



2025:KER:53171

WP(C) NO. 26123 OF 2024

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"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 17<sup>TH</sup> DAY OF JULY 2025 / 26TH ASHADHA, 1947

WP(C) NO. 26123 OF 2024

PETITIONER:

AAA

BY ADVS.  
SMT.RESHMA E.  
SMT.ANNA SONIE  
SMT.ATHEENA ANTONY  
SMT.ANJITHA SANTHOSH  
SMT.ATHIRA V.M.

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE PRINCIPAL SECRETARY TO  
GOVERNMENT OF KERALA, LOCAL SELF GOVERNMENT  
DEPARTMENT (LSGD), GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, THIRUVANANTHAPURAM DISTRICT,  
PIN - 695001
- 2 PAYYANUR MUNICIPALITY,  
PAYYANUR PAYYANUR P.O, KANNUR DISTRICT, REPRESENTED  
BY ITS SECRETARY, PIN - 670307
- 3 THE SECRETARY,  
PAYYANUR MUNICIPALITY, PAYYANUR P.O, KANNUR  
DISTRICT, PIN:670307



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- 4 REGISTRAR,  
BIRTH AND DEATH CERTIFICATE, PAYYANUR MUNICIPALITY,  
PAYYANUR P.O KANNUR DISTRICT, PIN - 670307
- 5 PAYYANUR CO-OPERATIVE HOSPITAL SOCIETY LTD  
NO.C.1487,  
, SOUTH BAZAR, PAYYANUR, PAYYANUR P.O. KANNUR  
DISTRICT, PIN: 670307 REPRESENTED BY ITS SECRETARY
- 6 VILLAGE OFFICER,  
UDINUR VILLAGE OFFICE, UDINUR CENTRAL, UDINUR,  
UDINUR P.O,KASARAGOD DISTRICT, PIN - 671310
- 7 XXX
- 8 YYY
- 9 ZZZ
- 10 CHIEF EXECUTIVE,  
PAYYANUR CO-OPERATIVE HOSPITAL SOCIETY LTD  
NO.C.1487, SOUTH BAZAR, PAYYANUR, PAYYANUR  
P.O,KANNUR DISTRICT, PIN - 670307
- 11 BALAGOPALAN N V,  
NADIYAN VEEDU, NEAR AUPS, UDINUR, UDINUR P.O.,  
KASARGOD DISTRICT, PIN - 671310
- 12 KUNHIKRISHNAN C  
AGE NOT KNOWN, FATHER'S NAME NOT KNOWN,CHAAPPAYIL  
HOUSE, NEAR PRIYAM FOODS, ARATHI CHAL ROAD,UDINUR  
P.O., KASARGOD DISTRICT, PIN - 671310

BY ADV

SMT.VIDYA KURIAKOSE, SR.GP.  
SHRI.M.SASINDRAN



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THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 17.07.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



“C.R”

**C.S.DIAS, J.****WP(C) No. 26123 OF 2024****Dated this the 17<sup>th</sup> day of July, 2025****JUDGMENT**

The petitioner was married to the 7<sup>th</sup> respondent on 26.05.2010. A son, who is arrayed as the 9<sup>th</sup> respondent, was born in their marriage on 07.03.2011. The child's birth was registered with the 2<sup>nd</sup> respondent - Municipality, and the petitioner and the 7<sup>th</sup> respondent were recorded as the child's parents. Post-delivery, the 7<sup>th</sup> respondent and the child went to the 7<sup>th</sup> respondent's parental home for recuperation. But, on 12.04.2011, both of them went missing. The 7<sup>th</sup> respondent's father lodged Ext.P2 FIR with the Payyannur Police. Simultaneously, the petitioner filed a writ petition before this Court, seeking a writ of habeas corpus. Shockingly, the 7<sup>th</sup> respondent appeared and stated that she desired to live with her



lover, the 8<sup>th</sup> respondent. Recording her statement, by Ext.P2(a) judgment, this Court closed the writ petition. In view of the irretrievable breakdown of the marriage, the couple executed Ext.P3 agreement to live separately. Subsequently, by Ext.P4 judgment, their marriage was dissolved on mutual consent. Later, through Ext.P7 information received under the Right to Information Act, 2005, the petitioner learnt that, by Ext.P9 order passed by the 4<sup>th</sup> respondent —Registrar of Births and Deaths of the Municipality —on Ext.P10 joint application submitted by the respondents 7 and 8, the petitioner's name was substituted with that of the 8<sup>th</sup> respondent as the child's father in the Birth Register. The 4<sup>th</sup> respondent also carried out corresponding changes in the Birth Register and issued Ext.P16 birth report and consequently the 2<sup>nd</sup> respondent issued Ext.P17 birth certificate. The changes were effected without notice or hearing the petitioner.



The 4<sup>th</sup> respondent has failed to adhere to the procedure laid down under Section 15 of the Registration of Births and Deaths Act, 1969, Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999 and Ext.P19 Circular. The Municipality has also failed to comprehend the conclusive presumption under Section 112 of the Indian Evidence Act, 1872. Ext. P16 birth report and Ext.P17 birth certificate are arbitrary and illegal, and passed in flagrant violation of the principles of natural justice. Thus, they are liable to be quashed.

2. In the counter affidavit of the 2<sup>nd</sup> respondent, it is stated that a male child was born to the 7<sup>th</sup> respondent on 07.03.2011 at the 5<sup>th</sup> respondent hospital. At the time of registration of the child's birth, the petitioner's name was recorded as the child's father. However, on 10.12.2012, the respondents 7 and 8 submitted a joint application stating that the petitioner's name was erroneously



recorded as the child's father instead of that of the 8<sup>th</sup> respondent. They submitted certificates from the 5<sup>th</sup> respondent Hospital, the Village Officer and two credible persons and the copy of the SSLC book, certifying that the child was born to them. Based on the above materials, the 8<sup>th</sup> respondent was recorded as the father of the child as per the procedure under the Rules. There is no illegality in Exts.P16 birth report and P17 birth certificate.

3. I have heard the learned counsel for the petitioner, the learned Senior Government Pleader and the learned Standing Counsel for respondents 2 to 5. Although notice was served on the respondents 7 to 12, there is no appearance for them.

4. The following facts are not in dispute: the petitioner and the 7<sup>th</sup> respondent were married on 26.05.2010; the child was born on 07.03.2011; the



petitioner's name was initially recorded as the child's father in the birth records; and by Ext.P4 judgment, the marriage between the petitioner and the 7<sup>th</sup> respondent was dissolved on 13.12.2011.

5. In the above context, it is necessary to refer to Section 112 of the Indian Evidence Act, 1872, which reads as follows:

**"112. Birth during marriage, conclusive proof of legitimacy.** — The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten".

6. In light of the above provision, it is conclusive proof that a child born during the subsistence of a valid marriage or within two hundred and eighty days after the dissolution of the marriage is the legitimate offspring of the husband, unless it is proved that the spouses had no access to each other during coverture.





7. In the present case, it is an admitted fact that the child was born during the subsistence of the marriage. Consequently, in the absence of any admission by the parties to the marriage or a declaration by a court of competent jurisdiction, the petitioner is deemed, conclusively, to be the legitimate father of the child.

8. Despite the above legal position, the 4<sup>th</sup> respondent has substituted the petitioner's name with that of the 8<sup>th</sup> respondent in the birth records of the child, solely based on a joint application of the respondents 7 and 8, that too without notice or hearing the petitioner.

9. It is equally necessary to refer to Section 15 of the Registration of Births and Deaths Act, 1969, and Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999, which lays down the procedure to correct or cancel an entry in the Register of Births and Deaths. The said provisions read as follows:



“S.15. Correction or cancellation of entry in the register of births and deaths.—If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation”.

“R.11. Correction or cancellation of entry in the register of births and deaths.—(1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the State Government or the officer specified in this behalf.

(4) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him take necessary action in the matter.



(5) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.

10. The above provisions enable and empower the Registrar to correct or cancel an entry in the Register, if there is a clerical or formal error in the Register or if any entry has been fraudulently or improperly made, by making a suitable entry in the margin, without alteration of the original entry.

11. In the case at hand, there is no allegation that the initial entry made in the birth records, recording the petitioner as the father of the child, was fraudulently or improperly made. There is also no dispute that the marriage between the petitioner and the 7<sup>th</sup> respondent was in subsistence when the child was born. Respondents 2 to 4 justify their action for the substitution by relying on a recital in Ext.P3 agreement, wherein it is stated that the 8th respondent is the biological father of the child.



This recital is seriously disputed by the petitioner, who states that the said recital is a unilateral statement of the 7<sup>th</sup> respondent. The above fact is a seriously disputed question, which is beyond the adjudicatory powers of a Registrar in summary proceedings under Section 15, read with Rule 11.

12. The powers conferred on a Registrar under Section 15 and Rule 11 are circumscribed and limited to the correction of clerical or formal errors or entries fraudulently or improperly made, and not matters of disputed paternity, which require a full-fledged trial and adjudication, and a judicial imprimatur. Here, the Registrar has substituted the names solely on a joint application and certain documents submitted by the respondents' 7 and 8, and without comprehending the conclusive proof of Section 112 of the Indian Evidence Act and Ext.P19 circular dated 16.12.2015 issued by the



Local Self Government Department. The circular mandates that, if the father's name has to be changed in the birth records, a DNA test report, an agreement attested before a Notary Public and an order from a competent Court are to be produced. It is without following the above procedures that the 4<sup>th</sup> respondent has carried out the substitution.

In the above conspectus, I am satisfied that the decision-making process leading to Exts.P16 and P17 is erroneous and in flagrant violation of the principles of natural justice. Accordingly, I allow the writ petition, by quashing Exts.P16 birth report and P17 birth certificate and directing the 4<sup>th</sup> respondent to reconsider the application submitted by respondents 7 and 8, in accordance with law, with notice to the petitioner and affording him and the respondents 7 and 8 an opportunity of being heard. Given the sensitive nature of the matter,



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the Registry is directed to anonymise the identities of the parties in the judgment, as per the procedure of this Court.

Sd/-

**C.S.DIAS, JUDGE**

rkc/dkr



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APPENDIX OF WP(C) 26123/2024

PETITIONER EXHIBITS

EXHIBIT P1	THE TRUE COPY OF MARRIAGE CERTIFICATE DATED 07.06.2010
EXHIBIT P2	THE TRUE COPY OF THE FIR DATED 13.04.2011 IN CRIME NO. 197 OF 2011 OF PAYYANUR POLICE STATION
EXHIBIT P2 (A)	THE TRUE COPY OF THE JUDGMENT IN WP (CRL) 219 OF 2011 OF THIS HON'BLE COURT DATED 13.04.2011
EXHIBIT P3	THE TRUE COPY OF THE AGREEMENT DATED 27.05.2011 SIGNED BETWEEN THE PETITIONER AND 7TH RESPONDENT
EXHIBIT P4	THE TRUE COPY OF THE JUDGMENT DATED 13.12.2011 IN O.P NO. 368 OF 2011 OF THE HON'BLE FAMILY COURT, KANNUR
EXHIBIT P5	THE TRUE COPY OF THE BIRTH CERTIFICATE OF 9TH RESPONDENT DATED 19.11.2012 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P6	THE TRUE COPY OF THE APPLICATION DATED 30.10.2020 SUBMITTED BY THE PETITIONER TO THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT MUNICIPALITY
EXHIBIT P7	THE TRUE COPY OF THE REPLY DATED 18.11.2020 SENT BY THE PUBLIC INFORMATION OFFICER OF THE 2ND RESPONDENT MUNICIPALITY UNDER RTI ACT
EXHIBIT P8	THE TRUE COPY OF THE RTI APPLICATION DATED 14.12.2023
EXHIBIT P9	THE TRUE COPY OF THE ORDER NO.33090/2012 DATE NOT CLEAR ISSUED BY THE 4TH RESPONDENT
EXHIBIT P10	THE TRUE COPY OF THE APPLICATION ,DATE NOT CLEAR, SUBMITTED BY THE 7TH AND 8TH RESPONDENT TO THE 2ND RESPONDENT
EXHIBIT P11	THE TRUE COPY OF THE UNDATED CERTIFICATE ISSUED BY THE 10TH RESPONDENT CERTIFYING TO CHANGE THE FATHER'S NAME OF 9TH RESPONDENT



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EXHIBIT P12	THE TRUE COPY OF THE UNDATED CERTIFICATE ISSUED BY THE 10TH RESPONDENT CERTIFYING TO CHANGE THE ADDRESS OF THE FATHER OF THE 9TH RESPONDENT
EXHIBIT P13	THE TRUE COPY OF THE UNDATED CERTIFICATE NO 789/2012/UDINOOR ISSUED BY THE 6TH RESPONDENT
EXHIBIT P14	THE TRUE COPY OF THE CERTIFICATE 30.11.2012 ISSUED BY THE 12TH RESPONDENT
EXHIBIT P15	THE TRUE COPY OF THE CERTIFICATE DATED 30.11.2012 ISSUED BY THE 11TH RESPONDENT
EXHIBIT P16	THE TRUE COPY OF THE BIRTH REPORT NO. IP. 16939, DATE NOT CLEAR , ISSUED BY THE 4TH RESPONDENT
EXHIBIT P17	THE TRUE COPY OF THE BIRTH CERTIFICATE OF THE 9TH RESPONDENT DATED 10.12.2012 ISSUED BY THE 2ND RESPONDENT
EXHIBIT P18	THE TRUE COPY OF APPLICATION DATED 06.03.2023 SUBMITTED BY THE PETITIONER TO THE 5TH RESPONDENT HOSPITAL AND THE GYNAEC RECORD OF THE 7TH RESPONDENT RECEIVED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT
EXHIBIT P19	THE TRUE COPY OF THE CIRCULAR LSGD RD NO. 142/RD3/15/LSGD DATED 16.12.2015 ISSUED BY THE 1ST RESPONDENT