

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 6709 of 2013 (K)

PETITIONERS:

1. M.P.ASHOK KUMAR AGED 57 YEARS
S/O. PADMARAJ GOWDER, PLANTER
RESIDING AT ANUGRAHA HOUSE, WARD NO. 18
MUTTIL GRAMA PANCHAYATH, PARIYARAM POST, ALPETTA
WAYANAD - 673 122.

2. PRAANTH RAJORE
S/O. BRIJILAL RAJORE, AGED 38 YEARS
REIDING AT ART OF LIVING CAMPUS, VISWAMITRA BUILDING
KANAKAPURA ROAD, UDAYAPURA, BANGALORE - 560 082
KARNATAKA.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENTS:

1. STATE OF KERALA
REP. BY THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695601

2. THE DISTRICT REGISTRAR (GENREAL)
WAYANAD.673122

3. THE SUB REGISTRAR
OFFICE OF THE SUB REGISTRAR, KALPETTA
WAYANAD DISTRICT.673122

SRI.NOUSHAD THOTTATHIL, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE GIFT DEED EXECUTED BY THE 1ST PETITIONER IN FAVOUR OF THE 2ND PETITIONER IN THE LATTER'S CAPACITY AS TRUST MEMBER OF VED VIGNAM MAHAVIDYA PEETH.

EXHIBIT-P2-TRUE COPY OF THE GIFT DEED EXECUTED BY THE 1ST PETITIONER IN FAVOUR OF THE 2ND PETITIONER IN THE LATTER'S CAPACITY AS TRUST MEMBER OF VAIDIC DHARMA SANSTHAN.

EXHIBIT-P3-TRUE COPY OF THE SPECIAL POWER OF ATTORNEY EXECUTED BY THE 2ND PETITIONER IN FAVOUR OF SRI.K.J. VIJAYAKUMAR, ADVOCATE IN RESPECT OF EXHIBIT-P1 DOCUMENT.

EXHIBIT-P4-TRUE COPY OF THE SPECIAL POWER OF ATTORNEY EXECUTED BY THE 2ND PETITIONER IN FAVOUR OF SRI.K.J. VIJAYAKUMAR, ADVOCATE IN RESPECT OF EXHIBIT-P2 DOCUMENT.

EXHIBIT-P5-TRUE COPY OF THE APPEAL FILED BY THE 1ST PETITIONER FOR THE REGISTRATION OF THE 1ST DOCUMENT.

EXHIBIT-P6-TRUE COPY OF THE APPEAL FILED BY THE 1ST PETITIONER FOR THE REGISTRATION OF THE 2ND DOCUMENT.

EXHIBIT-P7-TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT REGARDING REGISTRATION OF THE 1ST DOCUMENT.

EXHIBIT-P8-TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT REGARDING REGISTRATION OF THE 2ND DOCUMENT.

EXHIBIT-P9-TRUE COPY OF THE REPRESENTATION FILED BY THE TRUSTEE OF VED VIGNAM MAHAVIDYA PEETH BEFORE THE HONOURABLE MINISTER IN CHARGE OF REGISTRATION DEPARTMENT.

EXHIBIT-P10- TRUE COPY OF THE REPRESENTATION FILED BY THE TRUSTEE OF VAIDIC SANSTHAN FILED BEFORE THE HONOURABLE MINISTER IN CHARGE OF THE REGISTRATION DEPARTMENT.

RESPONDENTS' EXHIBITS : NIL

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

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W.P.(C) No.6709 of 2013
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Dated this the 28th day of May, 2015

JUDGMENT

The 1st petitioner executed two gift deeds- Exts.P1 and P2- in favour of the 2nd petitioner, by which his properties having an extent of (1) 2 hectars, 6 Ares and 80 squire meters and (2) 20 ares and 24 squire meters of land with a temple therein, in Resurvey No.209/17 in Muttill South Village, were donated to the Vaidic Dharma Sansthan, which is a Public Charitable and Religious Trust. The 2nd petitioner is one of the members of the Trust. The gift deed was executed and properties were handed over by the donor and accepted by the donee on 11.4.2011. Both the petitioners had put their signatures and completed all the formalities for registration of the gift deeds. After execution of the gift deeds, the 1st petitioner presented the same before the Sub Registrar's Office, Kalpetta for registration. The 2nd petitioner, after putting his signature in the documents, went to Bangalore and thereafter he went abroad.

2. According to the petitioners, they were given to

understand that the donor alone need present the document before the Registering Officer. It was the reason why the 2nd petitioner left the place immediately after the document was executed. As the donee was not present at the time of presenting the document before the Registering Officer, the Sub Registrar did not register the document and awaited the presence of the 2nd petitioner.

3. Thereafter, after the expiry of 4 months of presentation of the document before the Sub Registry Office, the Sub Registrar issued Ext.P7 order, refusing its registration. The reason stated was that the 2nd petitioner who was the donee did not report before the Sub Registry Office within the permitted period of 4 months. He did not also submit any application for extension of time for presentation of the document. The 2nd petitioner could not present the document, as he was abroad. In these circumstances he executed a special power of attorney in favour of one Mr.K.J.Vijayakumar, in order to represent him to present the document on his behalf.

4. After execution of the special power of attorney, the

1st petitioner along with the special power of attorney holder, representing the 2nd petitioner, filed Exts.P5 and P6 appeals before the District Registrar. In the appeals they explained that they had completed all the formalities for registration of the gift deed, except for the personal presence of the donee. Permission was sought therefore for the special power of attorney holder to represent the 2nd petitioner, granting sufficient time to register the gift deed and requested for cancelling the order passed by the Sub Registrar refusing registration. After conducting an enquiry into the matter, the District Registrar dismissed the appeals as per Exts.P7 and P8 orders dated 3.4.2012 stating that the donee, ie. the 2nd petitioner, did not present himself before the Sub Registrar within the prescribed period of 4 months as provided under section 24 of the Registration Act (herein after referred to as the 'Act' for short). They did not also request for condonation of delay by submitting any application as provided under section 25 of the Act. The District Registrar found that the action of the Sub Registrar was correct in refusing the registration, since the 2nd petitioner did not report for presenting

the document within the 4 months period and no action was taken under section 35 of the Act to take steps to bring the donee before the Registering Officer. It was stated therein that when one of the parties did not appear before the registering authority, it will be deemed to be a denial and therefore the action of the Sub Registrar under section 34(1) of the Act was quite legal.

5. I heard Dr.George Abraham, the learned counsel appearing for the petitioners and Sri.Noushad Thottathil, the learned Government Pleader appearing for the respondents.

6. According to Dr.George Abraham, the District Registrar went wrong in rejecting the appeals submitted by the petitioners treating them as applications under section 73 of the Act. It was argued that the parties to the deed had completed all the formalities except for the personal appearance of the Donee for presenting the document. The gift was complete by handing over the properties to the donee who accepted it. In fact, the donor, who conveyed the property, was present. It was the donee who was unable to appear before the Registering Officer, as he was

abroad. It cannot be said that there was denial on the part of the donee, since he did not present himself before the Registering Officer. As far as the gift deed is concerned, the property covered by it was voluntarily assigned to the 2nd petitioner on behalf of a Trust, by the 1st petitioner and the donor, the 1st petitioner, had already handed over the property; he had already put his signature and presented the document on 11.4.2011. According to the petitioners, though as per the provisions contained in section 24 of the Act, the proceedings for registration should have been completed within a period of 4 months, before which the donee had to appeared before the registering officer, when there was a provision for extension of time for presentation of document, a genuine case like the present one ought not have been rejected.

7. The learned Government Pleader, vehemently opposed the contentions raised on behalf of the petitioners with reference to the very same legal provisions contained in the Act. According to him, the petitioners did not approach the Sub Registrar or Registrar seeking extension of time which was

permissible under section 23 as well as 25. According to him, when opportunities are available for the petitioners for getting the document registered, the petitioners cannot be heard to contend that either they were unaware of the requirement of their presence before the Registering Officer or the time prescribed for completion of the registration of document or the provisions for seeking extension of time. Similarly, it is also his case that petitions Exts.P5 and P6 can only be treated as applications under section 73. Because, according to him, it is a case where the order of refusal by the Sub Registrar is on the ground of denial of execution. In the event of such refusal, the only remedy available to the petitioners was to submit application as provided under section 73. Since no appeal lies when there is denial of execution, the Sub Registrar refused to register the documents on the ground of denial. According to him, therefore, the Registrar has passed orders strictly in accordance with law and the only remedy available to the petitioners is to approach the Civil Court under section 77 of the Act.

8. In order to examine the legality of the orders impugned, it is necessary to have a look at the provisions contained in sections 23, 24, 25, 34, 72, 73 and 74 to 77 of the Act and Rules 195 as well as 204 of the Registration Rules, which read as follows:

"23. Time for presenting documents.— Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final."

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24. Documents executed by several persons at different times.— Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

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25. Provision where delay in presentation is unavoidable.— (1) If, owing to urgent necessity

or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time herein before prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

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34. Enquiry before registration by registering officer.— (1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in

addition to the fine, if any payable under Section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

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72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.— (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the

Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within 30 days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Section 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

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73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.— (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within 30 days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under Section 71, and the statements in the

application shall be verified by the applicant in the manner required by law for the verification of the complaints.

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74. Procedure of Registrar on such application.— In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

- (a) whether the document has been executed;*
- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.*

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75. Order by Registrar to register and procedure thereon.— (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first

duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court and he may also direct by whom the whole or any part of the costs of any such shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of 1908).

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*76. Order of refusal by Registrar.— (1)
Every Registrar refusing*

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under Section 72 or Section 75, shall make an order of refusal and record the reasons for such order in his Book No.2, and, on application made by any person executing or claiming under the document without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section, or Section 72.

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77. Suit in case of order of refusal by Registrar.— (1) Where the Registrar refuses to order the document to be registered, under

Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration Within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit."

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Rules:

"195. (i) An appeal under Section 72 or an application under Section 73 of the Act, shall be presented in writing to the Registrar of the district, or to the officer-in-charge of the Registrar's Office, accompanied by a copy of the refusal order appealed against and the original document in respect of which the order was passed.

(ii) When the document is stated to be in the possession of some person other than the appellant and the latter desires time to obtain and produce it or the issue of a summons for its

production, the request may be complied with and the appeal or application admitted pending receipt of the document."

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"204: Where a refusal order is based on the ground that the executant is purposely keeping out of the way in order to evade registration or has gone to a distant place and is not likely to return to admit execution and the non-appearance is treated as tantamount to denial of execution, the application may be accepted by a Registrar under Section 73, and the fact of execution enquired into as if execution had been specifically denied."

9. Section 23 of the Act provides that no document shall be accepted for registration, unless presented to the Registering Officer within 4 months of its execution. Section 24 provides that when there are several persons executing a document at different times, such document may be presented for registration and re-registration within 4 months from the date of each execution. In the present case, there are 2 persons who are executing the document. Section 25 provides that in the event of any urgent necessity or unavoidable accident, the document could not be presented for registration within the prescribed

time, the Registrar may direct acceptance of the document for registration in cases where the delay in presentation does not exceed four months, on conditions. Section 34 provides that no document shall be registered under this Act, unless the persons executing the document or their representatives or agents authorised appear before the Registering Officer within the time allowed for registration under section 23, 24, 25 and 26. On appearance of the parties, the Registering Officer has to enquire whether the document was executed by the person by whom he purports to have been executed, satisfy himself as to the identity of the person appearing before him and in the case of any person appearing as representative or agent satisfy himself the right of such person so to appear. Section 35 provides for the procedure for admission and denial of execution. Under section 35 (3) (a), if any person by whom the document purports to be executed denies its execution, the Registering Officer shall refuse to register the document as to the person so denying.

10. In the present case, the Sub Registrar refused to register the document. Section 72 of the Act provides for an

appeal before the Registrar where refusal is made on the ground of denial of execution, within 30 days from the date of order of the Sub Registrar. Section 73 provides that when the Sub Registrar refuses to register the document, on the ground that any person who has executed it or his agent denies its execution, he can apply to the Registrar within 30 days of the order of refusal to establish his right to have the document registered. The Registrar shall thereupon enquire into the matters relating to the actual execution of the document, whether the requirements under law at the relevant time were complied with on the part of the applicant or the person presenting the document, etc. Section 75 provides that the Registrar, in case he finds that the document has been executed and the requirements have been complied with, shall order the registration of the document. Section 77 provides for institution of civil suit in case the Registrar refuses to order registration of document under section 72 or 76.

11. Rule 204 provides that when the refusal order is passed on the ground that the executant is purposefully keeping out of

the way in order to evade registration or has gone to a distant place and is not likely to return to admit execution and the non-appearance is treated as tantamount to denial of execution the application may be accepted by the Registrar under section 73 and the fact of execution enquired into, as if execution has been specifically denied.

12. In the present case, it can be seen that the non-appearance of the 2nd petitioner before the Registering Officer was only on account of his non-availability in the country. It is not a case where he was evading execution of document or that he wanted to avoid the registration. It is a case where the property owned by the 1st petitioner was voluntarily given to the Trust in the name of the 2nd petitioner. There is no circumstances for the 2nd petitioner to keep himself away from the Registering Officer after accepting the property. It is quite improbable that the donee will deliberately keep himself away from the registering officer to avoid registration. Exts.P1 and P2 documents would show that all the formalities for registration of the documents, at the end of the Donor and Donee, were

completed. Therefore, the refusal of the Sub Registrar and the order of Registrar upholding it, treating the non-appearance of the 2nd petitioner as denial, cannot be said to be correct.

13. Coming to the powers of the Registrar under section 72 and 73, it can be seen that under section 72 of the Act, the Registrar is empowered to order registration of the document, in appeal. Appeal lies only when the refusal by the Sub Registrar is not made on the ground of denial of execution. In this case the District Registrar treated the refusal by the Sub Registrar on the ground of denial of execution. As already seen, it cannot be said that the 2nd petitioner has denied the execution. Just because he did not appear before the Registering Officer within the permitted time or because he did not submit an application for extension of time, it cannot be said that he has denied execution, as far as the documents involved were gift deeds. The appearance is insisted to enquire into the the factum of execution and to ensure the identity of the person executing the document. All these provisions are intended to check fraudulent transactions. In the present case, the gift was in favour of a Trust. There is no

reason to have any doubt as to the factum of execution or as to the identity of the 2nd petitioner, who is the donee.

14. The learned counsel for the petitioners relied on the decisions rendered in ***Uttam Singh V. Ratan Devi*** [AIR 1924 Lahore 28], ***Jwala Sahoy v. Balbhaddar Singh*** [1925 Oudh 445] and ***Jasti Bhujangeswara Rao V. Sub Registrar*** [AIR 2009 AP 78] contended that wilful nonappearance alone will not amount to denial and section 72 of the Act will be applicable in such cases. In ***Uttam Singh V. Ratan Devi*** (*supra*), a Division Bench of Lahore High Court considered the question whether the nonappearance of the party to admit execution will amount to denial of execution. After considering the judgments rendered by the Calcutta and the Bombay High Courts, and after distinguishing the same, it was held that the mere failure to appear which may be due to an accident or any other legitimate cause cannot be held to be wilful and if registration is refused on such grounds, it cannot be held to be wilful denial of execution.

15. In ***Jwala Sahoy v. Balbhaddar Singh*** (*supra*), the question considered was whether failure to apply for extension of

time under section 34 will disentitle the plaintiff for benefit under section 77. It was held therein that section 34 of the Act does not make it compulsory for a party to apply for extension of time where the executant fails to appear, unless the executant is purposefully keeping out of the way.

16. The question here is whether there was denial of execution. As I have already found earlier, the 2nd petitioner is only the person who receives the benefit on account of the voluntary action of the 1st petitioner in giving away his property in the name of the Trust. He is required only to accept the benefit by virtue of transfer of the property by the 1st petitioner on the basis of the document executed. Therefore his absence, which the petitioners have explained, on account of his nonavailability in station cannot be considered as denial of execution. When it is found that there is no denial, then the appellate authority can exercise his power under Section 72. The District Registrar ought to have, in exercise of the appellate jurisdiction permitted registration of document. Just because there is no specific explanation in cases like the present one

relating to the absence of donee in execution and registration of the gift deeds, their absence or their action in not availing the provisions for seeking extension of time, cannot be considered as denial of execution. As far as the term denial is not defined in the Act, it is only just and proper that the petitioners are permitted to get the document registered, by permitting them to appear before the registering officer with all requisite documents, if necessary, after condoning delay. Instead of rejecting the appeal or application submitted by the petitioners construing the provisions above referred in the literal sense, the respondents ought to have construed the same in a practical sense with due regard to the context in which and the purpose for which the documents in question were executed.

17. Even assuming that the petitions Exts.P5 and P6 were not appeals and only applications, there is no reason for disallowing those applications just because the 2nd petitioner did not present himself in time or did not seek extension of time as provided under the Rules. It is to be noted that the District Registrar is empowered to order registration in a case where the

Sub Registrar has ordered refusal. The only thing to be looked into under Section 74, for invoking his power under Section 73 is whether there is actual execution of the document and whether there is compliance of the requirements under law as provided under rule 204 of the Rules. In this case, there cannot be any dispute that there is execution of the document as well as compliance of all the requirement of law at the relevant time. Moreover, nobody is going to be affected by allowing registration of the documents. And no loss is likely to be caused to the Government or to anybody in any manner in allowing registration of the documents because the petitioners have complied all the requirements. The purpose or intent underlying the provisions prescribing the 4 months' time will not in any way be defeated, in case the document is permitted to be registered. In such circumstances, without going to the strict and literal rules of interpretation, the respondents ought to have allowed the applications of the petitioners. The judgments relied on by the learned counsel also support the same proposition.

In the above circumstances, I quash Exts.P7 and P8 orders

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of the District Registrar, Wayanad and direct the Registering Officials to see that the registration of Exts.P1 and P2 gift deeds is completed within a period of one month, allowing the 2nd petitioner to appear before him and complete all formalities for registration of documents-Exts.P1 and P2.

The writ petition is allowed accordingly.

Sd/-

**P.V.ASHA,
JUDGE.**

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