

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 04TH DAY OF MARCH 2020 / 14TH PHALGUNA, 1941

WP(C).No.35184 OF 2019(W)

PETITIONER:

KURIAKOSE, AGED 68 YEARS,
S/O.THOMAS, RESIDING AT ONATTAYA KUNNUMPURATHU,
PONKUNNAM P.O., VADAKKUM BHAGOM KARA,
CHIRAKADAVU VILLAGE.

BY ADVS.

SRI.LIJI.J.VADAKEDOM
SMT.REXY ELIZABETH THOMAS
SRI.RAJEEV JYOTHISH GEORGE
SRI.TOM E. JACOB

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
TO THE REGISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 SUB REGISTRAR-KANJIRAPPALLY,
OFFICE OF THE SUB REGISTRAR OFFICE,
PONKUNNAM P.O.,
KOTTAYAM DISTRICT, PIN- 686 506.

BY ADVS. SRI.Y JAFARKHAN GP TO AAG
SRI.M.R.DHANIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 4th day of March 2020

The petitioner was the owner of a building that consists of different rooms. He appears to have sold his right over the rooms including the appurtenant land in favour of various purchasers, except a room in the first floor numbered as 578A.

2. Thereafter, the petitioner prepared Ext.P4 draft settlement deed dated 17.09.2019 for settling the property in his daughter's name. When the draft settlement deed was shown to the 2nd respondent-Sub Registrar, he was of the opinion that the registration of Ext.P4 settlement deed cannot be effected in Book No.1 but, it can be effected only in Book No.4, referred to as the “miscellaneous register” as per Section 51(1)A of the Registration Act, 1908. Apparently, the Sub Registrar takes the stand that the shop room without an appurtenant land cannot be treated as an immovable property.

3. Section 51 of the Registration Act refers to the register-books to be kept in several offices. It contemplates different books for entering details of the registration. Book No.1 refers to “register of non-testamentary documents relating to immovable property” and the Book No.4 refers to “miscellaneous register”.

4. Section 2(6) of the Registration Act, 1908 defines “immovable property” which reads thus:

“(6) “immovable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber growing crops nor grass;”

The shop room without an appurtenant land is also an immovable property as referred under Section 2(6) of the Registration Act. What is attached to the earth or permanently fastened to it also is an “immovable property”.

5. In such circumstances, this Court is of the view that the settlement deed which is executed by the petitioner will have to be entered in Book No.1 by the 2nd respondent-Sub Registrar under Section 51(1)A of the Registration Act. Ordered accordingly.

The writ petition is disposed of as above.

sd/-
A .MUHAMED MUSTAQUE
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE COPY OF THE PARTITION DEED NO.3754/1999
DATED 12/10/1999 OF KANJIRAPPALY SRO.
- EXHIBIT P2 THE COPY OF THE SALE DEED NO.3770/1999 OF
THE SRO KANJIRAPPALLY.
- EXHIBIT P3 THE COPY OF THE SALE DEED NO.3602/2007 OF
THE SRO KANJIRAPPALLY.
- EXHIBIT P4 THE COPY OF THE DRAFT SETTLEMENT DEED DATED
17/9/2019 EXECUTED BY THE PETITIONER.

RESPONDENT'S/S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE