

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 29TH DAY OF JULY 2016/7TH SRAVANA, 1938

WP(C).No. 18664 of 2016 (G)  
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PETITIONER(S):  
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DIVAKARAN, AGED 88,  
S/O KRISHNAN, KANNAMBALLI THARYIL,  
ADINADU THEKKUMURI, KOLLAM DISTRICT.

BY ADVS.SRI.V.PHILIP MATHEW,  
SRI.GIBI.C.GEORGE,  
SRI.BIJU.K. MATHEW.

RESPONDENT(S):  
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1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF REGISTRATION,  
KERALA GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM -695 001.
2. THE SUB REGISTRAR,  
KARUNAGAPPALLY (ADDITIONAL),  
SUB REGISTRAR OFFICE, KARUNAGAPPALLY,  
KOLLAM DISTRICT- 690 518.
- \* ADDL. R3 IMPLEADED
3. THULASEEDHARAN, AGED 55 YEARS, S/O SREEDHARAN,  
VICE PRESIDENT OF THE MUTHALASSERIL TEMPLE TRUST,  
ARYA BHAVANAM, KALLELIL BHAGAM MURI,  
KARUNAGAPPALLY, KOLLAM.
- \* ADDL. R3 IS IMPLEADED AS PER ORDER DATED 08/06/2016  
IN I.A. NO.9030/2016.

R1 & R2 BY GOVT. PLEADER SRI.GIKKU JACOB.  
ADDL. R3 BY ADV. SRI.K.SUBASH CHANDRA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 14/06/2016, THE COURT ON 29/07/2016 DELIVERED THE  
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1            TYPED COPY OF PARTITION DEED NO.1575 OF 1103 M.E OF  
KARUNAGAPPALLY SUB REGISTRAR OFFICE.
- EXHIBIT P2            COPY OF SETTLEMENT DATED 26-04-2016.
- EXHIBIT P3            COPY OF REPRESENTATION DATED 03-05-2016 SUBMITTED BY  
THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P4            COPY OF RECEIPT DATED 03-05-2016 ISSUED BY THE  
2ND RESPONDENT.
- EXHIBIT P5            COPY OF REPLY DATED 05-05-2016.
- EXHIBIT P6            COPY OF ORDER DATED 18/05/2016 ISSUED BY THE  
SECOND RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R3A            COPY OF THE REPRESENTATION SUBMITTED WITH THE  
DEPUTY DIRECTOR OF SURVEY.
- EXT.R3B            COPY OF THE TRUST DEED DATED 29/10/2012.
- EXT.R3C            COPY OF THE BASIC TAX RECEIPTS OF THE TEMPLE PROPERTIES.
- EXT.R3D            COPY OF THE APPLICATION FOR CHANGING THANDAPER ACCOUNT  
AND OTHER LETTERS THERETO.
- EXT.R3E            COPY OF THE PLAINT IN O.S. NO.421/2014 BEFORE THE  
MUNSIFF COURT, KARUNAGAPPALLY.
- EXT.R3F            COPY OF THE ORDER IN I.A. NO.1059/2015 IN O.S. NO.461/2014.

//TRUE COPY//

P.S. TO JUDGE

**"CR"**

**P.B.SURESH KUMAR, J.**

**=====**

**WP(C).No.18664 of 2016-G.**

**=====**

Dated this the 29<sup>th</sup> day of July, 2016.

**J U D G M E N T**

Ext.P6 communication issued to the petitioner by the Registrar exercising powers under the Registration Act ('the Act' for short) in relation to a document presented by the petitioner for registration, is under challenge in this writ petition.

2. The case of the petitioner is that he is the owner of 14 Ares of property in re-survey No.65/7 of Thodiyoor village; that he obtained the said property by virtue of Ext.P1 partition deed; that he executed Ext.P2 settlement deed in respect of the said property in favour of his son and that when the said document was presented for registration, the Registrar refused to register the document. Ext.P6 is the communication issued by the Registrar to the petitioner in this connection. In Ext.P6, the Registrar has stated that the property sought to be conveyed as per Ext.P2 settlement deed is a property obtained by 56 persons by virtue of Ext.P1 partition deed and that the claim of the

petitioner that he being the only surviving owner among the 56 persons referred to in the partition deed, the said property devolved on him, is incorrect. The petitioner is aggrieved by Ext.P6 communication.

3. One Thulaseedharan who got himself impleaded in this writ petition as the additional third respondent has filed a counter affidavit. In the counter affidavit, it is contended, among others, that the petitioner has no manner of right over the property and that he was not even a party to Ext.P1 partition deed as claimed by him.

4. Heard the learned counsel for the petitioner, the learned Government Pleader and the learned counsel for the additional third respondent.

5. The learned counsel for the petitioner, relying on Rule 67 of the Registration Rules (Kerala) ('the Rules' for short) contended that it is not the duty of the registering officer to enquire into the validity of a document brought before him for registration. According to the learned counsel, the Registrar can refuse registration of a document presented before him for

registration only on the grounds mentioned in Rule 67 of the Rules. It was contended by the learned counsel for the petitioner that since the case of the petitioner is not a case falling under any of the objections referred to in Rule 67, the Registrar was bound to register the document.

6. As indicated above, Ext.P2 is a document executed on the strength of the right alleged to have been obtained by the petitioner as per Ext.P1 partition deed. Ext.P1 is a document of the year 1103 M.E. Ext.P1 partition deed indicates that the properties dealt with therein belonged to the family of one Ummini; that a temple existed in the property at the time of Ext.P1 partition deed and that the temple property, in the circumstances, was included as a separate schedule in the partition deed with a direction that the same shall be possessed and managed by the heads (മുപ്പന്മാർ) of the family without default.

The relevant portion of Ext.P1 reads thus:

“ നമ്മളുടെ വക സർവ്വേ 144-ാം നമ്പർ വസ്തുവിൽ തെക്കടുത്തു കീഴ്മേൽ 26 സെന്റ് സ്ഥലത്ത് നിൽക്കുന്ന ക്ഷേത്രത്തിലെ നിത്യനിദാനം വകക്ക് ടി വസ്തുവും വൃക്ഷങ്ങളും 14-ാം നമ്പർ പട്ടികയിൽ ചേർത്തിരിക്കുന്നതും അപ്പോഴപ്പോൾ ഉള്ള മുപ്പന്മാർ കൈവശം വെച്ച് ആദായമെടുത്തും ക്ഷേത്രകാര്യങ്ങൾ വീഴ്ചകൂടാതെ നടത്തി

കൊള്ളേണ്ടതും വീഴ്ച വരുന്നതായാൽ അടുത്ത പ്രായമുപ്പുള്ളവർ  
എടുത്തു നടത്തി കൊള്ളേണ്ടതും ആകുന്നു.”

It is conceded that Ext.P2 settlement deed is executed in respect of the temple property referred to in Ext.P1 partition deed. In the light of the recitals in Ext.P1 partition deed, it is evident that a private religious endowment is created in respect of the temple property referred to therein for the benefit of the members of the family. As such, the view taken by the Registrar that the petitioner does not have title to the property referred to in Ext.P2 settlement deed cannot be said to be incorrect.

7. The question now is as to whether the Registrar can refuse registration of a document on that ground. Though the Act does not contain any specific provision dealing with the circumstances under which the Sub Registrar can refuse to register a document, Section 71 of the Act indicates beyond doubt that the Registrar has the power to refuse registration in appropriate cases. Section 71 of the said Act reads thus:

**“71. Reasons for refusal to register to be recorded:-** (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2., and endorse the words “registration refused” on the

document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

(3) No registering officer shall accept for registration any document involving transfer of property including contract for sale of immovable property belonging to or vested in the Government of Kerala or public sector undertakings operating in the State or local self Government institutions unless it is accompanied by a no objection certificate issued by an officer authorised by the State Government in this behalf."

Rule 191 of the Rules gives indications 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."

In **Noble John v. State of Kerala** (2010(3) KLT 914) this Court has held that the grounds mentioned in Rule 191 are not exhaustive and the Registrar can refuse registration in appropriate cases not mentioned therein also. The case dealt with in **Noble John** (*supra*) is a case where the document presented for registration was a document cancelling a sale deed. In the context of the said case, this Court held that the power conferred on the Registrar to satisfy that the person who

presented the document is a person who has the right to present it includes the power to satisfy that the person presenting a document for registration has the authority to execute the document. It is also held by this Court in the said case that if on a cursory enquiry it is clear that the person purporting to have executed the document is not entitled to the property referred to therein, the Registrar can refuse registration. The relevant portion of the said judgment reads thus:

“On reading of all these provisions together, I am satisfied that a registering authority can refuse registration, if, on a cursory enquiry, it is clear that the person purporting to have executed the cancellation deed is not the person entitled to the property as on the date of execution. This he can easily do by merely (looking at the document and the previous documents registered in respect of the property as per the register available in his office in respect of the property, which would show who is the present owner of the property. S.35 of the Act indicates that such an enquiry is not alien to the powers and duties of the Sub-Registrar. Going by S.34 of the Indian Registration Act and R.67 of the Registration Rules (Kerala), at first blush it may appear that the registering officer cannot enquire into the validity of the document or the right of the executing party to execute the document. But to hold that under no circumstances the registering officer shall enquire into the competency of the person to execute the document and he shall blindly register the document except

for the reasons mentioned in R.191, would lead to very disastrous and anomalous results. Take for example a case where a person presents for registration a sale deed executed by him selling the property comprised of the High Court or any Government property for that matter; or an agreement between two persons whereby one agrees to kill a third person for consideration. Is the registering officer bound to register the same? If that is the position of law, then a cancellation deed cancelling any document by any person who has no relation to the property also will have to be registered if the reasons mentioned in R.191 are not available. That cannot be the object of the abovesaid provisions. But that does not mean that the Sub-Registrar can make a roving enquiry to decide the validity of the document or the right of the executants to execute the document. A reasonable interpretation commensurate with the object of the Act and Rules would be that if by reading the document and looking at the previous documents registered in respect of the property he is satisfied that the document cannot be validly executed by the person purporting to have executed the same, he has to refuse to register the same and act in accordance with S.71 of the Act."

In the circumstances, it cannot be said that in a case of this nature, the Registrar has no authority to refuse registration.

8. Rule 67 of the Rules reads thus:

"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."

A close scrutiny of the said Rule would indicate that it forms no part of the Registrar's duty to enquire into the validity of a document, except a document styled as a marriage agreement. It also clarifies that it is not the duty of the Registrar to attend to any written or verbal protest against the registration of a document based on the ground that the executing party has no right to execute the agreement. It further provides that the Registrar shall consider the objections referred to therein. Merely for the reason that the Act and the Rules do not make it obligatory for the Registrar to enquire into the validity of the document presented for registration, it cannot be contended that the duty of the Registrar is only to look into the objections

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referred to in Rule 67 of the Rules and that he is bound to register every document which does not involve objections referred to in the said Rule. A careful reading of Rule 67 would only indicate that the same makes it obligatory for the Registrar to consider the objections referred to in the Rule before registering the document.

In the said view of the matter, there is no merit in the writ petition and the same is, accordingly, dismissed.

*Sd/-*  
**P.B.SURESH KUMAR,**  
**JUDGE.**

*Kvs/-*

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