

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 6TH DAY OF OCTOBER 2022 / 14TH ASWINA, 1944

WP(C) NO. 12944 OF 2011

PETITIONERS:

1 ANVAR SADATH IBRAHIMKUTTY
JINCY HOUSE, KANNANALLOOR, KOLLAM, REPRESENTED BY
HIS POWER OF ATTORNEY HOLDER MRS. SUBAIDA BEEVI,
KAITHAVARATH ARAKKAL VEEDU, KOLLAM,
KOLLAM DISTRICT.

2 MRS. SUBAIDA BEEVI
KAITHAVARATH ARAKKAL VEEDU, KOLLAM.

BY ADVS.
SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.S.NIKHIL SANKAR

RESPONDENTS:

1 THE CHIEF REGISTRAR GENERAL OF MARRIAGES
(COMMON) (THE DIRECTOR OF PANCHAYAT),
PANCHAYAT DIRECTORATE, THIRUVANANTHAPURAM-695 011

2 THE REGISTRAR GENERAL OF MARRIAGES
(COMMON),
THE DEPUTY DIRECTOR OF PANCHAYAT),
KOLLAM DISTRICT - 691 001.

3 THE LOCAL REGISTRAR OF MARRIAGES
(COMMON), (SECRETARY, THRIKKOVILVATTAM GRAMA
PANCHAYATH),
OFFICE OF THE THRIKKOVILVATTAM GRAMA PANCHAYATH,
MUKHATHALA, KOLLAM - 691 001.

4 MR.IBRAHIMKUTTY
JINCY HOUSE, KANNANALLOOR P.O., KOLLAM - 691 576.

BY ADVS.
SRI.S.M.ALTHAF
SRI.B.SURESH KUMAR

OTHER PRESENT:

SR GP JUSTIN JACOB
GP SRI.K.M.FAISAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06.10.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

W.P.(C) No. 12944 of 2011

Dated this the 6th day of October, 2022

JUDGMENT

When this writ petition was filed, the 1st petitioner was working abroad, hence the writ petition was filed through his power of attorney holder, Smt.Subaida Beevi. The 2nd petitioner is the Mother-in-law of the 1st petitioner, and she is the mother of Khadeeja K.S, the wife of the 1st petitioner. She filed this writ petition representing her daughter because her daughter was also abroad at the time of filing this writ petition. The 1st petitioner married Khadeeja K.S on 26.11.2009 as per the religious rites and ceremonies under the Muslim law. It is stated that the marriage was solemnized by the Imam of Salafi Centre, and in the presence of the brother of the bride Mr.Mujeeb Rahman. The marriage was registered under The Kerala Registration of Marriages

(Common) Rules, 2008 (for short, "the Rules, 2008"). Ext.P1 is the marriage registration certificate. It is submitted that the 4th respondent, who is the father of the 1st petitioner, was not happy with the marriage of the 1st petitioner with Khadeeja. He filed a complaint before the 3rd respondent, the Local Registrar of Marriages (Common), seeking cancellation of Ext.P1, the marriage registration certificate alleging that the marriage was not solemnized as per the Muslim law. The 3rd respondent, after hearing the 4th respondent and after examining all the relevant records, passed an order rejecting the complaint as evident by Ext.P2. Thereafter, Ext.P2 was challenged by the 4th respondent by filing an appeal before the 2nd respondent, the Registrar General of Marriages(common). The 2nd respondent passed an order allowing the complaint preferred by the 4th respondent and cancelled Ext.P1 marriage registration. Ext.P3 is the order. Against Ext.P3 order, the 1st petitioner, along with his wife Khadeeja preferred a revision petition under Rule 17 of the

Rules, 2008 before the 1st respondent, the Chief Registrar General of Marriages(common). The revision petition was also rejected as per Ext.P4 order. Consequently, the 3rd respondent issued an order on 16.02.2011 cancelling Ext.P1 certificate of registration of marriage. Ext.P5 is the order. Thereafter, a notice was served on the petitioner by the 3rd respondent directing the petitioner to surrender Ext.P1 marriage certificate. Ext.P6 is the notice. Aggrieved by Exts.P3 to P6, this writ petition is filed.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. The counsel for the petitioners submitted that the respondents cancelled the marriage certificate based on a complaint filed by the 4th respondent, who is the father of the 1st petitioner and the father -in law of his wife. It is the submission of the petitioners that the 4th respondent cannot be treated as 'parties to the marriage' as stated in Rule 13 of the Rules, 2008. Therefore, respondents 1 and 2 erred in

entertaining the complaint relying on rule 13 of the Rules, 2008 is the contention. It is also submitted that the respondents 1 and 2 have no jurisdiction to decide the validity of the marriage and the validity of a marriage can be decided only by a Civil Court. On the other hand, the Government Pleader supported the impugned orders and submitted that there is no need to interfere with the same.

4. This Court considered the contentions of the petitioners and the Government Pleader.

5. Admittedly, the impugned orders were passed based on a complaint filed by the 4th respondent. The 4th respondent is the father of the 1st petitioner and the father in law of his wife. Now the question to be decided in this case is whether the 4th respondent has got the authority to file an application under Rule 13 of the Rules, 2008. For deciding the same, it will be better to extract Rule 13 of the Rules, 2008.

“13. Correction and cancellation of entries.- (1) If the Local Registrar is satisfied either suo motu or on

application by the parties, that any entry in the Register of Marriages (Common) is erroneous in form or substance or has been fraudulently or improperly made, he shall subject to conditions in sub-rule (2), make suitable corrections including cancellation of registration, noting the evidence for such corrections in the margin of the Register of Marriages (Common), without any alteration of the original entry and shall sign the marginal entry with the date of correction or cancellation and shall forward the particulars of the corrections to the Registrar General concerned.

(2) All corrections in material particulars like name, age, date etc., and cancellation shall be done only with the sanction of the Registrar General concerned:

Provided that no such correction or cancellation shall be made without affording a reasonable opportunity of being heard to the parties concerned.

(3) On getting sanction under sub-rule (2), the Local Registrar shall effect the correction or cancellation, as the case may be, in the Register of Marriages (Common).

(4) An amount of rupees one hundred shall be charged as the fee for making corrections in the Register of Marriages (Common) other than clerical mistakes.

(5) In every case in which an entry is corrected or

cancelled under this Rule, intimation thereof shall be sent to the parties to the marriage and the Local Registrar shall make a report giving necessary details to the Registrar General concerned.”

6. From a reading of Rule 13, it is clear that the Local Registrar can either *suo motu* or, on the application by the parties, entertain an application for correction and cancellation of entries in the Register of Marriages (Common). Thus two procedures are mentioned in Rule 13 for invoking the powers of the Registrar. One, it should be *suo motu* or two, it should be on the application of the parties. Whether the 4th respondent will come within the purview of 'parties' mentioned in Rule 13 is the question to be decided in this case. From a plain reading of Rule 13 of Rule 2008, it clear that the 'application of the parties' referred to in Rule 13(1) means the parties to the marriage. Parties to the marriage means the spouses, that is husband and wife. A third person who is not a party to the marriage cannot file an application for correction or cancellation of entries. This is clear from Rule

13 itself. Therefore, in my opinion, an application for cancellation of the entry in the Register of Marriages (Common) cannot be entertained by respondents 1 to 3 at the instance of a third person. Even though the 4th respondent is the father of the 1st petitioner and the father-in-law of his wife, he is not a party to the marriage. Under such circumstances, the impugned orders passed by respondents 1 and 2 at the instance of the 4th respondent are unsustainable.

7. A division bench of this Court in **Abdul Samad v. Valanchery Municipality [2020 (3) KLT 304]** observed that a reading of Rule 13 makes it clear that in more than one place, the legislature has used the words "parties to the marriage" which means only the spouses and not any other person. Similarly, in **Rajesh Rajan v. Chief Registrar General of Marriages (Common), Tvm and Others [2015 (3) KLT 27]**, it is observed that a party to the marriage cannot relegate the right to apply under Rule 13 even to a power of attorney holder. In **Lakshmi S.S. v. State of**

Kerala and Others [2018 (4) KHC 204], this Court observed that even if there is any illegality in solemnization of marriage, it cannot be adjudicated by the Registrar, invoking the powers conferred under Rule 13 of the Rules 2008. Such marriages can only be annulled by a competent court in accordance to law.

8. In the light of the above decisions, it is clear that the authorities can entertain an application under the Rule 13 of Rules 2008 only at the instance of the parties to the marriage. Similarly, the validity of the marriage cannot be decided by the Registrar by invoking the powers under Rule 13 and it can be decided only by a competent court. Therefore, this writ petition is to be allowed.

Therefore, this writ petition is allowed, and Exts.P3 to P6 are quashed.

das/JV

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX

PETITIONER'S EXTS:

EXT P1: COPY OF MARRIAGE REGISTRATION CERTIFICATE NO.M1-2/2010(01) DTD 25.1.2010.

EXT P2: COPY OF ORDER NO.M1-2389/2010 DTD 6.7.2010 ISSUED BY R3.

EXT P3: COPY OF ORDER ISSUED BY R2 NO. B1-3226/2010 DTD 28.9.2010

EXT P4: COPY OF ORDER ISSUED BY R1 No.B1-37229/2010 K.DIS DTD 22.1.2011

EXT P5: COPY OF ORDER NO.M1-2389/2010 DTD 16.2.2011

EXT P6: COPY OF NOTICE ISSUED BY R3 DTD 15.3.2011

RESPONDENTS EXTS: NIL

TRUE COPY

P.A.TO JUDGE