

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

AS.No. 162 of 2002 (C)

OS 214/1994 of SUB COURT, MANJERI

APPELLANT(S)/PLAINTIFFS:

1. ZENITH, D/O.ELIYAKKOTTIL MANU ALIAS
MUHAMMED, KOZHIKODEN HOUSE, UPPADA P.O.
NILAMBUR TALUK, MALAPPURAM DISTRICT, PIN-679 354.

2. RAMLATH,
D/O.ELIYAKKOTTIL MANU ALIAS MUHAMMED
MANNILTHODIKA HOUSE, EDAVANNA P.O.-676 541.
NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADVS.SMT.PREETHY KARUNAKARAN
SRIANISH S.AMBADY
SMT.BIJIMOL JOSE

RESPONDENT(S)/DEFENDANTS:

1. SAKKIR HUSSAIN,
S/O.ELIYAKKOTTIL MANU ALIAS MUHAMMED
ELIYAKKOTTIL HOUSE, P.O. WANDOOD-679 328.
NILAMBUR TALUK, MALAPPURAM DISTRICT.

2. NOUSHADALI,
S/O.ELIYAKKOTTIL MANU ALIAS MUHAMMED
ELIYAKKOTTIL HOUSE, P.O.WANDOOD-679 328
NILAMBUR TALUK, MALAPPURAM DISTRICT.

3. MUHAMMED JAFFER,
S/O.ELIYAKKOTTIL MANU ALIAS MUHAMMED
ELIYAKKOTTIL HOUSE P.O.WANDOOD-679 328
NILAMBUR TALUK, MALAPPURAM DISTRICT
BY POWER OF ATTORNEY HOLDER 1ST RESPONDENT
SAKKIR HUSSAIN.

4. MUHAMMED SHAREEF,

S/O.ALIYAKKOTTIL MANU ALIAS MUHAMMED
ELIYAKKOTTIL HOUSE, P.O.WANDOOR-679 328
NILAMBUR TALUK, MALAPPURAM DISTRICT
BY POWER OF ATTORNEY HOLDER 1ST RESPONDENT
SAKKIR HUSSAIN.

5. PATHUTHARA KADEESAKUTTY,

W/O.ELIYAKKOTTIL MANU ALIAS MUHAMMED
ELIYAKKOTTIL HOUSE, P.O.WANDOOR-679 328
NILAMBUR TALUK, MALAPPURAM DISTRICT.

6. CHOLAYIL AYISSA, D/O.UNNEEN,

ELIYAKKOTTIL HOUSE, PUNNAPPALA AMSOM
CHADANGAMKULAM DESOM, NADUVATH MOOCHIKKAL P.O.
VIA-WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT
PIN-679 328.

7. MUMTHAS (NOW MAJOR), D/O.AYISSA,

ELIYAKKOTTIL HOUSE, PUNNAPPALA AMSOM
CHADANGAMKULAM DESOM, NADUVATH MOOCHIKKAL P.O.
VIA-WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT.
PIN-679 328.

8. BASHEER(NOW MAJOR), S/O.AYISSA,

ELIYAKKOTTIL HOUSE, PUNNAPPALA AMSOM
CHADANGAMKULAM DESOM, NADUVATH MOOCHIKKAL P.O.
VIA-WANDOOR, NILAMBUR TALUK, MALAPPURAM DISTRICT
PIN-679 328.

9. CHOLAKKAL PATHU, D/O.KUNHALAVI,

ELIYAKKOTTIL HOUSE, P.O.WANDOOR, MALAPPURAM DISTRICT. (DIED. LRS.
RECORDED)

(IT IS RECORDED THAT THE 9TH RESPONDENT IN THE APPEAL DIED AND THAT THE
APPELLANTS AND RESPONDENTS WHO ARE ALREADY ON THE PARTY ARRAY
ARE HER ONLY LEGAL REPRESENTATIVES, VIDE ORDER DT. 21.8.2014 IN
I.A.NO.1409/14).

R4 TO 6 BY ADV. SRI.K.M.SATHYANATHA MENON

R1-2 BY ADV. SRI.R.RAJESH KORMATH

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 03-06-2015, ALONG WITH
RFA.796/2009, THE COURT ON 26.6.2015 DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

A.S.NO.162 OF 2002 & R.F.A. No.796 OF 2009

Dated 26th June, 2015.

J U D G M E N T

These appeals arise from the decision in O.S.No.214 of 1994 on the file of the Sub Court, Manjeri. A.S.No.162 of 2002 is by the plaintiffs and R.F.A.No.796 of 2009 is by defendants 1 to 4. The suit was one for partition of plaint B schedule properties.

2. Plaint B schedule properties belonged to one Maanu @ Mohammed. The fifth defendant is the first wife and the sixth defendant is the second wife of Maanu. The plaintiffs and defendants 1 to 4 are the children of Maanu in his first wife and defendants 7 and 8 are the children in his second wife. Maanu died on 7.3.1994. The case of the plaintiffs is that on the death of Maanu, the plaint B schedule properties devolved on the plaintiffs and the defendants. While defendants 1 to 5 supported the claim of the plaintiffs for partition, defendants 6 to 8 opposed the claim contending that Maanu had transferred

a portion of plaint B schedule properties to them and that the said portion is not partible. According to the plaintiffs, Maanu was not having a sound state of mind and therefore, the alienations, if any, made by Maanu are void and not binding on plaint B schedule properties.

3. The evidence in the case consists of the oral testimonies of PW1 and PW2 on the side of the plaintiffs and the oral testimony of DW1 and Exts.B1 to B8 documents on the side of the defendants. A document called for at the instance of the plaintiffs was marked as Ext.X1 in the proceedings. Among the documents produced by the defendants 6 to 8, Exts.B3 to B5 are the documents by which a portion of the plaint B schedule properties was transferred by Maanu in their favour.

4. The trial court held that the documents executed by Maanu in favour of defendants 6 to 8 are not void and accordingly, passed a decree for partition in respect of the remaining properties. The plaintiffs and defendants 1 to 4 are aggrieved by the said decision of the trial court in so far as a decree was not granted to them in respect of the properties

transferred by Maanu to defendants 6 to 8.

5. Heard the learned counsel on either side.

6. The learned counsel for defendants 1 to 4, relying on Ext.X1 case sheet called for from the Mental Health Centre, Kozhikode, contended that Maanu was suffering from Manic Depressive Psychosis and was on treatment for the said ailment for the period from 17.6.1979 to 24.6.1979. According to him, in so far as it was established that Maanu was suffering from the said ailment, it was for defendants 6 to 8 to establish that Maanu was not suffering from unsoundness of mind at the time of execution of Exts.B3 to B5 documents in their favour. It was also contended by the learned counsel that since the said defendants have not adduced any evidence in that regard, the trial court should have held that the said documents are void. He relied on the decision of this Court in **Mariam v. Varghese** (1965 KLT 692) in support of said contention. The learned counsel for the plaintiffs supported the said arguments, contending that when it is proved that Maanu was a person of unsound mind, the burden of proving that he had lucid intervals

and that the documents were executed during the lucid intervals is on the contesting defendants.

7. Section 11 of the Indian Contract Act provides that every person who has attained the age of majority and who is of sound mind is competent to contract. Section 12 of the Indian Contract Act defines 'sound mind' for the purpose of contracting, as follows :

“12. What is a sound mind for the purposes of contracting.-- A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.”

The provisions of Section 12 make it clear that a person is said to be of sound mind for the purpose of making a contract, if he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. The section clarifies that even a person who is usually of unsound mind, but occasionally of sound mind, can make a contract when he is of sound mind. The section further clarifies that the restriction for a person who is usually of sound mind, but occasionally of unsound mind, is only that he shall not make a contract when he is of unsound mind. The illustrations attached to the section further makes it clear that even a person who is in a lunatic asylum may contract during the intervals during which he is maintaining a sound state of mind. It is thus clear that even a person who is usually of sound mind, but occasionally of unsound mind, can enter into a contract when he is of sound mind. Previous or subsequent mental disorder may not be material except to create a suspicion as to the likelihood of

such disorder. The question whether a contract is invalid due to unsoundness of mind depends on the fact as to whether the person was capable of understanding the contract and of forming a rational judgment as to its effect upon his interests.

8. Ext.X1 is the case sheet called for from the Mental Health Centre, Kozhikode. Ext.X1 indicates that Maanu was admitted in the said hospital on 17.6.1979 and he was found missing from the Hospital on 24.6.1979. The complaints of Maanu as recorded in Ext.X1 are wandering tendency and disturbed sleep. It is recorded in Ext.X1 that Maanu had the first attack of the ailment three years ago and the same lasted for a week. It is also recorded in Ext.X1 that the ailment recurs once in a year. It is further recorded in Ext.X1 that the insight and judgment of the patient was impaired when he was admitted in the Hospital. It is also recorded in Ext.X1 that Maanu used to consume alcohol. PW2 is the Superintendent of Mental Health Centre, Kozhikode. He was examined as the custodian of Ext.X1. He deposed in his chief examination, on a perusal of Ext.X1 that Maanu was treated for Manic Depressive

Psychosis. In cross examination, PW2 admitted that a person suffering from the said ailment will have lucid intervals. He also stated in cross examination that in some cases, the said ailment is not curable. He further stated in cross examination that during the lucid intervals, the patient suffering from the said ailment will be a normal person.

9. Ext.X1 indicates that Maanu had no issues in his second wife at the time when he was admitted in the hospital on 17.6.1979. Defendants 7 and 8 were born to him after 24.6.1979. The evidence tendered by the sixth defendant as DW1 indicates that Maanu was residing with her till his death. The evidence of DW1 also indicates that Maanu owned a lorry and he was driving the said vehicle to earn his livelihood. The version of DW1 as regards the treatment undergone by Maanu was only that the same was for his addiction to alcohol. It is also seen from the evidence of DW1 that during 1987, Maanu met with an accident and thereafter, he could not work. Ext.B3 is the assignment deed executed by Maanu on 4.8.1987 in favour of defendants 7 and 8. Ext.B4 is a settlement deed

executed by Maanu on 8.5.1992 in favour of defendants 6 to 8. Ext.B5 is another assignment deed executed by Maanu in favour of defendants 6 and 7. Ext.B6 is a settlement deed executed by Maanu in favour of defendants 1 to 4. Even going by the evidence tendered by PW2, a person who is suffering from Manic Depressive Psychosis will have lucid intervals. True, Ext.B5 is a document executed by Maanu during 1979. But, Exts.B3 and B4 documents were executed several years after he was discharged from the hospital. Maanu died on 7.3.1994. There is nothing on record to indicate that Maanu had undergone treatment for any ailment after 24.6.1979 till his death. There is also nothing on record to indicate that Maanu was suffering from any ailments at the time of execution of Ext.B3 to B5 documents. Ext.B6 is a document executed by Maanu in favour of defendants 1 to 4 in the year 1991. Defendants 1 to 4 have no case that the said document was executed by Maanu without understanding the effect of the same. If Maanu was not having a sound state of mind, he would not have executed Ext.B6 in favour of defendants 1 to 4

when he was residing with the sixth defendant. As such, in the absence of any evidence to show that Maanu was suffering from the ailment referred to above after 24.6.1979, it cannot be said that Exts.B3 to B5 documents are void, especially when PW2 has categorically stated that the said ailment is curable.

10. In **Mariam v. Varghese** (supra), this Court held that if there is sufficient evidence to show that a person at certain stages of life had been of unsound mind, the burden shifts to the person who alleges his sanity. The case dealt with in the said decision was a case where a person who had attacks of insanity on five occasions had executed the documents impugned in the suit. More precisely, the person concerned was discharged from the mental hospital on 4.5.1117 M.E. and was re-admitted on 12.8.1120 M.E. and the impugned documents were executed during this interval. On the facts of the said case, this Court found that the evidence on record are sufficient to hold that he was suffering from unsoundness of mind at different stages of his life. It is in the said context, this Court held that the burden of proof shifts. Merely for the reason

that a person suffered an ailment affecting the soundness of his mind once in his life, he cannot be presumed to be a person of unsound mind throughout his life. Since it is found that there is no evidence to show that Maanu was suffering from unsoundness of mind after 24.6.1979, the said decision may not have any application to the facts of this case.

In the light of the facts and circumstances stated above, I do not find any merit in these appeals and the same are, accordingly, dismissed. The interlocutory applications in the appeals are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)