

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 6TH DAY OF JUNE 2018 / 16TH JYAISHTA, 1940

WP(C).No. 12870 of 2018

PETITIONER:

GEETHA SINGH,
AGED 47 YEARS, W/O BHAGAVAN SINGH, SIVA NIVAS,
NOOLUVALLI, CHEMBUCHIRA PO, THRISSUR.

BY ADV.SRI.V.M.KRISHNAKUMAR

RESPONDENT(S) :

1. DISTRICT REGISTRAR,
DISTRICT REGISTRAR OFFICE, THRISSUR, PIN-680003.
2. SUB REGISTRAR,
SUB REGISTRAR OFFICE, PIN-680684.

BY SENIOR GOVERNMENT PLEADER SRI. S.GOPINATHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-06-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PBS

WP(C).No. 12870 of 2018 (G)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF EXCHANGE DEED NO.1366/1/2017 DATED
31.08.2017.

EXHIBIT P2 TRUE COPY OF THE DRAFT SALE DEED DATED
02.02.2018.

EXHIBIT P3 TRUE COPY OF THE RELEVANT PAGES OF
"MUDRAPATHRA NIYAMAM ORU PADANAM".

EXHIBIT P4 TRUE COPY OF THE REPLY DATED 09.03.2018
SUBMITTED BY THE PETITIONER.

EXHIBIT P5 TRUE COPY OF ORDER DATED 16.03.2018 OF 1ST
RESPONDENT.

RESPONDENT'S EXHIBIT

NIL

/TRUE COPY/

PS TO JUDGE

PBS
21/6/2018

A. MUHAMED MUSTAQUE, J.

W.P. (C) No.12870 of 2018

Dated this the 6th day of June, 2018

J U D G M E N T

This writ petition is filed challenging an order passed by the District Registrar, Thrissur adjudicating the stamp duty payable in respect of conveyance deed and also levying penalty from the petitioner consequent upon the impounding of such instrument.

2. The petitioner's vendor Roy obtained the property from one Manoj through an exchange deed dated 31.08.2017. The petitioner had purchased the property from Roy by sale deed dated 02.02.2018. Since the transaction had taken place within a period of six months, the registering authority was of the view that Article 22(iii) of the Schedule to the Kerala Stamp Act, 1959 would apply and the petitioner will have to pay one and a half times the stamp duty payable in respect of the previous conveyance deed. The petitioner's contention is that, since the previous deed is an exchange deed,

Article 22(iii) would not apply and the petitioner need to pay only the stamp duty as referred under Article 21.

3. The short question to be considered in this writ petition is whether an exchange deed can be treated as conveyance for the purpose of levy of stamp duty as referred under Article 22 or not.

4. Learned counsel for the petitioner argued in extenso and submitted that the duty is charged on an instrument and not in respect of a transaction and therefore, the provisions have to be strictly construed for the purpose of levy of stamp duty. Learned counsel pointed out that Article 29 refers to exchange of property and charging of stamp duty. As far as exchange of property is concerned, it is totally different and distinct from charging stamp duty in respect of conveyance and therefore, charging one and a half times the stamp duty if such transaction had taken place within six months, is not proper and such levy cannot be claimed by the registering authority. Learned counsel further referred to Section 2(d), the definition of 'conveyance' and argued that 'conveyance' includes such instruments as referred in Section 2(d) and it cannot include exchange deed.

5. The conveyance in general term is understood as the transfer of interest in immovable property from one person to another. Section 2(d) refers to transfer of immovable property or movable property 'inter vivos'. The term 'inter vivos' means transaction between two living person. The definition in general part is only giving light to interpret the specific terms mentioned in other part of the statute. The exchange deed in fact is a conveyance in the sense that it is a transaction between two living persons. Article 29 cannot be understood in isolation of Article 22. Article 29 specifically refers the nature of levy of stamp duty for exchange of property.

6. No doubt, as rightly pointed out by the learned counsel for the petitioner, the provisions have to be strictly construed. If the term 'exchange of property' can be understood as independent of conveyance, certainly the argument is attractive. On a close glance of Articles 22 and 29, it can be seen that the exchange of property as referred in Article 29 is in fact with reference to the conveyance as referred in Article 22. The only difference in the case of exchange deed is that the stamp duty is leviable based on the higher value of the property in any of the instrument. The

exchange of property is conveyance of property by an instrument. If it is not conveyance for the purpose of charging stamp duty, it would have been so mentioned in the statutory provisions itself. On the other hand, Article 29 stipulates that the stamp duty payable on exchange is as same as applicable to conveyance and the parties need to pay stamp duty based on consideration which is higher in one of the properties exchanged.

Therefore, the impugned order suffers no infirmity and need not be interfered.

This writ petition is accordingly dismissed. No costs.

Sd/-

**A. MUHAMED MUSTAQUE
JUDGE**

smp