

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY ,THE 12TH DAY OF FEBRUARY 2019 / 23RD MAGHA, 1940

WP(C).No. 4113 of 2019

PETITIONERS:

- 1 KUNJAMMA @ MARIYAMM,
AGED 77 YEARS
W/O N P VARGHESE, KNALATH NJATTUTHOTTIYIL
HOUSE, VADAYAMBADI KARA, VAYAMBADI
P.O.PUTHENCruz, ERNAKULAM DISTRICT, PIN 682 308
- 2 SAJU JOSEPH,
AGED 46 YEARS
W/O BIJU VARGHESE, KNALATH NAJATTUTHOTTIYIL
HOUSE, VADAYAMBADI KARA, VAYAMBADI
P.O.PUTHENCruz, ERNAKULAM DISTRICT, PIN 682 308
- 3 BASIL JOSEPH, S/O BIJU VARGHESE, AGED 21,
KNALATH NJATTUTHOTTIYIL HOUSE, VADAYAMBADI
KARA, VADAYAMBADI P.O, PUTHENCruz, ERNAKULAM
DISTRICT, PIN 682308
- 4 KURIAN JOSEPH VARGHESE,
AGED 18 YEARS
S/O BIJU VARGHESE, KNALATH NAJATTUTHOTTIYIL
HOUSE, VADAYAMBADI KARA, VAYAMBADI
P.O.PUTHENCruz, ERNAKULAM DISTRICT, PIN 682 308
- 5 MATHAI JOHN,
AGED 63 YEARS
S/O V.J. JOHN, MEENPARA PUTHENPURAYIL HOUSE,
VADAYANPADY KARA, VAYAMBADI P.O.PUTHENCruz,
ERNAKULAM DISTRICT, PIN 682 308
BY ADV. SRI.SHIJU VARGHESE

RESPONDENT:

SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR, PUTHENCruz,
PUTHENCruz P.O.ERNAKULAM DISTRICT, PIN 682 308

OTHER PRESENT:

SRI.SAIGI JACOB PALATY, SR.GOV.T.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.02.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ALEXANDER THOMAS, J.

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W.P(C)No. 4113 of 2019

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Dated this the 12th day of February, 2019

JUDGMENT

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

- "a. *call for the entire records relating to Ext.P5 and quash the same and direct the 1st respondent to register Ext.P3 with its records as per Ext.P4 token, without incorporating the restriction clause.*
- b. *declare that petitioners are free to assign, alienate or pledge or otherwise encumber the property free from the restriction clause stated in Ext.P1.'*
- c. *grant such other reliefs as the petitioner may apply and the court may deem fit and proper to grant and*
- d. *award the petitioner the costs of these proceedings".*

2. Heard Sri. Shiju Varghese, learned counsel appearing for the petitioners and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondent.

3. It is stated that petitioners 2 and 4 are the owners of the

property covered by Ext.P1 registered will dated 07.09.2017 of SRO Puthencruz and wherein life interest is created in respect of the subject property therein in favour of the 1st petitioner herein who is the widow of the deceased testator of Ext.P1 registered Will. Petitioners 3 and 4 are now aged 21 years and 18 years respectively. Petitioner 1 to 4 have negotiated to sell an extent of 3 cents of the land out of the total extent of land covered by Ext.P1 Will to the 5th petitioner to meet urgently the medical expenses of the 1st petitioner.

4. Accordingly, Ext.P3 sale deed has been prepared and for registering the same Ext.P4 Token No. T -3028905 dated 01.02.2009 was also obtained from the respondents office and Ext.P3 sale deed was presented before the respondent-SRO for registration. The respondent-SRO has now refused to register Ext.P3 sale deed as per Ext.P5 letter dated 01.02.2019 on the ground that the property cannot be alienated in view of the abovesaid condition and as petitioners 3 and 4 have not completed the age of 30 as stipulated in Ext.P1 will.

After having heard both the sides it is only to be held that the impugned clause restricting the right of alienation until petitioners 3 and 4 completed the age of 30 years is *ultra vires* the provisions contained in Section 10 of the Transfer of Property Act. In view of the dictum laid down in various decision as in ***Fathima Sarohini Suresh and others V. K.Saraswathy Amma and others [AIR 1986 Ker.56 (DB)] = 1985 KHC 371 (DB), Narayanan Radhakrishnan Menon V.Narayanan Sukumara Menon 2018 (2) KLT 553.*** This Court has held similar cases that questioned the right of alienation contained in partion deed are the *ultra vires* provisions contained in Section 10 of the Transfer of Property Act.

5. Accordingly, it is held that the impugned rejection order as per Ext.P5 letter dated 01.02.2019 is illegal and *ultra vires*. Accordingly ,Ext.P5 rejection order dated 01.02.2019 will stand set aside. The petitioner may present the original of Ext.P3 sale deed for the registration before the respondent, who will then register the

same if it is otherwise in order, but, subject to the payment of the applicable stamp duty and the registration fee prescribed as per the statutory rules concerned.

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

SD/-

ALEXANDER THOMAS

JUDGE

SJ 12.02.2019

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE WILL DEED BEARING NO
190/111/2017 DATED 7.9.2017 OF THE
PUTHENCRUZ SRO.
- EXHIBIT P2 TRUE COPY OF THE THANDAPER ACCOUNT NO
2019/4985/07 DATED 24.1.2019
- EXHIBIT P3 TRUE COPY OF THE SALE DEED DATED
01.02.2019
- EXHIBIT P4 TRUE COPY OF THE ACKNOWLEDGEMENT FOR
ONLINE REGISTRATION WITH TOKEN NO T
3028905 DATED 1.2.2019
- EXHIBIT P5 TRUE COPY OF THE LETTER BEARING NO C-
35/2019 DATED 1.2.2019 ISSUED BY THE
RESPONDENT