

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

AS.No. 40 of 2002 (B) &
CROSS OBJECTIONS

AGAINST THE JUDGMENT IN OS 451/1994 of PRL.SUB COURT,IRINJALAKUDA
DATED 09/10/2001

APPELLANT/PLAINTIFF::

LILLY, W/O. MUNDAN KURIAN JOSE,
27/577/4, CHEMBUKKAVU DESOM & VILLAGE, THRISSUR TALUK
PIN.680 020.

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS/DEFENDANTS 1 TO 14 AND 16 TO 21

1. ANDREWS, S/O. IRANIMOSE,
PELLISSERY HOUSE, CHALAKUDY DESOM
KIZHAKKE CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK.

2. MARY, W/O. JOSE PALLISSERY -DO- -DO-.

3. JEROME, S/O. JOSE PALLISSERY &
2ND RESPONDENT, -DO- -DO-.

4. REENA, D/O. -DO- -DO- -DO-.

5. BEENA, D/O. -DO- -DO- -DO-.

6. JOMON, S/O. -DO- -DO- -DO-.

7. LEENA (SHOWN AS LISSY IN THE JUDGMENT),
D/O. -DO- -DO- -DO-.

8. STALIN (SHOWN AS STALIL IN THE JUDGMENT)
S/O. -DO- -DO- -DO-.

9. MEENA, D/O. -DO- -DO- -DO-.

10. DR.DAVIS MOYALAN,
MOYALAN'S HOSPITAL, WARD NO.28, DOOR NO.145
PALLISSERY BUILDINGS, CHALAKUDY.

11. P.R.GANGADHARAN, S/O. PUNATHIL RAGHAVAN,
KUNNATHUNADU P.O., KORATTY, WARD NO.28
DOOR NO.147, PELLISSERY BUILDINGS, CHALAKUDY.
12. THEKKEPPATTU LAKSHMI DEVI,
MENON'S JEWELLERY, WARD NO.28, DOOR NO.148
PALLISSERY BUILDINGS, CHALAKUDY.
13. C.V.VELAYUDHAN,
SANGEETHA TEXTILES, WARD NO.28, DOOR NO.150
PALLISSERY BUILDINGS, CHALAKUDY.
14. K.I.BABU,
KEESSEES READYMADE SHOP, DOOR NO.151, WARD NO.28
DOOR NO.150, PALLISSERY BUILDINGS, CHALAKUDY.
15. E.A.JOHNNY,
RAJA FOOTWEARS, SANTHI MEDICALS & MEDICAL LANDS
WARD NO.28, DOOR NOS.153, 154 & 158
PALLISSERY, BUILDINGS, CHALAKUDY.
16. MANJALI VARGHESE ITTIYERA,
SUVARNA STEEL HOUSE, WARD NO.28, DOOR NO.155
PALLISSERY BUILDINGS, CHALAKUDY.
17. C.D.JOSEPH,
SINI VESSELS, WARD NO.28, DOOR NO.156
PALLISSERY BUILDINGS, CHALAKUDY.
- * 18. N.V.KURIAKOSE,
PRIYA MEDICALS, WARD NO.28, DOOR NO.157
PALLISSERY BUILDINGS, CHALAKUDY.
19. C.A.JOSEPH,
ST.JOSEPH'S CYCLE STORES, DOOR NO.149
PALLISSERY BUILDINGS, CHALAKUDY.
20. ALPHONSA ANDREWS,
ALPHA COOL BAR, DOOR NO.159, PALLISSERY BUILDINGS
CHALAKUDY MUNICIPALITY, CHALAKUDY.

R2 TO 9 BY ADV. SRI.P.R.VENKETESH
R13,14,16 BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
R11&12 BY ADV. SRI.P.NARAYANAN KUTTY
BY ADV. SRI.KRISHNA PRASAD. S
R18 BY ADV. SRI.M.P.RAMNATH
R1 & R20 BY ADV. SRI.RENJITH THAMPAN
R2-9 BY ADV. SRI.P.R.RAJA

*[INSTEAD OF N.V.KURIAKOSE, "PRIYA MEDICALS, WARD NO.28, DOOR NO.157, PALLISSERY BUILDINGS, CHALAKUDY, REP. BY MANAGING PARTNER, NIJO THOMAS" IS IMPEADED AS 18TH RESPONDENT VIDE ORDER DATED 13/8/02 ON C.M.P.NO.2881/02.]

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 13-10-2015, A/W C.O., THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

A.S.No.40 of 2002 & C.O.

Dated this the 13th day of October, 2015

JUDGMENT

P. N. Ravindran, J.

The appellant is the plaintiff in O.S.No.451 of 1994 on the file of the Court of the Principal Subordinate Judge of Irinjalakuda. The respondents are the defendants therein. The plaintiff, the first defendant and late Jose, the predecessor-in-interest of defendants 2 to 9 are the children of late Pellissery Eranimose. O.S.No.451 of 1994 was instituted on 27.06.1994 for partition of the plaint schedule property comprising of 63.50 cents of land in Sy.No.286/3 and 5.75 cents of land in Sy.No.286/9 of Kizhakke Chalakudy Village, Mukundapuram Taluk, Thrissur District, into three equal shares and allotment of one such share to the plaintiff with past and future mesne profits.

2. The plaint schedule property admittedly belonged to late Eranimose. The appellant had in the plaint averred that Eranimose died

intestate in 1967; that he had not during his life time executed any conveyance in respect of the plaint schedule property or his other assets; that demanding partition, she had caused Ext.A1 notice dated 23.01.1994 to be issued to defendants 1 and 2; that in Ext.A2 reply notice dated 02.04.1994 issued on the instructions of the first defendant, it is contended that as per Ext.B1 sale deed dated 12.09.1996, 63.50 cents of land in Sy.No.286/3 of Kizhakke Chalakkudy Village, Mukundapuram Taluk was conveyed to the first defendant and his brother Jose who passed away in the year 1986; that they constructed a building in the said land and in the adjoining 5.75 cents of land during the year 1967-68 after availing a loan from the Chalakudy branch of the Federal Bank and that they have perfected title over 5.75 cents of land in Sy.No.286/9 of Kizhakke Chalakudy Village, Mukundapuram Taluk by adverse possession and limitation. The appellant contended that Eranimose was not in a sound disposing state of mind, that Ext.B1 sale deed is vitiated by undue influence and that it is a forgery. The first defendant entered

appearance and filed a written statement resisting the suit. Though initially, defendants 1 to 9 filed a written statement admitting the plaint claim, later it was amended and the prayer for partition was opposed.

3. Before the trial court, the plaintiff was examined as PW1 and the doctor who proved Exts.X1 and X2 extracts of the registers maintained at Christian Medical College Hospital, Vellore was examined as PW2. On the side of the defendants, the first defendant was examined as DW2, the second defendant was examined as DW1, the scribe and attesting witness to Ext.B1 sale deed was examined as DW4 and his daughter-in-law who is also an assignee of one of the shop rooms in the building situate in the plaint schedule property was examined as DW3. The court below held, on an analysis of the pleadings and the evidence, oral and documentary available in the case that, the plaintiff has not succeeded in proving her case that late Eranimose was not in a sound disposing state of mind. The court below also held, relying on Ext.B2 registered receipt executed by the Branch

Manager of Catholic Syrian Bank, Chalakudy branch that late Eranimose had executed a mortgage deed in the year 1965 registered as document No.222 of 1965 of SRO Chalakudy; that he had also redeemed the mortgage and therefore, no reliance can be placed on Exts.X1 and X2 registers to hold that Eranimose had any mental incapacity or infirmity. As regards Exts.X1 and X2 registers, it was held that the registers would only show that Eranimose had been admitted as inpatient at the mental health centre attached to Christian Medical College, Vellore; that the treatment records are not available and that from Exts.X1 and X2, it is not possible to come to a conclusion that he had any mental incapacity or infirmity. The court below also held that there is no merit in the contention that Ext.B1 has not been duly and properly registered. The court below accordingly upheld Ext.B1 sale deed. The contention of the defendants that they have perfected title over 5.75 cents of land in Sy.No.286/9 of Kizhakke Chalakudy Village of Mukundapuram Taluk was repelled. A preliminary decree for partition was accordingly passed in respect of the said parcel of land.

The plaintiff has filed this appeal aggrieved by the dismissal of the suit for partition in respect of 63.50 cents of land situate in Sy.No.286/3 of Kizhakke Chalakudy Village, Mukundapuram Taluk. The first defendant has, aggrieved by the preliminary decree for partition passed in respect of 5.75 cents of land in Sy.No.286/9 of Kizhakke Chalakudy Village, Mukundapuram Taluk, filed the memorandum of cross objections.

4. We heard Sri.K.G.Balasubramanian, learned counsel appearing for the appellant, Sri.Renjith Thampan, learned Senior Advocate appearing for the first respondent and Sri.P.R.Venketesh, learned counsel appearing for respondents 2 to 9. Sri.K.G.Balasubramanian, learned counsel for the appellant contended, relying on Exts.X1 and X2 registers that the said documents prove that late Eranimose had undergone treatment at the mental health centre attached to Christian Medical College, Vellore and therefore, the conclusion is inescapable that he was not in a sound disposing state of mind at the time of Ext.B1 sale deed. Referring to the testimony tendered by the

attesting witness to Ext.B1 sale deed who has been examined as DW4, learned counsel contended that the requirements of a valid house registration have not been proved by him and therefore, the court below erred in holding that Ext.B1 was duly and properly registered. Learned counsel contended that as the appellant has succeeded in proving that late Eranimose was not in a sound disposing state of mind, the mere fact that Ext.B1 was registered cannot stand in the way of the appellant claiming a legitimate share in the plaint schedule property. As regards the memorandum of cross objections filed by the first defendant, challenging the preliminary decree for partition of 5.75 cents of land referred to above, learned counsel for the appellant contended that Ext.B1 sale deed was executed on 13.09.1966; that the plaint schedule properties were custodia legis during the period 1977-1993; that the instant suit was filed on 27.06.1994 and therefore, the contention of defendants 1 to 9 that they have perfected title over 5.75 cents of land by adverse possession and limitation cannot be sustained. Learned counsel contended that as defendants 1

to 9 were not in possession for the requisite period of 12 years on the date on which Official Receiver took over possession of the plaint schedule property and as they have not perfected title by adverse possession and limitation after 1993, the court below was justified in decreeing partition of 5.75 cents of land.

5. Per contra Sri.Renjith Thampan, learned Senior Advocate appearing for the first defendant and Sri.P.R.Venketesh, learned counsel appearing for respondents 2 to 9 submitted that PW2, the doctor who proved Exts.X1 and X2, has testified that the practice at Christian Medical College, Hospital, Vellore is that patients with unexplained headache are referred by other medical departments to the mental health centre for examination and diagnosis and therefore, nothing turns on the mere fact that late Eranimose had been referred to the mental health centre for examination initially as an outpatient and later as an inpatient. Learned counsel appearing for the respondents submitted that after the execution of Ext.B1 sale deed, the first defendant and late Jose, the predecessor-in-interest of

defendants 2 to 9 had with the knowledge of the appellant/plaintiff constructed a commercial building in the plaint schedule property; that the consent of the plaintiff was also obtained for the purpose of availing a loan from the Federal Bank and as the plaintiff was fully aware of the fact that her brothers have put up a commercial building in the plaint schedule property, she cannot at this distance of time challenge the authenticity and genuineness of Ext.B1 sale deed or the competence of their father to execute Ext.B1 sale deed. Inviting our attention to Ext.B2 receipt, learned counsel for respondents 1 to 9 submitted that late Eranimose had in the year 1965 executed a mortgage deed registered as document No.222 of 1965 of SRO Chalakudy; that the said mortgage was also redeemed by him and therefore, the contention that late Eranimose was not in a sound disposing state of mind at the time of execution of Ext.B1 cannot be countenanced. As regards the memorandum of cross objections, learned counsel for the cross objector/first defendant very fairly submitted that the cross objector has not been able to prove his

contention that he has perfected title by adverse possession and limitation over 5.75 cents of land in Sy.No.286/9 above referred to.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. Ext.B1, the disputed document, was executed and registered on 29.12.1967. DW4, the scribe of the said document who is also an attesting witness has proved that Ext.B1 was validly registered. He has also spoken about the fact that he had acquaintance with late Eranimose and he has prepared a large number of documents for him. Though a suggestion was made that he is speaking falsehood with a view to support defendants 1 to 9 for the reason that his daughter-in-law had purchased one of the rooms in the building put up in the plaint schedule property, it did not find acceptance at the hands of the court below for the reason that the daughter-in-law of DW4 who was examined as DW3 purchased the shop room only in the year 1990 and was not his daughter-in-law at that point of time when Ext.B1

document was executed and registered. At the time when DW4 was examined, he was aged 81 years. The disputed document was executed in the year 1967, about 35 years back. Having regard to the old age of the scribe who was examined as DW4, even assuming that he has not spoken about the various steps required to be observed in registering a document, we find no reason on that score to hold that Ext.B1 document was not duly and properly registered. The rules relating to house registration as it obtained in the year 1967 are totally different from the rules which are now in force. Therefore, the rules now in force cannot be pressed into service to contend that there was no proper or valid registration. It is also evident from the materials on record, more particularly Ext.B2 that late Eranimose had in the year 1965 mortgaged the plaint schedule properties as per a registered mortgage deed, No.222 of 1965 of SRO, Chalakudy and that it was also redeemed. The said fact cuts at the root of the case put forward by the plaintiff that late Eranimose had undergone treatment for mental infirmity and was not in a sound disposing state of mind. That

apart, Exts.X1 and X2, do not by themselves prove that late Eranimose was not in a sound disposing state of mind or that he was suffering from any mental infirmity or incapacity. All that the said documents would show is that he had been referred to the mental health centre attached to Christian Medical College, Vellore. PW2, who proved Exts.X1 and X2 extracts of the register maintained at Christian Medical College, Vellore has deposed that in Christian Medical College, Vellore, if a patient approaches other medical departments with unexplained headache, he is generally referred to the mental health centre attached to the hospital for examination and diagnosis. Apart from producing Exts.X1 and X2 extracts of the register maintained at Christian Medical College, Vellore, the plaintiff has not chosen to examine any of the near relations of late Eranimose to prove that he was suffering from any mental illness or incapacity. We therefore find no reason to interfere with the finding of the court below that the plaintiff has not succeeded in proving the case set out in the plaint that late Eranimose was not in a sound disposing state of mind. There is

also no material to hold that Ext.B1 sale deed is vitiated by undue influence. In short, there is no material to hold that Ext.B1 sale deed was not validly registered or that the executant thereof, namely, late Eranimose was not in a sound disposing state of mind. We therefore, find no good grounds to interfere with the impugned judgment.

7. That takes us to the question whether there is any merit in the memorandum of cross objections filed by the first defendant challenging the preliminary decree for partition in respect of 5.75 cents of land comprised in Sy.No.286/9 of Kizhakke Chalakudy Village, Mukundapuram Taluk. As stated earlier, the properties were custodia legis during the period 1977-1993. The first defendant had not perfected title to the plaint schedule property or any portion thereof by the time the Official Receiver took over possession of the property. As there was disruption in the possession of the first defendant in the year 1977, unless the first defendant has perfected title after 1993, he cannot, in our opinion, contend that he has perfected title by adverse possession and limitation. We therefore, find no reason to interfere

with the finding entered by the court below in that regard. The memorandum of cross objections is, in our opinion, without any merit.

For the reasons stated above, we hold that there is no merit either in the appeal or in the memorandum of cross objections. The appeal and the memorandum of cross objections fail and are accordingly dismissed. Having regard to the fact that parties are near relations, we deem it appropriate to direct that the parties shall bear their respective costs in this court.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

