IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 29TH DAY OF NOVEMBER 2018 / 8TH AGRAHAYANA, 1940

WP(C).No. 37908 of 2018

PETITIONER/S:

LALI YOHANNAN,AGED 48 YEARS,
W/O.LATE JAMES, LALU MANDIRAM, VELIYAM VILLAGE,
MEEYANNUR PO, KOTTARA, KOLLAM DISTRICT- 691537.

BY ADVS.
SMT.SREEDEVI KYLASANATH
SRI.ACHUTH KYLAS
SRI.DEAGO JOHN
SRI.R.MAHESH MENON

RESPONDENT/S:

1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695001.

2 THE THAHASILDAR,
TALUK OFFICE, KOTTARAKKARA,
KOLLAM DISTRICT-691506.

3 THE DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR (GENERAL),
NEAR COLLECTORATE, KOLLAM DISTRICT- 691013.

4 THE SUB-REGISTRAR,
OFFICE OF THE SUB-REGISTRAR,
ANCHAL, KOLLAM DISTRICT- 691306.

SRI.SAIGI JACOB PALATTY, SR.GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.11.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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ALEXANDER THOMAS, J.

W.P.(C)No. 37908 of 2018

Dated this the 29th day of November, 2018

JUDGMENT

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

"

i. *To issue a writ of mandamus directing the 3rd respondent to register the Settlement Deed dated 14.8.2018 executed by the petitioner in favour of her daughter;*

ii. *To issue a writ of mandamus or any other writ or order directing 3rd respondent to consider and ass appropriate orders on Ext.P-5 reply, after affording an opportunity of hearing to the petitioner within a period of 3 weeks;*

iii. *Issue such other writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.*"

2. Heard Smt.Sreedevi Kylasanath, learned counsel appearing for the petitioner, and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. The petitioner is the widow of one James, S/o.Late Kunjamma. In the wedlock of the petitioner with James, a daughter by name Juliet James has been born. The petitioner's husband James had died on 3.10.2003. During the lifetime of James, his mother Kunjamma had executed Annexure 1

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Settlement Deed No.2003/2002 of SRO, Anchal whereby she had settled certain properties in favour of her son the abovesaid James. Annexure -1 Settlement Deed was registered on 28.6.2002 before the SRO, Anchal. During the lifetime of James, the petitioner was in ownership, enjoyment and possession of said property covered by the said settlement deed No.2003/2002 and after his death the petitioner being the widow of James was in ownership and enjoyment of the said property. Later the petitioner decided to execute a settlement deed so as to settle the said property in favour of her daughter Juliet James. The said settlement deed executed by the petitioner in favour of her daughter Juliet James was presented before the 4th respondent Sub Registrar, SRO, Anchal. Thereupon the petitioner was appraised that the said settlement deed cannot be registered by the 4th respondent on the ground that after the execution of Annexure 1 Settlement Deed No.2003/2002 of SRO, Anchal by the said Kunjamma in favour of her son, the same was cancelled. That Kunjamma, the mother of James had executed Annexure 2 cancellation deed no.2648/2005 of SRO, Anchal

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whereby Annexure 1 settlement deed was said to be cancelled. Further it has also been informed that the said Kunjamma, without reciting about Annexure 2 cancellation deed, had later executed and got registered yet another cancellation deed No.397/2011 of SRO, Anchal purporting to cancel Annexure 1 settlement deed given in favour of James earlier. Copy of the said cancellation deed No.397/2011 has been produced as Annexure 3. Annexures 1 to 3 has been produced along with memo dated 27.11.2018 by the learned Senior Government Pleader in compliance with this Court's order dated 22.11.2018. The objections raised by the 4th respondent SRO in refusing to register the settlement deed executed by the petitioner in favour of her daughter Juliet James are contained in Ext.P-3 memo. Later the petitioner had approached the 3rd respondent District Registrar (General) praying for direction to the 4th respondent SRO to register the settlement deed executed by her in favour of her daughter. The 3rd respondent District Registrar had issued Ext.P-4 communication dated 14.9.2018 intimating the petitioner about the factum of cancellation

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deeds as in Annexures 2 & 3 and also requesting the petitioner to file her objections before the 4th respondent SRO as against Ext.P-3 memo issued by the 4th respondent etc. Thereafter the petitioner had submitted Ext.P-5 written submissions/objections before the 4th respondent SRO as against the Ext.P-3 memo. In thelight of these aspects the petitioner had filed the instant Writ Petition with the aforementioned prayers.

4. The facts are not in dispute. The subject property in question was earlier settled by Kunjamma, the mother of James in favour of James, (Husband of the petitioner) as per Annexure -1 settlement deed No.2003/2002 of SRO, Anchal. The said James had died on 3.10.2003. Later the said Kunjamma has unilaterally cancelled said Annexure-1 settlement deed as per Annexure -2 cancellation deed No.2648/2005 SRO, Anchal. Still later the said Kunjamma without even reciting about Annexure 2 Settlement Deed has again executed and got registered yer another cancellation deed as per Annexure -3 whereby Annexure 1 settlement deed has again been cancelled. The cancellations as per Annexure 2 & 3 have been done unilaterally by

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Kunjamma and have not been effected bilaterally as between Kunjamma and James with the consent of James during his life or with the consent of his LRs, after his death. It is pointed out that later James's mother Kunjamma has died on 11.12.2016.

5. The matter in issue as to whether such unilateral cancellation of deeds executed by the vendor is legally permissible is no longer res integra and is covered fully in favour of the petitioner on the basis of the dictum laid down by this Court in decisions as in ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KLT 941 = 2010 (3) KHC 879) & Hamsa P.A. v. District Registrar General, Kozhikode and Others (2011 (3) KLT 64 = 2011 (3) KHC 6).*** In the judgment of this Court in ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KHC 879)*** this Court after elaborate consideration of various issues in that regard and after considering various provisions of Registration Act, 1908 has clearly held that *the Registration Officer like the Sub-Registrar is legally obliged to reject and refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge*

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and consent of the other parties to the sale deed and without complying with S.32A of the Registration Act, 1908. Further this Court has also issued general directions to all the Registration Officers in the State that they shall ensure that *a deed of cancellation of sale is registered only if executed with mutual consent of all parties to the sale, and after compliance with the provisions of the Act and Rules including S.32A of the Registration Act.* Paragraph 22 of the abovesaid judgment of this Court in ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KHC 879)*** provides as follows:

"

(i) *The Sub-Registrar is legally obliged to reject and refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with S.32A of the Registration Act, 1908.*

(ii) *a deed of cancellation of sale is registered only if executed with mutual consent of all parties to the sale, and after compliance with the provisions of the Act and Rules including S.32A of the Registration Act.*

"

6. The legal decision in this regard has also been re-iterated in various other judgments as in ***Hamsa P.A. v.***

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District Registrar General, Kozhikode and Others (2011 (3) KHC 6). It has been held in paragraph 14 thereof, that *the vendee cannot be divested of his title by the unilateral act of cancellation of the sale deed by the vendor. Even on cancellation of the sale deed, the vendor would not get title to the property and only the vendee can confer title to the vendor.* It has also been held by the Division Bench of this Court in the common final order dated 14.3.2018 in IA.No.227/2018 in Mat.Appeal.No.778/2012 & IA.No.2336/2015 in Mat.Appeal.No.16/2013 that such unilateral cancellation of deeds is ultra vires in provisions of the Registration Act and Rules framed thereunder and is null and void etc.

7. In the instant case it is also relevant of bear in mind that Annexure 1 settlement deed was executed by Kunjamma in favour of James on 28.6.2002. The said James died on 3.10.2003. It is after the death of James that his mother Kunjamma has executed and got registered Annexures 2 & 3 cancellation deeds on 5.8.2005 & 7.2.2011. Therefore when the abovesaid Kunjamma had executed cancellation deeds Annexures 2 & 3 , James was no

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longer alive and there was no question of any bilateral execution and registration of cancellation deeds with his consent etc. Annexures 2 & 3 cancellation deeds have not been executed with the consent of the petitioner and her daughter, who are the LRs of late James. Therefore it is only to be held that Annexures 2 & 3 are null and void and ultravires and at any rate it cannot bind James or his legal heirs like petitioner and her daughter Juliet James etc. There is no question of divestment of the title of James conferred on him as per Annexure-1 merely on account of Annexures 2 & 3 and therefore the same has no legal effect on the rights of the parties based on Annexure 1 settlement deed. Of course if such bilateral cancellation of the deed is not possible due to difference of opinion between the parties, then certainly the remedy of the aggrieved person is to institute a civil suit before the competent court with civil jurisdiction seeking cancellation of the deed, in the manner known to law.

8. Accordingly it is ordered that the stand taken by the respondents in Ext.P-3 that the settlement deed proposed to be

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exeucted and registered by the petitioner in favour of her daughter in respect of the properties covered by Annexure 1 settlement deed, cannot be registered in view of the cancellation deeds as per Annexures 2 & 3 are illegal and ultra vires. Accordingly the decision of the impugned order of the 4th respondent as in Ext.P-3 will stand quashed. The petitioner may present the settlement deed for registration before the 4th respondent Sub Registrar thereafter the said officer shall register the same, if it is otherwise in order. It is ordered and declared that the respondents cannot refuse to register the said sale deed on the basis of the grounds pointed out in Exhibit P3 & P4.

9. Before parting with this case, it is to be noted that this Court had specifically issued the aforequoted directions in paragraph 22 in ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KHC 879)*** the judgment rendered as early as on 3.9.2010. Very many cases have come to the notice of this Court that the directions issued by this Court in paragraph 22 of Pavakkal Noble John's case supra has been more

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observed in the breach than in observance. It is not known whether the Head of the Department of Registration like the Inspector General of Registration has issued any guidelines and circulars, appraising the Registration Officers like the Sub Registrar, District Registrars etc. about the legal position reflected in the judgment of this Court in paragraph 22 of ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KHC 879) etc.***

10. Accordingly it is ordered that the Inspector General of Registration will forthwith issue necessary norms and guidelines by way of circular, to the Registration Officers like the Sub Registrar, District Registrars etc. about the legal position adumbrated by the judgment of this Court in ***Pavakkal Noble John and Another v. Kerala State and Others (2010 (3) KHC 879) etc.*** more particularly about the specific directions and orders issued by this Court in paragraph 22 thereof which has been quoted herein above. The Secretary to the Office of the Advocate General will forthwith send a certified copy of judgment

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to the Inspector General of Registration, Thiruvananthapuram who will then forthwith issue such circular as afore stated on the abovesaid matters more particularly with respect to paragraph 22 of the judgment of this Court in WP(C).Nos.34367 & 37150 of 2009 dated 3.9.2011 in Pavakkal Noble John's case supra. Such circular should be issued by the Inspector General of Registration without much delay preferably within a period of 1 month from the date of production of a certified copy of this judgment and should also be published in the official website of the Registration Department and should be communicated to all the Sub Registrars and District Registrars etc for strict compliance. Necessary publication in that regard about such circular may also be effectuated by the Inspector General of Registration through the Public Relations Department and Media etc so as to appraise the general public also about this elementary legal position.

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

Sd/-

ALEXANDER THOMAS,
JUDGE

MMG

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE LEGAL HEIR SHIP DETAILS ISSUED BY THE 2ND RESPONDENT DATED 24.05.2018.
EXHIBIT P2	A TRUE COPY OF THE LAND TAX RECEIPT DATED 27.06.2018.
EXHIBIT P3	A TRUE COPY OF THE OBJECTION RAISED BY THE 4TH RESPONDENT.
EXHIBIT P4	A TRUE COPY OF THE COMMUNICATION DATED 14.09.2018 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.
EXHIBIT P5	A TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY THE PETITIONER DATED 23.10.2018.

RESPONDENTS' EXHIBITS:

ANNEXURE I	TRUE COPY OF THE SETTLEMENT DEED NO.2003/2002 OF SRO, ANCHAL
ANNEXURE II	TRUE COPY OF CANCELLATION DEED NO.2648/2005 OF SRO. ANCHAL
ANNEXURE III	TRUE COPY OF CANCELLATION DEED NO.397/2011 OF SRO, ANCHAL.

TRUE COPY

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