did not act under Rule 207 of the Registration Rules but invoked a suspect power under Section 33 of the Act to impound the document. This, according to me, is completely impermissible. He could not have impounded the document because the documents was not presented before him in evidence or in such related proceedings. It was presented before him for registration and therefore, the provisions under Rule

207 ought to have been complied with. In other words, when a document was presented before the registering Officer, he ought to have determined the fee payable and intimated the presenting party that the fee so paid has to be remitted before the registration can be permitted. It would have been then up to the presenting person to either remit the fee or seek return of the document without registration. It is baffling that the Sub Registrar has, without adverting to Rule 207, invoked the powers under Section 33 of the Act to impound the document. This was certainly not possible at that time. In such event, I have not doubt in my mind that Exhibits P2 and P5 proceedings which proceeds to impound the document is completely impermissible and unsustainable under the mandate of law.

16. As I have already indicated above, the Sub Registrar ought to have determined the fee under Rule 207. Once this was done, the option was to the petitioner

to either go on with the registration of the document or to remit the fee and then approach the Inspector General for refund of the excess amount. This procedure not having been followed, the concerned Registrars have acted foul of the mandatory and imperative provisions of both the Rules and the Act.

17. In such circumstances, I quash Exhibits P2 and P5 orders and direct the Sub Registrar to take up the document presented by before it for registration by the petitioner and act in terms of Rule 207 of the Kerala Registration Rules and intimate the petitioner an appropriate order under its provisions. I make it clear that all procedure subsequent to such proceedings will be as provided and mandated under the Registration Rules and the relevant Statutes and in no other manner. It will be up to the petitioner to accept the determination of fee as made by the Sub Registrar or to seek that the document be returned to him without registration if he is

so advised. Any such request made by the petitioner will be considered by the Authorities in terms of the applicable Manual. This exercise shall be completed by the Sub Registrar as expeditiously as possible but not later than two months from the date of receipt of a copy of this judgment.

The writ petition is ordered as above. In the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.

Devan Ramachandran, Judge

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