

Satheesh Vs. Thomas

Satheesh Vs. Thomas

SooperKanoon Citation : sooperkanoon.com/727940

Court : Kerala

Decided On : Dec-01-2004

Reported in : AIR2005Ker57; 2005(1)KLT9

Judge : B. Subhashan Reddy, C.J. and; Kurian Joseph, J.

Acts : Notaries Rules, 1952 - Rule 8(4)

Appeal No. : W.A. No. 1881 of 2004

Appellant : Satheesh

Respondent : Thomas

Advocate for Def. : P.M. Sebastian, Adv.,; Thomas Mathew Nellimoottil, A.C.G.S.C.,;

Advocate for Pet/Ap. : B. Jayasurya, Adv.

Disposition : Appeal dismissed

Judgement :

B. Subhashan Reddy, C.J.

1. This Writ Appeal is directed against the order of the learned Single Judge in the matter arising under the Notaries Act, 1952. The first respondent has been appointed as notary for Kochi Municipal Corporation area. Appellant is an

Advocate and is also a notary appointed for Ambalappuzha Taluk. It is his case that since the first respondent had been appointed as notary for Kochi Municipal Corporation area, he can only notarise the documents for residents of Kochi Municipal Corporation and not others. For that purpose, he relies upon a Government letter dated 4.7.2001 (Ext. R 1 (a) in Writ Appeal No. 2110/2003) which reads as follows :-

'From

The Law Secretary

To

The Passport Officer,

Passport Office, SNSM Building,

Karalkada Junction, Kaithamukku,

Thiruvananthapuram.

Sir,

Sub: The Notaries Rules, 1956 - Jurisdiction of notaries clarification sought-reg.

Ref: Lr. No. 1/PO/TVM/2001 dated 22.6.2001.

I am directed to invite your attention to the reference cited and to inform you that as per the provision of the Notaries Act, 1952 and the Rules made thereunder a notary can practice only within the jurisdiction assigned to him as per the certificate of practice issued. The doubts entertained in this regard by you are, therefore, well-founded. It had already come to the notice of the Government that certain notaries were performing notarial works exceeding their jurisdiction and such documents when presented before the authority were not honoured causing unnecessary hardship and monetary loss to the general public. In order to avoid such instances Government had issued a press release as well. A copy of the press release is also enclosed herewith for information.'

Appended to that is a press release in Malayalam which slightly deviates from the contents of the Government letter meaning the same way as the learned counsel for the appellant wants us to read. But the press release has got no legal sanctity and on going by the contents of the Government letter which is in English, the argument of the learned counsel for the appellant cannot be countenanced as the contents of the Government letter do not restrict any notary from attesting any document brought by the outside residents. If that would be, then we have to examine the provisions of the statute and the rules framed thereunder. It is a settled law that wherever there is a conflict between the statute and the rules framed thereunder, it is the statute that prevails and whenever there is inconsistency between a rule and the Government letter like Ext. R1(a) referred to above, it is the rule which prevails. But, here there is no such difficulty as both the statute, the rules framed thereunder as also Ext. R 1 (a) Government letter are in the same tune and there is no inconsistency or clash with each other.

2. We shall now consider the arguments of Sri. Jayasurya, learned counsel appearing for the appellant. His submission is that if not Ext.R 1 (a), it is Sub-rule.4 of Rule 8 of the Notaries Rules, 1956 which prohibits the first respondent from entertaining any document for notarising, if it is brought from a place outside Kochi Municipal Corporation area. But, we do not read any such restriction. It is apt to extract Sub-rule 4 which reads as follows:-

'(4) Where the application is allowed, the appropriate Government shall appoint the applicant as a notary and direct his name to be entered in the Register of Notaries maintained by that Government under Section 4 of the Act and issue to him a certificate on payment of prescribed fees authorizing him to practise in the area to which the application relates or in such part thereof as the appropriate Government may specify in the certificate, as a notary for a period of (five years) from the date on which the certificate is issued to him.'

The words 'authorizing him to practise in the area to which the application relates' cannot be interpreted and understood as limiting the area of a notary to notarise only such documents executed by the residents of a particular Taluk or District for which a certificate has been issued by the competent authority. That only means

that the said notary shall practice only in that area and he cannot travel beyond that area and practise. The emphasis is on the area where the notary practises on the basis of certification issued to him and not on the executants of any document. When the notary is practising at the place where he is authorised to do so by the certificate issued by the competent authority, he is entitled to notarise any document brought to him and from any person either within that area or beyond that area or even beyond the country. We have taken an instance of a person who is terminally ill and anxious to execute a will. He is entitled to execute the will and a notary like the first respondent can attest, if it is executed in his presence within the Kochi Municipal Corporation area. Sub-rule 4 of Rule 8 cannot be read as the learned counsel for the appellant wants us to read. As we go to Section 3 of the Notaries Act, 1952 by which the State Government can appoint as many notaries as it wants as permitted under the Schedule, it can be for whole of the State or any part of the State. In the instant case as the first respondent is authorised to act as a notary in Kochi Municipal Corporation area, he is entitled to notarise all such documents which are brought to him at the area. This Writ Appeal is thus devoid of any merit and is accordingly dismissed. In the circumstances we direct the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com