

Cherry Thomas vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1411961

Court : Kerala

Decided On : Dec-19-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : WP(C)/41630/2023

Appellant : Cherry Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
TUESDAY, THE 19TH DAY OF DECEMBER 2023 / 28TH
AGRAHAYANA, 1945 WP(C) NO. 41630 OF 2023 PETITIONER:

CHERRY THOMAS AGED 43 YEARS S/O THOMAS
KANAKKANCHERIL CHERIAN, HAVING PERMANENT ADDRESS AT
HOUSE NO.28/2769A, KANAKKANCHERIL, PONNETH SOUTH ROAD,
KADAVANTHRA, ERNAKULAM, KERALA- 682020 RESIDING AT FLAT
NO. 305, SULTAN RASHED SULTAN AL KAITOOB BUILDING, AL
NAHDA 2, P.O BOX 18022, DUBAI, UAE. THROUGH HIS POWER OF
ATTORNEY, THOMAS KANAKKANCHERIL CHERIAN, AGED 77

YEARS, S/O KANAKKANCHERIL ETTAN CHERIAN, HOUSE NO. ERNAKULAM, PIN - 682020 BY ADVS. ENOCH DAVID SIMON JOEL S.SREEDEV RONY JOSE LEO LUKOSE KAROL MATHEWS SEBASTIAN ALENCHERRY DERICK MATHAI SAJI KARAN SCARIA ABRAHAM

RESPONDENTS: 1 STATE OF KERALA

REPRESENTED BY SECRETARY DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001 2 DISTRICT COLLECTOR FIRST FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN - 682030 3 REVENUE DIVISIONAL OFFICER RDO OFFICE, FORT KOCHI, PIN - 682001 4 VILLAGE OFFICER ELAMKULAM VILLAGE OFFICE, ERNAKULAM, PIN - 682020 5 *CORRECTED(LOCAL LEVEL MONITORING COMMITTEE, NATTIKA GRAMA PANCHAYAT, REPRESENTED BY ITS CONVENER, AGRICULTURAL OFFICER, KRISHI BHAVAN, VYTILLA-682019) *NAME OF R5 IS CORRECTED AS " LOCAL LEVEL MONITORING COMMITTEE, COCHIN CORPORATION, REPRESENTED BY ITS CONVENER, PRINCIPAL AGRICULTURAL OFFICER, KRISHI BHAVAN, VYTILLA-682 019.(AS PER

ORDER DATED 19.12.2023 IN IA 1/2023 IN WP(C) 41630/2023.)

GP - SRI. SYAMANTHAK B. S. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C). No.41630 of 2023 :2:

VIJU ABRAHAM, J.

-- -- -- -- -- W.P.(C) No.41630 of 2023 -- -- -- -- --
Dated this the 19th day of December, 2023

JUDGMENT

The petitioner has approached this Court aggrieved by the demand of conversion fee as per Ext.P5.

2. The petitioner is the absolute owner and is in possession of

an extent of 2.73 Ares(6.75 cents) of property in Sy. No.619/4 of Ealamkulam Village in Ernakulam District, obtained as per Ext.P1 sale deed dated 16.03.2020. The petitioner submits that the prior deed in respect of the property, which is produced as Ext.P8, is one executed as early as on 02.06.1994 and the extent of the property shown in the said document is also 2.73 Ares. The petitioner relies on Exts.P6 judgment in Sumesh U. v. Revenue Divisional Officer, Palakkad, [2023 (3) KHC 431], paragraph 5 of the said

judgment reads as follows:

5. A reading of the provisions of the Act, the Rules, the Schedule as well as Ext.R3(a) Government Order would make it amply clear that the exemption would be lost only in case there is a transaction after 30.12.2017 by which, a property having a larger extent is fragmented W.P.(C). No.41630 of 2023 :3:

to make the individual parcels of land of an extent of less than 25 cents. The contention that any property purchased after December, 2017 would loss the exemption even when the said property was less then 25 cents in extent even prior to such transaction cannot be accepted in view of the specific language of the Act, the Rule and the Schedule. In the above view of the matter, I am of the opinion that the contentions raised in the statement are completely untenable. The communications issued, which do not have the force of law, cannot stand in the way of consideration of applications in accordance with law.

Taking into consideration Exts.P1 and P8 sale deeds, I am of the opinion that the case of the petitioner is covered by the

judgment in Sumesh U. 's case cited Supra. Therefore, Ext.P5

demand is set aside with a consequential direction to the 3rd respondent to consider and pass orders on Ext.P4 application in Form 6. The petitioner shall produce a copy of Exts.P1 and P8 before the 3rd respondent, who shall verify the same and if the property covered by Exts.P1 and P8 are of the same extent, the benefit of Sumesh U.'s case shall be extended to the petitioner. The 3rd respondent shall finalise the proceedings within an outer limit of one month from the date of receipt of a copy of this W.P.(C). No.41630 of 2023 :4:

judgment.

The writ petition is disposed as above. Sd/- VIJU ABRAHAM JUDGE sm/ W.P.(C). No.41630 of 2023 :5: APPENDIX OF WP(C) 41630/2023 PETITIONER EXHIBITS Exhibit P1 A TRUE COPY OF THE SALE DEED NO. 954/2020 OF ERNAKULAM SRO AND DATED 16.03.2020. Exhibit P2 A TRUE COPY OF THE EXTRACT OF THE BTR IN RESPECT TO THE PROPERTY COVERED BY THANDAPER NUMBER 37574 AND DATED 28.06.2021 ISSUED BY THE 4TH RESPONDENT.

Exhibit P3 A TRUE COPY OF THE ORDER NUMBERED AS RDOCHN/4864/2021-K8/K-DIS AND DATED 22.08.2023 ISSUED BY THE 3RD RESPONDENT. Exhibit P4 A TRUE COPY OF THE FORM 6 APPLICATION DATED 17.03.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT. Exhibit P5 A TRUE COPY OF THE NOTICE DATED 16.11.2023 ISSUED BY THE 3RD RESPONDENT AGAINST THE PETITIONER. Exhibit P6 A TRUE COPY OF THE COMMON JUDGEMENT DATED 30.03.2023 IN W.P(C) NOS: 3538 OF 2023 & 4450 OF 2023 ON THE FILES OF THIS HON'BLE COURT. Exhibit P7 A TRUE COPY OF THE JUDGEMENT DATED 17.08.2023 IN W.P(C) NO: 21186 OF 2023 ON THE FILES OF THIS HON'BLE COURT. Exhibit P8 A TRUE COPY OF THE SALE DEED NO: 2759/1994 OF ERNAKULAM SRO AND DATED 02.06.1994 .