

Ponamma, vs the Tahsildar,

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Court : Kerala

Decided On : Mar-07-2022

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/1842/2020

Appellant : Ponamma,

Respondent : The Tahsildar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN MONDAY, THE 7TH DAY OF MARCH 2022 / 16TH PHALGUNA, 1943 PETITIONERS: 1 PONAMMA, BEENA SADANAM, KUMMANOOR.P.O, KONNI, PATHANAMTHITTA DISTRICT-689691 2 BEENA.P., SREE BHAVAN, KOTTA.P.O, KARAKKAD, ALAPPUZHA DISTRICT-689504 3 LEENA.P., MENAMPLAVIL HOSUE, AZHOOR, PATHANAMTHITTA DISTRICT-689645 4 SHEENA.P., BEENA SADANAM, KUMMANOOR.P.O, KONNI, PATHANAMTHITTA DISTRICT-689691 BY ADVS. BRIJESH MOHAN SMT.RESMI G. NAIR RESPONDENTS: 1 THE TAHSILDAR, KONNI, PATHANAMTHITTA DISTRICT, PIN-689691 2 THE VILLAGE OFFICER, VILLAGE OFFICE,

IRAVON, PATHANAMTHITTA DISTRICT, PIN-689692 3 SRI.THOMAS, KIZHAKEPARAMBIL, ANJILIKUNNU, ATTACHAKKAL, KONNI, PATHANAMTHITTA DISTRICT, PIN-689692 BY ADV SRI.M.NARENDRA KUMAR SMT.RESMI THOMAS G.P. SMT.HARSHA DEV THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The first petitioner claims to be in ownership and possession of 43.05 Ares of land, comprised of in Sy.No.137/8 of Iravon Village. She says that petitioners 2 to 4 are her children and that she has partitioned the property between them through Exts.P2, P3 and P4, which have now been registered. She asserts that she was competent to do so because she was its full owner, which is manifest from Ext.P1 tax receipt, as per which she was allowed to remit land tax on it without demur by the competent Authorities.

2. The petitioners say that after Exts.P2 to P4 were

registered, she and her children applied for transfer of Registry of the extents covered by it through Ext.P5, but that it has been refused to be acted upon, merely for the reason that there is a Civil Suit pending with respect to the property. They contend that the mere pendency of the Suit cannot deter their request and thus pray that the first respondent - Tahsildar be directed to accede to Ext.P5, thus leading to the transfer of Registry of the properties covered by Exts.P2 to P4 in favour of the respective beneficiaries, within a time frame to be fixed by this Court.

3. Sri.Brijesh Mohan, learned counsel for the petitioners,

supplemented the afore contentions of his clients, pointing out to Ext.P6 Suit filed by the third respondent, to assert that what has been prayed for therein is essentially a decree for fixation of the boundaries of their respective holdings and that there is no rival claim per se with respect to his clients' property. He read Ext.P6 to show that even the third respondent admits item No.2 therein to be

belonging to his client and argued that this is the

same which is the subject matter of this writ petition. He, however, conceded that the third respondent has, in Ext.P6, made an allegation that his client has trespassed into his property and argued that even if this is so found by the Civil Court, it is only a matter of adjustment of the entries of the transfer of Registry and cannot, in any manner, operate to

interdict the said process based on Ext.P5. He thus reiteratingly prayed that the first respondent - Tahsildar, be directed to take up Ext.P5 and complete necessary action thereon, thus effecting transfer of Registry of the properties covered by Exts.P2 to P4 in favour of the respective petitioners.

4. In response, Smt.Harsha Dev, learned counsel

appearing for the third respondent, submitted that even though her client has admitted that item No.2 in Ext.P6 is owned by the first petitioner, the allegations therein are clear to the effect that she has trespassed into her client's property, which is described in item No.1 therein. She submitted that, therefore, until and unless the dispute is properly resolved and the measurements and extents of the respective properties identified, it would not be upto for the Tahsildar to accede to Ext.P5 request of the petitioners and effect transfer of Registry of the property , because the extents shown therein will certainly require modification if her client is to win the Suit in question.

5. Smt.Resmi Thomas, learned Government Pleader, appearing for the official respondents, submitted that the first respondent has been incapacitated from considering Ext.P5 or

in issuing orders thereon, because of the pending Suits. She added that, in fact, the first petitioner has also filed a Suit against the third respondent, namely O.S.No.11/2019, seeking injunction against him and that this is also presently pending. She, therefore, prayed that this writ petition be dismissed and that the Tahsildar be permitted to await the decision of the competent Civil Court in the two pending Civil Suits.

6. At first blush, the afore submissions of Smt.Resmi Thomas may find itself to be lustrous, but on a closer look, it certainly loses sheen.

7. I say as afore because the Suit filed by the third respondent, namely Ext.P6, which has been numbered as

O.S.No.466/2018 on the files of the Munsiff's Court, Pathanamthitta, seeks that the boundaries of his property and that of the first petitioner be fixed on the basis of their respective title documents. It is only as a corollary that he has sought for a declaration of the title of his property, which has been described as schedule A in the said proceedings.

8. It is also true that the first petitioner filed

O.S.No.11/2019 before the same Court, seeking a decree of permanent prohibitory injunction against the third respondent from trespassing into her property and she asserts that there can be no dispute with respect to its boundaries or extent.

9. Obviously, therefore, even if the third respondent is to

win O.S.No.466/2018, the best he can claim are portions of the property presently in the possession of the petitioners and this may lead to a change or modification of the extents in Exts.P2 to P4.

10. Indubitably hence, any transfer of Registry based on Exts.P2 to P4 should be and will be subject to the judgment and decree of the Munsiff's Court, Pathanamthitta in

O.S.No.466/2018. To paraphrase, if O.S.No.466/2018 is to be decreed as prayed for by the third respondent and should this lead to a change in the extents and measurements of item No.2 property mentioned therein - which is admitted to be that belonging to the first petitioner - necessary and consequential changes will also have to be made in the records relating to the transfer of Registry of the properties covered by Exts.P2 to P4. This, however, cannot absolutely interdict the transfer of Registry of the properties in favour of the beneficiaries covered by

Exts.P2 to P4, since the interest of the third respondent will be fully protected if this Court is to order that the Tahsildar will endorse in the records that such transfer of Registry is subject to the final judgment and decree in O.S.No.466/2018.

In the afore circumstances, I order this writ petition in the following manner:

(a) The first respondent - Tahsildar will effect transfer of

Registry of the property covered by Exts.P2 to P4 in favour of the beneficiaries - petitioners as prayed for by them in Ext.P5, as expeditiously as is possible, but not later than three weeks from the date of receipt of a copy of this judgment.

(b) It is made unequivocally clear that the afore action of

the Tahsildar will be subject to any judgment and decree issued by any competent Civil Court, including in O.S.No.466/2018 on the files of the Munsiff's Court, Pathanamthitta.

(c) As a necessary corollary, the Tahsildar will be obligated to endorse on the files that the transfer of Registry effected in terms of direction (a) above are subject to the

judgment and decree in O.S.No.466/2018 on the files of the

Munsiff's Court, Pathanamthitta; and such endorsements will be also made on the tax receipt.

(d) It is needless to say that if the Munsiff's Court,

Pathanamthitta is to allow O.S.No.466/2018 and if the extents of the property of the first petitioner is to undergo any change consequent thereto, the resultant changes will also be made in the transfer of Registry records.

Sd/- DEVAN RAMACHANDRAN JUDGE STU APPENDIX OF WP(C) 1842/2020
PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE RECEIPT
NO.KL03061603747/2019 SHOWING PAYMENT OF TAX BY THE 1ST

PETITIONER EXHIBIT P2 TRUE COPY OF THE DEED NO.122/2019 DATED 19.01.2019 PARTITIONING THE PROPERTY IN FAVOUR OF THE 2ND PETITIONER EXHIBIT P3 TRUE COPY O THE DEED NO.124/19 DATED 19.01.2019 PARTITIONING THE PROPERTY IN FAVOUR OF THE 3RD PETITIONER EXHIBIT P4 TRUE COPY OF THE DEED NO.123/2019 DATED 19.1.2019 PARTITIONING THE PROPERTY IN FAVOUR OF THE 4TH PETITIONER EXHIBIT P5 TRUE COPY OF THE RECEIPT NO.KL03061601428/2019 SHOWING ACCEPTANCE OF THE APPLICATION ON 26.04.2019 FOR MUTATION EXHIBIT P6 TRUE COPY OF THE PLAINT IN O.S.NO.466/2018 BEFORE THE MUNSIF COURT, PATHANAMTHITTA FILED BY THE 3RD RESPONDENT EXHIBIT P7 TRUE COPY OF COMMUNICATION NO.574/2019 DATED 20.08.2019 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER EXHIBIT P8 COPY OF TAX RECEIPT FOR THE YEAR 2018-19 EXHIBIT P9 COPY OF THE CERTIFICATE ISSUED BY THE 2ND RESPONDENT ON 22/10/16 RESPONDENT EXHIBITS EXHIBIT R3(a) TRUE COPY OF THE SALE DEED NO.771/89 OF SRO, KONNI. EXHIBIT R3(b) TRUE COPY OF THE PROCEEDINGS OF THE TALUK OFFICE, KONNI DATED 22.06.2017 EXHIBIT R3(c) THE TRUE COPY OF THE LETTER NO. 3/21 RECEIVED BY THE 3RD RESPONDENT, BY APPLICATION DATED 01.03.2021 UNDER R.I ACT.

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