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(2010) 06 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12015 of 2010

Ayisha Beebee	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 — Regulation 2, 4
Foreign Exchange Management Act, 1999 — Section 47(2), 6(3)
Kerala Registration Rules, 1958 — Rule 72A
Registration Act, 1908 — Section 69

Citation : (2010) 3 KLT 273

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : Jacob Varghese, K.K. Mohammed Ravuf, for the Appellant; P.N. Manoj, Government Pleader, for the Respondent

Judgement

P.N. Ravindran, J.—The first petitioner is the wife of Thekkepeediyakkal Moideen Haji. Petitioners 2 to 4 are their children. Late Valiyapeediyakkal Mohammed Koya, father of the first petitioner was an Indian citizen who emigrated to Malaysia after the commencement of Constitution of India and acquired Malaysian citizenship. The first petitioner had also acquired Malaysian citizenship in the year 1969. The marriage between the first petitioner and her husband Thekkepeediyakkal Moideen Haji, an Indian citizen was solemnized in India. He passed away on 1.4.1991.

2. The first petitioner''s husband late Thekkepeediyakkal Moideen Haji had acquired 71 cents of land situated in Re-survey Nos. 25672 and 25673 of Tirur Village, Tirur Taluk as per assignment deed registered as Document No. 1145 of 1970 of Sub Registrar''s office, Tirur. He sold the said parcel of land to the petitioners herein as per Ext.P2 sale deed dated 14.9.1981. Thereupon, mutation was effected in the revenue records and the petitioners are paying tax. They are also in possession and enjoyment of the property.

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3. The first petitioner had after her marriage to late Thekkepeediyakkal Moideen Haji, acquired Malaysian citizenship. Petitioners 2 to 4 who were born in that country are also Malaysian citizens. After her husband died, the first petitioner returned to India and after revoking her Malaysian citizenship she has applied for registration as an Indian citizen. That application is pending. Ext.P6 evidences the said fact.

4. It is stated that with a view to meet the expenses of the marriage of the second petitioner''s daughter, the petitioners have entered into Ext.P7 agreement on 22.3.2010 for sale of the land described in Ext.P2, with Sri. Melepeediyekkal Saidali. This Writ Petition is filed aggrieved by the stand taken by the third respondent that the petitioners who are not Indian citizens cannot execute a sate deed in respect of the lands described in Ext.P2 agreement. In this Writ Petition, the petitioners seek the following relief:

(i) To issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent to accept the sale deed executed by the petitioners in respect of 71 cents'' comprised in R.S. No. 256/2 and 256/3 of Tirur Village or any portion thereof if presented and register the same.

The petitioners contend that as per Regulation 2(c) of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 framed and issued by the Reserve Bank of India in exercise of the power conferred on it under Clause (i) of Sub-section (3) of Section 6 and Sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999, they are entitled to acquire property in India and to dispose of the same.

5. Though the official respondents have not filed a counter affidavit, Sri. P.N. Manoj, learned Government Pleader appearing for the respondents submitted that under Rule 72A of the Registration Rules (Kerala) framed by the Inspector General of Registration with the approval of the Government of Kerala u/s 69 of the Indian Registration Act, the parties appearing before the Registering Officer have to produce electoral identity card or passport or driving license or PAN card or ration card or identity card issued by the Government or any authority controlled by the Government to prove their identity. The learned Government Pleader contended that as the petitioners did not produce any such document to prove their identity, the Sub Registry declined to register the original of the sale deed.

6. I heard Sri. K.K. Mohammed Ravuf, learned Counsel appearing for the petitioners, Sri. P.N. Manoj, learned Government Pleader appearing for the respondents and Sri. Jacob Varghese, learned Senior Advocate who assisted the Court as Amicus curiae. Sri. Jacob Varghese, learned Senior Advocate submitted that under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 framed and issued by the Reserve Bank of India in exercise of the power conferred under the Foreign Exchange Management Act, 1999, the petitioners are entitled to acquire property

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in India and to dispose of the same. The learned Counsel submitted that the petitioners satisfy the definition of the term ''a person of Indian origin'' occurring in Regulation 2(c) thereof and that under Regulation 4(d) they are entitled to transfer immovable property in India other than agricultural land/farm house/ plantation property, by way of sale to a person who is resident in India.

7. I have considered the rival submissions made at the Bar by the learned Counsel appearing on either side. Regulation 2(c) of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 as originally framed reads as follows:

2(c) ''a person of Indian origin'' means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who

(i) at any time, held Indian passport; or

(ii) who or either of whose father or whose grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);

As per the said definition, the first petitioner who is not a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan and is the daughter of late Valiyapeediyakkal Mohammed Koya, an Indian citizen, is a person of Indian origin. Regulation 2(c) was amended by Ext.P10 notification by substituting Clause (ii) thereof. Clause (ii) of Regulation 2(c) as amended reads as follows:

(ii) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Going by the amended definition of ''a person of Indian Indian origin'', petitioners 2 to 4 who are the children of late Thekkepeediyakkal Moideen Haji, an Indian citizen are also persons of Indian origin.

8. Regulation 4 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 reads as follows:

4. Acquisition and Transfer of Property in India by a Person of Indian origin

A person of Indian origin resident outside India may:

(a) acquire any immovable property other than agricultural land/farm house/ plantation property in India by purchase, from out of (i) funds received in India by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank under the Act.

(b) acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of

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Indian origin resident outside India;

(c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India;

(d) transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;

(emphasis supplied)

(e) transfer agricultural land/farm house/plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India;

(f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a person of Indian Origin resident outside India.

In the instant case, the land described in Ext.P2 was acquired by late Thekkepeediyakkal Moideen Haji, husband of the first petitioner and father of petitioners 2 to 4, in the year 1970. Late Thekkepeediyakkal Moideen Haji was an Indian citizen. He was therefore competent to acquire property in India. Even if the sale deed evidenced by Ext.P2 had not been executed, on the death of late Thekkepeediyakkal Moideen Haji, the petitioners as his legal heirs would have inherited the property. The assignment of land by late Thekkepeediyakkal Moideen Haji to the petitioners as per Ext.P2 sale deed is not objected. As per Clause (d) of Regulation 4, persons of Indian origin residing outside India may transfer any immovable property in India other than agricultural land/farm house/ plantation property, by way of sale to a person resident in India. The lands described in Ext.P2 are not agricultural lands or farm house or plantation property. The petitioners have agreed to sell it to an Indian citizen who is residing in India as can be seen from Exts.P7 and P8. In such circumstances, the respondents cannot put forward any objection to the registration of an instrument of transfer in respect of the lands described in Ext.P2.

9. It is not in dispute that the first petitioner''s father was a person of Indian origin though later he acquired Malaysian citizenship. The first petitioner''s husband is an Indian citizen. The petitioners acquired the property from late Thekkepeediyakkal Moideen Haji, husband of the first petitioner and father of petitioners 2 to 4. Such acquisition is also permissible under Regulation 4(a) above referred to. In view of the definition of the term ''a person of Indian origin'' occurring in the regulations referred to above, it cannot be said that the petitioners are not entitled to transfer the lands described in Ext.P2 to an Indian citizen. Further, the land sought to be transferred is not agricultural land or plantation property or farmhouse. In such circumstances, the stand taken by the respondents that the petitioners cannot execute an instrument of sale in respect of the lands described in Ext.P2 cannot be sustained. However, it will be open to

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the registering authority to insist on the petitioners producing proof of their identity issued by the State of which they are citizens.

I accordingly dispose of this Writ Petition with a direction to the third respondent to permit the petitioners to execute and register a sale deed in respect of the lands described in Ext.P2, in favour of a person of Indian origin/Indian citizen on the petitioners producing proof of their identity before him, subject to payment of proper stamp duty.

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