

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 07TH DAY OF AUGUST 2020 / 16TH SRAVANA, 1942

WP(C).No.6577 OF 2020(V)

PETITIONERS:

- 1 MINOR ANNA FRANCIES,
AGED 17, D/O. MALEYEKKAL OLLUKKARAN FRANCIES, RESIDING
AT IRINJALAKUDA VILLAGE AND DESOM, IRINJALAKUDA
TALUK, TRISSUR DISTRICT, REPRESENTED BY THE FATHER
AND GUARDIAN FRANCIS CHETHALAN,
AGED 50, S/O. LATE MALEYEKKAL OLLUKKARAN ANTONY,
RESIDING AT IRINJALAKUDA VILLAGE AND DESOM,
IRINJALAKUDA TALUK, TRISSUR DISTRICT.
- 2 MINOR ANTONY FRANCIES,
AGED 14, S/O. MALEYEKKAL OLLUKKARAN FRANCIES, RESIDING
AT IRINJALAKUDA VILLAGE AND DESOM, IRINJALAKUDA
TALUK, TRISSUR DISTRICT, REPRESENTED BY THE FATHER
AND GUARDIAN FRANCIES CHETHALAN,
AGED 50, S/O. LATE MALEYEKKAL OLLUKKARAN ANTONY,
RESIDING AT IRINJALAKUDA VILLAGE AND DESOM,
IRINJALAKUDA TALUK, TRISSUR DISTRICT.
- 3 MINOR ANGEL FRANCIES,
AGED 9 YEARS, D/O. MALEYEKKAL OLLUKKARAN FRANCIES,
RESIDING AT IRINJALAKUDA VILLAGE AND DESOM,
IRINJALAKUDA TALUK, TRISSUR DISTRICT, REPRESENTED BY
THE FATHER AND GUARDIAN FRANCIES CHETHALAN,
AGED 50, S/O. LATE MALEYEKKAL OLLUKKARAN ANTONY,
RESIDING AT IRINJALAKUDA VILLAGE AND DESOM,
IRINJALAKUDA TALUK, TRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ

RESPONDENTS:

- 1 THE SUB REGISTRAR,
O/O. THE SUB REGISTRAR, IRINJALAKUDA,
P.O. IRINJALAKUDA, TRISSUR DISTRICT, PIN-680121.

2 THE DISTRICT REGISTRAR GENERAL
O/O THE DISTRICT REGISTRAR GENERAL, CHEMBUKAVU
THRISSUR, PIN 680020

SRI K.P HARISH SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”

J U D G M E N T

This petition under Article 226 of the Constitution of India questions the refusal of the Sub Registrar acting under the provisions of the Registration Act, 1908 ('the Act' for short), and the rules framed thereunder to register a receipt presented for registration.

2. Late Maleyekkal Ollukkaran Varghese Antony had two sons and a daughter, they being Francis, Victor, and Sherly. During his lifetime, Varghese executed a will bequeathing an item of property owned by him and having an extent of 23 cents comprised in Survey No.243/1 of the Irinjalakuda Village together with the building situated therein in favor of his son Victor. The petitioners herein are the minor children of Francis and they are represented in this petition by their father and guardian, Sri. Francis.

3. As per the stipulations in the Will, Victor was required to pay a sum of Rs. 14 Lakhs to Francis, 5 Lakhs to Shirley, One lakh each to the petitioners, and one lakh each to his own minor children. However, it was expressly stipulated in the Will that if any of the children of Sri. Francis does not attain the majority even after 10 years of the passing away of the testator,

Victor should pay the amount to the respective beneficiary after the attainment of the majority and obtain receipts. Any delay in effecting the payment was to attract interest at the rate of 12 % and a charge was also created over the property to the extent of the amounts directed to be paid under the Will.

4. The petitioners contend that Varghese passed away and the Will has come into effect. Sri. Victor, in tune with the stipulations in the Will, has deposited the amount in the account maintained by the petitioners at the Service Cooperative Bank, Irinjalakkuda, and acknowledging the same, the father of the petitioners, for and on their behalf, as their guardian, has issued Exhibit P2 receipt. Victor remitted the requisite fees with the 1st respondent and requested that the deed be registered. However, the 1st respondent has refused to register the receipt on the ground that the same is premature, as the Will stipulates payment only after the petitioners attain majority and not before.

5. It is in the above backdrop that the petitioners are before this court seeking the following reliefs.

1. Appropriate writ order or direction to declare that Exhibit P2 receipt is capable of being registered under the provisions of the Registration act, by the 1st respondent without waiting till the petitioners to attain majority.

2. Appropriate writ of mandamus, order or any other appropriate direction to the 1st respondent to register Exhibit P2 under the provisions of the Registration Act.

6. The 1st respondent has filed a statement. In para 4 it is stated

thus:

"4. It is true that on 31.01.2020 Francis Chethalan has presented Exhibit P2 receipt before this respondent for and on behalf of his three minor children namely Anna Francis, Antony Francis and Angel Francis. The registration of Exhibit P2 receipt was objected by this respondent for the reason that a stipulation has been written at Page No.4 of Exhibit P1 registered Will No.100/III/2011 of S.R.O Kallettinkara executed by Grandfather of the minors- Late Antony that the beneficiary of the will i.e., the uncle of the minor namely Maleyakkal Ollukaran Victor has to pay Rs.1,00,000/- each to all three minors and to receive the receipt for the said amount only when the minors attaining majority and property described in Exhibit P1 Will was made charge for the fulfillment of this condition. In the Exhibit P1 Will it is specifically stated that only at the time of attainment of majority and not below the attainment of the majority the amount is to be passed to the majors. The very recitals of Exhibit P1 Will it is crystal clear that the amount should reach in the hands of the children after attainment of majority and not to the others and the receipt of amount will have to given by them for acknowledgment of the same to the beneficiary. It is stated in the Exhibit P2 receipt that Registered Will already came into effect on the demise of the testator. Hence all the conditions stipulated in the said Will are to be complied by the beneficiary."

7. I have considered the submissions advanced by Sri T.N. Manoj, the learned counsel appearing for the petitioners and Sri. K.P. Harish, the learned Senior Government Pleader.

8. The stipulations in the Will is extracted below for easy reference.

“മകൻ ഫ്രാൻസിസിന്റെ മക്കളായ അന്ന, ആർദ്രിനി, എയ്ഞ്ചൽ എന്നിവർ ഒരേയരതത്തിൽ 1,00,000/- ഒരു ലക്ഷം രൂപവീതം 3,00,000 /- രൂപയും കൊടുക്കണമെന്ന് എനിക്ക് അഗ്രഹമുള്ളത് എൻ്റെ കാലശേഷം 5 വർഷത്തിനകം മകൻ ഫ്രാൻസിസിന് 14,00,000/- രൂപയും മകൻ ഫ്രാൻസിസിന്റെ മക്കളായ ആർദ്രിനിക്ക് 1,00,000/- രൂപയും, അന്നക്ക് 1,00,000/- രൂപയും എന്തെങ്കിലും 1,00,000 /- രൂപയും, മകൻ വിക്ടർ കൊടുത്ത രശീതി വരണമെന്നും, എൻ്റെ കാലശേഷം 10 വർഷത്തിനകം മേൽപ്പറഞ്ഞ കുട്ടികളിലൊരാൾക്കും മേൽപ്പറഞ്ഞതനുസരിച്ച് മേൽപ്പറഞ്ഞതനുസരിച്ചുകൊടുത്ത രശീതി വരണമെന്നും അയ്യതിനത്തൊഴി പട്ടികവഹകർ ചർച്ചയിരിക്കുന്നതുമാണ്.”

9. The only dispute is with regard to the payment which is to be effected to the petitioners. The Will stipulates that if the petitioners do not attain majority within 10 years of the passing away of the testator, the beneficiary shall pay the amount as and when the minor attains majority and obtain a receipt. It is evident from Exhibit P2 that Varghese had passed away on 21.7.2016. It is undisputed that a sum of Rs.1,00,000/- each has been deposited by Victor in the individual accounts maintained by the petitioners in the Service Cooperative Bank Ltd., Irinjalakkuda on 31.1.2020 and this fact is seen acknowledged in the receipt itself.

10. It is apparent from the tenor of Exhibit P1 that the testator was intent on providing Sri. Victor a more extended period to pay the amounts to

the petitioners. Instead of waiting for a decade or more, the beneficiary has deposited the amounts in the individual accounts of the petitioners. This according to me would be infinitely more advantageous as they would be able to realize the interest that would accrue in their accounts. I also do not think that any advantage will accrue to the petitioners, by waiting for several years to obtain the monetary benefits which they are entitled to as per the provisions of the Will.

11. The next question is whether the respondent was justified in refusing to register the receipt on the ground that Sri. Victor has not complied with the stipulations in the Will in its letter and spirit. Section 17 of Act 16 of 1908 states that the documents made mention of therein are required to be compulsorily registered. There is no dispute that Ext.P2 is a document of which registration is compulsory. Section 34 provides for enquiry before registration by the 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.

12. 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.

13. Section 71 of the Registration Act provides the reasons for

refusal to register to be recorded. However, no other indications are given.

14. 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.

15. Rule 67 is specific when it states that it forms no part of the duty of a Registering Officer 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. However, he is bound to consider objections made mention of in sub-clause (a) to (e). The circumstances made mention of therein have not arisen in the instant case.

16. 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."

17. The reasons given by the 1st respondent for refusing to register the receipt does not fall under any of the heads stated in Rule 191.

18. 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 authority under Act may venture to refuse registration if the circumstances which have been detailed in Rule 67 or Rule 191 strikes his notice. Being quasi-judicial authorities they will not be justified in usurping powers which have not been conferred to them under the statute. They also will not be justified in donning the cloak of the judicial authority and go into intricate questions such as the intent of the executant, the right of the executant to execute such a document, or its validity. Power to decide such disputes is vested in the Civil Courts. Though in **Pavakkal Noble John and Another V State of Kerala** [2010 (3) KLT 941] it was held by this Court that Rules enabling the registering authority to register a document presented before him is not exhaustive, the registering officer cannot conduct a roving enquiry into the validity or legal sustainability of a document, as has been done in the instant case. I am of the considered opinion that the 1st respondent has exceeded in his powers by interpreting the terms of the Will and in concluding that the receipt issued by the petitioners are not liable to be registered more so because none of the petitioners, to whom money was ordered to be paid,

have raised any objection on any of the grounds made out under the statutory provisions. For the afore reasons, I am of the considered opinion that there was no justification on the part of the 1st respondent in refusing registration when Exhibit P2 receipt was presented before him.

This Writ Petition will stand allowed and the 1st respondent is directed to register Exhibit P2 presented before him as per the provisions of the Registration Act, 1908, and the Rules framed thereunder.

sd/-

RAJA VIJAYARAGHAVAN . V

JUDGE

PS/7/8/2020

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE WILL DATED 8.4.2011
EXECUTED BY LATE VARGHESE ANTONY.

EXHIBIT P2 TRUE COPY OF THE RECEIPT DATED 31.1.2020.

RESPONDENTS EXHIBITS:NIL