

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 6TH DAY OF SEPTEMBER 2021 / 15TH BHADRA, 1943

WP(C) NO. 2849 OF 2012

PETITIONER/S:

- 1 C.K.SASEENDRAN, S/O. KARUNAKARAN,
CHETHIKKATTIL HOUSE, CHAZHOOR, THRISSUR 680 571.
- 2 C.K. MURALEEDHARAN, AGED 45 YEARS
S/O KARUNAKARAN, CHETHIKKATTIL, PAZHUVIL WEST, P.O.
ANTHIKKAD, THRISSUR 680 564.
- 3 RATHNAKUMAR, AGED 39 YEARS
S/O. KUNJETTY, CHETHIKKATTIL, CHAZHOOR P.O., ANTHIKKAD,
THRISSUR. 680 571.
- 4 C.P. ARJUNA KUMAR, AGED 48 YEARS
S/O PRABHAKARAN, CHETHIKKATTIL, CHAZHOOR P.O.,
ANTHIKKAD, THRISSUR. 680 571.
- 5 C.V. REGHU, AGED 44 YEARS
S/O. VELAYUDHAN, CHETHIKKATTIL, CHAZHOOR P.O.,
ANTHIKKAD, THRISSUR. 680 571.
- 6 C.G. UNNIRAJ, AGED 67 YEARS
S/O. GANGADHARAN, CHETHIKKATTIL, CHAZHOOR P.O.,
ANTHIKKAD, THRISSUR. 680 571.
- 7 SURAJ C UNNIRAJ, AGED 36 YEARS
S/O. C.G. UNNIRAJ, CHETHIKKATTIL, CHAZHOOR P.O.,
ANTHIKKAD, THRISSUR. 680 571.

BY ADVS.
SRI.C.HARIKUMAR
SRI.VIPIN VARGHESE

RESPONDENT/S:

- 1 INSPECTOR GENERAL OF REGISTRATION
NEAR CHIEF JUDICIAL MAGISTRATE COURT, VANCHIYOOR,
THIRUVANANTHAPURAM. 695 035.
- 2 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, VADAKKUMKARA,

VELLIKULANGARA P.O., THRISSUR. 680 699.

- 3 C.K. VISWAMBHARAN
S/O KOCHACKAN, CHETHIKKATTIL, CHAZHOOR P.O.,
ANTHIKKAD, THRISSUR.680 571.
- 4 SOMASUNDARAM
S/O. VELAPPANKUTTY, CHETHIKKATTIL, GREEN PARK,
PERINGAVU, THRISSUR.680 008.
- 5 THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR,
ANTHIKKAD THRISSUR 680 641.

*ADDL.R6 CHETHIICKATTIL KUDUMBA KSHEMA SABHA
CHAZHOOR, REPRESENTED BY ITS SECRETARY
C.P.GREESH, S/O PUSHKARAN, CHETHIKKATTIL HOUSE,
CHAZHOOR P.O., THRISSUR-680571.
(*ADDL.R6 IS IMPEADED AS PER ORDER DATED
26.03.2014 IN I.A.NO.3933/2014)

BY ADVS.
SRI.T.M.CHANDRAN
SRI.JOSEPH ALBIN NEDUNTHALLY
SRI.V.A.SASIDHARAN
SR.G.P-SRI.RENIL ANTO KANDAMKULATHY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22.07.2021, THE COURT ON 06.09.2021 DELIVERED THE
FOLLOWING:

C . R

JUDGMENT

The petitioners say that they are members of 'Chethikkattil family' in Chazhoor village of Thrissur District. An association of members of the family by name 'Chethikkattil Kudumbakshema Sabha' (Association, for short) was functioning for the past several years and in the general body meeting of the Association convened on 31.1.2010, it was decided to convert the Association into a Trust by name 'Chethikkattil Family Welfare Charitable Trust'. The objectives of the Trust, include the upkeep of the Chethikkatt Bhuvaneswari Devi Temple and the conduct of its annual festivals and also to provide financial aid and assistance to the weaker members of the family who are in need. Accordingly, Ext. P1 trust deed with capital of Rs.10,000/- (Ten thousand) was registered by Sri. Thilakan C.C, the then President of the Association as registered deed No. 190/IV/2010 of the Sub Registrar Office, Anthikkad, Thrissur District.

2. A few months thereafter, Sri. Thilakan C.C, the executant of Ext. P1 trust deed presented for registration a

cancellation deed before the Sub Registrar Office, Vadakkumkara, Thrissur District for cancelling Ext. P1 trust deed. Accordingly, Ext. P2 deed No. 194/IV/2011 dated 23.8.2011 was registered by the Sub Registrar, Vadakkumkara cancelling Ext. P1 trust deed. The reason for revoking Ext. P1 trust deed stated in Ext.P2 is that the general body of the Association did not ratify the registration of Ext. P1 trust deed and the general body resolved to cancel the trust deed.

3. According to the petitioners, the trust deed was registered with the Sub Registrar Office, Anthikkad, but, the cancellation deed was registered at the Sub Registrar Office, Vadakkumkara, 15 Km away from Anthikkad where the trust property is situated and the trust deed was originally registered. Though one of the petitioners by application dated 22.08.2011 objected to the registration of the revocation deed before the Sub Registrar, Anthikkad, the said respondent as per Ext. P3 letter dated 25.08.2011 rejected the application by directing the said petitioner to approach the Court to resolve his grievances. According to the petitioners, registration of Ext. P2 cancellation deed in a Sub Registrar Office, other than the one where Ext.P1 was registered, is not legally

sustainable. The petitioners also contend that since the trust deed was registered as per the resolution of the general body of the Association, no ratification of the trust deed by the general body of the Association is required and the same was only a ruse to get the trust deed revoked.

4. Relying on the decision of this Court in **Noble John v. State of Kerala and Others [2010 (3) KHC 879: 2010 (3) KLT 941: ILR 2010 (3) ker.979]**, the petitioners seek to quash Ext.P2 cancellation deed and for directing the Sub Registrar, Vadakkumkara to cancel, strike off, and remove Ext. P2 deed from the register maintained by him.

5. A Counter Affidavit is filed on behalf of the 1st respondent wherein it is stated that as per Section 29(1) of the Registration Act, 1908, the executants or claimant of documents other than those covered by Section 28 of the said Act, are at liberty to present such documents either at the Sub Registrar Office of the Sub District where the document was executed or at any other Sub Registrar Office in the State where they desire to register the document and therefore there is nothing unusual about the registration of Ext. P2 document at Sub Registrar Office, Vadakkumkara. After the

registration of Ext. P2, a memorandum required under Rule 186 of the Registration Rules (Kerala), 1958 has been sent to the Sub Registrar Office, Anthikkad by the Sub Registrar, Vadakkumkara. Ext.P2 was registered strictly adhering to the Registration Act and Rules. It is further stated that, as per Rule 67 of the Registration Rules (Kerala), 1958, enquiring about the legal validity of a document presented for registration does not form the part of the duty of a Registering Officer. A Registering Officer can refuse a document presented before him for registration only under provisions described under Rule 191 of Registration Rules (Kerala), 1958. As regards the contention of the petitioners based on **Noble John's** case, supra, it is stated that the said decision was with regard to cancellation of a sale deed and Ext.P2 document is not with regard to cancellation of a sale deed, but a trust deed and as such the decision in **Noble John's** case is not applicable to the facts of this case.

6. Respondents 3, 4 and addl. 6th respondent, the President of the Association after the death of Sri. Thilakan C.C, the Secretary at the time of filing the writ petition and the later secretary respectively have filed counter affidavits

almost in similar lines as filed by the 1st respondent.

7. Heard the learned counsel for the petitioners, the learned Government pleader for respondents 1, 2 and 5 and the learned counsel for respondents 3, 4 and 6.

8. Part V of the Registration Act, 1908, deals with place of registration and Section 28 deals with place for registering documents relating to land. Section 29 deals with place for registering other documents and Section 29(1) reads as under:

“29. Place for registering other documents.—(1)
Every document [not being a document referred to in section 28 or a copy of a decree or order], may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the [State Government] at which all the persons executing and claiming under the document desire the same to be registered.”

Going by the above provision, the executants or claimant of documents other than those covered by section 28 of the said Act are at liberty to present such documents either at the Sub Registrar Office of the Sub District where the document was executed or at any other Sub Registrar Office in the State

where they desire to register the document. Further, Rule 186 of the Registration Rules (Kerala), 1958 provides that, when a document cancels a document previously registered in another office, a memorandum shall be sent to that office.

9. In the light of the provisions under Section 29 of the Act, there is nothing wrong in the registration of Ext. P2 document at Sub Registrar Office, Vadakkumkara. Since Ext. P2, not being document relating to land, it can be presented for registration in the office of any other Sub-Registrar under the State where the executant desires. In the counter affidavit filed on behalf of the 1st respondent it is stated that after the registration of Ext. P2 document, a memorandum as required under Rule 186 of the Registration Rules (Kerala), 1958 has been sent to the Anthikkad Sub Registrar Office where Ext. P1 trust deed was registered, by the Sub Registrar, Vadakkumkara. Therefore, Ext. P2 cancellation deed is not liable to be quashed, removed or struck off from the register maintained by the Sub Registrar, Vadakkumkara for the reason that the same is registered in a different Sub Registrar Office, other than the one where Ext. P1 trust deed was registered.

10. In **Noble John's** case, supra, a learned Single Judge of this Court held that the Sub Registrar is legally obliged to reject and refuse a deed of cancellation of a sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with Section 32A of the Registration Act, 1908 and further directed that all Sub Registrars of the State shall see that a deed of cancellation of sale is registered only if executed with mutual consent of all parties to the sale, complying with the provisions of the Act and Rules. The decision in **Noble John's** case, supra (common judgment), has been upheld in **Santhosh Antonio S. Netto v. Joshy Thomas and others [2020 (3) KHC 278: 2020 (3) KLT 408:2020 (3) KLJ 230]**. In **Noble John's** case, supra, the learned Single Judge after elaborately considering the proposition of law laid down by the Apex Court in various decisions with regard to the consequences of execution of sale deed, the contract entered into by and between the parties, the public policy involved in the registration of deed by and between parties, and the apparent adverse consequences in regard to the unilateral cancellation of sale deed, arrived at the conclusion that the

Sub Registrar is not vested with powers to cancel a sale deed unilaterally. To arrive at this conclusion, this Court also relied on the proviso to Section 32A of the Registration Act, 1908 which deals with compulsory affixture of photograph. Section 32A of the Act reads thus:

'32A. Compulsory affixing of photograph, etc.'

Every person presenting any document at the proper registration - office under S.32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.'

(emphasis supplied)

11. After analyzing the laws relating to transfer of immovable properties in India, and relying on the proviso to section 32A of the Registration Act, 1908, this Court in **Noble John's** case, supra, came to the conclusion that cancellation of sale deed can be only bilateral and the Sub Registrar is legally obliged to reject and refuse a deed of cancellation of a

sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with Section 32A of the Registration Act, 1908. While the proviso to Section 32A deals with document relating to the transfer of ownership of immovable property, the principal Section 32A deals with any document other than document relating to the transfer of ownership of immovable property provided in the proviso and provides that every person presenting any document at the proper registration - office under Section 32 shall affix his passport size photograph and fingerprints to the document. So, as far as registration of trust deed or cancellation of trust deed where transfer of ownership of immovable property is not involved, it is the main section, i.e., Section 32A and not the proviso that applies. A trust deed cannot be equated with a sale deed. **Noble John's** case, *supra*, did not deal with cancellation of trust deed. Therefore, the contention of the petitioners based on **Noble John's** case to assail Ext. P2 cancellation deed is only to be rejected.

12. The application dated 22.08.2011 submitted before the 5th respondent by the 6th petitioner objecting to the registration of the cancellation deed is not produced in the

writ petition. According to the 1st respondent, as per Rule 67 of Registration Rules (Kerala), 1958, a Registering Officer can refuse a document presented before him for registration as per provisions under Rule 191 of Registration Rules (Kerala), 1958 and none of such heads/ conditions existed to refuse registration of Ext. P2. The facts set forth in the writ petition to plead non compliance with Section 32A is absolutely vague. From a perusal of Exts. P1 and P2 documents it can be seen that these documents are affixed with passport size photograph of the executant with the seal of the Registering Officer. Though not very clear, from Ext. P2 (which is a photocopy of the original document, marked in the writ petition), a finger print is seen affixed below the stamp print on the first page on the left side of the photograph. The Sub Registrar has not chosen to refuse registration of Ext. P2 under Rule 191 VIIA for non compliance with Section 32A of the Registration Act read with Rule 30A (i) & (iii) of the Registration Rules (Kerala) and this Court will not wade through the records of the registering officer and examine the same in a writ petition under Article 226 of the Constitution of India. Without prejudice to the petitioners' right if any, to take

recourse to any legal remedies as may be available in law, the writ petition is dismissed. No order as to costs.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

spc

APPENDIX OF WP (C) 2849/2012

PETITIONER EXHIBITS

EXHIBIT P1 THE TRUE COPY OF THE REGISTERED DEED
NO.190/2010 DATED 10.08.2010 OF THE
ANTHIKKAD SUB REGISTRAR OFFICE.

EXHIBIT P2 TRUE COPY OF THE CANCELLATION DEED
NO.194/2011 DATED 23.08.2011 OF THE
VADAKKUMKARA SUB REGISTRAR.

EXHIBIT P3 TRUE COPY OF THE ORDER DATED
25.08.2011 OF THE 5TH RESPONDENT.