
(2021) 01 KL CK 0308

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28787 Of 2020

Usha

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Citation : (2021) 01 KL CK 0308

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : M. Jayakrishnan, C.R. Biju Kumar, Jestin Mathew

Final Decision : Disposed Of

Judgement

1. Being aggrieved by the refusal on the part of the 4th respondent in registering the gift deed executed by the petitioner in favour of her daughter, the

instant writ petition is filed under Article 226 of the Constitution of India.

2. The petitioner states that by Ext.P5 settlement deed, which is dated 4.8.1992, property having an extent of 16.78 Ares was settled in favour of the

petitioner by her mother, Smt. Vasumathy. She states that though in the settlement deed, the extent of property is mentioned as 16.78 Ares, the actual

extent of the property falling within the boundaries mentioned in the deed is 24.82 Ares. After the death of her mother, the transfer of registry was

effected in the name of the petitioner herein and she has been remitting tax in respect of the said extent as is evident from Ext.P2 tax receipt under

Thandaper No.22832. The petitioner has also produced Ext.P1 possession certificate issued by the Village Officer, Chemmaruthy, which states that

the petitioner is in possession of 24.82 Ares in Sy. No.143/7. The petitioner decided to execute a gift deed in favour of her daughter and the deed was

prepared. When the document was presented before the 4th respondent for registration, the same was refused by Ext.P6 order. In the impugned order, the Sub Registrar has wondered as to how the extent of property in her possession increased by over 60% from the extent shown in Ext.P5 settlement deed executed in her favour by her mother. According to the petitioner, when there is a conflict between the area and boundaries, the description of the boundaries should be accepted in preference to the area mentioned. The petitioner also states that the registering authority can refuse registration only if the circumstances which have been detailed in Rule 67 or Rule 191 of the Registration Rules strikes their notice and in no other circumstances.

3. The 4th respondent has filed a statement wherein it is stated that the extent of land obtained by the petitioner as per Ext.P5 document is only 15

Ares and 39 sq.mts. out of which 0.78 sq. mts. have already been assigned to strangers. All that remains is 14 Ares and 69 sq.mts. In Ext.P3

settlement deed, the extent of property which is sought to be gifted to her daughter is 24.82 Ares. It is stated that the petitioner has not stated as to

how the land in her possession has increased by an extent of 9.43 Ares. It is further stated that as per Annexure-R4(a) order of the Government if the

titleholder makes request for transfer of registry of excess land, if the excess land is less than 5%, the same has to be ratified by the concerned

Tahsildar and if the excess land is more than 5%, the transfer of registry has to be ratified by the District Collector. It is stated that in the absence of

materials to show that the petitioner is entitled to hold land much in excess of what has been settled in her favour, the registering authority had no

other go but reject her request.

4. I have heard Sri. M. Jayakrishnan, the learned counsel appearing for the petitioner, and Sri. Jestin Mathew, the learned Government Pleader.

5. In Savarimuthu Nadar Chellayan Nadar (1957 KLT 825) and Krishnamurthi Iyer vs. Janaki Amma (1957 KLT 886), it was held that when there is

a conflict between the area and the boundaries, the description of the boundaries should be accepted in preference to the area mentioned in the

document for determining the extent of the land conveyed thereunder. It was also held that this is not an inflexible rule. That which is more certain and

stable and the least likely to have been mistaken must prevail. In Savithri Ammal

vs. Padmavathi Amma (1990 (1) KLT 187), the Division Bench held that in cases where there is a difference in the extent and the boundary covered by a document, one or the other which is clearer and more specific has to be preferred. The usual rule is that when there is a conflict between the area and boundaries, the description of the boundaries should be accepted in preference to the area mentioned.

6. From the materials produced before this Court, it is evident that the property settled in favour of the petitioner by her mother as per Ext.P5 deed was 15.39 Ares. However, it is apparent from Ext.P1 possession certificate issued by the Village Officer that the petitioner is in possession of property having an extent of 24.82 Ares. The petitioner has also produced the Survey sketch prepared by the Village officer, Chemmaruthy in Field No.3 which reveals that the extent of property in possession of the petitioner is 24.82 Ares in Re-Sy. No. 143/7.

7. If reference is made to the provisions of the Registration Act, 1908 and the Rules framed thereunder, it can be seen that Rule 191 provides for the reasons for refusal to register a document. The refusal will usually come under one or more of the heads mentioned in the Rule which would invariably be quoted as authority for refusal. None of the heads mentioned in Rule 67 or 191 provides that discrepancy in extent can be a ground for declining to register the document. Though in Noble John v. State of Kerala [2010 (3) KLT 941], it has been held by this Court that the grounds mentioned in Rule 191 of the Rules are not exhaustive and that the Registrar can, for other valid reasons, decline to register a document, such refusal should be for legally tenable reasons and the same should be supported by statutory provisions.

8. For the aforesaid reasons, I am of the considered opinion that the petitioner is entitled to succeed. Ext.P6 will stand set aside. If there is no other infirmity in Ext.P3 and if the same is in order, the 4th respondent shall register the document as and when the same is presented before the said authority.

This petition is disposed of with the above directions.