

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

AS.No. 597 of 1991 (D)

OS 25/1984 of PRINCIPAL SUB COURT, PALAKKAD

APPELLANT(S)/PLAINTIFF :

1. MUTHU, S/O.VELANKANDAN, PUDUSSERY AMSOM,
PALAKKAD TALUK (DIED - LEGAL REPRESENTATIVES IMPEADED AS
ADDL. APPELLANTS 2 TO 7)
2. AMMUKUTTY R.
3. SUNDARY M.
4. JAYAN M.
5. BABU M.
6. ULLAS M.
7. NANDAKUMAR M.

(THE SECOND ADDITIONAL APPELLANT IS THE WIDOW AND ADDL.
APPELLANTS 3 TO 7 ARE THE CHILDREN OF DEEASED APPELLANT V.MUTHU
AND ARE RESIDING AT MALAYANKAVU HOUSE, POST PUDUSSERY,
PALAKKAD DISTRICT. ADDL. APPELLANTS 2 TO 7 ARE IMPEADED AS
THE LEGAL REPRESENTATIVES OF DECEASED SOLE APPELLANT AS PER ORDER
DATED 29.10.1999 IN C.M.P.NO.5574 OF 1999.)

BY ADVS.SRI.C.P.DAMODARAN NAYAR

SRI.P.SHRIHARI

SRI.D.KRISHNA PRASAD

RESPONDENT(S): (DEFENDANTS 2 TO 22)

1. BHASKARAN, S/O.VELANKANDAN, RESIDING AT
PORICHUKULAM, KIZHAKKETHARA AMSOM, CHITTUR TALUK.
2. VIJAYAN, S/O.CHELLAKUTTY, RESIDING AT
KONDANCHATHY, KIZHAKKETHARA, KOLLANGODE.
3. SANTHA VIJAYAN, W/O.VIJAYAN, RESIDING AT
KONDANCHATHY, KIZHAKKETHARA, KOLLANGODE.
4. CHELLAN, S/O.VELAYUDHAN, RESIDING AT POLIYIDAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR (DIED - LRS. IMPEADED)
5. SASI, S/O.KRISHNAN, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
6. MANIKANDAN (MINOR) AGED 15 YEARS,
S/O.BHASKARAN, REP. BY GUARDIAN - FATHER, 1ST RESPONDENT,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
7. DEVI, W/O.MANI, RESIDING AT VITHANASSERY, VALLENGI,
NENMARA, CHITTUR.
8. CHELLAKUTTY, W/O.LATE KARUPPAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
9. SAROJINI, W/O.NARAYANAN, RESIDING AT VATTAKADU,
KOLLENGODE.
10. CHANDRAN, S/O.KARUPPAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
11. K.SATHYABHAMA, W/O.SAHADEVAN,
RESIDING AT PANDAMKODEKALAM,
VATTAKADU, KOLLENGODE.

12. K.VISWANATHAN, S/O.KARUPPAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
13. K.SANTHAKUMARI, D/O.KARUPPAN, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
14. K.PADMAVATHY, D/O.KARUPPAN, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
15. K.GIRIJA, D/O.KARUPPAN, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
16. K.SIVAN, S/O.KARUPPAN, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
17. YESODHA, W/O.LATE KRISHNAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
18. PUSHPAVATHI, D/O.LATE KRISHNAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
19. SHAKKILA, D/O.LATE KRISHNAN,
RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
20. LATHA (MINOR), AGED 17 YEARS,
D/O.LATE KRISHNAN, REP. BY GUARDIAN - MOTHER
17TH RESPONDENT, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR
21. SUNIL (MINOR) AGED 16 YEARS,
D/O.LATE KRISHNAN, REP. BY GUARDIAN - MOTHER
17TH RESPONDENT, RESIDING AT PORICHIKULAM,
KIZHAKKETHARA, KOLLENGODE, CHITTUR.

ADDL. RESPONDENTS 22 TO 27 (LRS. OF DECEASED R4) IMPEADED :

22. VELAYUDHAN

23. VIJAYAN.

24. CHANDRAN.

25. KAMALAM

26. SUBHADRA.

27. RUKKU ALIAS RUGMINI

(ADDL.R22 TO R27 ARE THE CHILDREN OF DECEASED CHELLAN RESIDING AT POLIYIDAM, KIZHAKKETHARA, KOLLENGODE – IMPEADED AS THE LEGAL REPRESENTATIVES OF DECEASED R4 AS PER ORDER DATED 22.3.2004 IN CMP NO.967/02)

ADDL.R22,24,25 BY ADV. SRI.T.C.SURESH MENON

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

A.S.No.597 of 1991

Dated 21st May, 2015.

J U D G M E N T

The legal representatives of the plaintiff in a suit for partition are the appellants.

2. The plaintiff and one Karuppan were the children of Velankandan in his first wife Kannu. The defendants 1 and 2 are the children of Velankandan in his second wife Kunji. The suit was filed after the death of Velankandan and his wives for partition of three items of properties described in schedules A to C to the plaint. The case of the plaintiff as far as plaint A schedule property is concerned is that the same was outstanding on a lease in favour of Velankandan and on the death of Velankandan and his wives, the same devolved on him and defendants 1 and 2. As far as plaint B and C schedule properties are concerned, the case set up in the plaint is that the said properties were acquired by Velankandan in favour of defendants 1 and 2, making use of the income from plaint A schedule property and therefore the said properties are also

liable to be treated as the properties of Velankandan. The plaintiff, therefore, claimed partition of his 1/3rd right over the plaint schedule properties.

3. Defendants 1 and 2 filed a written statement, contending among others, that the plaintiff has no right in the plaint schedule properties. It was conceded by defendants 1 and 2 in the written statement that plaint A schedule property was outstanding on lease in favour of Velankandan. However, it was contended by them that by virtue of Ext.B2 release deed, Velankandan had released his rights over plaint A schedule property in favour of the Janmi Tharawad and later, their mother Kunji obtained a fresh lease in respect of the said property and consequently on the death of Kunji, the said property devolved on them exclusively. They also contended that the first defendant had obtained a purchase certificate under the Land Reforms Act in respect of plaint A schedule property on behalf of his mother Kunji and therefore, at any rate, the plaintiff cannot claim any right over plaint A schedule

property. As regards plaint B and C schedule properties, the contention raised by defendants 1 and 2 was that the said properties are acquisitions made by defendants 1 and 2 from their personal income.

4. In the plaint, there was no reference to Ext.B2 release deed. However, when the defendants set up a case on the strength of Ext.B2 release deed in the written statement, a replication was filed by the plaintiff, stating among others, that Velankandan had never released his rights over plaint A schedule property.

5. The evidence in the case consists of the oral testimony of PW1 and Exts.A1 to A13 on the side of the plaintiff and the oral testimony of DW1 and Exts.B1 to B14 on the side of the defendants.

6. The court below found that the father of the plaintiff Velankandan had released his leasehold right over plaint A schedule property as per Ext.B2 release deed and as such, the plaintiff has not acquired any right on the property on the death

of his father. It was also found by the court below that since the plaintiff had no right in plaint A schedule property, he cannot claim any right over plaint B and C schedule properties as well. In the matter of arriving at the said conclusion, the court below relied on the recital in Ext.B1 release deed executed by the plaintiff in favour of his own brother Karuppan in respect of another property held by his father, that he was not holding any other property jointly with him. The plaintiff is aggrieved by the said decision of the trial court.

7. Heard the learned counsel for the appellant as also the learned counsel for respondents 5 and 26.

8. The learned counsel for the appellant contended that Ext.B2 is only a certified copy of the document and the release of the leasehold right of Velankandan over plaint A schedule property has not been established by the defendants by producing the original of the document and examining an attestor to the same as provided for under Section 68 of the Evidence Act. He also contended that while the defendants

admit that they are in possession of plaint A schedule property even after Ext.B2 release deed, they have not established the case pleaded by them in the written statement that their mother Kunji had obtained a fresh lease in her favour in respect of the said property. He further contended that Exts.B3 to B7 rent receipts allegedly issued by Lakshmikutty Amma from the Janmi Tharawad have also not been proved in the suit.

9. The fact that plaint A schedule property was outstanding on lease in favour of the father of the plaintiff Velankandan is not in dispute. The case of defendants 1 and 2 is that Velankandan had released his leasehold right in favour of the Janmi Tharawad by virtue of Ext.B2 release deed and thereafter, a fresh lease over the property was obtained by their mother Kunji. The specific case of the plaintiff is that there was no release of the leasehold right by his father. The document evidencing the fresh lease in favour of Kunji has not been produced before the Court. As pointed out by the learned counsel for the appellant, there is no pleading in the written

statement filed by defendants 1 and 2 as to the date on which their mother Kunji had obtained a fresh lease in respect of plaint A schedule property. There is also no pleading by defendants 1 and 2 as to the terms of the fresh lease claimed to have been obtained by their mother Kunji. The fact that the defendants and their mother have been in possession of the property all along is also not in dispute. The only documents produced to establish the lease in favour of Kunhi are Exts.B3 to B7. Exts.B3 to B7 are receipts allegedly issued by one Lakshmikutty Amma. Exts.B3 to B7 are not seen proved by examining the executant or any person who is conversant with the signature of Lakshmykutty Amma. No explanation has been given by defendants 1 and 2 as to the reason for the release of the leasehold right Velankandan had over plaint A schedule property and for obtaining a fresh lease in respect of the same property in favour of Kunji, which may not practically involve change of possession of the property. In this context, the contention of the plaintiff that Ext.B2 is a false document

created to prevent the plaintiff from claiming rights over plaintiff A schedule property on the death of his father assumes importance. As rightly contended by the learned counsel for the appellant, Ext.B2 release deed has not been proved as provided for under Section 68 of the Act. Despite the specific contention of the plaintiff that Ext.B2 was only a sham document, none from the jenmi Tharawad has been examined by defendants 1 and 2 to prove that pursuant to that document the jenmi Tharawad obtained possession of the property back from the lessee. Above all, it is seen that Ext.B2 release deed is a unilateral document executed by Velankandan. In the said circumstances, on an evaluation of the entire materials on record, I am inclined to hold that Ext.B2 is only a false document and that the rights held by the father of the plaintiff over plaintiff A schedule property was never released as per the said document. If the father of the plaintiff had not released the leasehold right he had over the property, on his death, the same would devolve on the plaintiff and

others. It seems that the court below has given much emphasis on the recital of the plaintiff in Ext.B1 release deed. Merely for the reason that the plaintiff has stated that he was not holding any property jointly with his brother Karuppan, he will not lose his rights, if any, over other properties. In the aforesaid circumstances, the plaintiff is entitled to a decree for partition of his rights over plaint A schedule property.

10. True, even the plaintiff has no case that his own brother Karuppan has any right over plaint A schedule property. But, the fact remains that Karuppan being the son of Velankandan, he is also entitled to a share in the property held by Velankandan at the time of his death along with other legal representatives of Velankandan. As such, it has to be held that on the death of the father of the plaintiff, the plaint A schedule property devolved on the plaintiff, his brother Karuppan, the second wife of the father of the plaintiff Kunji and defendants 1 and 2. The plaintiff is therefore entitled to 1/5th right over plaint A schedule property.

11. Coming to plaint B and C schedule properties, as noticed above, the case of the plaintiff is that the same have been acquired by the father of the plaintiff Velankandan in favour of defendants 1 and 2 making use of the income from plaint A schedule property. Defendants 1 and 2 have contended specifically in their written statement that they were having independent income and plaint B and C schedule properties have been acquired by them making use of their personal income. The plaintiff has not adduced any evidence to show that there was sufficient income from plaint A schedule property to enable his father Velankandan to purchase plaint B and C schedule properties in the name of defendants 1 and 2. There is no explanation also forthcoming from the plaintiff as to the reason why Velankandan had purchased plaint B and C schedule properties in the name of defendants 1 and 2, if the consideration for the said sale deeds has been paid by Velankandan. As such, I am not inclined to accept the case set up by the plaintiff in respect of plaint B and C schedule

properties.

12. The learned counsel for respondents 5 and 26 contended that the first defendant has obtained a purchase certificate in respect of plaint A schedule property from the Land Tribunal in accordance with the provisions of the Land Reforms Act and though the decision of the Land Tribunal in the proceedings before it was taken up in appeal by the plaintiff, the decision of the Land Tribunal was confirmed by the appellate authority and therefore the plaintiff cannot claim any right over the property. Even going by the pleadings of the first defendant, he was not having any leasehold right over the property and that he has obtained purchase certificate in respect of the property on behalf of his mother who was holding leasehold right over the property. Applying the same logic, since it is found that Kunji had no leasehold right over plaint A schedule property, the purchase certificate obtained by the first defendant can only be on behalf of all the legal representatives of Velankandan. As such, there is no merit in the said

argument of the learned counsel.

In the result, the appeal is allowed in part. The decree and judgment of the court below in so far as it relates to plaint A schedule property is set aside and a preliminary decree is passed declaring the 1/5th right of the plaintiff over plaint A schedule property. The plaintiff is also given a decree for recovery of mesne profits as claimed by him to be determined at the final decree stage. All the interlocutory applications in this appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)