

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 1ST DECEMBER 2011 / 11TH AGRATHAYANA 1933

WP(C) No. 24452 of 2011(F)

PETITIONER :-

PARAKANDY HAREENDRAN, SO. VASU,
NALPADY HOUSE, ERNHOLI DESHM,
KANNHOLI T.O., KANNUR DISTRICT-670 197.

BY ADVS. SRI.V.C.JAMES
SRI.JERGI JOSEPH THOMAS

RESPONDENTS :-

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
REGISTRATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. INSPECTOR GENERAL,
REGISTRATION DEPARTMENT,
THIRUVANANTHAPURAM - 695 001.
3. THE DISTRICT REGISTRAR (GENERAL)
THALASSERY,
KANNUR DISTRICT, PIN - 679 304.
4. THE SUB REGISTRAR,
SUB REGISTRAR OFFICE,
KATHIRKKON,
KANNUR DISTRICT, PIN - 679 321.

NI TO RA BY Sr. GOVT. LEADER SRI. JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/12/2011,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ANTONY DOMINIC, J.

W.P.(C) No. 24452 OF 2011

Dated this the 2nd day of December, 2011

J U D G M E N T

Exts.P4 and P5 are under challenge in this writ petition.

2. Briefly stated the facts are that 12 cents of land comprised in R.Sy.No.83/6 of Erenholi Amsom and Desom in Kannur District originally belonged to the petitioner's mother, Yeshodha. She executed a settlement deed registered as 964/03 of the Kathiroor Sub Registry in favour of the petitioner. On that basis the petitioner was enjoying the property. Subsequently, the petitioner executed a settlement deed in 2010 by which the property was settled in favour of his mother.

3. When the document was presented for registration that was impounded and was forwarded to the 3rd respondent u/s 37 of the Kerala Stamp Act. The 3rd respondent obtained clarification from the 2nd respondent

and issued Ext.P4 proceedings, informing that the document will have to be treated as a conveyance and that the petitioner should pay stamp duty payable under Article 21 of the Stamp Act in stead of Article 51 as originally paid. By Ext.P5 this decision of the 3rd respondent was conveyed to the petitioner and he was called upon to remit the differential stamp duty. It is thereupon this writ petition was filed.

4. I heard the learned counsel for the petitioner and also the learned Government Pleader. The only reason that is stated in Ext.P4 for treating the document as a conveyance is that the property was once settled by the mother in favour of the son and that now the property is settled by the son in favour of his mother. In my view there is absolutely no substance in the objection of the respondent against Ext.P4. Neither in the Stamp Act nor elsewhere, is there any prescription that a property once settled cannot be settled again, even in favour of the original settlor. If that be so, there is nothing wrong in the petitioner settling the property in favour of his mother. Further, either in Ext.P4 or in the

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subsequent proceedings respondents also have no case that the factual averment in the settlement deed that the mother is a dependent of the petitioner when the document was executed is incorrect. In such a situation also the petitioner is entitled to settle the property in favour of his mother. Therefore the petitioner had the right to execute the settlement deed. If that be so, the respondents were bound to register the same applying the stamp duty as ordered in terms of Article 51 of the Stamp Act and not Article 21 thereof. Consequently, Exts.P4 and P5 are to be set aside and I do so.

5. It is directed that on production of a copy of this judgment the 4th respondent shall register the documents of the petitioner.

The writ petition is disposed of accordingly.

ul/- Sd/- **ANTONY DOMINIC, JUDGE**
[true copy]

P.S. to judge

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT P1 : COPY OF THE LETTER NO. 94 / 2018 DATED 29.03.2018 OF THE 4th RESPONDENT.
- EXT P2 : COPY OF THE LETTER NO. G1 / 2174 / 2018 DATED 20.04.2018 OF THE 3rd RESPONDENT.
- EXT P3 : COPY OF REPLY SUBMITTED BY THE PETITIONER BEFORE THE 3rd RESPONDENT.
- EXT P4 : COPY OF THE PROCEEDINGS NO. G1-2174/2018, THALASSERY DATED 19.06.2018 OF THE 3rd RESPONDENT.
- EXT P5 : COPY OF THE LETTER NO. 1794/2018 DATED 17.06.2018 OF THE 4th RESPONDENT.

RESPONDENTS' EXHIBITS:

NO.

TRUE COPY

P.A. TO JUDGE

DMR-

(Handwritten signature)