

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 7TH DAY OF NOVEMBER 2022 / 16TH KARTHIKA, 1944

WP (C) NO. 29407 OF 2021

PETITIONERS:

- 1 SABEELA P
AGED 38 YEARS
W/O. RAFEEQ, KALLULLA PARAMBATH KUTTIYIL HOUSE, P.O
PONMERIPARAMBIL, VADAKARA TALUK, KOZHIKODE DISTRICT 673
542

- 2 HAJARA C K
AGED 42 YEARS
W/O. LATE NAZEER C K, RESIDING AT RASIYATH MANZIL,
PUTHUPPANAM P.O, , VADAKARA TALUK, KOZHIKODE DISTRICT
673 542

BY ADVS.
ZUBAIR PULIKKOOL
BINU.P.S
SIVASANKARAN T.

RESPONDENT:

THE SUB REGISTRAR
SUB REGISTRAR'S OFFICE,
VADAKARA P.O, VADAKARA TALUK,
KOZHIKODE DISTRICT 673 101

SMT. DEEPA. V. GP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAVI, J.

W.P.(C.).No.29407 of 2021

Dated this the 7th day of November, 2022

JUDGMENT

Admit. Government Pleader takes notice for the respondent.

2. The prayer in the writ petition is to quash Ext.P7 order dated 09.11.2021 and declare that the petitioners are entitled to present Ext.P2 deed of partition for registration, since Ext.P1 is not binding on the minors under the provisions of Mohammedan Law. There is also a prayer for declaring Ext.P1 as a void document.

3. The facts required for deciding the case are as follows:

The petitioners executed a partition deed on 26.08.2019 numbered as 1117/2019 of SRO Vadakara, wherein the 2nd petitioner had acted as guardian of minor children, Muhammed Farsin and Muhammed Hijas. It is submitted that since the parties are Mohammedans, a mother could not have executed the document on behalf of the minor children without the sanction of the competent court and hence the document itself is not valid in law. The 2nd petitioner thereafter filed O.P(G).No.728/2019 before the District Court, Kozhikode for appointment of the 2nd petitioner as a guardian of the minors. The said original petition was allowed by order dated

14.02.2020 appointing the 2nd petitioner as guardian to deal with the immovable properties of the minors, especially the property covered by Ext.P1 which is a partition deed executed on 26.08.2019. The petitioners thereafter prepared another partition deed on 09.03.2021 in identical terms of Ext.P1, the only difference being that the minors were represented by the mother as per the order in O.P(G).No.728/2019. The respondent refused to register Ext.P2 partition deed as per Ext.P3 order wherein it is stated that the earlier document Ext.P1 has to be got set aside in appropriate proceedings. The petitioners have challenged Ext.P3 in this writ petition.

Ext.P4 produced along with the writ petition contains the relevant pages from Mulla's Mohammedan Law dealing with the Guardianship of minors. It can be seen therefrom that the guardians of the property of minor are the father, the executor appointed by the father's Will, father's father or the executor appointed by the Will of the father's father. The only other person who can deal with the properties of the minor is a guardian who is appointed by a competent court. The petitioners have also produced Ext.P5 judgment of the Hon'ble Supreme Court in **Mohd.Ammin and others v. Vakil Ahmad and others** reported in **[AIR 1952 SC 358]**. The Hon'ble Supreme Court held that transfer of minor's property by way of family settlement by brother as guardian is void and not binding on the minor, irrespective of the considerations.

Reliance is also placed on the judgment in **Prem Singh and others v. Birbal and others** reported in [(2006) 5 SC 353]. The Hon'ble Supreme Court held that when a document is valid, no question arises of its cancellation, but when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of law, as it would be a nullity. In view of the decisions aforesaid, Ext.P1 has to be held to be a void document which does not require to be set aside by a decree since it is non est in the eye of law. In the above circumstances, the reasoning in Ext.P3 that the petitioners will have to get the documents cancelled is not legally sustainable. The writ petition is hence allowed. Ext.P3 is set aside. The respondent is directed to register the original of Ext.P2 document as an when it is presented, if it is otherwise in order.

Sd/-
T . R . RAVI
JUDGE

APPENDIX OF WP(C) 29407/2021

PETITIONER EXHIBITS

- Exhibit P1 THE PARTITION DEED EXECUTED BY
PETITIONERS DT 26-08-2009 NO 1117/2019 OF
SRO VATAKARA
- Exhibit P2 THE PARTITION DEED EXECUTED BY
PETITIONERS DT 9-3-2021
- Exhibit P3 THE TRUE COPY OF ORDER PASSED BY THE
RESPONDENT DT 13-04-2021
- Exhibit P4 THE RELEVANT PAGES MULLA'S MOHAMMEDAN LAW
PAGE 456-459
- Exhibit P5 THE TRUE COPY OF THE JUDGMENT IN 1952 KHC
346
- Exhibit P6 THE TRUE COPY OF THE JUDGMENT IN WPC
15896/2021 DATED 26-10-2021
- Exhibit P7 THE TRUE COPY OF ORDER PASSED BY THE
RESPONDENT DATED 09-11-2021