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O.P (C) No.3213 of 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 31ST DAY OF JULY 2025 / 9TH SRAVANA, 1947

OP (C) NO. 3213 OF 2018

AGAINST THE ORDER/JUDGMENT DATED IN OS NO.179 OF 2018 OF

IIIrd ADDITIONAL SUB COURT, ERNAKULAM

PETITIONER:

MARGRET @ THANKAM,
AGED 80 YEARS,
W/O.LATE JOSEPH EDMUND,
RESIDING AT DOOR NO.2D,
IVORY HEIGHTS,
MATHER APARTMENTS,
PANAMPILLY NAGAR,
KOCHI - 36.

BY ADVS.
SHRI.V.L.SHENOY
SHRI.ANOOP V.NAIR
SMT.TANOOSHA PAUL
SHRI.ROHITH C.
SMT.AVANTHIKA R.



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RESPONDENT :

JOSEPH MATHEW CHETTUPUZHA.
AGED 54 YEARS, SON OF LATE JOSEPH EDMUND,
CHETTUPUZHA HOUSE, ELAMKULAM POST,
ERNAKULAM DISTRICT,
THROUGH THE POWER OF ATTORNEY HOLDER JOSEPH
MATHEW,
S/O.M.J.MATHEW, MALAYIL HOUSE, HOUSE NO.7/672,
ALAPPUZHA MUNICIPALITY, THATTAMPILLY POST,
ALAPPUZHA DISTRICT, PIN - 688 013.

BY ADVS.
SHRI.M.BAIJU NOEL
SMT.T.S.LIKHITHA
SHRI.JITHIN T.P.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
31.07.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'C.R'

K.BABU, J.

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Dated this the 31st day of July, 2025

JUDGMENT

The challenge in this Original Petition is to the order dated 15.11.2018 in I.A No.3455/2018 in O.S No.179/2018 passed by the Additional Subordinate Judge's Court-III, Ernakulam, an application filed by defendant No.1 in the suit under Order VI Rule 16 and Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, seeking to strike out the pleadings and reject the plaint.

2. The learned Trial Judge rejected the application as per the impugned order. The plaintiff instituted the suit seeking to direct defendant Nos.1 and 2 to execute a release deed in respect of plaint 'A' schedule property in favour of the plaintiff in terms of the family arrangement, partitioning the plaint 'B' schedule property and to declare gift deed No.448/2014 of SRO, Ernakulam as void.



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3. The defendants resisted the suit denying the alleged family arrangement and contended that defendant No.1 had validly executed the gift deed.

4. The plaint was filed by the Power of Attorney Holder of the plaintiff. A copy of the power of attorney is produced and marked as Ext.P1. The power of attorney was apparently executed and authenticated at St.Louis County, a place in the State of Missouri in the USA on 13.04.2018. In I.A No.3455/2018, defendant No.1 raised the following contentions:

- (i) There is nothing to show that the principal (Plaintiff) was identified before the notary public. There was no identification.
- (ii) The notarial act apparently evidenced by Ext-P1 cannot be recognised in India, the reason being that it is not shown that the State of Missouri is a reciprocating country, in that, it recognises the notarial acts done in India. Nor there is any notification under Schedule 14 of the Notaries Act, 1952, recognising the State of Missouri to be a reciprocating country, and therefore, the notarial



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act done in the said country is not recognisable in India.

(iii) That the provisions of the Stamp Act and the Registration Act are not complied with. The document is not stamped under Sec.18 of the Kerala Stamp Act.

5. I have heard Sri.S.V.Balakrishna Iyer, the learned Senior Counsel appearing for the petitioner and the learned counsel for the respondent.

6. The learned Senior Counsel did not press the contentions (i) and (iii). The learned Senior Counsel submitted that contention (iii) is sustainable and the Trial Court ought to have insisted for proof of reciprocation insofar as the power of attorney is concerned under Section 14 of the Notaries Act.

7. The learned Senior Counsel submitted that the Court can apply the presumption under Section 85 of the Evidence Act and make use of Section 57(6) of the Evidence Act only if the country where the power of attorney was executed is a reciprocating country as provided in Section 14 of the Notaries Act. The learned



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Senior Counsel further submitted that if it is a reciprocating country, or if there is a notification under Section 14 of the Notaries Act, recognising the fact of reciprocity, the presumption of due execution and authentication can be drawn under Section 85 of the Evidence Act and the official seal of the notary public can be taken to be proved under Section 57(6) of the Evidence Act. The learned Senior Counsel also submitted that in the present case, there is neither evidence that the State of Missouri is a reciprocating country nor there is proof of notification under Section 14 of the Notaries Act.

8. The learned Senior Counsel relied on **Rei Agro Ltd, and others (AIR 2015 Cal 54)** and **Indira R. Pillai @ Indiramma v. Federal Bank Ltd, Kottarakkara Brach and others [2017 (5) KHC 849]**

9. The learned Senior Counsel submitted that a Court can proceed to conclude that there was a proper identification in the case of a document executed in a foreign country before a notary



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public, only if such country is a reciprocating country enabling the Court to draw the presumption under Section 85 of the Evidence Act.

10. The learned counsel for the plaintiff submitted that the presumption under Section 85 of the Evidence Act can be drawn even if no notification as provided in Section 14 of the Notaries Act is made. The learned counsel relied on **Abdul Jabbar v. 2nd Additional District Judge (1980 SCC OnLine All 888) : (AIR 1980 All 369)**, **Jugraj Singh v. Jaswant Singh (1970) 2 SCC 386) : (AIR 1971 SC 761)** and **Rajesh Wadhwa v. Dr. Sushma Govil, (1988 SCC OnLine Del 270) : (AIR 1989 Delhi 144)** to support his contentions.

11. The Notaries Act, 1952, an Act to regulate the profession of notaries, was enacted to empower the Central and State Governments to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries.

12. Section 3 of the Notaries Act empowers the Central and



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State Governments to appoint any other legal practitioners or other persons who possess such qualifications as may be prescribed as notaries for exercising the functions provided in Section 8 of the Act. Section 14 of the Notaries Act deals with reciprocal arrangements for recognition of notarial acts done by foreign notaries. Section 85 of the Evidence Act (Section 84 is the corresponding provision in the Bharatiya Sakshya Adhiniyam, 2023) provides for presumption as to power-of-attorney. Section 57(6) of the Evidence Act mandates that the Court must take judicial notice of all seals of Notaries Public.

13. It is relevant to extract the above referred statutory provisions:

Section 14 of the Notaries Act reads thus:

“14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.—If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such



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limited purposes as may be specified in the notification.”

Section 85 of the Indian Evidence Act reads thus:

85. Presumption as to power-of-attorney.

“The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.”

Section 57(6) of the Indian Evidence Act reads thus:

“57. Facts of which court must take judicial notice

The Court shall take judicial notice of the following facts:

xxx xxx xxx

(6) All seals of which English Courts take judicial notice; the seals of all the Courts in India and of all courts out of India established by the authority of the Central Government or the Crown Representative; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or regulation having the force of law in India.”

14. The learned counsel for the plaintiff submitted that a presumption can be drawn under Section 85 of the Evidence Act that a power of attorney has been executed before and authenticated by a Notary Public was so executed and



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authenticated without reference to the provisions in Section 14 of the Notaries Act.

15. The learned Senior Counsel countered and submitted that Section 85 of the Indian Evidence Act cannot be read in isolation to the specific provisions as contained in Section 14 of the Notaries Act, insofar as notarial acts done by foreign notaries are concerned. The learned Senior Counsel submitted that for an Indian Court to recognise a notarial act done by a notary public in a foreign country, it is imperative for the Central Government to issue a notification under Section 14 of the Notaries Act declaring that the notarial acts lawfully done by notaries in that country shall be recognised within India for all purposes, or as the case may be, for such limited purposes as may be specified in the notification.

16. Section 14 of the Notaries Act insists the satisfaction of the Central Government that by the law or practice of any country or place outside India, the notarial acts done by notaries within such country or place may be recognised within India. The



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provision empowers the Central Government by a notification in the official gazette to make a declaration to that effect. Therefore, the mandate of Section 14 of the Notaries Act is that unless the foreign country where a power of attorney is executed before a notary public is a reciprocating country by way of recognition under Section 14 of the Notaries Act, the notarial act done in the foreign country lacks sanctity.

17. In the absence of such recognition and notification as provided in Section 14 of the Notaries Act, an Indian Court cannot unilaterally recognise a notarial act done by a foreign notary.

18. In **Rei Agro Ltd**, the decision relied on by the learned Senior Counsel, the question whether presumption under Section 85 of the Evidence Act could be drawn in respect of a power of attorney authenticated by one Yang Yung Chong, a notary public of Singapore, was considered by the Calcutta High Court. In constructing the mandate of Section 14 of the Notaries Act and the scope of Section 85 of the Evidence Act, the learned Single Judge



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observed that it must be held that to the extent it dwells upon presumption as to powers of attorney, executed and authenticated by a Notary Public, the provision of Section 85 of the Indian Evidence Act cannot be read in isolation to the specific provision as contained in Section 14 of the Notaries Act, insofar as notarial acts done in foreign countries are concerned. The learned Single Judge held that to recognise a notarial act done by a Notary Public at Singapore, it was imperative for the Central Government to issue a notification under Section 14 of the Notaries Act, declaring that the notarial acts lawfully done by notaries in Singapore shall be recognised within India for all purposes, or as the case may be, for such limited purposes as may be specified in the notification.

19. In **Jugraj Singh**, the question considered by the Supreme Court was whether the second power of attorney referred to therein, which cured the defect in the first power of attorney, would operate from the date of the first power of attorney, making transaction done during the interregnum valid. The Supreme Court



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held that it would relate back. However, the scope and application of Section 14 of the Notaries Act were not argued and considered by the Supreme Court in **Jugraj Singh**.

20. Following **Jugraj Singh**, the Allahabad High Court in **Abdul Jabbar** held that the presumption under Section 85 could be drawn even if no notification is shown to be made under Section 14 of the Notaries Act. The learned Single Judge of the Allahabad High Court observed that if presumption is limited to cases where the country of execution recognises the notarial act done in a foreign country, the same would lead to serious difficulties, including interference with international trade and commerce. I respectfully disagree with the view taken by the Allahabad High Court.

21. Another decision relied on by the learned counsel for the plaintiff is **Rajesh Wadhwa v. Dr. Sushma Govil, (1988 SCC OnLine Del 270) : (AIR 1989 Delhi 144)**, wherein the learned Single Judge of the Delhi High Court observed that presumption under Section 85 of the Evidence Act cannot be withheld, merely because, the party



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relying on the document, fails to prove the issuance of a notification under Section 14 of the Notaries Act, if it is otherwise proved that the country of execution is a reciprocating State. The facts considered in the instant case are not applicable to the facts raised and considered by the Delhi High Court.

22. The learned Senior Counsel submitted that a court of law can proceed to conclude that there was a proper identification in the case of a document executed in a foreign country before a Notary Public, with the aid of Section 57 (6) of the Indian Evidence Act, only if such country is a reciprocating country enabling the Court to draw the presumption under Section 85 of the Evidence Act.

23. In **Indira R. Pillai @ Indiramma v. Federal Bank Ltd, Kottarakkara Brach and others [2017 (5) KHC 849]**, a Division Bench of this Court recognised the special responsibility of the Notary Public in the matter of identification and authentication.

24. I am of the considered view that the mandate of Section



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57(6) of the Indian Evidence Act that the Court shall take judicial notice of the seals of notaries public can be made applicable to a power of attorney executed before a notary public in a foreign country only if the foreign country is a reciprocating country. In the absence of proof of reciprocation of the foreign country where the power of attorney was executed before the notary public the presumption regarding identification and authentication as provided in Section 85 of the Evidence Act would not arise.

25. The resultant conclusion is that the learned Trial Judge ought to have insisted for proof of reciprocation by the State of Missouri to draw the presumption under Section 85 of the Evidence Act with regard to the power of attorney produced before the Court.

26. Defendant No.1 sought to strike out the pleadings and reject the plaint. The conclusion that the Trial Court ought not to have recognised the power of attorney produced is not a ground to strike out the pleadings or reject the plaint.

27. The learned counsel for the plaintiff submitted that the



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plaintiff will produce a duly executed power of attorney to proceed with the suit. The plaintiff is given liberty to place on record a duly executed power of attorney and proceed with the suit.

28. The impugned order, to the extent it, accepted the power of attorney (Ext.P4) and permitted the plaintiff to proceed with the suit with the aid of the power of attorney, stands set aside.

The Original Petition (Civil) stands disposed of as above.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF OP(C) 3213/2018

PETITIONER EXHIBITS

EXHIBIT P1	COPY OF THE POWER OF ATTORNEY.
EXHIBIT P2	COPY OF THE PETITION I.A.3455/2018 IN O.S.179/2018 OF SUB COURT, ERNAKULAM.
EXHIBIT P3	COPY OF OBJECTION IN I.A.3455/2018 IN O.S.179/2018 OF SUB COURT, ERNAKULAM.
EXHIBIT P4	COPY OF ORDER DATED 15/11/2018 IN I.A.3455/2018 IN O.S.179/2018 OF SUB COURT, ERNAKULAM.