

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 38468 of 2015 (G)

PETITIONER(S):

1. NARAYANIKUTTY CHETTUR,
W/O. JAYARAMDAS, HB-123, PANAMPILLY NAGAR,
ERNAKULAM, KOCHI -682 036, REPRESENTED BY
HER POWER OF ATTORNEY HOLDERS
REMESH GOVIND AND LAKSHMI REMA MENON.
2. REMESH GOVIND,
S/O. JAYARAMDAS, HB-123, PANAMPILLY NAGAR,
ERNAKULAM, KOCHI -682 036.
3. LAKSHMI REMA MENON,
D/O. JAYARAMDAS, HB-123, PANAMPILLY NAGAR,
ERNAKULAM, KOCHI -682 036.
4. U.N. RAJAN,
S/O. NEELAKANDAN NAMPOOTHIRI, XX/833A,
UNNIMADATHIL HOUSE, CHALAKKUDY, THRISSUR - 680 307.

BY SRI.M.C.SEN, SENIOR ADVOCATE.
ADVS. SRI.K.JAGADEESH,
SMT.SHAHNA KARTHIKEYAN.

RESPONDENT(S):

1. DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR (GENERAL),
THRISSUR - 680 001.
2. SUB REGISTRAR,
CHALAKKUDY, THRISSUR - 680 307.

BY GOVT. PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

WP(C).No. 38468 of 2015 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- TRUE COPY OF THE COPY OF THE ORDER NO. INS4-5661/2015 OF THE 1ST RESPONDENT DATED 26/11/2015.**
- P2- TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN A.S 358 OF 2002 DATED 28/09/2015.**
- P3- TRUE COPY OF THE PARTITION DEED EXECUTED BY THE PETITIONERS DATED 26/09/2015.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P(C)No.38468 of 2015
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Dated this the 18th day of December, 2015

JUDGMENT

Petitioners approached this Court challenging Ext.P1 order of District Registrar, Thrissur. The petitioners are parties to a partition deed. However, by Ext.P1, the partition deed executed by the petitioners has been treated as a conveyance deed as the District Registrar was of the view that the stamp duty payable for conveyance shall be levied in respect of the property. It apparent the District Collector influenced by the Circular issued by the Government whereby Government informed that the purchaser cannot claim the status of co-owner of the property which was purchased by him for valid consideration from the actual owner.

2. In fact, there are two categories of partition deed. First category is as referred in Explanation which would come within the ambit of Family in respect of which maximum stamp duty payable is only Rs.1,000/-. The second category is referred in Article 42(ii) of the Kerala Stamp Act, 1959. This is referable in respect of partition deed executed based on the pre-existing right of the owners. Therefore, a purchaser of the share of co-owners would also come within the ambit of second category.

The reference in the Circular mainly relates to the explanation and not based on the second category. Further, Circular cannot override statutory provision.

3. Therefore, having found that the petitioners are having a pre-existing right along with others, certainly petitioners' document can be treated only as a partition deed and not otherwise. Therefore, if the petitioners paid the necessary stamp duty as applicable under Art.42(ii) of the Schedule, the document shall be registered and, after registration, shall be released to the petitioners. Accordingly, Ext.P1 stands quashed.

The writ petition is disposed as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE