
(2012) 06 KL CK 0196

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35040 of 2011 (D)

Mathew Ouseph, rep. by P.A. Holder, Babu Alias

APPELLANT

Vs

The Sub Registrar, Ernakulam

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Registration Act, 1908 — Section 34, 35, 71

Citation : (2012) 06 KL CK 0196

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : George Mathews and Smt. Celine Joseph, for the Appellant; Joseph George, Government Pleader for R1 and Sri. M.M. Anto, for R2, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The petitioner seeks for various reliefs including a direction to call for the original of Ext. P5 document and to quash the same. The challenge is against the cancellation deed said to have been executed unilaterally, purportedly to cancel Ext. P1 document. As per Ext. P1 document, the petitioner's mother Eli settled her properties to her children and the petitioner obtained a total extent of 31.75 cents of land comprised in Sy. No. 1026/6 of Kothamangalam Village. Ext. P2 is the receipt showing payment of land tax, dated 11.5.2011 and Ext. P3 is the copy of the possession certificate issued by the Village Officer showing that the petitioner is in possession of the said property.

2. In connection with an application for availing a bank loan, the petitioner applied for an encumbrance certificate and Ext. P4 is the copy of the said certificate. It contains an endorsement that Ext. P1 has been cancelled. Thereafter, the petitioner obtained a copy of the cancellation deed which is produced as Ext. P5. The date of Ext. P5 is 1.4.2003. According to the petitioner, the mother was completely laid up at that time and she finally expired on

25.7.2003 and she was not in a position to execute any document. The allegation is that this document was registered at the instance of the third respondent.

3. Pursuant to the notice issued by this Court, the third respondent has entered appearance.

4. Heard learned counsel for the petitioner, learned Government Pleader and learned counsel for the third respondent.

5. Learned counsel for the petitioner relied upon a decision of this Court in *Noble John v. State of Kerala* (2010 (3) KLT 941). The question considered therein is identical. After elaborately considering various aspects, this Court laid down the principle thus in para 10:

If a person is not entitled to transferable property, he cannot execute a document in respect of transfer of the property and therefore he is not a person competent to present such a document for registration. Under sub-clause VII of R.191 of the Rules, the Sub-Registrar can validly refuse registration of a document if it is presented by a person who has no right to present it. By cancelling a sale deed executed by him earlier, the vendor is actually attempting to re-transfer the property to himself, which he cannot do, since he is no longer entitled to that property as the title had already passed to the purchaser on the execution of the sale deed unless the sale deed stipulates otherwise and for becoming entitled to be competent to execute a document in respect of that property he has to first get the earlier sale deed annulled by a court of law. On reading of all these provisions together, I am satisfied that a Registering Authority can refuse registration, if, on a cursory enquiry, it is clear that the person purporting to have executed the cancellation deed is not the person entitled to the property as on the date of execution. This he can easily do by merely looking at the document and the previous documents registered in respect of the property as per the register available in his office in respect of the property, which would show who is the present owner of the property. S. 35 of the Act indicates that such an enquiry is not alien to the powers and duties of the Sub-Registrar. Going by S. 34 of the Indian Registration Act and R. 67 of the Registration Rules (Kerala), at first blush it may appear that the Registering Officer cannot enquire into the validity of the document or the right of the executing party to execute the document. But to hold that under no circumstances the Registering Officer shall enquire into the competency of the person to execute the document and he shall blindly register the document except for the reasons mentioned in R. 191, would lead to very disastrous and anomalous results. A reasonable interpretation commensurate with the object of the Act and Rules would be that if by reading the document and looking at the previous documents registered in respect of the property he is satisfied that the document cannot be validly executed by the person purporting to have executed the same, he has to refuse to register the same and act in accordance with S. 71 of the Act. By refusing to register a deed of cancellation of a sale deed, the Sub Registrar is only performing a duty cast upon him by the Registration Act and

Rules, notwithstanding R. 67 of the Registration Rules (Kerala) and the same is in consonance with the object of the Registration Act and Rules.

It was held that the Registering Authority can refuse registration, if, on a cursory enquiry, it is clear that the person purporting to have executed the cancellation deed is not the person entitled to the property as on the date of execution.

6. Evidently, in this case the said principles will apply. As on the date of execution of the cancellation deed, Ext. P1 deed has already come into effect and the petitioner has already obtained possession as well as title to the property. These aspects have not been disputed by the third respondent also. The executant of Ext. P5 had no right at all. In that view of the matter, there will be a declaration that the registration of the original of Ext. P5 is not legal and valid and therefore the original of the same will stand set aside. There will be a direction to respondents 1 and 2 to effect suitable entries in that regard in the various registers maintained in the Office, of the Sub Registrar, Kothamangalam and thereafter issue a fresh encumbrance certificate to the petitioner in terms of the declaration made as above. The petitioner will produce a certified copy of this judgment for compliance.

The writ petition is allowed as above. No costs.