

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945

WP(C) NO. 21010 OF 2023

PETITIONER:

BALACHANDRAN
AGED 73 YEARS
S/O .CHAMIYAPPANPILLA, CHERUMKODE, VANDAZHY.P.O,
ALATHUR, PALAKKAD, PIN - 678706

BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS:

- 1 SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR, VADAKKENCHERRY,
VADAKKENCHERRY.P.O, ALATHUR, PALAKKAD, PIN - 678682
- 2 VILLAGE OFFICER,
VANDAZY-I VILLAGE, VANDAZHY.P.O, ALATHUR, PALAKKAD-,
PIN - 678706

OTHER PRESENT:

SMT. DEEPA V (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.07.2023, ALONG WITH WP(C).21273/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945

WP (C) NO. 21273 OF 2023

PETITIONER/S:

- 1 PREMAKUMARAN
 AGED 58 YEARS
 S/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 2 ANANTHAKUMARAN
 AGED 54 YEARS
 S/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 3 SURENDRAN
 AGED 51 YEARS
 S/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 4 BABU,
 AGED 46 YEARS
 S/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 5 RAJESH,
 AGED 44 YEARS
 S/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 6 CHANDRIKA,
 AGED 49 YEARS
 D/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA, KANNAMBRA-II VILLAGE,
 ALATHUR, PALAKKAD, PIN - 678685

- 7 OMANA,
 AGED 44 YEARS, D/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA,
 KANNAMBRA-II VILLAGE, ALATHUR, PALAKKAD, PIN - 678685

- 8 ANITHA,
 AGED 39 YEARS, D/O.CHERUKUTTY, CHIRAYIL, MANJAPPRA,
 KANNAMBRA-II VILLAGE, ALATHUR, PALAKKAD, PIN - 678685

BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS :

1 SUB REGISTRAR,
OFFICE OF THE SUB REGISTRAR, VADAKKENCHERRY,
VADAKKENCHERRY.P.O, ALATHUR, PALAKKAD, PIN - 678682

2 VIILAGE OFFICER
KAHNAMBRA-II VILLAGE, KANNAMBRA.P.O, ALATHUR,
PALAKKAD-, PIN - 678686

SMT. DEEPA V (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.07.2023, ALONG WITH WP(C).21010/2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioners in these cases have approached this court being aggrieved by the refusal by the Sub Registrar to register documents presented by the petitioners on the ground that they petitioners have not produced any prior documents.

2. The learned counsel appearing for the petitioners in these cases would submit that the issue stands covered in favour of the petitioner by the judgment of this court in ***Sumathi and another v. State of Kerala and others; 2018 (5) KHC 586*** where this court has taken the view that in the light of the provisions contained in Section 17 of the Registration Act the Sub Registrar is not authorised to insist that the executant must produce prior documents. Reference made in this regard to paragraph 8 of the judgment in ***Sumathi*** (supra) wherein it held as follows;

“8. This Court has also held in the judgment in 16.2.2018 in W.P. (C).No.2871/2018, which has been followed in a series of cases that the Sub Registrar is not legally justified to insist that executant should produce prior title deeds to satisfy the title and ownership of the property before he could register the deed concerned and that even possessory right could also be conveyed and there is no bar or legal impediment in transferring the possessory rights from one person to another and whether the possession is based on lease or title are all not matters of enquiry by the Sub Registrar and only those rights which the executor are having alone could be conveyed to the transferee. In other words, mere execution of the deed by itself will not be conclusive of the title and ownership rights of the person concerned merely on the basis of the description and recitals in the deed concerned. Accordingly, this Court had directed the Sub Registrar concerned to accept the document concerned and register the same in accordance with law which is otherwise in order, etc. In the light of the above said legal principles well settled in the aforesaid judgments of this Court, this Court is of the considered view that the petitioners' contentions are sustainable and tenable. In Ext.P-2 thandapader account finalised after re-survey proceedings pertaining to the 1st petitioner's property, it is clearly shown that the total extent of land is 4.80 ares and the boundaries are also shown in Ext.P-2 which tallies with the boudaries shown in Ext.P-3 sale deed. It is true that in Ext.P-6 land tax receipt, the extent of land is only 4.05 ares and not 4.80 ares shown in Ext.P-2 thandaper account. This Court had specifically directed the Senior Government pleader to get instructions from the 4 th respondent-Tahsildar in the matter and the 4 th

respondent-Tahsildar, Ottappalam, has now furnished written instructions dated 20.10.2018 to the learned Senior Government Pleader, a copy of which has been made available for perusal of this Court, wherein it has been inter alia stated that the State Government as per Circular No.40837/E3/15/Rev. dated 12.10.2015 has ordered that the area mentioned in the re-survey record in each survey/sub division cases can be taken into account as basic record for pokkuvaravu (Transfer of Registry). The Government Circular No.40837/E3/Rev. dated 12.10.2015 issued by the government in the Revenue Department reads as follows:

xxx xxx xxx

Accordingly, it has been apprised by the 4th respondent, Tahsilar, that based on the entries made in the Basic Tax Registrar with respect to the property in re-survey No.3/40 Block No.78 of Kadambazhipuram Village-I, and physical verification report of the Village Officer concerned, an extent of 0.0480 hectares (about 12 cents) of land is admissible to the 1st petitioner, Sumathi, in the light of the abovesaid Government Circular dated 12.10.2015. In the light of these aspects, this Court is of the view that there are no legal impediments for admitting the pleas of the petitioners and accordingly it is so ordered. In that view of the matter, it is ordered that the view taken by the 3rd respondent-SRO, Kadambazhipuram in the impugned Ext.P-5 letter dated 23.8.2018 refusing to register the document on the grounds stated therein is illegal and ultravires and the same will stand quashed. The petitioners may present Ext.P-3 sale deed for registration before the 3rd respondent-SRO, who will then register the same if it is otherwise in order. However, it is made clear that the 3rd respondent cannot refuse to register the said deed on the ground that the total extent of the land shown therein is 4.80 ares and not 4.05 ares. The petitioners may produce a certified copy of this judgment at the time of presentation of Ext.P-3 document for registration. After registration of the deed, it will be open to the petitioners to file the requisite application for mutation of the above property and for acceptance of land tax for an extent of 4.80 ares based on the title deed and the abovesaid Government Circular dated 12.10.2015 before the competent Revenue Officials concerned, who will then consider such request without delay”

3. The learned Government Pleader on instructions would submit that the prior documents were required only because that the petitioners claimed to have obtained '*verum pattam*' rights over the property in question. The learned counsel for the petitioners in reply would submit that even possessory rights can be transferred and since the property in question is not Government land in any manner, it was not open to the Sub Registrar to deny registration.

4. Having heard the learned counsel for the petitioner, the learned Government Pleader and having regard to the law laid down by this court in n

Sumathi (supra), I am of the view that these writ petitions are liable to be allowed. The learned counsel for the petitioner is right in contending that it is open for persons to transfer possessory right. That is settled by judgment of this court in W.P (C) No.2871/2018 where in paragraph 2, this court held as follows;

“2. The possessory rights also can be conveyed. There is no bar impediment under law in transferring the possessory right of a person to another person. The possession is based on a lease or under a title, is not a matter of enquiry by the Sub Registrar. What all the rights the petitioner is having, alone can be conveyed to the transferee.”

I am of the view that the same principle can be applied in the facts of these cases as well. The persons executing the document can only transfer the right that they have and merely because they are purporting to transfer possessory rights and they are not been able to produce any prior documents cannot be a ground for the Sub Registrar to refuse registration. Therefore these writ petitions are allowed. The documents presented for registration in both these cases shall be registered subject to compliance of usual formalities without insisting for production of prior documents.

Sd/-
GOPINATH P.
JUDGE

APPENDIX OF WP (C) 21273/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
IPETITIONERS' PROPERTY COMPRISED IN RE.SY.NO.666/15
IN BLOCK NO.34 OF KANNAMBRA-II VILLAGE DATED
23.08.2022 ISSUED BY THE 2NDRESPONDENT
- Exhibit P2 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
PETITIONERS' PROPERTY COMPRISED IN RE.SY.NO.'658/13
IN BLOCK NO.34 OF KANNAMBRA-II VILLAGE DATED
24.08.2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P3 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
PETITIONERS' PROPERTY COMPRISED IN RE.SY.NO.639/7 IN
BLOCK NO.34 OF KANNAMBRA-II VILLAGE DATED 23.08.2022
ISSUED BY THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
PETITIONERS' PROPEITY COMPRISED IN RE.SY.NO.647/3 IN
BLOCK NO.34 OF KANNAMBRA-II VILLAGE DATED 24,08.2022
ISSUED BY THE 2ND RESPONDENT
- Exhibit P5 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
PETITIONERS' PROPERTY COMPRISED IN RE.SY.NO.647/13
IN BLOCK NO.34 OF KANNAMBRA-II VIILAGE DATED
24.08.2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P6 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE
PETITIONERS' PROPERTY COMPRISED IN RE.SY.NO.647/14
IN BLOCK NO.34 OF KANNAMBRA-II VILLAGE DATED
24.08.2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P7 TRUE COPY OF THE BASIC TAX RECEIPT OF THE
PETITIONERS' PROPERTY DATED 20.05.2023 ISSUED FROM
THE OFFICE OF THE 2ND RESPONDENT
- Exhibit P8 TRUE COPY OF UNREGISTERED RELEASE DEED DATED
30.05.2023 SUBMITTED AS PER TOKEN NO. T 716706001
- Exhibit P9 TRUE COPY OF THE MEMO IN TOKEN NO.T 716706001DATED
15.06.2023 ISSUED BY THE LSTRESPONDENT
- Exhibit P10 TRUE COPY OF THE JUDGMENT IN W.P.(C).NO.17073/2022
OF THIS HONFOLE COURT DATED 14.06.2022

APPENDIX OF WP (C) 21010/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE PETITIONER'S PROPERTY COMPRISED IN RE.SY.NO.275/18 IN BLOCK NO.48 OF VANDAZHY-I VILLAGE DATED 23.11.2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P2 TRUE COPY OF THE TANDAPPER ACCOUNT OF THE PETITIONER'S PROPERTY COMPRISED IN RE.SY.NO.280/10 IN BLOCK NO.48 OF VANDAZHY-I VILLAGE DATED 23.11.2022 ISSUED BY THE 2ND RESPONDENT
- Exhibit P3 TRUE COPY OF THE BASIC TAX RECEIPT DATED 25.11.2022 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 28.11.2022 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT
- Exhibit P5 TRUE COPY OF UNREGISTERED SETTLEMENT DEED DATED 20.05.2023 SUBMITTED AS PER TOKEN NO. T 714897501
- Exhibit P6 TRUE COPY OF THE MEMO IN TOKEN NO.T 714897501 DATED 03.06.2023 ISSUED BY THE 1ST RESPONDENT
- Exhibit P7 TRUE COPY OF THE JUDGMENT IN W.P (C).NO.17073/2022 OF THIS HON'BLE COURT DATED 14.06.2022