

C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 26TH DAY OF MARCH 2019 / 5TH CHAITHRA, 1941

WP(C).No.5712 of 2019

PETITIONERS:

- 1 BABURAJ.P.K
AGED 55 YEARS
S/O.LATE.T.K. KRISHNAN, PADMA VIHAR HOUSE,
KOLANCHERRY ROAD, POONITHURA P.O., POONITHURA
VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT,
PIN - 682 038.
- 2 RAJESWARI P.K.
AGED 56 YEARS
W/O. SATHEESH BABU, KUTHANVALLY HOUSE, MANATHALA
DESOM, CHAVAKKAD VILLAGE, CHAVAKKAD P.O., THRISSUR
DISTRICT, PIN - 680 506.
- 3 BINDHU @ BINDHU V. MENON
AGED 51 YEARS
W/O. VINODH KUMAR MENON, C-2, 3RD FLAT, NAVARATNA
APARTMENTS, KUMARAPILLA ROAD, EDAPPALLY DESOM,
EDAPPALLY VILLAGE, EDAPPALLY P.O., ERNAKULAM
DISTRICT, PIN - 682 026.
- 4 RAJ MOHAN P.K.
AGED 52 YEARS
S/O. LATE T.K. KRISHNAN, KRISHNA VIHAR HOUSE,
KOLANCHERY ROAD, POONITHURA P.O., POONITHURA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN - 682 038
- 5 LATHA P.K.
AGED 47 YEARS
D/O. LATE T.K. KRISHNAN, PADMA VIHAR HOUSE,
KOLANCHERY ROAD, POONITHURA P.O., POONITHURA VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN - 682 038.

BY ADVS.

SRI.S.RANJIT (KOTTAYAM)

SRI.BINU JOHN

RESPONDENTS :

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001.
- 2 INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR, THIRUVANANTHAPURAM,
PIN - 695 035.
- 3 SUB REGISTRAR,
SUB REGISTRAR'S OFFICE, MARADU, ERNAKULAM DISTRICT,
PIN - 682 304.
- 4 VILLAGE OFFICER
POONITHURA VILLAGE OFFICE, VYTTILA P.O., ERNAKULAM,
PIN - 682 019.

OTHER PRESENT:

SRI.S GOPINATHAN, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.03.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

In what manner the wrong descriptions in a 'Will' would have an impact upon the legatee claiming the property covered by the Will is the sole question to be considered in this writ petition.

2. The petitioners are the children of late T.K.Krishnan and late Padmini Amma. Late T.K.Krishnan had executed a registered Will bequeathing his property to petitioners 1 to 3. In the Will, there is a mistake in regard to description of the property. That lead to a thought for the petitioners to partition the property among the legal heirs as per the wish of the testator. Accordingly, they executed a partition deed. The Sub Registrar refused to register the partition deed stating that after the death of the testator, mutation of the property was effected and the document presented for registration can be treated only as a conveyance deed. It is challenging the decision of the Sub Registrar, the petitioners approached this Court.

3. The erroneous description of subject in a 'Will' is attempted to be resolved by executing a partition deed by the legal heirs. If the bequest had already given effect, there may not be any right available for the legal heirs of the testator to enter into a partition deed. The question, therefore, is whether the bequest had taken effect or not.

4. Section 78 of the Indian Succession Act, 1925 reads as follows:

“78. Rejection of erroneous particulars in description of subject.- If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect”.

Section 78 states that erroneous description of some part of the property can be rejected to give effect to the bequest. All the legal heirs of late T.K.Krishnan have joined together in this writ petition and they have no case that any such property as such exists to fit into the description of the Will. There is no difficulty for them to identify the property as such and there is no dispute among the legal heirs. If extrinsic circumstances are of such nature which would enable one to sufficiently identify the subject, there is no difficulty to hold that bequest has taken effect. In such circumstances, the wrong description will not make the bequest invalid. The bequest, therefore, is valid. Then the only question remains is in what manner such bequest can be given effect.

5. Learned counsel for the petitioners submits that the petitioners may be permitted to execute a rectification deed.

6. Learned Government Pleader submits that such rectification is not possible insofar as a Will is concerned.

7. The law does not provide any platform or remedy for such issues. Section 26 of the Specific Relief Act, 1963 only refers for rectification of instruments if it happened on account of fraud or mutual mistake. It does not speak about the mistake committed by the testator in a Will. This Court is only concerned about the manner in which such rectification has to be done. If the learned Government Pleader's argument is accepted, every person will have to be driven to the Civil Court for obtaining relief even if there is no dispute among the beneficiaries or legal heirs. Such a course is not under contemplation of law. If there is unanimity among the legal heirs who otherwise would have been inherited the property, they could very well justify the intention of the testator and there is no impediment under law in executing a rectification deed by such persons so as to correct the descriptions in a registered Will. In fact, as far as a rectification is concerned, the petitioners being the legal heirs of the testator, they have every right to correct such wrong description in the Will. However, this is only possible if there is unanimity among the legal heirs. If there is any dispute in regard to such description, it can be

resolved only through the Civil Court. When there is no dispute regarding such description, it can be done through a rectification deed.

8. The Stamp Act or the Registration Act does not define a rectification deed by assigning an exclusive meaning to it. The Registration Act provides a Table of fees under Section 78 of the Act. Table 1(s) under Section 78 refers a deed which can be treated as rectification deed and it states that the maximum fee leviable on such a deed at Rs.500/-. It gives sufficient indication as to, what is a rectification deed. It states that rectification deed does not create, transfer, limit, extend, extinguish or record any right. Therefore, wrong description which will not create, transfer or record any fresh right can be rectified through a rectification deed. It is made clear that such deed is possible only to correct an error or mistake. The facts clearly would show that a mistake was crept in regard to the description of the property in the Will. None has a case that there exist any such property as described in the Will to the testator. As already adverted, there is no exclusive definition being assigned under the Stamp Act or the Registration Act for a rectification deed, it has to be contextually understood by the nature of circumstances under which the deed has to be executed. Therefore, it is possible to execute a rectification deed

by the legal heirs on unanimity to correct wrong description in a Will.

Upshot of the above discussion is that the petitioners cannot enter into a partition deed in respect of the property in respect of which bequest has been given effect. The Sub Registrar is justified in rejecting the petitioners' request. However, the petitioners are at liberty to execute a rectification deed correcting the wrong description in the registered Will on condition that all the legal heirs have joined together in such deed. The petitioners shall also make available a copy of the legal heir certificate before the Sub Registrar for compliance. If the petitioners make an application for refund of the spoiled stamp papers, that shall be considered in accordance with law.

This writ petition is disposed of as above.

sd/-

A . MUHAMED MUSTAQUE

JUDGE

smp

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE SALE DEED DATED 27.05.1967 BEARING NUMBER 1468/1967 OF THE SUB REGISTRAR'S OFFICE, THRIPPUNITHURA.
- EXHIBIT P2 TRUE COPY OF THE SALE DEED DATED 17.12.1991 BEARING NUMBER 4159/1991 OF THE SUB REGISTRAR'S OFFICE, MARADU.
- EXHIBIT P3 TRUE COPY OF THE WILL DATED 17.10.2008 BEARING REGISTRATION NUMBER 356/111/2008 BEFORE THE SUB REGISTRAR'S OFFICE, THRIPPUNITHURA
- EXHIBIT P4 TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE SHOWING THE LEGAL HEIRS OF DECEASED T.K. KRISHNAN ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE THANDAPER ACCOUNT EXTRACT (3 NOS.) ISSUED TO THE 1ST PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE THANDAPER ACCOUNT EXTRACT ISSUED TO THE 2ND PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE THANDAPER ACCOUNT EXTRACT (2 NOS.) ISSUED TO THE 3RD PETITIONER.
- EXHIBIT P8 TRUE COPY OF THE PARTITION DEED DATED 19.01.2019 EXECUTED BY THE PETITIONERS.
- EXHIBIT P9 TRUE COPY OF THE LETTER DATED 25.01.2019 BEARING NUMBER C.11/19 ISSUED BY THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS: NIL.

True Copy

P.S to Judge

smp