

(2023) 06 KL CK 0311

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28667 Of 2022

Smt. Lathakumari

APPELLANT

Vs

Commissioner For Land Revenue

RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Registry Rules, 1966 — Rule 28

Citation : (2023) 06 KL CK 0311

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

**Advocate : Abdul Raoof Pallipath, Raj Carolin V., K.R.Avinash, M.K.Sumod,
Preetha K K**

Final Decision : Dismissed

Judgement

Gopinath P, J

1. The petitioner has approached this Court, seeking the following reliefs:-

"i) Issue writ of mandamus or any other writ or order directing the 3rd respondent to effect Transfer of Registry (pokkuvaravu) of the property having an extent of 5.00 Ares (12.350 Cents) under the Avanavanchery Village office, Chirayinkeezhu Taluk in the name of the petitioner as contemplated under Rule 28 of the T.R. Rules, 1966;

ii) Issue writ of mandamus or any other writ or order directing the second respondent to consider Exhibit P8 representation in a time bound manner;

iii) Issue a direction to the 2nd respondent to issue necessary orders for effecting transfer of registry and grant of mutation as per the request of the petitioner;

iv) Issue a direction to the 4th respondent to register the transfer deed submitted by the petitioner upon completion of the Transfer of Registry (pokkuvaravu) and grant of mutation of the property having an extent of 5.00

Ares (12.350 Cents) under the Avanavanchery village Office, Chirayinkeezhu Taluk in the name of the petitioner as contemplated under Rule 28 of the T.R. Rules, 1966.”

2. Case of the petitioner is that, apart from the property which has been mutated in favour of the petitioner and over which the petitioner is permitted to pay land tax, petitioner is in possession and enjoyment of a further extent of 12.350 cents of land in Survey No.1571/134 of Avanavanchery village and the petitioner is to be permitted to mutate the said property also in favour of the petitioner and to pay land tax in respect of the same.

3. Learned counsel appearing for the petitioner submits that the petitioner purchased an extent of 3.60 Ares of land through registered sale deed No.2418/2011 of S.R.O., Attingal (Ext.P1) on 24.08.2011 and that the petitioner as also the predecessor in interest of the petitioner has been in possession of the extent of 12.350 Cents of land in Survey No.1571/134 of Avanavanchery village, for a large number of years.

4. The 2nd respondent has filed a counter affidavit where it is stated that the petitioner has not been in possession of the land, over which the petitioner claims to establish title by adverse possession for more than 12 years and therefore, the claim of the petitioner cannot be considered as one under Rule 28 of the Transfer of Registry Rules. It is submitted that, in such circumstances, the petitioner cannot be permitted to pay land tax in respect of the property over which she has absolutely no title though it is asserted that she is in enjoyment and possession of the said land.

5. Having heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents, I am of the view that the petitioner is not entitled to the reliefs sought for in the present writ petition. Petitioner has admittedly no documents to prove ownership over the extent of 12.350 Cents of land in Survey No.1571/134 of Avanavanchery village. It is true that she has documents to prove title over 3.60 Ares of land in the same survey number. While the petitioner asserts that the petitioner has perfected title by adverse possession over the remainder of the land, which is in her possession and enjoyment, and that the said area was under the occupation of the predecessor in interest of the petitioner also for a large number of years, it is the specific case of the 2nd respondent that the petitioner has not been in possession of the land for more than 12 years as claimed by her. Obviously, this issue cannot be resolved in a writ petition under Article 226 of the Constitution of India. If the petitioner has a claim over the land which is stated to be in her possession and enjoyment for more than 12 years , it is for the petitioner to establish such right by process of the civil court. Reserving the liberty to the petitioner to do so, the writ petition will stand dismissed. I make it clear that I have not expressed any opinion on the merits of the matter and it will be open to the competent civil court to decide the matter, in any proceedings to be filed, in accordance with the law.