IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY,THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

FAO.No. 340 of 2014

AGAINST THE ORDER IN I.A.No.1337/13 in OS 190/2013 of I ADDL.SUB COURT, THRISSUR DATED 28-08-2014

APPELLANT/PETITIONER/PLAINTIFF:

USHA VENUGOPALAN, AGED 59 YEARS
D/O LATE K.G NAIR, RESIDING AT SREEPADAM, MAMANGALAM
EDAPPALLY SOUTH, KOCHI 682 024, KERALA.

BY ADVS.SRI.K.P.BALASUBRAMANYAN
SRI.NIRMAL. S
SMT.VEENA HARI

RESPONDENTS/RESPONDENTS/D5 TO 9 IN O.S:
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1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001

2. ADDITIONAL SALES TAX OFFICER II,
   ALUVA, ERNAKULAM DISTRICT 683 101

3. THE DISTRICT COLLECTOR OF THRISSUR,
   CIVIL STATION, THRISSUR 680 001

4. THE THAHSILDAR,
   TALAPPILLY TALUK, VADAKANCHERY
   THRICHUR DISTRICT 680 588

5. THE VILLAGE OFFICER,
   THIRUVILWAMALA, THALAPPILLY TALUK
   THRISSUR DISTRICT 680 588

R BY GOVERNMENT PLEADER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

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F.A.O.No.340 of 2014

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Dated this the 17th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the petitioner in I.A.1337/13 in O.S.190/13 on the file of the 1st Additional Sub Court, Thrichur. The appellant had filed the suit for partition and separate possession of her share in the plaint schedule properties and for other reliefs.

2. According to the appellant, the plaint properties were acquired by their father Late K.G.Nair. K.G.Nair expired in 1973 and was survived by his wife, two daughters and son Chandran, who expired later and whose legal heirs were impleaded in the suit as D2 to 4. It is her case that in 1964 her father had executed Ext.A1 will, by which his properties were to be bequeathed equally among his three children.

3. Subsequent to the death of her father, in 1974, Ext.A4 partition deed was executed among the wife and the other children of the deceased and to which the appellant was not a party. Still later, deceased Chandran started business in plywoods and at a later stage, he appears to have inducted his mother also as a partner into the firm.

4. In 1996, Chandran also expired. The partnership firm had incurred huge liabilities towards the dues under the Kerala General Sales Tax Act. Revenue Recovery proceedings were initiated against the legal heirs of Chandran and their mother. This was disputed in various proceedings before this Court and finally the appellant filed the suit, namely, O.S.190/13 before the Sub Court, Thrissur, seeking partition of the plaint schedule properties acquired by her father late K.G.Nair, as per the terms of Ext.A1 Will. Along with the plaint, she also filed I.A.1337/13 seeking temporary injunction restraining the respondents herein from proceeding with Revenue Recovery action against the plaint schedule properties, except the undivided share of late Chandran, her deceased brother.

5. By the impugned order, the court below held that the appellant had not made out, a prima facie, case entitling her for an order of injunction in respect of the entire plaint schedule properties. However, the court restrained the respondents from proceeding against the property allotted to the appellant in Ext.A4 partition deed of 1974. It is this order, which is under challenge before us.

6. We heard the counsel appearing for the appellant and the learned counsel appearing for the respondents.

7. While the learned counsel for the appellant contended that since the properties in question were those acquired by Late K.G.Nair and as he had executed Ext.A1 Will, which was traced only in 2012, the devolution of the property as per Ext.A1 cannot be affected by Ext.A4 partition deed of 1974, to which the appellant was not even a party. Therefore, according to her, the properties are to be shared as bequeathed in Ext.A1 and the Revenue Recovery proceedings initiated can only be against a share of Late Chandran as per Ext.A1. It was also pointed out that as per the Will their mother had not inherited any property. However, this contention was sought to be resisted by learned Government Pleader by referring to the details of the previous proceedings instituted by the appellant and her mother and also that the appellant herself had accepted Ext.A4 partition deed. Learned Government Pleader also contended that Ext.A1 Will, was not a registered document and that its execution was not proved in accordance with law.

8. We have considered the submissions made. From the facts pleaded, it is seen that according to the appellant way back on 24.7.1964 deceased K.G.Nair had executed Ext.A1 Will, while he was at Malaysia. It is her case that as per this Will the entire property devolved on the three children equally. It is stated that the said Will was remaining unknown to the appellant till it was recovered in the year 2012. She, therefore, contends that Ext.A4 partition deed of 1974 is unenforceable and is also not binding on the appellant for the reason that she admittedly was not a party to the said document. It is also her case that, her pleadings in the previous proceedings before this Court suggesting of having accepted the partition deed and the terms thereof, were made without being aware of the existence of Ext.A1, Will executed by the deceased.

9. As rightly found by the trial court, these are the factual contentions urged by the appellant and are matters which are to be established by her by adducing acceptable oral and documentary evidence. That stage in the trial of the suit, which is pending before the Sub Court has not reached. Therefore, from the facts pleaded we are

inclined to think that at this stage if the Revenue Recovery proceedings are permitted to continue and third parties are allowed to be treated as the plaint schedule properties, irreparable injury will be caused to the appellant. In view of that, without expressing anything on the merits of the case, we set aside the order impugned and restrain the respondents from proceeding with the Revenue Recovery proceedings against the plaint schedule properties, excluding the undivided share of Late Chandran.

10. Having regard to the fact that substantial amounts are to be realised by the Government, the recovery of which is stalled, we direct that the court below will expedite the matter and dispose of the suit as expeditiously as possible.

Appeal is disposed of accordingly.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE

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