



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

THURSDAY, THE 29<sup>TH</sup> DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945

WP(C) NO. 33749 OF 2023

PETITIONERS:

- 1 MARY MOHAN CHACKO  
AGED 60 YEARS  
W/O MOHAN CHACKO EAPEN MANNIL HOUSE, KESAVADASAPURAM,  
PATTOM . P.O. THIRUVANTHAPURAM. , PIN - 695004
- 2 MOHAN CHACKO EAPEN  
AGED 67 YEARS  
S/O. K.E.CHACKO, MANNIL HOUSE, KESAVADASAPURAM, PATTOM .  
P.O. THIRUVANTHAPURAM. , PIN - 695004

BY ADVS.SINDHU SANTHALINGAM  
A.D.SHAJAN, ABRAHAM K GEORGE

RESPONDENTS:

- 1 INSPECTOR GENERAL  
DEPARTMENT OF REGISTRATION VANCHIYOOR.P.O.  
THIRUVANTHAPURAM. , PIN - 695035
- 2 DEPUTY INSPECTOR GENERAL  
DEPARTMENT OF REGISTRATION OPP MAHARAJA'S GROUND,  
KOCHI, ERNAKULAM, PIN - 682011
- 3 SUB REGISTRAR  
S.RO. EDAPPALLY, AIMS. PO ERNAKULUM. , PIN - 682041
- 4 SUB REGISTRAR  
PATTOM MUTTADA, MUTTADA P.O. , THIRUVANANTHAPURAM. ,  
PIN - 695025
- 5 SHEELA JACOB  
W/O JACOB PHILIP, PLAMOOTIL HOUSE, 40/2832,  
PADIVATTOM. , PIN - 682024
- 6 SUJA GEORGE  
W/O GEORGE KURIAKOSE, FLAT NO. 2 C , GARDEN VIEW  
APARTMENT, ANSALS, RIVERDAL; EROOR, PIN - 682306

R5 & R6 BY ADV.SREEKANTH K.M.  
GP - DEEPA V.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**VIJU ABRAHAM, J.****“CR”**

.....  
**W.P (C) No.33749 of 2023**  
.....

Dated this the 29<sup>th</sup> day of February, 2024**JUDGMENT**

Petitioner has approached this Court seeking to quash Ext.P3 Will.

2. Bare facts of the case necessary for the disposal of the writ petition are as follows: 1st petitioner is the wife of the 2nd petitioner, who is the eldest son of late Chinnamma Chacko, who is the testatrix of Ext P1 will and respondents 5 and 6 are her children. The testatrix's husband is late K. E. Chacko. It is contended that the testatrix is having certain extent of properties and she has executed Ext.P1 registered Will No.106 of 1996 of Sub Registrar Office, Pattom. Petitioners contend that going by Ext.P1 Will it is executed in favour of the petitioners. The testatrix died on 10.01.2015 as is evident from Ext.P2 death certificate. It is the contention of the petitioners that the testatrix's husband has cancelled Ext.P1 Will executed by the testatrix and registered a new Will, Ext.P3 as document No.38/III/2022 of Sub Registrar Office, Edappally. The 1st petitioner lodged Ext.P4 complaint before the 1st respondent and by Ext.P5 order the matter was directed to be enquired into. Thereafter 2nd respondent after inquiry issued Ext.P6 communication essentially holding that since the Will is registered, it can only be cancelled through an order of a competent court. It is in the said circumstance that the



petitioners have approached this Court seeking to quash Ext.P3 Will.

3. A counter affidavit has been filed on behalf of respondents 5 and 6 mainly contending that a writ petition is not maintainable in as much as the validity of a Will cannot be a subject matter of a writ petition under Article 226 of the Constitution of India. On the factual aspect they would contend that the husband of the testatrix has been given ample power as per Ext.P1 Will itself to amend or cancel the terms of the Will and it is invoking the said power that Ext.P3 Will was executed. Disputes regarding the contents of the Will can only be adjudicated in a civil court. The counter affidavit further states that late K.E.Chacko who executed Ext.P3 also submitted Ext.R5(b) objection before the registering authority and Ext.R5(c) complaint was also preferred by him challenging the findings in Ext.P6. It is further contended that though Ext.P1 Will was executed, late K.E.Chacko who executed Ext.P3 Will was under the impression that his son and his wife would take care of him and his wife, but they neglected to take care of them and thereafter late K.E.Chacko was residing along with his younger daughter and that K.E.Chacko has also preferred Ext.R5(a) complaint against his son before the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

4. The only question to be considered is whether the veracity of Ext.P1 Will could be examined by this Court and a writ of certiorari could be issued quashing Ext.P3 registered Will. Petitioners rely on Ext.P8 judgment of the Madras High Court in W.P. No.25234 of 2011 to contend for the position that



this Court has sufficient power to look into the terms of the Will and issue orders quashing the same. That was a case where after a property had been transferred by way of a release deed, the same was unilaterally cancelled by executing a cancellation deed. In that case, the court interfered on the ground that the registering authority should not have registered the cancellation deed which unilaterally cancelled the release deed. The learned counsel for the petitioners also relies on the judgment of this Court in W.P.(C) No.16402 of 2015 wherein also the court was considering a question as to whether after executing a registered sale deed, the vendor of the property could unilaterally execute a deed cancelling the said sale deed. In both these cases, the court considered the unilateral cancellation of a sale deed without the consent or knowledge of the owner and held that the same cannot be treated as valid as the same is void *ab initio*. It is in the said circumstance that the courts interfered under Article 226 of the Constitution of India.

5. The issue here is as to the interpretation of the terms of the Will. Petitioners contend that late K.E.Chacko cannot execute Ext.P3 Will in respect of the property which was bequeathed by late Chinnamma Chacko, his wife as per Ext.P1. But the contention of the party respondents is that even in Ext.P1 Will it is specified that the Will shall come into effect only after the death of the testatrix and her husband and during the lifetime of the testatrix and her husband, the terms of the Will can be amended or cancelled by them. Relying on the said recital in Ext.P1 Will, it is contended that the



execution of Ext.P3 Will is in accordance with the law. Therefore, the issue herein is essentially the interpretation of the contents of Ext.P1 Will and whether Ext.P1 Will has given any power to late K.E.Chacko to execute Ext P3 Will. I am of the opinion that these are all matters that should be agitated before a competent civil court and the same cannot be adjudicated in a writ proceedings.

6. Section 83A of the Registration Act, 1908 deals with the cancellation of registered documents in certain cases. Section 83A(1) reads as follows:

*“83A.Cancellation of registered documents in certain cases.-(1) If on enquiry by an officer in the Registration Department not below the rank of the Deputy Inspector General of Registration, it is found that some one has falsely personated another. and in such assumed character presented, admitted the execution and got registered any document by a registering officer and the existence of such a document is detrimental to the interest of another person, the same shall be cancelled by the Inspector General of Registration on application made to him in such form as may be prescribed.”*

*“underline supplied”*

Going by Section 83A, a registered document could be cancelled by the registration authorities, ie., Inspector General of Registration only on finding that someone has falsely personated another, and in such assumed character presented, admitted the execution and got registered any document by a registering officer and the existence of such a document is detrimental to the interest of another person. Therefore the Registration Act, 1908, only gives power to the registering authorities to cancel a registered deed only in case of



false impersonation.

7. It is profitable to refer to Section 31 of the Specific Relief Act dealing with the cancellation of instruments. Section 31 reads as follows:

*“31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*

*(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”*

The “instrument” referred to in Section 31 also includes a Will (see the judgment in **Ganga Prasad vs Munna Lal & Others AIR 2018 (NOC) 619 (ALL)**) and therefore the petitioners if aggrieved by Ext P3 Will, have to approach the competent civil court for cancellation of the same.

8. The Apex Court in **Satya Pal Anand v. State of M.P. and others, 2016 (10) SCC 767** has held that once a document is registered, it is not open to the registering authority to cancel that registration even if its attention is invited to some irregularity committed during the registration of the document and the aggrieved party can challenge the registration and validity of the document before the civil court. A similar issue came up for consideration before this Court in **Sivadasan v. Sub Registrar, Malappuram and others,**



**2019 (2) KLT OnLine 2095** and relying on the judgment in **Satya Pal Anand's** case cited supra, this Court held that it is for the aggrieved party to approach the competent civil court for appropriate reliefs.

In view of the facts and circumstances as stated above, I am of the opinion that if the petitioners are aggrieved by Ext.P3 Will, they have to approach the competent civil court seeking appropriate relief.

The above writ petition fails and is accordingly dismissed.

Sd/-

**VIJU ABRAHAM  
JUDGE**

APPENDIX OF WP(C) 33749/2023

## PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE WILL NO. 106 OF 1996 REGISTERED AT SUB REGISTRAR OFFICE, PATTOM.
- Exhibit P2 A TRUE COPY OF THE DEATH CERTIFICATE DTD. 2/9/2023 OF SMT. CHINNAMMA CHACKO ISSUED BY THIRUVANANTHAPURAM CORPORATION.
- Exhibit P 3 A TRUE COPY OF THE NEW WILL NO. 38/III/2022 REGISTERED AT THE OFFICE OF THE SUB REGISTRAR OFFICE, EDAPPALLY ON 7/2/2022.
- Exhibit P4 A TRUE COPY OF THE COMPLAINT DTD. 12/10/2022 FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- Exhibit P5 A TRUE COPY OF THE LETTER DATED 20/10/2022 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT
- Exhibit P 6 A TRUE COPY OF THE LETTER DTD. 21/11/2022 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- Exhibit P7 A TRUE COPY OF THE DEATH CERTIFICATE DTD. 11/8/2023 OF TESTATRIX'S HUSBAND LATE K E CHACKO ISSUED BY THE THRIIPPUNITHURA MUNICIPALITY.
- Exhibit P8 A TRUE COPY OF THE JUDGMENT DTD. 19/8/2021 IN W P 25234/2011 OF THE MADRAS HIGH COURT

## RESPONDENT EXHIBITS

- EXHIBIT R5(a) The true copy of the Complaint filed by the K.E.Chacko before the Hon'ble Tribunal Constituted under the maintenance and welfare of parents and senior citizens act, 2007 against the petitioners dated 25/10/2022
- EXHIBIT R5(b) The True copy of the Counter filed by K.E.Chacko before the Second respondent dated 31/10/2022
- EXHIBIT R5(c) The True copy of the complaint filed against the second respondent before the first respondent dated 26/12/2022