

IN THE COURT OF THE MUNSIFF, KOCHI

Present :-

Sri. Anirudhan T K, Additional Munsiff

Saturday the 7th day of September, 2024/16th Bhadra, 1946

I.A. No. 1/2024 in O.P. No. 4/2023

Petitioners/Petitioner:--

- 1 Paul Raj, S/o.Simon, Marottikarapambil House, Ochanthuruthu PO, Puthuvype, Pin-685508
- 2 Maggi, W/o.Simon, Marottikarapambil House, Ochanthuruthu PO, Puthuvype, Pin-685508

By Adv.R Leela, Dhiya K Noel & Shini Mary Sanu

Respondents/Respondents :-

- 1 Laina, aged 54 years, W/o.Thomas, residing at Kuruppasherry House, Valappu, Malipuram PO, Pin-682511.
- 2 Lisha, aged 52 years, W/o.Stephen, Ittikunnathu House, Valappu, Malipuram-682511
- 3 Mary M S @ Soya, W/o.V T Joseph, Veliyil House, Malipuram PO, Pin-682511

By Adv. C T Jestin & Jyothi K

This petition come up for hearing before me on 02.09.2024 and the

court on 07.09.2024 passed the following:-

ORDER

The petition filed for permission to mutate the petition schedule property in the name of petitioner.

2. Petitioner's contentions in brief, is as follows:- The petitioner filed the above OP against the respondents for depositing charge amount stipulated in a Will executed by the father of the petitioner and respondents. After filing the petition the respondents filed OS.73/2024 for partition of the property covered by the Will and also cancellation of the Will, by which the properties of the father were bequeathed in the name of the petitioner herein. If the property is mutated in the name of the petitioner he could avail a loan and effect repair of the dilapidated house situated in the property. According to the petitioner, the house is in a pathetic condition due to its old age. During the rain electricity of the house has to be switched off to prevent electric shocks. Even after rain till the wall become dry the switches to be touched only with severe caution. It was under this circumstance the petitioner filed OP for direction to deposit sum of Rs.1,50,000/-(Rupees One Lakh Fifty Thousand only) each to the sisters and for effecting mutation of the property.

3. But the respondents herein, have filed the above mentioned O S 73/2024 to compel the petitioner to yield to their demand. Therefore it is highly necessary to bring actual picture of the property and the present condition of the house for which another application has also filed for appointing an Adv.Commissioner. The petitioner undertook that he will not have any intention to alienate the property and if the property is not mutated in accordance with the Will he will not be able to secure a loan to reconstruct the house. If the plaintiff succeeded in their claims the petitioner further undertook to abide by the directions of this Court and to the decree passed by this court. Therefore the petition may be allowed.

4. The respondents filed counter stating that OS.73/24 filed not as a counter blast to the above OP. The court has passed an order of temporary injunction after evaluating the merits of the suit and the same is in force. The residential building in the property is not an old building and it is not in a dilapidated condition. The suit was filed by the respondents to cancel the Will fabricated by the petitioner herein and for consequent partition of the property. The payment of the petitioner over the petition schedule property is on the basis of the Will and ie, fabricated document. Therefore it is not proper to effect mutation. Since the suit is pending consideration, in the event of allowing this petition, to mutate the property in petitioner's name, it

will cause injustice to the respondents. Therefore, the petition may be dismissed.

5. Heard both sides.

6. **The following point arise for consideration:-**

(i) **Whether the petition is allowable?**

7. **The point:-** The petitioner's contention is that if the mutation of the property, which he is entitled as per the Will, is not effected he could not get any loan to reconstruct the building situated in the property. The house in the property is in a dilapidated condition and it is to be urgently repaired or reconstructed. The petitioner filed the above OP for depositing the charge amount but during the hearing it was revealed that the charge amount stipulated in the Will will be payable after the life time of the mother of the petitioner and the respondents. The mother is still alive therefore the question whether the petitioner can deposit the charge amount as per the Will is also to be considered in the OP. Moreover, the respondents have already filed OS.73/2024 for cancellation of the Will. Thus, the very validity of the Will itself is challenged, so it is not desirable to allow this petition and matter of mutation of a disputed property can only be decided in a suit not in a petition like this. Therefore, there is no merit in the petition, and it is liable to be dismissed.

In the result, petition stands dismissed. No costs.

(Dictated to Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court on this the 7th day of September, 2024)

Sd/-
Anirudhan T K
Additional Munsiff

APPENDIX : Nil

Id/-
Additional Munsiff

//True Copy//

Additional Munsiff

ORDER

I.A. No.1/2024

O.P. No. 4/2023

Dated : 07.09.2024