

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 13TH DAY OF APRIL 2018 / 23RD CHAITHRA, 1940

WP(C).No. 1860 of 2018

PETITIONER:

AHAMAD BASHEER,
S/O.MOHAMMED KUTTY MUSALIAR,
AGED 57 YEARS, RESIDING AT
KUZHIMANNIL HOUSE, PANDIKASALA,
KOORIYAD P.O., TIRURANGADI,
MALAPPURAM-676306.

BY ADVS.SMT.SHAMEENA SALAHUDHEEN
SMT.S.SIMY

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, REGISTRATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001.
2. THE LAND REVENUE COMMISSIONER, O/O THE LAND REVENUE COMMISSIONER, PUBLIC OFFICE BUILDING, MUSEUM, THIRUVANANTHAPURAM - 695033.
3. THE INSPECTOR GENERAL OF REGISTRATION, DEPARTMENT OF REGISTRATION, THIRUVANANTHAPURAM - 695001.
4. THE DISTRICT REGISTRAR (GENERAL), MALAPPURAM, OFFICE OF THE DISTRICT REGISTRAR, CIVIL STATION, MALAPPURAM - 676505.
5. THE SUB REGISTRAR, O/O. SUB REGISTRAR, VENGARA - 676304.

BY GOVERNMENT PLEADER SMT.A.C. VIDHYA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-04-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.1860 of 2018

Dated this the 13th day of April, 2018

JUDGMENT

The petitioner, impugning orders passed under the Kerala Stamp Act, 1959 (for short, the 'Act'), approached this Court.

2. The brief facts involved in this case are as follows:

The petitioner along with legal heirs of the deceased brother entered into a partition deed. It was executed on 14.7.2016. It was presented for registration claiming lesser stamp duty applicable for family as referred under the Explanation to Article 42(i) of the Act. However, the registering authority impounded the document. The petitioner exhausted all remedies. The authorities did not accept the petitioner's claim for lesser stamp duty. The Division Bench judgment of this Court in **State of Kerala and Others v. Manuel [2013 (1) KHC 765]** held that partition of the property of the parents among the sons, daughters and legal heirs of the

deceased children would come within the definition of 'family' and therefore, they are entitled to the benefit of lesser stamp duty. This judgment was overruled by the Full Bench of this Court in **Abdul Muneer v. Sub Registrar, Tirur and Others [2018 (1) KHC 207]**. In fact, the petitioner is entitled to the benefit of the Division Bench judgment. However, as of now, the law propounded by the Full Bench would prevail. The Full Bench in categorical terms held that the overruling is only prospectively. The Full Bench judgment was rendered on 16.10.2017.

In that view of the matter, since the petitioner's document was executed on 14.7.2016, he will be entitled to the benefit of the judgment in **Manuel's** case (*supra*). Therefore, the impugned orders are set aside. The document shall be returned to the petitioner.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT-P1: A TRUE COPY OF THE UNREGISTERED PARTITION DEED DATED 14/07/2016.
- EXHIBIT-P2: A TRUE COPY OF THE ORDER DATED 29/08/2016 ISSUED BY THE 4TH RESPONDENT.
- EXHIBIT-P3: A TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER AND OTHERS BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P4: A TRUE COPY OF THE ORDER DATED 07/08/2017 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P5: A TRUE COPY OF ORDER DATED 18/12/2014 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P6: A TRUE COPY OF THE COMMUNICATION DATED 23/10/2016 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/
19.04.2018.

TRUE COPY
Mokesh
Examiner



**HIGH COURT OF KERALA
AT ERNAKULAM**

Year and Number of Suit or
other Proceedings : WPC 1860 / 2018

Name of Applicant/Advocate : SMT.S.SIMY

Application Number : A 34160/2018

Application Date : 13-04-2018

Date of Calling for Stamp : 04-05-2018

Date of Production of Stamp : 04-05-2018

Date When copy was Ready : 04-05-2018

Date Notified for appearance to
receive the copy : 11-05-2018

Date when copy was delivered : 04/05/2018

Mahabees
Examiner