

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2020 / 24TH ASHADHA, 1942

WP(C).No.12809 OF 2020(A)

PETITIONER/S:

BABU.P.T., AGED 62 YEARS, S/O.PULICKAN THOMAS,  
PULICKAN HOUSE, IRINJALAKUDA VILLAGE AND DESOM,  
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENT/S:

- 1 THE SUB REGISTRAR, O/O. THE SUB REGISTRAR,  
IRINJALAKUDA P.O.IRINJALAKUDA, TRISSUR DISTRICT,  
PIN-680 121.
- 2 THE DISTRICT REGISTRAR GENERAL, O/O. THE DISTRICT  
REGISTRAR GENERAL, CHEMBUKAVU, THRISSUR,  
PIN-680 020.
- 3 THE INSPECTOR GENERAL OF REGISTRATION,  
VANCHIYOOR P.O., THIRUVANANTHAPURAM-695 035.

BY GOVERNMENT PLEADER, SRI.Y JAFFAR KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
15.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

**Dated this the 15th day of July 2020**

The petitioner along with others obtained a 'Will'. The petitioner obtained two shop rooms from his father in a shopping complex as per Ext.P3(G Schedule in the Will). The father of the petitioner obtained right over the shop rooms along with the right to enjoy common amenities like the staircase, bathroom vide Ext.P3. Based on the Will, the petitioner and other beneficiaries of the Will executed Ext.P4 in favour of one Anitha. The shop rooms have been valued at Rs.3 lakhs. In the document, Rs.10,000/- has been fixed towards the value and consideration for parting the right of common amenities. On presentation, the Sub Registrar refused to register the instrument stating that the petitioner had not valued proportionate right of the common amenities and appurtenant land.

2. As seen from Exts.P1 and P2, the father of the petitioner obtained shop rooms along with common amenities. What is being conveyed by Ext.P4 is the property as received by his father vide Exts.P1 and P2. The Sub Registrar has no case that the document covers any other right other than the right covered by Exts.P1 and P2.

3. The learned Government Pleader submitted that Section 6 of the Kerala Apartment Ownership Act, 1983 (hereinafter referred to as the 'Act') states the common areas and facilities. He also refers to the amendment brought to Kerala Stamp Act, 1959. Section 2(fc) of the Kerala Stamp Act states that a shop room in the multi-storied building with common facilities comes under the definition of apartment. Therefore, it is submitted that the undivided interest in the shop room will have to be valued for the purpose of stamp and registration. It is further submitted that Section 6(4) states that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains. Section 6(4) of the Act reads thus:

*“The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.”*

4. Section 6(4) of the Act states that common areas and facilities shall not be separated from the apartment and shall be deemed to be conveyed. The question is whether the

definition under the Act would apply in this case or not. It is not known whether this area is notified under the Act. It is to be noted that the Act contemplates maintenance of register by the registering authority. This register had also not been made available to the Sub Registrar in the State. The petitioner's father, admittedly, did not derive any undivided right over the apartment land or facilities. What was given to the father is only a right to use the common amenities and facilities. If the petitioner's father had not received such an undivided right, the petitioner cannot convey such right, which is not existed with him.

In this case, the petitioner had valued his right of the user at Rs.10,000/-. Therefore, it cannot be said that the petitioner had not valued his right of user. Whether this is sufficient or not is not a matter for consideration by the Sub Registrar at the time of registration. If the Sub Registrar is of the view that it is a case of under valuation, it is a matter for him to proceed under Section 45B of the Stamp Act. Therefore, assuming that there is a deemed conveyance of the undivided right to the petitioner based on the definition of the apartment as contemplated under the Act, this is not a case where the registration can

be denied on account of the fact that the value of the undivided right has not been shown. As already noted, the petitioner had valued his right at Rs.10,000/-, the Sub Registrar is bound to register such document. The Sub Registrar is of the view that the consideration has been under valued, it is up to him, initiate proceedings under Section 45B of the Stamp Act. With liberty as above, the Sub Registrar is ordered to register the document in accordance with law.

The writ petition is disposed of as above.

sd/-

**A.MUHAMED MUSTAQUE**

**JUDGE**

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1            TRUE COPY OF THE DEED OF ASSIGNMENT NO 2351/92  
DATED 15.9.92 IN FAVOR OF THE FATHER OF THE  
PETITIONER LATER THOMAS PERTAINING TO ROOM (OLD  
NO VI/189) OF IRINJALAKUDA MUNICIPALITY.
- EXHIBIT P2            TRUE COPY OF THE DEED OF ASSIGNMENT NO 2500/92  
DATED 2.10.92 IN FAVOR OF THE FATHER OF THE  
PETITIONER LATE THOMAS PERTAINING TO ROOM (OLD  
NO VI/186) OF INRINJALAKUDA MUNICIPALITY.
- EXHIBIT P3            TRUE COPY OF THE JOINT WILL DATED 7.5.1996  
EXECUTED BY THOMAS AND VERONICA.
- EXHIBIT P4            TRUE COPY OF THE DRAFT DEED OF ASSIGNMENT TO  
ASSIGN THE ROOMS DESCRIBED IN G SCHEDULE TO THE  
WELL COVERED BY EXHIBITS P1 AND EXHIBIT P2.

RESPONDENTS EXHIBITS:NIL.

//TRUE COPY//

P.A.TO JUDGE