IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 07TH DAY OF DECEMBER 2020 / 16TH AGRAHAYANA, 1942

OP(C).No.1428 OF 2020

AGAINST THE ORDER/JUDGMENT IN C.A.NO.721/2020 DATED 2.6.2020 IN OP 48/1964 OF THE DISTRICT COURT ,THALASSERY

PETITIONER/S:

V.SAFARULLAH
AGED 61 YEARS
S/O.KOYA KUNJI, SHAHI NIVAS, P.O.VALAPATTANAM, KANNUR.

BY ADVS.
SRI.V.R.KESAVA KAIMAL
SMT.C.DEVIKA RANI KAIMAL

RESPONDENT/S:

GRACY JOSEPHINE LAMBIE
W/O.ANDREW RODGER LAMBIE, RESIDING AT NO.99, CANTONMENT, KANNUR-670 001.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-12-2020, THE COURT ON 07-12-2020 DELIVERED THE FOLLOWING:

“CR”

C.S.DIAS, J.
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OP(C) No.1428 of 2020
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Dated this the 7th day of December, 2020.

JUDGMENT

What is the procedure to be followed by a Court when a case record goes missing is the question that arises for consideration in this original petition.

2. The facts in a nutshell are, the petitioner is a co-owner of the property comprised in Resurvey No.558 in Block No.3/10 in Kannur-1 Village, having an extent of 6.88 Ares, covered by Ext P3 basic tax receipt and Ext P4 possession certificate. The property originally belonged to Andrew Rodger Lambie. The erstwhile owner had by an unregistered Will (Ext P1) dated 4.1.1961 bequeathed the property in favour of his wife - the respondent. The respondent, on the death of her husband, filed OP No.48/1964 (Ext P9) before the Court of the District Judge, Thalasserry, seeking letters of administration with

Will annexed in respect of item No.2 in Ext P1. By Ext P2 judgment the original petition was allowed. The respondent sold the property to the petitioner's predecessors in interest. Ultimately, by document No.1685/1971, the property was assigned in favour of the petitioner's mother and other relatives. Now, the property has vested on the petitioner and his siblings, who are desirous of constructing a building in the property. They approached a Bank for financial assistance, but the Bank has insisted for a certified copy of the Will. In the said circumstances, the petitioner filed Ext P5 copy application, Ext P6 Vakalath and Ext P7 list of documents before the District Court in OP No.48/1964, to obtain the certified copy of Ext P1. The endorsement on Ext P9 original petition substantiates that the Will was marked as Ext A1 in evidence. However, by Ext P8 endorsement made on Ext P7, the Record Clerk has returned Exts P5 to P7 for the reason that the Will cannot be traced. The petitioner seeks to set aside Ext P8 endorsement and a direction to the District

Court to issue the certified copy of the Will.

3. When the original petition came up for consideration on 17.11.2020, this Court had called for a report from the District Court.

4. The learned District Judge by communication dated 24.11.2020 has informed this Court that the Record Clerk had searched for the Will, as in the index paper it is endorsed that record was kept in a sealed cover with the Sheristadar. Although he had conducted a thorough search in the chest and almirah, the Will could not be traced out. The said reason was not mentioned by the Record Clerk in the copy application. The Court is not in a position to issue the certified copy of the Will, as it is not available in the case records.

5. As the relief sought in the original petition, is with respect to issuing a certified copy of the Will, notice to the respondent was dispensed with.

6. Heard the learned counsel appearing for the petitioner.

7. The endorsement on Ext P9 original petition

proves that the Will was marked in evidence as Ext A1. The communication of the learned District Judge also establishes that the Will was kept in a sealed cover in the safe custody of Sheristadar. Therefore, the Will has been misplaced/lost while the document was in 'custodia legis'.

8. This Court, after noticing the increasing incidents of missing of case records, has promulgated Official Memorandum dated 30.1.2019, issuing exhaustive directions to all Subordinate Courts to deal with such situations. It is seen that the Official Memorandum was communicated to all Judicial Officers and Sections for strict compliance. Nevertheless, the Official Memorandum is extracted below, which reads thus:

THE HIGH COURT OF KERALA

No.D6-6141/2019 **Date:30.1.2019**

OFFICIAL MEMORANDUM

Sub: Missing of records of subordinate Courts-instances of missing on an increase-general directions issued-reg.

Ref: 1. High Court Circular No. 26/1958.

2. High Court Circular No. 13/1962

3. High Court O.M. No. D6-32813/14 dated 10/07/2014.

It has come to the notice of the High Court that instances of missing of case records reported from the subordinate courts are increasing recently, despite the strict directions issued by the High Court on the subject. This causes considerable delay in the disposal of cases, thus causing much difficulty to the parties to the proceedings. In some cases the documents are found impossible to be reconstructed, which may result in miscarriage of justice. Taking a serious note of this disturbing trend, the following directions are issued to all subordinate courts for strict compliance.

a) One of the main reasons for missing of records is improper keeping of records. It is necessary that the subordinate judicial officers bestow personal attention in the matter. They shall ensure that case records are properly maintained in their courts. Any lack of space or insufficiency of racks should be looked into and necessary action be taken at the earliest. They shall impress upon their staff the need for proper upkeep and safety of records.

b) The High Court had earlier issued instructions to report instances of missing of records to the High Court promptly. But instances have been noticed where there have been considerable delay in reporting the matter. **Any lapse from the Subordinate Courts in promptly reporting the missing of documents to the High Court will be viewed seriously and proceeded with accordingly hereafter.**

c) **The High Court had also directed the subordinate courts to ensure that thorough search is conducted before reporting the missing to the High Court. But it is often found that the matter is reported without conducting a thorough and proper search. Records are often traced out after instructions have been issued for reconstructing the same. The judicial officers shall bear in mind that the missing records are to be necessarily traced out and reconstruction of those records shall be resorted to only as the last resort. The search shall not be in a casual manner and the judicial officer may avail the service of all the staff of the court concerned so as to trace out the records, which can be done even on a holiday, by availing holiday duty.**

d) **When the documents are irrecoverably lost and the same need to be reconstructed, the courts concerned shall report the steps taken to trace out the document and the possibility of reconstruction at the time of reporting the matter to the High Court It is also incumbent upon the Courts to secure the copies of such documents at the stage of reporting the matter to the High Court and to Inform the same, so that they can proceed with the matter as and when instructions are received from the High Court**. This will help to avoid delay in the disposal of the case.

e) In order to appreciate the relevance of the missing document in further proceedings, it is necessary that the subordinate courts report the nature of the case, the details of the lost document and the stage of the case. But these matters are often omitted in the report. Hence, the subordinate courts shall include all the necessary details of the missing documents and the case while reporting the matter to the High Court. They shall also enter all the necessary details in the form appended herewith as (Annexure I) and forward the same along with the report.

f) Often it is noticed that the disciplinary proceedings against the delinquent employee takes a long time. This delay is not desirable. The proceedings shall be conducted promptly. Since the power to take disciplinary action rests with the District Judge/ Chief Judicial Magistrate, while reporting the missing of records to the High Court, they shall simultaneously take steps to fix responsibility for the missing of the records and initiate action against the delinquent. The whole proceedings shall be completed in a time bound manner and a report shall be sent to the High Court on conclusion of the proceedings.

g) The subordinate judicial officers are advised to take a strict view while dealing with disciplinary proceedings with respect to missing of records. They should also issue necessary directions to their staff for the proper upkeep and safety of records. **They shall ensure that instances of missing of records are not repeated.**

The above directions shall strictly be followed. Any violation of these directions will be viewed seriously by the High Court and dealt with accordingly.

(By Order)

sd/-
PG. Ajithkumar.
Registrar (Subordinate Judiciary)

(Bold letters given)

9. By virtue of the provisions in Chapter VII of the Civil Rules of Practice, Kerala, 1971 (in short 'Rules') the Record Clerk had no authority to return Exts P5 to P7. It is evident in the communication of the learned District Judge that the missing of the record was not brought to his notice, before Ext P8 was endorsed and Exts P5 to P7 were returned. The learned District Judge has informed that the certified copy cannot be issued as the Will as it cannot be traced out. This is against the directions and procedure prescribed in the Official Memorandum.

10. In light of the Official Memorandum, it was the duty of the learned District Judge to have promptly ordered a proper search to be conducted and, thereafter, reported the matter to this Court, and as a last resort,

ordered the reconstruction of the records.

11. In view of the directions in the Official Memorandum and that Ext P1 is in the custody of the Court, I hold that Ext P8 endorsement and returning of Ext P5 to P7 are erroneous and unsustainable in law and, therefore, liable to be set aside.

In the result, I allow this original petition by setting aside Ext P8 endorsement, and in exercise of the powers of this Court under Article 227 of the Constitution of India, I direct the District Court, Thalassery to accept Exts P5 to P7 and take the necessary steps, as contemplated in the Official Memorandum and pass appropriate orders on Ext P5, in accordance with law. Forward a copy of this judgment to the Registrar (Subordinate Judiciary) of this Court.

Sd/-

C.S.DIAS

JUDGE

SKS/2.12.2020

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE WILL EXECUTED BY LATE ANDREW RODGER LAMBIE DATED 04.01.1961.**
EXHIBIT P2	**TRUE COPY OF THE ORDER OF GRANTING LETTER OF ADMINISTRATION DATED 30.07.1965 ISSUED BY THE LEARNED DISTRICT JUDGE, THALASERY.**
EXHIBIT P3	**TRUE COPY OF THE BASIC TAX DATED 14.11.2019 ISSUED BY VILLAGE OFFICE, KANNUR.**
EXHIBIT P4	**TRUE COPY OF THE POSSESSION CERTIFICATE DATED 15.11.2019 ISSUED BY THE VILLAGE OFFICE, KANNUR.**
EXHIBIT P5	**TRUE COPY OF THE APPLICATION DATED 27.02.2020 SUBMITTED BY THE PETITIONER.**
EXHIBIT P6	**TRUE COPY OF THE VAKALATH EXECUTED BY THE PETITIONER IN FAVOUR OF M.K.ANIL KUMAR, ADVOCATE, THALASSERY.**
EXHIBIT P7	**TRUE COPY OF THE LIST OF DOCUMENTS SUBMITTED BY THE ADVOCATE OF THE PETITIONER.**
EXHIBIT P8	**TRUE COPY OF THE ENDORSEMENT DATED 02.06.2020 MADE IN THE REAR SIDE OF EXT.P7 LIST OF DOCUMENTS.**

EXHIBIT P9 CERTIFIED COPY OF THE ORIGINAL PETITION NO.48/1964 ON THE FILES OF THE DISTRICT COURT, THALASSERY.