

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY ,THE 18TH DAY OF JANUARY 2019 / 28TH POUSHA, 1940

WP(C).No. 1533 of 2019

PETITIONER/S:

ASHBIN MATHEW  
AGED 28 YEARS  
S/O.MATHEW PUTHIYAPARAMBIL, PURATHODE,  
KONNATHADY VILLAGE, IDUKKI TALUK, IDUKKI.

BY ADVS.  
SRI.K.B.GANGESH  
SMT.ATHIRA A.MENON  
SMT. FARHA BEEGUM K.M.  
SRI.AMAL S KUMAR

RESPONDENT/S:

- 1 SUB REGISTRAR,  
IRINJALAKKUDA, SUB REGISTRARS OFFICE  
IRINJALAKKUDA, THRISSUR-680020.
- 2 TAHSILDAR,  
MUKUNDAPURAM, CHEMMANADA RD.,  
IRINJALAKUDA, KERALA-680125.
- 3 VILLAGE OFFICER,  
MADYIKONAM VILLAGE OFFICE, MADAYIKONAM.P.O.,  
THRISSUR-680712.

OTHER PRESENT:

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 18.01.2019, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ALEXANDER THOMAS, J.**

-----  
W.P(C).No.1533 Of 2019  
-----

Dated this the 18<sup>th</sup> day of January, 2019.

**J U D G M E N T**

**The prayers in the above Writ Petition  
(Civil) are as follows:**

- "I) a Writ of mandamus or any other appropriate writ, order or direction commanding the 1<sup>st</sup> respondent to register Ext P5 as rectification deed upon levy of stamp duty and registration charges as applicable for registration of a rectification deed;
- II) A Writ of mandamus or any other appropriate writ, order or direction commanding the respondents 2 and 3 to effect the mutation of the property covered by Ext.P1 sale deed in favour of the petitioner upon accepting Ext.P4 no objection issued in his favour by the vendor.
- III) Any other appropriate writ, order or direction as this Hon'ble Court may deem fit on the facts and in the circumstances of the case and allow this petition with all costs."

**2. Heard Sri.K.B.Gangesh, learned counsel for the petitioner and Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.**

**3. The petitioner had purchased 4.05 ares of property with a residential building**

in Sy.No.907/1 of Madayikonam Village, Mukundapuram Taluk, Thrissur Revenue District, from one Smt.Jayalakshmi, D/o.Velayudhan K.K., residing at 27-B Pocket 5 MIG Mayur Vihar, Phase-III, Delhi, as per Ext.P-1 registered sale deed No.1712/2017 dated 9.11.2017 of S.R.O., Irinjalakuda. In Ext.P-1 sale deed the abbreviation of the name of the father of the vendor has been wrongly shown as "V.K.Krishnan" instead of "Velayudhan K.K.". On account of this, the mutation of the property in favour of the petitioner was declined by respondents 2 & 3. The vendor has issued Ext.P-4 in favour of the petitioner acknowledging the mistake and expressing her willingness to correct Ext.P-1 and rectify the same relating to the description of the father's name in Ext.P-1 sale deed and also to effect mutation of the

property in favour of the petitioner. Even after Ext.P-4, the respondents have refused to grant mutation in respect of the property of the petitioner and they have insisted for a rectification deed. When Ext.P-5 rectification deed was produced before the 1<sup>st</sup> respondent, he had insisted for stamp duty and registration charges applicable for a new sale deed for registering the same. It is alleged that the conduct of both the 1<sup>st</sup> respondent-Registrar as well as respondents 2 & 3-revenue officials are illegal and arbitrary.

4. It can be seen from item (s) of clause 3(i) of Table of Registration fees notified by the State Government in exercise of the enabling powers conferred under Sec.78 of the Registration Act, 1908, it is notified that registration fee for a deed of rectification which does not create,

transfer, limit, extend, extinguish or record any right or liability shall be the same as the fee leviable on the original document subject to a maximum of Rs.500/-. Without getting into actual specific rates of registration fee applicable, it can be seen that broad contours of a rectification deed in substance and essence should be the one which does not not create, transfer, limit, extend, extinguish or record any right or liability in respect of the subject property in comparison to the original deed, which is sought to be rectified by the deed of rectification. In the instant case, the dispute is only with regard to the correction of the mistake occurred in respect of the recital in Ext.P-1 deed about the initial and full name of father of the vendor. This Court would prima facie take the view that such minor and inconsequential

mistake is only a clerical mistake and will not change the substance and essence of the title and such minor mistakes even could be ignored in serious disputes of title. However, no final opinion need be rendered now in view of the decision that is proposed to be taken by this Court. When the vendor herself says that there has to be correction in the description of the name of her father as recited in Ext.P-1 and she herself has voluntarily come forward consenting to be an executant to rectify and correct that mistake, which is pertaining to only description of her father, this Court would really wonder as to how the 1<sup>st</sup> respondent-Registrar would take an extreme view that such a deed in essence and substance is not a deed of rectification as conceived in clause (i)(s) but amount to conveyance and that too when the property has been already

conveyed as per Ext.P-1. It is not known as to how the 1<sup>st</sup> respondent-Registrar can conceive that property already conveyed by the vendor as per Ext.P-1 could be again conveyed by the same party. If as a matter of fact, the 1<sup>st</sup> respondent has taken such a stand, the same can only be described as high arbitrariness and capriciousness or at least ignorance of elementary provisions relating to the law of registration of the document. The said position has been unequivocally and categorically held by this Court in P.A.Jihas v. The District Registrar & anr, reported in 2012 (3) KLT 146, that for correction of mistake in the sale deed, even if it is with regard to flat number, stamp duty payable is as per the duly applicable for rectification deed. Even if there is an extinguishment of a right and creation of a new right, by changing of identity of the flat, that will not alter the nature of rectification deed.

Accordingly, it is ordered that the petitioner and other executants of Ext.P-5 rectification deed will immediately present the deed before the 1<sup>st</sup> respondent forthwith and register the same if it is otherwise in order by charging the registration fee applicable for registration of such a deed of rectification. It appears that as per the provisions of the Kerala Stamp Act and the articles appended to the schedule thereto, no stamp duty is prescribed for a deed of rectification.

5. Further this Court would hold that the competent authority among respondents 2 & 3 have no power to insist that a minor mistake in the description of the name of the father of the vendor should necessarily be corrected by registration of a rectification deed before they could request for grant of mutation, etc. The said stand



of respondents 2 & 3 is wholly without jurisdiction and highly arbitrary and capricious and it is declared so. The petitioner's application for mutation, transfer of registry and acceptance of basic land tax in respect of the property covered by Ext.P-1 shall be forthwith considered by the 3<sup>rd</sup> respondent after granting a reasonable opportunity of being heard to the petitioner and will grant the said request if it is otherwise in order. It is hoped and expected that respondents 2 & 3 will not unnecessarily make the petitioner to run from pillar to post and would take a decision realising the heavy responsibility cast on their shoulders by the Legislature as per Secs.5(2) and 3(3) of the Kerala Land Tax Act and their basic function is to ensure the collection of revenue from the "land holder" as understood in Sec.3(3),

otherwise it would amount to violation of specific mandate made by Sec.5(2) of the Kerala Land Tax Act which mandates that the competent revenue officials like respondents 2 & 3 are obliged in law to accept basic land tax from the registered land holder as conceived in Sec.3(3). In the instant case, it appears that the property was earlier mutated in the name of the petitioner's vendor and basic land tax was also accepted from her. The petitioner, as the assignee of the registered land holder, will stand in the shoe of the "land holder" going by the impact of Sec.3(3) of the Kerala Land Tax Act and the respondents 2 & 3 are obliged in law to collect basic land tax from such "land holder" as understood in Sec.3(3). Respondents 2 & 3 should not insist the petitioner to produce copy of the rectification deed as it is not within the

province of function of them to make any such insistence. Respondents 2 & 3 should bear in mind the elementary aspect that they are invested with the duty to collect land tax and that they are not entering into the difficult terrain of adjudication of title disputes, which are in the domain of civil courts concerned and any such attempt to transgress into the such disputed area of title determination, if permitted, would amount to permitting the competent revenue officials to transgress the sacred doctrine of separation of powers as such function for resolving the vexed issues of disputes is solely within the province of the civil court.

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

Sd/-

ALEXANDER THOMAS,  
Judge.

## APPENDIX

### PETITIONER'S/S EXHIBITS:

- EXHIBIT P1                    TRUE COPY OF SALE DEED  
NO.1712/1/2017 DATED 9.11.2017 OF  
SUB REGISTRAR OFFICE,  
IRINJALAKKUDA.
- EXHIBIT P2                    TRUE COPY OF THE 3RD PAGE OF THE  
SSLC CERTIFICATE OF  
JAYALAKSHMI.C.V.
- EXHIBIT P3                    TRUE COPY OF THE PAN CARD OF  
JAYALAKSHMI.C.V.
- EXHIBIT P4                    TRUE COPY OF NO OBJECTION  
CERTIFICATE DATED 12.6.2018 ISSUED  
BY JAYALAKSHMI.C.V. TO THE  
PETITIONER.
- EXHIBIT P5                    TRUE COPY OF THE DRAFT  
RECTIFICATION DEED PREPARED FOR  
CORRECTING EXT.P1 SALE DEED.