

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

C.R.P.No. 463 of 2013 (E)

AGAINST THE ORDER IN O.P.NO.1/2012 OF THE COURT OF
THE PRINCIPAL MUNSIF, ERNAKULAM, DATED 21-05-2013.

REVISION PETITIONERS/RESPONDENT NOS. 1 TO 9 & 11 TO 13:

1. DEVAN, AGED 47 YEARS, S/O. LATE VELAYUDHAN
RESIDING AT VELIPARAMBIL, P.O. VADAKOD KAILS COLONY
KOCHI-682 021.
2. NIRMALA PRABHAKARAN,
W/O. LATE PRABHAKARAN, RESIDING AT NEENU NIVAS
CHETTIMANGALAM.P.O., VAIKOM, KOTTAYAM-686142.
3. V.C. SUNIL KUMAR, S/O. LATE CHANDRAN
RESIDING AT LAKSHMIPRIYA (THOPPIL)
SREE NARAYANA ROAD, P.O.EROOR NORTH
KOCHI-682306.
4. SAJI CHANDRAN, S/O. LATE CHANDRAN,
RESIDING AT VENATTU HOUSE
NIKATHIL ROAD, P.O. EROOR NORTH, KOCHI-682 306.
5. SIJU CHANDRAN, S/O. LATE CHANDRAN
RESIDING AT THOPPIL, OPP. KAPPATTIKAVU TEMPLE
P.O. EROOR NORTH, KOCHI-682 306.
6. LALITHA CHANDRAN, W/O. LATE CHANDRAN
RESIDING AT THOPPIL, OPP. KAPPATTIKAVU TEMPLE
P.O. EROOR NORTH, KOCHI-682 306..
7. SUNIL BOSE, S/O. LATE INDIRA, RESIDING AT INDIRA VIHAR
PERUMTHODATHU LANE, SRM ROAD, KOCHI-682 018.
8. RAKESH BOSE @SHARMA,
S/O.LATE INDIRA, RESIDING AT INDIRA VIHAR
PERUMTHODATHU LANE, SRM ROAD, KOCHI-682 018.
9. BHAVANI, AGED 81 YEARS
W/O. KANDU, RESIDING AT NJALIKKATTIL HOUSE
P.O. PENGOTTU, KOCHI-683 530.
10. PONNAPPAN, AGED 63 YEARS
S/O. VELAYUDHANU, RESIDING AT VELIPARAMBIL,
P.O.CHANGAMPUZHA NAGAR, KOCHI-683 533.
11. DHARMARAJAN, AGED 61 YEARS
S/O. VELAYUDHAN, RESIDING AT VELIPARAMBIL
P.O.CHANGAMPUZHA NAGAR, KOCHI-683 533.

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12. HARI, AGED 53 YEARS, S/O. VELAYUDHAN,
RESIDING AT VELIPPARAMBIL, P.O. CUSAT, KOCHI-682 022.

BY ADVS. SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS/PETITIONERS & 10TH RESPONDENT:

1. K. BHAVYA GOPAL, AGED 26 YEARS
W/O. E.S. SUNEESH, RESIDING AT KANNAMMATTU HOUSE,
P.O. PALLILANKARA, THRIKKAKKARA NORTH, KOCHI-682 021.
2. BABY GOPALAKRISHNAN, AGED 59 YEARS
W/O. LATE GOPALAKRISHNAN
RESIDING AT KANNAMMATTU HOUSE, P.O., PALLILANKARA
THRIKKAKKARA NORTH, KOCHI-682 021.
3. NITHIN DAMODARAN, AGED 24 YEARS
S/O. LATE DAMODARAN, RESIDING AT KANNAMMATTU HOUSE,
P.O.PALLILANKARA, THRIKKAKKARA NORTH, KOCHI-682 021.
4. PADMINI DAMODARAN, AGED 56 YEARS
W/O. LATE DAMODARAN, RESIDING AT KANNAMMATTU HOUSE,
P.O.PALLILANKARA, THRIKKAKKARA NORTH, KOCHI-682 021.
5. SUBHADRA PADMANABHAN, W/O.PADMANABHAN,
RESIDING AT KANDAAYIL, P.O. HMT COLONY,
KOCHI - 683 530.

BY ADV. SRI.MANU ROY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 9-6-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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Dated this the 9th day of June, 2015

ORDER

Respondents 1 to 4 filed O.P.No.1 of 2012 on the file of the Court of the Principal Munsiff of Ernakulam, against the revision petitioners and the fifth respondent under Section 151 of the Code of Civil Procedure and Sections 83 and 100 of the Transfer of Property Act, for permission to deposit ₹100/- payable to Thankamma, the predecessor-in-interest of the respondents in the Original Petition in terms of Will No.2068/1958 of Sub Registrar's Office, Edappally. The court below allowed the application as per the order dated 21.5.2013, which is under challenge in this Revision.

2. The Will was executed by one Kuttan, who died in 1976. The legal representatives of Kuttan are his sons Damodaran, Gopalakrishnan, Kelan and daughters Thankamma, Bhavani and Subhadra. Damodaran died and his legal representatives are petitioners 3 and 4 before the court below to whom item No.2

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property in the Will was allotted. Gopalakrishnan died on 1.2.1996 and his legal representatives are petitioners 1 and 2 before the court below, to whom item No.1 property in the Will was allotted. Thankamma also died and her legal representatives are the respondents before the court below. As per the terms of the Will, Damodaran and Gopalakrishnan were liable to pay ₹100/- each to Thankamma, Bhavani and Subhadra. It is submitted that Bhavani and Subhadra accepted the amount and issued receipts on 7.12.2011 and 9.12.2011. It was alleged that the legal representatives of Thankamma refused to accept the amount directed to be paid to Thankamma and hence the Original Petition was filed.

3. The revision petitioners and the fifth respondent herein, who were the respondents before the court below, contended that the Original Petition was not maintainable. It was also contended that the Original Petition was barred by limitation, the Will having been executed in the year 1958 and the testator having died in the year 1976.

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4. The court below did not consider the question whether the application is barred by limitation. On the merits, the court below held that the application is liable to be allowed.

5. The court below relied on the decision in **Narayana Kurup v. Manoharan (1991 (2) KLT 330)**, where it was held as follows:

“4. ... Though the Indian Succession Act does not make any specific provision regarding the mode of payment of the amount under a will to the legatee, Court's power to allow a person to deposit the amount in the Court under S.151 C.P.C. cannot be denied. As the revision petitioner is a legatee entitled to Rs.2,000/- and the respondents were duty bound to pay the said amount to him, they could comply with the directions in the will by offering it to the legatee and in case of refusal, by approaching the civil Court with the prayer to allow them to deposit the amount with notice to the legatee. Case of the respondents is that they offered the amount to the revision petitioner and he did not accept it. In such a situation, it is not possible to hold that the civil Court is helpless. It is always open to the Court to do what is fair and equitable. As the respondents approached the Court to perform their obligation under the will, the Court could not have

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refused them permission to deposit the amount on the ground that there is no express provision in the Code or the Rules to allow it ignoring its power under S.151 C.P.C. to do what is fair and equitable. It is trite law that S.151 does not empower the Court to do anything in contravention of any specific provisions of the Code or Rules. But so long as there is no express provision in the Code or Rules interdicting a particular thing S.151 can be invoked by a party. S.151 can be invoked by a party where the proposed action by the Court does not infringe any of the provisions in the Code or Rules or provisions in any statute. As S.151 makes the statutory recognition of the inherent power of the Court to do things *ex debito justitiae*, the Court can exercise it to meet the ends of justice so long as it does not transgress any specific provision in the Code or Rules or provision under any statute. In circumstances like the present one, it is not proper to set limitations on Court's inherent powers to grant relief.”

6. The court below also relied on the decision in **Vasantha Kumari v. Sarojini** (2008 (1) KLT 451), wherein the court considered the question of deposit as per the terms of a gift deed and it was held thus:

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“12. In order to record the deposit under S.83 of the Transfer of Property Act or to record the same by invoking S.151 of the Code of Civil Procedure, the Court is not expected to decide the disputes between the parties relating to the genuineness or otherwise of the document or the respective rights and liabilities of the parties or the entitlement of any party to receive any amount or as to the sufficiency of the amount or any other matter which is required to be settled in a properly constituted civil suit. The jurisdiction of the Court in disposing of such an Original Petition is only procedural and ministerial in character as held by the Supreme Court in ((2006) 4 SCC 432). The Court need only look into the document and ascertain whether the petitioners are liable to pay certain amounts to the respondents as per the terms of the said document. If the Court is satisfied that there is such a liability, permission can be granted to the petitioners to make the deposit. The court shall not in such case decide the question whether the settlement deed is genuine or whether the donor had the required sound disposing state of mind at the time of execution of the document, or whether the document is vitiated by fraud, undue influence or coercion. Such questions are alien to a petition under S.83 of the Transfer of Property Act or one under S.151 of the Code of Civil Procedure to record the deposit.

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Once the deposit is recorded, the liability of the person bound under the document to discharge the liability would come to an end. The petitioners cannot be compelled to indulge in a suit on title or a suit for declaration, when according to them, there is no cloud on their title or when they do not want any declaration in respect of their title. It is not for the court to compel a party to institute a suit. When a petition of the nature now under consideration is filed, the only requirement is to ascertain whether the petitioners are liable to pay the amount and whether they are prepared to make the deposit. After service of notice on the respondents, the court can record the deposit and relegate the parties to agitate all their contentions and the defence in a properly constituted civil suit.”

In view of the settled legal position, the findings rendered by the court below are beyond challenge. I confirm the findings rendered by the court below on the above aspect.

7. As stated above, the question of limitation was not considered by the court below. The learned counsel for respondents 1 to 4 submitted that in view of the terms of the Will, it cannot be said that the application is barred by limitation. That is a matter to be

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decided on the basis of the documentary and oral evidence, if any. I think it would not be proper to take a decision on such a question in this revision. The court below shall consider the question of limitation and render a finding on that aspect. Only for that purpose, the matter is remitted to the court below for a decision. In other words, on the questions decided by the court below and as mentioned above, there is no ground for interference.

Accordingly, the Civil Revision Petition is allowed in part and the matter is remitted to the court below for considering only the question of limitation. Both parties would be entitled to adduce such other evidence as is relevant. The court below shall, after affording an opportunity of being heard and to adduce evidence, documentary and oral, dispose of the question of limitation in accordance with law and on the basis of the same, decide O.P.No.1 of 2012 afresh. The parties shall appear before the court below on 22.6.2015.

(K.T.SANKARAN)
Judge

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