

(2026) 01 KL CK 1671

In the High Court Of Kerala

Case No : Writ Petition (C) No. 40845 Of 2025

Pradeep Bharathan. K

APPELLANT

Vs

State Of Kerala, Represented By Its Chief Secretary

RESPONDENT

Date of Decision : 15-01-2026

Acts Referred:

Kerala Stamp Act, 1959 — Section 2(k)

Citation : (2026) 01 KL CK 1671

Hon'ble Judges : Basant Balaji, J

Bench : Single Bench

Advocate : J.R.Prem Navaz, Muhammed Swadiq, K. M. Faisal

Final Decision : Allowed

Judgement

Basant Balaji, J

1. The petitioner is a co-owner in respect of property in re-survey numbers.190/5-8 and 190/4-10 of Eranellur Village, Kunnamkulam Taluk in Thrissur district. The extent of property is 4.78 Ares, which originally belonged to the father of the petitioner one Bharathan and another person, by name Nasar, by virtue of registered sale deed bearing No.1862/2013 of Sub Registrar Office, Mundur. The petitioner's father gifted his undivided one-half share in the subject property in favour of the petitioner by virtue of a registered gift deed bearing No.1997/1/2024 of the Sub Registrar Office, Mundur. The petitioner and the co-owner of the property wanted to partition the same by metes and bounds. Therefore, they executed Ext.P4 partition deed on stamp paper having a value of Rs.7,20,000/- on 04.10.2025. The total value of the property is shown as Rs.2,40,00,000/-.

2. In respect of item No.1 schedule property, market value has been calculated as Rs.1,20,00,000/- and the same is allotted to the petitioner and the item No.2 schedule property has been allotted in favour of the co-owner, and the market value is calculated as Rs.1,20,00,000/-. When the document was produced

before the 3rd respondent for registration, he refused to register the same on the ground that the right of the petitioner is a created co-ownership of the property and he is directed to pay 8% of the stamp duty of Rs.7,20,000/- and also 2% registration fees for the amount. The petitioner challenges the said intimation, Ext.P6 dated 6.10.2025, in this writ petition.

3. A statement is filed by the 3rd respondent, wherein it is stated that while scrutinizing the document, it was found that there does not exist co-ownership in the said property for the reason that one of the joint owners subsequently transferred his right to his son by virtue of a Gift deed. For getting partition, the pre-existence of joint ownership is a basic requirement, but by a subsequent transaction one of the parties, namely Sri.Bharathan, had lost the same.

4. In the letter No.11763//E3/88/T.D. dated 09. 01. 1989 of the Commissioner & Secretary to the Government, Taxes Department informed the Registration Inspector General that a purchaser cannot claim the status of a co-owner of a property. Therefore, the nature of the transaction is akin to a sale deed, and stamp duty is to be levied as per Schedule Nos.21 and 22 of the Kerala Stamp Act, 1959 (the Act) and not under Schedule 42 of the Act. The petitioner obtained the property through a gift deed, and therefore, the share is independent and does not form part of the undivided share of the petitioner's father. Therefore, the petitioner cannot be considered as a co-owner for the purpose of stamp duty under the Act. If the petitioner remits the proper stamp duty, the respondent shall register the document.

5. Heard the learned counsel for the petitioner as well as the respondent.

6. Section 2(k) of the Act defines instrument of partition as follows:

"Instrument of Partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severally, and includes also a final order for effecting a partition passed by any Revenue Authority or any Civil Court and an award by an arbitrator directing a partition;"

7. The petitioner obtained the property through a gift deed executed by the father of the petitioner. Upon execution of the gift deed and acceptance of the gift, the petitioner steps into the shoes of his father as a co-owner. Therefore, the undivided shares belong to the petitioner, who obtained his share through a gift is entitled for partition as a co-owner.

8. Thus, being a co-owner of the property of Bharathan, and in order to have separate shares by metes and bounds, the parties executed a partition deed and produced the same before the Sub Registrar for registration. As per the definition, any instrument whereby co-owners of a property divide or agree to divide such property among themselves, is treated as an instrument of partition.

9. The contention of the learned Government Pleader that the petitioner, though he becomes a co-owner, cannot be treated as such for the purpose of stamp duty, since he derived title through a separate gift deed and not as a legal heir of

the original owner, and therefore, the stamp duty has to be paid as if it was a conveyance, is unsustainable.

10. Once the father executes a gift deed in favour of the petitioner, the petitioner becomes a co-owner of the property and is entitled to seek partition by metes and bounds. The respondent cannot refuse the registration of the partition deed on the ground that the petitioner is not a co-owner and that the document amounts to a conveyance, which cannot be termed as a partition. The stamp duty applicable is to a partition deed, which is scheduled in Article No.42 of the Schedule. It deals with two kinds of partition, (i) among all or any of the family members and legal heirs of the deceased family, and (ii) partition in any other cases.

11. The contention that the petitioner does not become a co-owner for the purpose of stamp duty, cannot stand in the eye of law. As stated above, the petitioner becomes a co-owner once the gift is executed and validly accepted. Therefore, the intimation issued as Ext.P6 is liable to be set aside.

In the result, this Writ Petition is allowed and Ext.P6 dated 6.10.2025, is set aside. The 3rd respondent is directed to register Ext.P4 document, treating the same as an instrument of partition, as defined under Section 2(k) of the Act, in accordance with the rate prescribed under the schedule applicable to the case. The same shall be done within a period of one month from the date of receipt of a copy of this judgment.

It is made clear that the validity of the stamp shall stand extended for a period of six weeks from today as the registration is denied by the respondent on unsustainable and illegal grounds.