

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 1ST DAY OF AUGUST 2023 / 10TH SRAVANA, 1945

WP(C) NO. 23912 OF 2023

PETITIONER:

G. RAJENDRA PRASAD
AGED 57 YEARS
S/O. GANGADHARAN PILLAI, THUNDIL VEETIL, PATHIYOOR
KIZHAKKU MURI, PATHIYOOR VILLAGE, KEERIKKAD P.O,
ALAPPUZHA DISTRICT,, PIN - 690508

BY ADVS.
B.RENJITHKUMAR
CLARA SHERIN FRANCIS

RESPONDENTS :

- 1 STATE OF KERALA
REP. BY ITS SECRETARY, DEPARTMENT OF REGISTRATION
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM DISTRICT, PIN
- 695001
- 2 THE DISTRICT COLLECTOR
ALAPPUZHA DISTRICT,, PIN - 688001
- 3 THE DISTRICT REGISTRAR
REGISTRATION COMPLEX, NEAR IRON BRIDGE, ALAPPUZHA,, PIN
- 688011
- 4 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, KAREELAKULANGARA P.O,
ALAPPUZHA DISTRICT,, PIN - 690578

OTHER PRESENT:

SMT. DEEPA V (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner has approached this Court being aggrieved by the fact that the 4th respondent has refused to register a document, presented in respect of property obtained by the petitioner through Ext.P1 document executed on 27.08.2005. Ext.P1 is a sale deed executed by the mother of the petitioner and registered as sale deed No.1249/05 of the SRO, Kareelakulangara transferring 1.28 Ares of property in Block No.21 in Re.Sy.No.566/4 of Pathiyoor Village in favour of the petitioner. In Ext.P1 there is a condition that the petitioner should pay a sum of Rs.15,000/- to one Sasidharan Pillai (brother of the petitioner) within ten years from 27.08.2005. It is the case of the petitioner that even on the date of execution of Ext.P1 sale deed, the whereabouts of the aforesaid Sasidharan Pillai were not known and presently for nearly 30 years, the whereabouts of the aforesaid Sasidharan Pillai are not known. It is submitted that the petitioner is intending to sell the land for the purpose of settling various liabilities and in the light of the fact that the whereabouts of the aforesaid Sasidharan Pillai are not known for nearly 30 years, the condition in Ext.P1 requiring the petitioner to pay a sum of Rs.15,000/- to him is practically unworkable and unimplementable. It is submitted that going by the provisions of Section 108 of the Indian Evidence Act, persons whose whereabouts are not known for more than 7 years are presumed to be dead and that presumption may be applied to the facts of this case.

2. The learned Government Pleader on instructions would submit that it was after noticing the condition in Ext.P1 that there is a requirement that the petitioner shall pay sum of Rs.15,000/- to his brother Sasidharan Pillai that the Sub Registrar had refused the registration of the document.

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3. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader for official respondents, I am of the view that petitioner is entitled to succeed. Ext.P1 document was executed on 27-08-2005. It is a sale deed. It is true that the vendor has imposed a condition requiring the petitioner to pay a sum of Rs.15,000/- to his brother Sasidharan Pillai. According to the petitioner the whereabouts of Sasidharan Pillai were not known at the time of execution of Ext.P1 and is still unknown, it would be inequitable and unjust if the petitioner is to be permitted to transact the property covered by Ext.P1 only after making the payment of the aforesaid sum of Rs.15,000/- to the aforesaid Sasidharan Pillai. As pointed out by the petitioner the said recital in Ext.P1 appears to be incapable of execution at this distance of time. Therefore, this writ petition is allowed and the 4th respondent is directed to register any document presented in respect of the property covered by Ext.P1 subject to compliance with usual formalities and without being in any manner affected by the condition in Ext.P1 that the petitioner had to pay a sum of Rs.15,000/- to Sasidharan Pillai within 10 years from the date of execution of that document.

Writ petition is ordered as above.

Sd/-
GOPINATH P.
JUDGE

DK/AMG

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APPENDIX OF WP (C) 23912/2023

PETITIONER EXHIBITS

Exhibit-P1 TRUE COPY OF THE SALE DEED NO. 1249/05 OF SUB
REGISTRAR OFFICE, KAREELAKULANGARA EXECUTED BY THE
MOTHER OF THE MOTHER OF THE PETITIONER ON 27.8.2005

Exhibit-P2 TRUE COPY OF THE REQUEST SUBMITTED TO THE RESPONDENTS
3 & 4 DATED 19.7.2023