

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

WP(C).No.16101 OF 2020(K)

PETITIONERS:

- 1 K.K.GEORGE  
S/O. LATE K.K KURUVILA, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM-686 507
- 2 K.K JOSEPH,  
S/O. LATE K.K KURUVILA, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM - 686 507
- 3 K.K THOMAS,  
S/O. LATE K.K KURUVILA, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 4 K.K SEBASTIAN,  
S/O. LATE K.K KURUVILA, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 5 TONY KURUVILA,  
S/O. LATE K.K KURUVILA, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 6 TESSY MATHEW,  
W/O. LATE K.K MATHEW, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 7 KURUVILA MATHEW,  
S/O. LATE K.K MATHEW, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 8 MATHEW MATHEW,  
W/O. LATE K.K MATHEW, KALLARAKKAL ANATHANAM ,  
KANJIRAPPALLY P.O, KOTTAYAM 686 507
- 9 LUSY ABRAHAM,  
W/O. ABRAHAM XAVIER, 7-B, SKYLINE HOME STAY  
CHAKKOLA COLONY, PERUMANUR, . ERNAKULAM 682 015

BY ADVS.

SRI.MATHEW JOHN (K)

SRI.ABY J AUGUSTINE

RESPONDENT/S:

- 1 THE REGISTRATION INSPECTOR GENERAL  
OFFICE OF THE REGISTRATION INSPECTOR GENERAL  
VANCHIYOOR POST, THIRUVANANTHAPURAM 695 035
- 2 THE DISTRICT REGISTRAR,  
REGISTRATIONS, COLLECTORATE P.O, KOTTAYAM 686 002
- 3 THE SUB REGISTRAR,  
SUB REGISTRY OFFICE, KANJIRAPPALLY, PONKUNNAM P.O,  
KOTTAYAM 686 506
- 4 SRI ALEX THANNIPPARA,  
S/O. ALEXANDER, THANNIPPARA HOUSE, VELLAPPAD,  
PALA 686 575

R4 BY ADV. SRI.JIMMY GEORGE (THADATHIL)  
R4 BY ADV. SRI.T.V.GEORGE

SRI K.P HARISH SR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
24.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

Being aggrieved by the refusal on the part of the 4th respondent in registering the partition deed executed by the petitioners in respect of an item of property owned by them, the petitioners have approached this Court with this Writ Petition.

2. Property having an extent of 1.5280 hectares (3.7750 Acres) of land in Re-survey No.34/1 in Block No.11 of Kanjirappally village was originally owned by late Sri.K.K. Kuruvila, the father of the petitioners 1 to 5. Sri K.K. Mathew, another son of K.K. Kuruvila predeceased him and his wife and children are the petitioners 6 to 9. By virtue of a will registered as Document No.74/1990 of the Kanjirappally SRO, Sri. K.K. Kuruvila bequeathed the above property in favor of his children. The fact that the petitioners are paying tax in respect of the above property is borne out from Exhibit P1 tax receipt.

3. The petitioners contend that in the year 2012, they had entered into an agreement with the 4th respondent agreeing to assign the property to him for consideration of Rs.10 Lakhs per cent. A sum of Rs.6 Crores was

received by them by way of advance. As per the terms of the agreement, the 4th respondent was to pay a further sum of Rs.6 crores and get the sale deed executed and registered. However, disputes arose between the parties and the sale did not go through.

4. The petitioners decided to partition the property among themselves and after drawing up a partition deed approached the 3rd respondent. They were informed that several complaints were lodged by the 4th respondent objecting to the registration of any deed by the petitioners. They filed an application under the Right to Information Act which yielded information that the 3rd respondent had rejected the request of the 4th respondent and he was informed that the provisions of the Registration Act and the Rules will not enable the 3rd respondent to refuse registration on the grounds detailed by the 4th respondent. The said communication obtained under the RTI Act is Exhibit P2. They further contend that the 4th respondent moved this Court by filing W.P.(C) No.10785/2020 seeking to conduct an enquiry into one of the petitions filed by him and the 1st petitioner herein was also arrayed as one of the respondents. However, the said petition was dismissed as infructuous based on submissions made by the 4th respondent. In spite of the above, when the partition deed was presented before the 3rd respondent, he refused registration by issuing Exhibit P5. According to the petitioners, the reasons assigned by the 3rd respondent are unsustainable. They contend that the stand taken by the 3rd

respondent would militate against the provisions of the Registration Act and the Rules framed thereunder. It is in the above backdrop that the petitioners are before this Court seeking for quashing Exhibit P5 and for a direction to the 3rd respondent to register the partition deed executed by the petitioners and for incidental reliefs.

5. In the counter affidavit filed by the 4th respondent, he has contended that the petitioners have an efficacious remedy in preferring an appeal assailing Exhibit P5 and in that view of the matter, this petition is not liable to be entertained. It is further contended that the extent of property possessed by the petitioners is only 3.60 Acres and not 3.7750 Acres as stated by them. According to the 4th respondent, by claiming that the petitioners are in possession of property much in excess of what is actually possessed by them, they tried to obtain additional amounts from him. It is contended that against the understanding between the parties as borne out from the agreement for sale, the petitioners have mortgaged the property with the Service Co-operative Bank, Kanjirappally on more than one occasion. Finally, it is stated that the petitioners have grossly undervalued the property and instead of adopting the fair value fixed by the State Government and have entered into the agreement with the 4th respondent fixing the fair value at Rs.1.50 Lakhs per Are by obtaining orders from the District Collector, Kottayam. According to the 4th respondent, it is not the duty of the Registrar to register every document presented before him for

registration unmindful of its validity and legality.

6. Sri K.P. Harish, the learned Government pleader, on instructions, submitted that in view of the stand taken by the 3rd respondent in Exhibit P2, as and when the partition deed is presented for registration, the 3rd respondent shall consider the same and if there are no other impediments either under the Registration Act or the Rules framed thereunder, the document shall be registered on payment of the appropriate stamp duty.

7. I have heard Sri. Mathew John, the learned counsel appearing for the petitioners, learned counsel appearing for the 4th respondent and the learned Government Pleader.

8. Section 17 of Act 16 of 1908 states that the documents made mention of are required to be compulsorily registered. Section 34 provides for enquiry before registration by registering officer. Section 34 reads as follows:

Section 34: Enquiry before registration by registering officer -

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon--

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

9. From the above provision, it is evident that the registering

officer, prior to registration, has to enquire as to whether or not such document was executed by the persons by whom it purports to have been executed and also to satisfy himself as to the identity of the person appearing before him either in person or through a representative.

10. Section 71 of the Registration Act provides the reasons for refusal to register to be recorded. However, no other indications are given. However, Chapter XI of the Registration Rules (Kerala), states the procedure to be adopted by the Registrar at the time of registration of documents. Rule 67 dealing with enquiry before registration reads as follows :

Rule 67: It forms no part of a Registering Officer's duty to enquire into the validity of a document except documents styled as marriage agreement brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:--

- (a) That the parties appearing or about to appear before him are not the persons they profess to be;
- (b) That the document is forged;
- (c) That the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d) That the executing party is not really dead, as alleged by the party applying for registration; or



(e) That the executing party is minor or an idiot or a lunatic.

11. Rule 67 is specific when it states that it forms no part of the duty of a Registering Officer to inquire into the validity of a document except documents styled as marriage agreement brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document. However, he is bound to consider objections made mention of in sub-clause (a) to (e). No one has a case that the document presented for registration by the petitioners herein was suffering from any of the impediments mentioned above.

12. Rule 191 of the Registration Rules (Kerala) framed by the IG of Registration under Section 69 (2) of the Registration Act, 1908 also gives an indication as to some of the circumstances under which the registrar can refuse registration. Rule 191 of the Rules reads thus:

"191. The reasons for refusal will usually come under one or more of the heads mentioned below; which should invariably be quoted as authority for refusal.

Section 19

- I. That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the district, and that it is unaccompanied by a true translation and a true copy.

Section 20

- II. That it contains unattested interlineations, blanks, erasures, or alterations which in the opinion of the Registering Officer require to be attested.

Sections 21 (1-3) and Section 22

- III. That the description of the property is insufficient to identify it.

Section 21(4)

- IV. That the document is unaccompanied by a copy or copies of any map or plan which it contains.

Rule 42

- V. That the date of execution is not stated in the document or that the correct date is not ascertainable.

Sections 23, 24, 25, 26, 72, 75 and 77

- VI. That it is presented after the prescribed time.

Sections 32, 33, 40 and 43

- VII. That it is presented by a person who has no right to present it.

Section 32A

- VIIA. That the document is not affixed with the Passport size photographs and impression/impressions of the left thumb or any of the fingers in the absence of left thumb as prescribed in R.30A(i) and (ii).

Section 34

- VIII. That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

Note.- 'Prescribed time', shall mean the time allowed for presentation under Sections 23, 24, 25 and 26 and not the delay of four months in appearance which may be condoned under the proviso to Section 34, unless the presentant or the executing party concerned applies for extension of the period on proper grounds or takes action under Section 36.

Sections 34 and 43

IX. That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

Sections 34 and 40

X. That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign or agent so to appear.

Section 35

XI. That execution is denied by any person purporting to be an executing party or by his agent.

Note.- When a Registering Officer is satisfied that an executant is purposely keeping out of the way with a view to evade registration of a document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, registration may be refused, the non - appearance being treated as tantamount to denial of execution.

Section 35

XII. That the person purporting to have executed the document is a minor, an idiot or a lunatic.

Note.- When the executant of a document who is examined under

a commission under Section 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic, registration may be refused, and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification.

Section 35

XIII. That execution is denied by the representative or assign of a deceased person by whom the documents purports to have been executed.

Note.- When some of the representatives of a deceased executant admit and others deny execution, the registration of the document shall be refused in toto, the persons interested being let to apply to the Registrar for an enquiry into the fact of execution.

Sections 35 and 41

XIV. That the alleged death of a person by whom the document purports to have been executed has not been proved.

Section 41

XV. That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

Sections 25, 34 and 80

XVI. That the prescribed fee or fine has not been paid.

XVII. That the full additions of all persons executing and of all persons claiming under the document are not given.

XVIII. A Kanam demise or a renewal thereof shall be refused registrations if it does not contain the following particulars:

- (i) The name if any, the description and the extent of each item of holding;
- (ii) The Government tax payable on each item;
- (iii) The renewal fee if any paid. If no renewal fee is paid the fact should be stated; and
- (iv) The settlement pattam, the settlement patta, michavaram, the Jenmivaram and the Jenmikaram in respect of the land or each of the several parcels of land comprised in the holding.

Rule 67

XIX. That the executing parties do not get the status of married couple as per the document styled as marriage agreement."

13. In Exhibit P5, the 3rd respondent has refused registration for the reason that the 4th respondent has filed a protest petition before the 3rd respondent objecting to the registration. The 3rd respondent also states that he wants to ascertain whether any writ petition instituted by the 4th respondent is pending before this Court. Admittedly, the Writ Petition filed by the 4th respondent has been dismissed as infructuous. The registration of a document by the registration authority under the provisions of the Registration Act, 1908 merely records the transaction between the transferor and the transferee in the jurisdiction of the said registering authority. It is

apparent from the rules that the Registering authorities under Act may venture to refuse registration if the circumstances which have been detailed in Rule 67 or Rule 191 strikes their notice. Being quasi-judicial authorities they will not be justified in usurping powers which have not been conferred to them under the statute. The reasons assigned by the 3rd respondent in Ext.P5 for refusing to register the partition deed does not fall under any of the heads stated in Rule 191.

14. For the aforesaid reasons, I am unable to sustain Ext.P5 and the same will stand quashed. The 3rd respondent is directed to consider Exhibit P4 request afresh and proceed to register the Deed strictly adhering to the provisions of the Registration Act, 1908 and the Registration Rules (Kerala). Needful shall be done within a period of 5 weeks from the date of receipt of a copy of this judgment.

This Writ Petition will stand disposed of.

sd/-

**RAJA VIJAYARAGHAVAN. V**

**JUDGE**

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE RECEIPT DATED 11-05-2020  
ISSUED BY THE VILLAGE OFFICER KANJIRAPPILLY  
ACCEPTING THE TAX FOR THE YEAR 2020-21
- EXHIBIT P2 TRUE COPY OF THE LETTER DATED 21.05.2020 SENT  
TO THE 4TH RESPONDENT BY THE 3RD RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 19.06.2020 IN  
W.P. (C).NO.10785/2020 PASSED BY THIS HON'BLE  
COURT.
- EXHIBIT P4 TRUE COPY OF THE PETITION DATED 16-07-2020  
SUBMITTED BY THE 1ST PETITIONER BEFORE THE  
3RD RESPONDENT
- EXHIBIT P5 TRUE COPY OF THE REPLY DATED 23-07-2020  
ISSUED BY THE 3RD RESPONDENT TO THE  
PETITIONER.

**RESPONDENTS' EXHIBITS:**

- EXHIBIT R4 (a) : TRUE COPY OF THE SALE DEED NO.3527/1956 OF  
SRO KANJIRAPPALLY WITH SURVEY SKETCH.
- EXHIBIT R4 (b) : TRUE COPY OF THE WILL DEED NO.74/90 OF SRO,  
KANJIRAPPALLY EXECUTED BY LATE KURUVILA.
- EXHIBIT R4 (c) : TRUE COPY OF AGREEMENT DATED 31/05/2012  
BETWEEN THE PETITIONERS AND 4TH RESPONDENT.
- EXHIBIT R4 (d) : TRUE COPY OF THE CERTIFICATE OBTAINED BY THE  
4TH RESPONDENT FROM THE VILLAGE OFFICE,  
KANJIRAPPALLY DATED 13/07/2020 (T.NO.9551).
- EXHIBIT R4 (e) : TRUE COPY OF TAX PAID RECEIPT OBTAINED FROM  
THE VILLAGE OFFICE, KANJIRAPPALLY DATED  
31/05/2012.
- EXHIBIT R4 (f) : TRUE COPY OF POSSESSION CERTIFICATE DATED  
17/10/2012 FROM THE VILLAGE OFFICE,  
KANJIRAPPALLY (T.NO.8383).
- EXHIBIT R4 (g) : TRUE COPY OF THE POSSESSION CERTIFICATE DATED  
28/02/2015 FROM THE VILLAGE OFFICE,  
KANJIRAPPALLY (T.NO.9551).