



-:1:-

2024:KER:84934

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

WP(C) NO. 21759 OF 2024

PETITIONER:

BABU R
AGED 47 YEARS
S/O RAMAKRISHNAN, ARUNODAYAM HOUSE, NORTH PAVADY,
KOLLENGODE POST, PALAKKAD DISTRICT, PIN - 678506

BY ADVS.
M.P.PRIYESHKUMAR
VINODKUMAR.S

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,, PIN - 695001
- 2 DISTRICT COLLECTOR
CIVIL STATION, PALAKKAD, PIN - 678001
- 3 TAHSILDAR
CHITTUR TALUK, PALAKKAD, PIN - 678101



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- 4 VILLAGE OFFICER
MUTHALAMADA NO.1 VILLAGE PALAKKAD,, PIN - 678507
- 5 ADDL.R5 INISH BOBAN M.,
AGED 39 YEARS, S/O. LATE MANICKAN, RESIDING AT
"KAMBANKODEKALAM", NENMENI P.O, KOLLENGODE,
CHITTUR TALUK, PALAKKAD DISTRICT, PIN-678506.
[ADDL.R5 IS IMPEADED AS PER ORDER DATED
31/07/2024 IN I.A-1/2024 IN WP(C) 21759/2024]

BY ADVS.
JACOB SEBASTIAN
WINSTON K.V
ANU JACOB
BHARATH KRISHNAN G.

OTHER PRESENT:

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.08.2024, ALONG WITH WP(C).22548/2024, AND
CONNECTED CASES, THE COURT ON 14.11.2024 DELIVERED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

WP(C) NO. 22548 OF 2024

PETITIONERS:

- 1 ABDUL SALAM,
 AGED 66 YEARS
 S/O KADAMBOTTU ISMAIL HAJI, SANTHIPURAM DESOM,
 S.N. PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM
 P.O., THRISSUR DISTRICT, PIN - 680668
- 2 ASLAM AHAMMED,
 AGED 67 YEARS
 S/O KADAMBOTTU AHAMMED MOIDEEN, S.N. PURAM
 VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.,
 THRISSUR DISTRICT, PIN - 680668
- 3 RAMLA
 AGED 56 YEARS
 W/O ABDUL SALAM, S.N. PURAM VILLAGE, KODUNGALLUR
 TALUK, SANTHIPURAM P.O. THRISSUR DISTRICT., PIN -
 680668
- 4 SAFIYA JABBAR
 AGED 59 YEARS
 W/O ABDUL JABBAR, THANATHUPARAMBIL, PERINJANAM
 VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
 THRISSUR DISTRICT., PIN - 680668



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- 5 SAINABA IBRAHIM
 AGED 71 YEARS
 W/O IBRAHIM, PUTHIYAVEETIL, VALAPPADU
 KARAYAMVATTAM DESOM, EDAMUTTAM VILLAGE,
 KODUNGALLUR TALUK, SANTHIPURAM P.O. THRISSUR
 DISTRICT., PIN - 680668
- 6 ISHYAMOL
 AGED 65 YEARS
 D/O KADAMBOTTU ISHABI, SANTHIPURAM DESOM, S.N.
 PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
 THRISSUR DISTRICT., PIN - 680668
- 7 SHAFIA, AGED 67 YEARS
 D/O KADAMBOTTU ISHABI, SANTHIPURAM DESOM, S.N.
 PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
 THRISSUR DISTRICT., PIN - 680668
- 8 SEENA
 AGED 65 YEARS
 D/O KADAMBOTTU ISHABI, SANTHIPURAM DESOM, S.N.
 PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
 THRISSUR DISTRICT., PIN - 680668
- 9 SAKKEENA, AGED 65 YEARS
 D/O KADAMBOTTU FATHIMA, SANTHIPURAM DESOM, S.N.
 PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
 THRISSUR DISTRICT., PIN - 680668
- 0 K.I.ABDUL RAHIMAN, AGED 70 YEARS
 SON OF ISMAIL HAJI, KADAMBOTTU HOUSE, SANTHIPURAM
 P.O. THRISSUR DISTRICT., PIN - 680668

BY ADVS.

S.VINOD BHAT

ANAGHA LAKSHMY RAMAN

V.NAMITHA



RESPONDENTS:

- 1 TAHSILDAR,
KODUNGALLUR TALUK OFFICE, FIRST FLOOR, MINI CIVIL
STATION, VADAKKENADA, KODUNGALLUR, PIN - 680664
- 2 VILLAGE OFFICER
ALA-PANANGAD, SANTHIPURAM P.O., PIN - 680668
- 3 K.I.ABOOBACKER
AGED 61 YEARS
S/O ISMAYIL HAJI, KADAMBOTTU HOUSE, SANTHIPURAM
P.O. THRISSUR DISTRICT., PIN - 680668
- 4 ABDULLA, AGED 83 YEARS
S/O KADAMBOTTU ISMAIL HAJI, S.N. PURAM VILLAGE,
KODUNGALLUR TALUK, SANTHIPURAM P.O. THRISSUR
DISTRICT., PIN - 680668
- 5 DR. ISHA
W/O KADAMBOTTU AHAMMED MOIDEEN, S.N. PURAM
VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 6 SAJI AHAMMED
S/O KADAMBOTTU AHAMMED MOIDEEN, S.N. PURAM
VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 7 IJAS AHAMMED
S/O KADAMBOTTU AHAMMED MOIDEEN, S.N. PURAM
VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 8 ABDUL KHADER
S/O KADAMBOTTU ISMAIL HAJI, S.N. PURAM VILLAGE,
KODUNGALLUR TALUK, SANTHIPURAM P.O. THRISSUR
DISTRICT., PIN - 680668



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- 9 FASALULLA, S/O KADAMBOTTU ISHABI, SANTHIPURAM
DESOM, S.N. PURAM VILLAGE, KODUNGALLUR TALUK,
SANTHIPURAM P.O. THRISSUR DISTRICT., PIN - 680668
- 0 KAMARUNISA, W/O ABDUL KALAM, SANTHIPURAM DESOM,
S.N. PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM
P.O. THRISSUR DISTRICT., PIN - 680668
- 11 SHIMNA, D/O ABDUL KALAM, SANTHIPURAM DESOM, S.N.
PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 12 ISHA, D/O ABDUL KALAM, SANTHIPURAM DESOM, S.N.
PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 13 SUHAIBA, D/O ABDUL KALAM, SANTHIPURAM DESOM, S.N.
PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668
- 14 ANWAR, S/O KADAMBOTTU FATHIMA, SANTHIPURAM DESOM,
S.N. PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM
P.O. THRISSUR DISTRICT., PIN - 680668
- 15 MUHAMMED SHAW
S/O KADAMBOTTU FATHIMA, SANTHIPURAM DESOM, S.N.
PURAM VILLAGE, KODUNGALLUR TALUK, SANTHIPURAM P.O.
THRISSUR DISTRICT., PIN - 680668

BY ADVS.

V.M.KRISHNAKUMAR - R3

MAYA M. (K/897/2019)

RENJITH THAMPAN (SR.) (K/276/1990)

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 5.11.2024, ALONG WITH WP(C).21759/2024, AND CONNECTED
CASES, THE COURT ON 14.11.2024 DELIVERED THE FOLLOWING:



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2024:KER:84934

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

WP(C) NO. 23763 OF 2024

PETITIONER:

KAMALAMMA P., W/O.VIJAYARAJAN
AGED 72 YEARS
PANTHAPLAVILA THEKKATHIL, SASTHAMCOTTA VILLAGE,
KOLLAM, PIN - 690521

BY ADVS.
B.MOHANLAL
P.S.PREETHA
ASWIN V. NAIR
KARTHIK J SEKHAR
ABIJITH M.
JAYAPRABHA ARJUN
BLESSY MARY SEBASTIAN
PRAVEENA T.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR
COLLECTORATE, CUTCHERRY P.O., KOLLAM, PIN - 691013



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- 3 THE SUB DIVISIONAL MAGISTRATE (RDO)
COLLECTORATE, CUTCHERRY.P.O., KOLLAM, PIN - 691013
- 4 THE TAHASILDAR
TALUK OFFICE, KUNNATHOOR.P.O., SASTHAMCOTTA,
KOLLAM, PIN - 690521
- 5 THE VILLAGE OFFICER
SASTHAMCOTTA VILLAGE, SASTHAMCOTTA.P.O., KOLLAM,
PIN - 690521
- 6 SRI.SURESH, S/O.PRABHAKARAN
THUNDIL VEEDU, KARINTHOTTUVA MURI, KARIMTHOTTUVA
P.O., SASTHAMCOTTA, KOLLAM, PIN - 591540
- 7 SRI.ANIL KUMAR, S/O.PRABHAKARAN
SRUTHILAYAM VEEDU, KARINTHOTTUVA MURI,
KARIMTHOTTUVA.P.O., SASTHAMCOTTA, KOLLAM, PIN -
691540
- 8 SRI.PRAKASAN, S/O.KUNJUPILLAI
KANNITTAYIL VEEDU, KULANGARA BHAGAM, CHAVARA P.O.,
KOLLAM, PIN - 691584

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 5.11.2024, ALONG WITH WP(C).22548/2024, AND
CONNECTED CASES, THE COURT ON 14.11.2024 DELIVERED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

WP(C) NO. 25731 OF 2024

PETITIONERS:

- 1 THOMAS.P.P,
AGED 53 YEARS
S/O.PORUTHUKKARAN PAVU, PORUTHUKKARAN HOUSE,
PARAVATTANI DESOM, KIZHEKKEKOTTA, OLLUKKARA
VILLAGE, THRISSUR DISTRICT, PIN - 680005
- 2 VARGHESE.P.P,
AGED 50 YEARS
S/O.PORUTHUKKARAN PAVU, PORUTHUKKARAN HOUSE,
UNIVERSITY.P.O, VELLANIKKARA VILLAGE, THRISSUR
DISTRICT, PIN - 680565
- 3 THIMATHI,
AGED 45 YEARS
S/O.PORUTHUKKARAN PAVU, PORUTHUKKARAN HOUSE,
UNIVERSITY.P.O, VELLANIKKARA VILLAGE, THRISSUR
DISTRICT, PIN - 680565
- 4 ABHI,
AGED 43 YEARS
S/O.PORUTHUKKARAN PAVU, PORUTHUKKARAN HOUSE,
PARAVATTANI DESOM, OLLUKKARA VILLAGE, THRISSUR
DISTRICT, PIN - 680005



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BY ADVS.
LINDONS C.DAVIS
E.U.DHANYA
V.A.AJAY
N.S.SHAMILA
CHINJU P. JOYIES

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 TAHSILDAR (LAND RECORDS), THRISSUR
TALUK OFFICE, CHEMBUKKAVU, THRISSUR, PIN - 680020
- 3 VILLAGE OFFICER,
AYYANTHOLE VILLAGE OFFICE, THRISSUR, PIN - 680003

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 5.011.2024, ALONG WITH WP(C).22548/2024, AND CONNECTED
CASES, THE COURT ON 14.11.2024 DELIVERED THE FOLLOWING:



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2024:KER:84934

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 14TH DAY OF NOVEMBER 2024/23RD KARTHIKA, 1946

WP(C) NO. 38399 OF 2024

PETITIONER:

ALEYAMMA CYRIAC
AGED 57 YEARS
W/O CYRIAC J, KANJIRATHUMMOOTIL HOUSE, THURUTHY
P.O., CHANGANACHERRY, KOTTAYAM DISTRICT, PIN -
686535

BY ADVS.
SANIL JOSE
BONNY BENNY
P.G.SUDHEESH
AMALJITH

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 DISTRICT COLLECTOR
COLLECTORATE, KOTTAYAM, PIN - 686002
- 3 TAHSILDAR, (LAND RECORDS), CHANGANACHERRY TALUK,
REVENUE TOWER, CHANGANACHERRY, KOTTAYAM DISTRICT,
PIN - 686101



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- 4 VILLAGE OFFICER
VAZHAPPALLY WEST VILLAGE, VAZHAPPALLY,
CHANGANACHERRY, KOTTAYAM DISTRICT, PIN - 686103
- 5 DAISY JOSEPH
RESIDING AT KANJIRATHUMMOOTIL HOUSE, THURUTHY
P.O., CHANGANACHERRY,
KOTTAYAM DISTRICT, PIN - 686535
- 6 MINI TOM
KUTTAMPEROOR HOUSE, SACHIVOTHAMAPURAM P.O.,
KURICHY, KOTTAYAM DISTRICT, PIN - 686532

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 01.11.2024, ALONG WITH WP(C).22548/2024, AND
CONNECTED CASES, THE COURT ON 14.11.2024 DELIVERED THE
FOLLOWING:



J U D G M E N T

[WP(C) Nos.21759, 22548, 23763, 25731 & 38399/2024]

This bunch of writ petitions deal with the scope and nature of the enquiry to be undertaken by the Revenue Officers under the Transfer of Registry Rules, 1966 (for short, ‘TR Rules’) regarding the transfer of revenue registry (mutation) due to testamentary succession.

2. The petitioners in all the writ petitions are legatees claiming right over the property on the strength of the Will executed by the testator/testatrix in their favour. They are aggrieved by the rejection/non-consideration of their applications for effecting mutation of the property covered by the Will in their favour by the Village Officer concerned either on the ground of the pendency of the civil suit challenging the Will or on the ground of the objection of the natural legal heirs.

3. I have heard Sri.Priyesh Kumar M.P., Sri.Vinod Bhat S.,



Sri.Mohanlal B., Sri.Lindons C. Davis and Sri.Sanil Jose, the learned counsel for the petitioners, Sri.Jacob Sebastian, the learned counsel for the 5th respondent in WP(C) No.21759/2024, Sri.V.M.Krishnakumar, the learned counsel for the 3rd respondent in WP(C) No.22548/2024 and Smt.Vidya Kuriakose, the learned Government Pleader.

4. The submissions of the learned counsel for the petitioners, briefly stated, are as follows;

(i) The Wills relied on by the petitioners would *prima facie* show that the properties covered by the Wills were bequeathed in their favour and hence, the Revenue Officer concerned is bound to mutate the property in their favour irrespective of the objection raised by the legal heirs of the testator/testatrix.

(ii) The mutation of the property and acceptance of land tax will not, by itself, either create or extinguish the title nor has it any presumptive value on the title. It only enables the person in whose favour mutation has been effected to pay the land tax in question. Therefore, even if there is any dispute regarding the



title of the property, there is no reason for not accepting the land tax. Reliance was placed on ***Sawarni v. Inder Kaur and Others***¹.

(iii) The pendency of the civil suit can never be a bar for mutating the property or accepting the tax unless specifically restrained by an order passed by the Court. Reliance was placed on ***Sudan K.K. and Others v. State of Kerala and Others***² and ***Nevin Raju v. S. Basheer and Others***³.

(iv) It is not obligatory for the Revenue Officers under the TR Rules to issue notices to the legal heirs when mutation is sought on the basis of the Will.

5. Per Contra, the submissions of the learned Government Pleader, briefly stated, are as follows;

(i) Where the genuineness of the Will is disputed, transfer of registry is not contemplated under the TR Rules until the rights of parties are adjudicated by a competent Civil Court. Reliance was placed on ***Jitendra Singh v. State of Madhya Pradesh and***

1 (1996) 6 SCC 223

2 (2013 (4) KHC 201)

3 (2015 KHC 3676)



Others⁴.

(ii) When the transfer of registry is claimed on the strength of Will, it cannot be effected without notice to the natural heirs of the legator as per the relevant law of succession. Reliance was placed on ***Korah M.P. (Dr.) and Others v. Dr.Mrs.Rachel Zacharia alias Rahel and Others***⁵.

(iii) The authority vested with the jurisdiction to effect transfer of registry under TR Rules has no power to examine and adjudicate the vexed issues of title.

6. At the outset, it is relevant to note that the TR Rules, which deal with the transfer of revenue registry in the State of Kerala, do not have a specific provision that governs the transfer of registry due to testamentary succession. So also, no uniform standard is adopted or followed across the State by the Revenue Officers under the TR Rules when dealing with the request to transfer registry based on Will.

7. Going by the scheme of the TR Rules, transfer of

⁴ (2021 KHC OnLine 6527)

⁵ (2018 (1) KHC 365)



registry takes place either (i) by voluntary action of the owners, (ii) by decrees of Civil Courts or by Revenue sales and (iii) by succession (Rule 2). Rule 3 deals with the procedure to be followed by the Revenue Officers (Tahsildar/Village Officer) for effecting the transfer of registry. While Sub-rule (a) of Rule 3 lays down the procedure to be followed in the case of transfer of registry based on the voluntary transfer of title over a land based on a deed of sale, gift, partition etc., Sub-rule (b) of Rule 3 lays down the procedure to be followed in the case of transfer of registry based on transfers by decrees of Civil court or Revenue sales. Sub-rule (c) of Rule 3 refers to the procedure to be followed in the case of transfer of registry based on transfers due to succession. In respect of these matters, Rule 7 provides that the Tahsildar shall forward the cases to the concerned Village Officer for preparing the statement in Form 'A'. On that basis, the Village Officer has to submit the report in terms of Rule 8. Sub-rule (c) of Rule 3 specifically provides that it shall be the duty of the Village Officer, whenever a Pattadar dies, to report the said



fact to the Tahsildar with the names of the legal heirs so far as can be ascertained.

8. Once the report of the Village Officer is received as above, the cases are to be classified in the manner as laid down in Rule 9. Rule 9 provides that the cases received in the Taluk Office with the report of the Village Officer shall be classified and dealt with separately as, (a) uncontested cases, (b) contested cases and (c) cases involving sub-divisions. Rule 10 provides that uncontested cases may be of two kinds, viz., (i) those which can be disposed of without further enquiry and (ii) those in which a decision cannot be taken without conducting a further enquiry by the Tahsildar. Note to Rule 10 provides that cases of sale and other absolute transfer of land mentioned under Rule 3(a) will fall under the category of cases which can be disposed of without further enquiry. It is stated that in such cases, no enquiry is necessary, and they shall be disposed of accordingly. Note (ii) to Rule 10 clarifies that the cases coming under the second category are transfers due to inheritance, acquisition of title by



adverse possession, etc., for which the parties might have applied under Rule 4. The said Note also clarifies that though most of such cases are usually uncontested, in all such cases, notices should be issued to the parties interested, if any, inviting objections, and such cases shall be disposed of on merits, after giving the parties concerned an opportunity of being heard.

Note (ii) to Rule 10 reads thus:

"Note. -- (ii) The cases coming under the second category are transfers due to inheritance acquisition of title by adverse possession etc. for which the parties might have applied under R.4. Most of such cases are usually uncontested but in all such cases notices should be issued to the parties interested, if any, inviting objections, to the transfer of registry. The objection should be preferred within 15 days of the service of the notice. Copies of the notice shall also be published on the Notice Board of the concerned Village, Panchayat and Taluk Offices. Such cases shall also be disposed of by the Deputy Tahsildar on merits, after giving the parties concerned an opportunity of being heard. A Revenue Inspector, after making personal enquiry in the village where the land is situated, may dispose of such of the petitions presented to him and also such of the cases of transfer ascertained by him as do not involve the formation of new sub-divisions and



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about which there is no dispute."

9. Rule 14 deals with the general principles to be observed while disposing of transfer of registry cases. Sub-rule (2) of Rule 14 provides that when the transfer of registry is due to inheritance, a summary enquiry as to who is the nearest legal heir of the deceased Pattadar according to the law of inheritance applicable to the parties concerned shall be made. The said Sub-rule also provides that a notification to the proposed transfer of registry in the name of the legal heirs shall be published in the Village, Panchayat and Taluk Offices, inviting objections, if any, within 15 days from the date of publication of the notice in such cases.

10. Clause (i) of Rule 27 of the TR Rules deals exclusively with the transfer of title by intestate succession. It provides that if the succession is disputed, the Tahsildar should hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder according to the principles of the law of succession which governs the case and give notice to all



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persons known or believed to be interested in the manner provided in Note (ii) to Rule 10 to the effect that the registry will be made in the name of the person found to be entitled, unless a declaration is filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. The clause also provides that if a declaration is filed, the result of the suit should be awaited before taking further action. Rule 28 of the TR Rules deals with the transfer in favour of a person proving title by adverse possession for 12 years or more.

11. A reading of the provisions of the TR Rules stated above would show that a detailed procedure has been prescribed for effecting the transfer of registry in respect of transfer inter-vivos, transfer by decrees of Civil Courts or Revenue sales, and transfer due to intestate succession/inheritance. Rules 3(c), 14(2), 27 and Note (ii) of Rule 10 deal with intestate succession, not testamentary succession. Then, the crucial question is what



procedure is to be followed when the transfer of registry is sought by the legatees based on the Will.

12. A Will is one of the most solemn documents known to law. One important feature that distinguishes Wills from other documents is that, unlike other documents, the testator who had departed the temporal state cannot be called to confirm whether it is his last Will or not. Therefore, trustworthy and unimpeachable evidence is insisted on to establish the genuineness and authenticity of the Will.

13. The onus of proving the Will is always on the propounder. As would be evident from the contents of Section 63 of the Indian Succession Act, to execute the Will as contemplated therein, the testator would have to sign or affix his mark to it, or the same must be signed by some other person in his presence and on his direction. Further, the signature or mark of the testator or the signature of the person signing for him must be so placed that it would appear that it was intended thereby to give effect to the writing as a Will. The Section further mandates that the Will



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shall have to be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to it or has seen some other person sign it, in the presence and on the direction of the testator, or has received from the testator, personal acknowledgment of his signature or mark, or the signature of such other persons and that each of the witnesses has signed the Will in the presence of the testator. It is, however, clarified that it would not be necessary that more than one witness be present at the same time and that no particular form of attestation would be necessary. It cannot be gainsaid that the above legislatively prescribed essentials of a valid execution and attestation of a Will under the Act are mandatory in nature, so much so, that any failure or deficiency in adherence thereto would be at the pain of invalidation of such instrument of disposition of property. In the evidentiary context, Section 68 of the Indian Evidence Act enjoins that if a document is required by law to be attested, it would not be used as evidence until one attesting witness, at least if alive, and is subject to the process of Court and capable of giving



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evidence proves its execution. The proviso attached to this Section relaxes this requirement in case of a document, not being a Will, but has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution by the person by whom it purports to have been executed, is specifically denied. These statutory provisions, thus, make it incumbent for a document required by law to be attested to have its execution proved by at least one of the attesting witnesses, if alive and is subject to the process of the Court conducting the proceedings involved and is capable of giving evidence. This rigour is, however, eased in case of a document required to be attested but not a Will if the same has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless the execution of this document by the person said to have executed it denies the same. In any view of the matter, however, the relaxation extended by the proviso is of no avail *qua* a Will⁶. The proof of a Will to be admissible in evidence with probative potential, being a document required by law to be attested by

⁶ *Jagdish Chand Sharma v. Narain Singh Saini*, AIR 2015 SC 2149



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two witnesses, would necessarily need proof of its execution through at least one of the attesting witnesses even if its execution is not specifically denied⁷. The general provision in Section 58 of the Indian Evidence Act that the admitted facts need not be proved has to give way to the special provisions of Section 68 of the Indian Evidence Act so far as the Will is concerned. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the Will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator⁸. These stringent requisites prescribed for the proof of execution of the Will, which have been statutorily enjoined, cannot be lost sight of while prescribing the procedures for effecting mutation based on it.

⁷ *Ramesh Verma and others v. Lajesh Saxena and others*, AIR 2017 SC 494; *Sarada and others v. Radhamani and others*, 2017(2) KHC 527 DB

⁸ *H. Venkatachala Iyengar v. B.N. Thimmajamma and Others*, AIR 1959 SC 443.



14. The provisions in the TR Rules [Rules 3(c), 14(2), 27 and Note (ii) of Rule 10] indicate beyond doubt that when transfer of registry is claimed on the basis of intestate succession, it is obligatory on the part of the concerned Revenue Officers to conduct an inquiry as to the persons who are entitled to succeed to the property of the deceased registered holder according to the principles of the law of succession which governs the case. Going by the Rules, it is also obligatory for the Revenue Officer concerned in a case of that nature to issue notice to all such persons and conduct a summary enquiry as to the entitlement of the person claiming transfer of registry. The Rules also make it clear that if the persons to whom notices are issued prefer a suit and produce a copy of the plaint before the Revenue Officer (Tahsildar), he shall await the decision in the suit for effecting transfer of registry. In the absence of specific provisions in the TR Rules dealing with the transfer of registry due to testamentary succession, principles embodied in the provisions applicable to the transfer of registry due to intestate succession could be



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applied to the transfer of registry due to testamentary succession as well. However, the authority to conduct an enquiry to prove the genuineness or execution of the Will cannot be conferred on the Revenue Officers as in the case of intestate succession inasmuch an enquiry prescribed for the proof of execution of the Will in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act falls only within the realm of the Civil Court. The Revenue Officers under the TR Rules do not have the jurisdiction to adjudicate the correctness or genuineness of the Will.

15. A Will is ordinarily executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. Therefore, all interested parties, particularly legal heirs, should be notified before a transfer of registry is executed based on a Will. A Single Bench of this Court in *Korah*⁹ has held that competent authority under the TR Rules is obliged to issue notice to persons who are entitled to succeed to the estate as per the law of

⁹ (supra)



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succession applicable before effecting transfer of registry on the strength of the Will. The mere registration of a Will does not suffice to effect a transfer if there are objections raised by interested parties.

16. The decisions in *Nevin Raju*¹⁰ and *Sudan*¹¹ relied on by the petitioners to the effect that the pendency of a civil suit is not an impediment for effecting mutation relates to the transfer of registry based on voluntary transfer by way of sale and cannot be applied to transfer of registry due to testamentary succession. So also, the provision in Rule 16 of the TR Rules that summary enquiry and decision thereon is only an arrangement for fiscal purposes and the proposition laid down in *Sawarni*¹² that mutation of property in the revenue records will not create or extinguish title would not confer any right to the Revenue Officers under the TR Rules to effect mutation based on disputed Will. In short, the Revenue Officers under the TR Rules cannot decide on the title of property based on the Will; they can only facilitate the

10 (supra)

11 (supra)

12 (supra)



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transfer of registry if there is no dispute on the title. If the legal heirs of the legator appear before the concerned Revenue Officer and raise a dispute regarding the Will, he must refrain from making any entries in the revenue records until the dispute is resolved in the Civil Court. The Supreme Court in *Jitendra Singh*¹³ held that if there is any dispute with respect to title, and more particularly when mutation entry is sought to be made on the basis of the Will, the party who is claiming title/right on the basis of the Will has to approach the appropriate Civil Court, get his rights crystalised and only thereafter on the basis of the decision of the Civil Court, necessary mutation entry can be made.

17. Based on the above findings, I consider it desirable to formulate the following guidelines to be followed by the Revenue Officers under the TR Rules while considering the application for the transfer of revenue registry (mutation) due to testamentary succession.

- (i) Along with the application for transfer of registry based on the Will, the applicant must produce a copy of the Will

¹³ (supra)



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and the legal heirship certificate/Family Membership Certificate. If those certificates are not available, the applicant must file an affidavit furnishing the name and details of the legal heirs of the testator who are entitled to succeed to the estate as per the law of succession applicable.

(ii) On receipt of the application for transfer of registry based on the Will, the Revenue Officer concerned shall issue notice to the legal heirs of the testator who are entitled to succeed to the estate as per the law of succession applicable and to any other person, if any, known or believed to be interested in the subject matter inviting their objections, if any, fixing an outer limit of 30 days.

(iii) A notice inviting objection to the proposed transfer of registry in the name of the legatee shall also be published in the Village, Panchayat, Municipality, Corporation, as the case may be, and Taluk Office inviting objections, if any, within 30 days from the date of publication of the notice.



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(iv) If none of the legal heirs appears before the Revenue Officer and raises an objection in response to the notice, the legatee's request for transfer of registry can be allowed treating it as an uncontested case.

(v) If all legal heirs appear and express no objection, the transfer of registry can be allowed treating it as an uncontested case.

(vi) In the event any of the legal heirs appear, dispute the Will, and raise an objection in effecting the transfer of registry, the Revenue Officer should relegate the parties to the Civil Court.

(vii) If any person claims to be interested in the subject matter other than the legal heir appears and makes an objection in effecting mutation, the Revenue Officer concerned shall hold a summary enquiry as to the merits and genuineness of the said objection, and if the Revenue Officer is satisfied that the objection merits consideration, the parties shall be referred to Civil Court.



(viii) The legal heir or any such person other than the legal heir (mentioned in Clause vii) above) who objects shall be directed to file a declaration within three months thereafter that he/she has instituted a civil suit before a competent civil court challenging the Will.

(ix) If no declaration is filed or no document showing the institution of the suit is produced within the period of three months, the transfer of registry sought for can be allowed treating it as an uncontested case.

(x) If the declaration is filed with a copy of the document showing the institution of the suit within the above mentioned period, the result of the suit shall be awaited before taking further action.

(xi) If it is brought to the notice of the concerned Revenue Officer that a civil suit is pending before a competent court regarding the Will in question or regarding the succession of the property covered by the Will, he shall not effect the transfer of registry and await the result of the suit before



taking further action.

(xii) In cases that fall under Clauses (vii) and (viii) above, the final decision shall be taken in accordance with the final outcome of the Civil Suit.

18. Bearing in mind the above parameters, let me consider each case on its merits.

(I) **WP(C) No.21759/2024:** The petitioner claims right over the property based on Ext.P1 registered Will executed by his grandmother in the year 1984. Admittedly, a suit for partition of the property covered by the Will instituted by one of the sons of the testatrix is pending before the Sub Court, Palakkad as OS No.255/2011. Ex P1 Will is disputed in the said suit. Since the civil suit is pending challenging the Will, the mutation can be effected only subject to the final outcome of the said civil suit. The 4th respondent - Village Officer is directed to take further action in the matter after the final disposal of the suit.

(II) **WP(C) No.23763/2024:** The petitioner claims title over the property as per Ext.P1 Will executed by the brother of her



husband in the year 2006. The respondents 6 to 8, who are the legal heirs of the testator, instituted a suit as OS No.84/2023 before the Munsiff's Court, Sasthamcotta against the petitioner and others to set aside Ext.P1 Will. The learned Munsiff has also granted an ad interim injunction order from effecting mutation of the property as per Ext.P1 Will till the final disposal of the suit. Therefore, the 5th respondent - Village Officer rejected Ext.P2 application filed by the petitioner for mutation as per Ext.P5 order, stating that further action would be taken only after the final decision in the suit since the suit is pending. I see no reason to interfere with the said order.

(III) **WP(C) No.38399/2024:** The petitioner claims title over the property as per Ext.P3 registered Will executed by her father-in-law late K.K. Joseph in the year 2013 in the name of her late husband Cyriac J. It is contended that during the lifetime of her husband, he did not take any steps to mutate the property in his name. After the death of her husband, the petitioner submitted Ext.P6 application before the 4th respondent - Village Officer to



mutate the property in favour of her late husband. The 5th respondent is the daughter of the late K.K. Joseph, who executed the Will and the 6th respondent, is the daughter of one K.K.Mariakutty, who is the sister of the late K.K. Joseph. They filed Exts.P8 and P9 objections before the 4th respondent against mutation in the name of the petitioner. In the objections, it is contended that the late K.K.Joseph had only $\frac{1}{4}$ right over the property covered by the Will. They have also disputed the execution of the Will by late Joseph. The grievance of the petitioner is that because of the said objection, the 4th respondent is not mutating the property. In view of the objection raised by one of the legal heirs of the testator and another person who claims to have a right over the property, the 4th respondent cannot effect mutation based on Will. The 4th respondent is directed to follow the direction Nos. (vi), (viii), (ix) and (x) mentioned in paragraph 17.

(IV) **WP(C) No.25731/2024:** The petitioners claim right over the property based on Ext.P3 Will executed by their uncle and his



wife in their favour. Ext.P7 application filed by the petitioners for transfer of registry in their favour based on Ext.P3 Will was rejected by the 3rd respondent Village Officer mainly on the ground that transfer of registry cannot be effected without the knowledge of the legal heirs of the testator/testatrix. As stated already, the legal heirs of the testator/testatrix must be given notice before effecting the transfer of registry. Hence, the petitioners are directed to produce the legal heirship certificate/family membership certificate of the testators or to file an affidavit furnishing the name and address of the legal heirs. On receipt of the same, the 2nd and 3rd respondents are directed to follow the direction Nos.(ii) to (xii) mentioned in paragraph 17.

(V) **WP(C) No.22548/2024:** The petitioners and respondents 3 to 15 are Muslims following Muslim Personal Law. They are the legal heirs of late Ismail Haji and Mariyumma C.K. Late Ismail Haji, and Mariyumma executed Ext.P1 registered joint Will bequeathing the property covered by it to the petitioners and respondents 3 to 15 who are their legal heirs entitled to succeed



to their estate as per the Muslim Personal Law. The petitioners 1 to 9 and respondents 4 to 15 filed Ext.P2 application before the 1st respondent - Tahsildar seeking transfer of registry of the properties covered by Ext.P1. The 1st respondent issued notice to all the legal heirs of Ismail Haji and Mariyumma C.K. including the 10th petitioner and the 3rd respondent. All the legal heirs except the 10th petitioner and the 3rd respondent appeared before the 1st respondent on 26/10/2023 and gave their statement expressing no objection to mutate the property based on Ext.P1 Will. Thereafter, on 9/11/2023, the 10th petitioner also expressed his no objection to allow Ext.P2 application. The 10th petitioner and the 3rd respondent had together filed a suit as OS No. 1/2016 for the partition of the property belonging to the late Ismail Haji and Mariyumma C.K., including the property covered by the Will. The said suit was withdrawn. However, in the statement filed by the 3rd respondent, he has disputed the Will. It is further contended that he has filed another suit before the Sub Court, Irinjalakkuda, as OS No.135/2024, for partition of the property belonging to the



late Ismail Haji and Mariyumma, including the property covered by the Will. Ext.R3(b) is the plaint in the said suit. In paragraph 5 of the plaint, Ext.P1 Will has been specifically disputed.

19. The Muslim Personal law administered in India doesn't provide for unlimited testamentary power. The testamentary capacity of a Muslim is circumscribed in two ways, as to the quantum and as to the legatee. The Sunni law does not allow a Will to be made in favour of any person who would be an heir of the legator under the law of intestate succession. It permits to make a Will to persons other than heirs to the extent of one-third of a heritable estate after payment of funeral expenses and debts. A Will in favour of an heir is not, however, altogether void. Where the legatee is found to be an heir of the legator and other heirs of the latter ascended to the Will after the death of the legator, it becomes valid and enforceable. In effect, therefore, a Will made by a Sunni Muslim in favour of one of his heirs is voidable at the option of his remaining heirs. Any single heir may consent to bind his own share either in whole or in part. The



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bequest is invalid unless consented to by other heir or heirs and whosoever consents, the bequest is valid to that extent only and binds his or her share. According to Shiah law, a bequest to an heir is valid if it does not exceed one-third of the estate of the testator without the consent of the other heirs. Under all schools of Muslim law, every Muslim is free to make a Will in favour of a non-heir to the extent of one-third of his/her estate. Over and above one-third of his net estate, the Will of a Muslim in favour of a non-heir is not void. It is invalid, but his would be heirs can validate it by their consent, express or implied¹⁴.

20. Here, since the 3rd respondent, who is one of the legal heirs, has not consented to the Will after the death of the legator, the Will is void so far as his right over the property is concerned. Hence, the transfer of registry sought for by the petitioners based on the Will in respect of the entire property, including the share of the 3rd respondent, cannot be allowed.

21. The writ petitions are disposed of as above.

22. The Registry is directed to forward a copy of this

14 (See *Tahir Mahmood, The Muslim Law of India, Butterworth's 3rd Edition*, 2002, pp 190-192)



Judgment to the Chief Secretary, Government of Kerala and the Principal Secretary to the Kerala Revenue Department. The Principal Revenue Secretary shall direct all the Revenue Officers of the State under the TR Rules to follow guidelines prescribed in paragraph 17 of this Judgment while disposing of transfer of registry cases based on Will. The State Government may consider amending the Transfer of Registry Rules, 1966, incorporating specific provisions that govern the transfer of revenue registry (mutation) due to testamentary succession based on the directions given in this judgment.

I place on record the appreciation for the able assistance rendered by the learned Government Pleader Smt. Vidya Kuriakose.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp



APPENDIX OF WP(C) 21759/2024

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE COPY OF THE REGISTERED WILL NO.8 DATED 09.03.1984 REGISTERED IN SUB REGISTRAR OFFICE KOLLANGODE, PALAKKAD |
| Exhibit P2 | A TRUE COPY OF THE LAND TAX RECEIPT NO. KL09021501441/2023 DATED 18.04.2023 |
| Exhibit P3 | A TRUE COPY OF THE LETTER OF THE GOVERNMENT PLEADER DATED 22.05.2024 |



APPENDIX OF WP(C) 22548/2024

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF CERTIFIED COPY OF WILL DEED DATED 09-06-1994 (NO.32/1994) OF SRO, MATHILAKAM |
| Exhibit P2 | TRUE COPY OF APPLICATION DATED 14-09- 2023 |
| Exhibit P3 | TRUE COPY OF NOTICE DATED 09-10-2023 OF THE 1ST RESPONDENT |
| Exhibit P4 | TRUE COPY OF PLAINT - O.S.1/2016 OF SUB COURT, IRINJALAKUDA |
| Exhibit P5 | TRUE COPY OF WRITTEN STATEMENT IN O.S.1/2016 OF SUB COURT, IRINJALAKUDA |
| Exhibit P6 | TRUE COPY OF JUDGMENT DATED 02-09-2022 IN O.S.1/2016 OF SUB COURT, IRINJALAKUDA |
| Exhibit P7 | TRUE COPY OF LETTER DATED 28-04-2023 ISSUED BY 2ND RESPONDENT |
| Exhibit P8 | TRUE COPY OF JUDGMENT DATED 20-02-2014 IN WP(C) 24991/2013 OF HIGH COURT OF KERALA |



RESPONDENT EXHIBITS

Exhibit-R3(a) TRUE COPY OF THE APPLICATION FOR
WITHDRAWAL OF SUIT, IA.2/2022 IN
OS.1/2016 FILED BEFORE THE SUB COURT
IRINJALAKUDA

Exhibit-R3(b) TRUE COPY OF THE PLAINT IN
OS.NO.135/2024 PENDING BEFORE THE SUB
COURT IRINJALAKUDA



APPENDIX OF WP(C) 23763/2024

PETITIONER EXHIBITS

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| Exhibit P1 | THE TRUE COPY OF THE WILL NO.19/2006-III DATED 30.05.2006 OF SASTHAMCOTTA SUB REGISTRY EXECUTED BY SRI.SURENDRAN |
| Exhibit P2 | THE TRUE COPY OF THE APPLICATION DATED 01.02.2023 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT |
| Exhibit P3 | THE TRUE COPY OF THE JUDGMENT DATED 26.05.2023 IN W.P.(C)NO.15947/2023 OF THIS HON'BLE COURT |
| Exhibit P4 | THE TRUE COPY OF THE ORDER DATED 18/04/2023 IN I.A.NO:1/2023 IN O.S.NO:84/2023 OF THE MUNSIF COURT, SASTHAMCOTTAH |
| Exhibit P5 | THE TRUE COPY OF THE ORDER NO:97/2023 DATED 01/07/2023 ISSUED BY THE 5TH RESPONDENT |
| Exhibit P6 | THE TRUE COPY OF THE JUDGMENT DATED 26/03/2024 IN W.P.(C)NO:26823/2023 OF THIS HON'BLE COURT |
| Exhibit P7 | THE TRUE COPY OF THE JUDGEMENT IN WP(C)NO: 19729/2019 DATED 12/02/2020 OF THIS HON'BLE COURT |



APPENDIX OF WP(C) 25731/2024

PETITIONER EXHIBITS

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| Exhibit P1 | A COPY OF SALE DEED NO 3556/1986 DATED 21.11.1986 OF AYYANTHOLE REGISTRY IN FAVOR OF SRI.THOMAS.K.V AND AMMINI.E.P |
| Exhibit P2 | COPY OF THE LAND TAX RECEIPT DATED 25.06.2022 ISSUED FROM VILLAGE OFFICE, AYYANTHOLE |
| Exhibit P3 | A COPY OF THE WILL DATED 16.03.2020 EXECUTED BY SRI.THOMAS.K.V AND SMT.AMMINI.E.P. IN FAVOUR OF THE PETITIONERS |
| Exhibit P4 | A COPY OF THE DEATH CERTIFICATE DATED 14.08.2020 ISSUED BY THE THRISSUR CORPORATION |
| Exhibit P5 | A COPY OF THE CERTIFICATE NO.600/2022 DATED 01.06.2022 ISSUED FROM THE VILLAGE OFFICE, AYYANTHOLE |
| Exhibit P6 | A COPY OF THE DEATH CERTIFICATE DATED 09.07.2022 ISSUED FROM AVANUR GRAMA PANCHAYAT |
| Exhibit P7 | A COPY OF THE APPLICATION SUBMITTED ON 08.04.2024 BEFORE THE VILLAGE OFFICER, AYYANTHOLE |
| Exhibit P8 | A COPY OF THE ORDER NO.86/2024 DATED 17.05.2024 OF VILLAGE OFFICE, AYYANTHOLE |

WP(C) No.21759/2024 & conn.cases



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Exhibit P9

COPY OF THE JUDGMENT IN WP(C) NO. 22887
OF 2022 DATED 03.08.2022

Exhibit P10

A COPY OF THE JUDGMENT IN WP(C) NO.
21820 OF 2014 DATED 21.08.2014



APPENDIX OF WP(C) 38399/2024

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE PHOTOCOPY OF THE DEATH CERTIFICATE OF CYRIAC J. DATED 27/2/2024 ISSUED BY THE ARPOOKARA GRAMA PANCHAYAT |
| Exhibit P2 | TRUE PHOTOCOPY OF THE DEATH CERTIFICATE OF K.K. JOSEPH DATED 1/3/2024 ISSUED BY THE VAZHAPPALLY GRAMA PANCHAYAT |
| Exhibit P3 | TRUE PHOTOCOPY OF THE WILL DEED NO.40/III/2013 OF SRO CHANGANACHERRY EXECUTED BY LATE K.K. JOSEPH |
| Exhibit P4 | TRUE PHOTOCOPY OF THE THANDAPER REGISTER DATED 24/10/2024 BEARING THANDAPER NO.746 OF VAZHAPPALLY WEST VILLAGE IN THE NAME OF LATE K.K. JOSEPH |
| Exhibit P5 | TRUE PHOTOCOPY OF THE FAMILY MEMBERSHIP CERTIFICATE DATED 11/3/2024 ISSUED BY VILLAGE OFFICER, VAZHAPPALLY WEST VILLAGE |
| Exhibit P6 | TRUE PHOTOCOPY OF THE APPLICATION DATED 2/5/2024 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT |
| Exhibit P7 | TRUE PHOTOCOPY OF THE NOTARIZED AFFIDAVIT DATED 27/4/2024 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT |
| Exhibit P8 | TRUE PHOTOCOPY OF THE OBJECTION DATED 16/10/2024 SUBMITTED BY THE 5TH RESPONDENT |

WP(C) No.21759/2024 & conn.cases



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Exhibit P9

TRUE PHOTOCOPY OF THE OBJECTION DATED
16/10/2024 SUBMITTED BY THE 6TH
RESPONDENT