

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

RSA.No. 1140 of 2005 ()

**AGAINST THE JUDGMENT IN AS 172/2000 of ADDITIONAL DISTRICT & SESSIONS
COURT (ADHOC)-II, KOTTAYAM DATED 29-03-2005**

**AGAINST THE JUDGMENT IN OS 695/1997 of PRL. MUNSIFF COURT, KOTTAYAM
DATED 31-08-1999**

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

1. JAGADAMMA, W/O.LATE MADHAVAN NAIR,
MANARGATTU HOUSE, KUZHIMATTOM P.O., PANACHIKKADU KARA
KOTTAYAM.
2. SUJATHA, D/O.MADHAVAN NAIR,
THEKKETHARAYIL HOUSE, CHALAPPALLY P.O.
MADATHILCHAL BHAGOM, CHERIAKUNNAM KARA
PERUMPATTY VILLAGE, MALLAPPALLY TALUK.
3. SULEKHA, D/O.MARAGATTU HOUSE,
KUZHIMATTOM P.O., PANACHIKKADU KARA, KOTTAYAM.
4. SUJITH, S/O.OF DO. DO.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. SARASWATHYAMMA, D/O.GOURIAMMA,
PUTHENPURACKAL HOUSE, KUZHIMATTOM P.O.
PANACHIKKADU KARA, KOTTAYAM.
2. LATHA, D/O.SARASWATHYAMMA OF DO. DO.
3. SREEDEVI, D/O. OF DO. DO.
4. GEETHA, D/O. OF DO. DO.
5. KALA, D/O. OF DO. DO. DO.

**(DEFENDANTS 1 AND 2 ARE NO MORE. SO THEY ARE NOT ARRAYED AS
RESPONDENTS)**

**R1 BY ADV. SRI.MATHEW JOHN (K)
R1 BY ADV. SRI.SUJESH MENON V.B.**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.BHAVADASAN, J.

R.S.A. No. 1140 of 2005

Dated this the 18th day of September, 2015

J U D G M E N T

Plaintiffs are appellants. Their suit for partition was dismissed by the court below which was confirmed in appeal.

2. The facts absolutely necessary for the purpose of disposal of this appeal are as follows:

Plaintiffs 1, 3 and 4 are respectively the 2nd wife and children of late Madhavan Nair. The 2nd plaintiff is the daughter of deceased Madhavan Nair born through his 1st wife. The 1st defendant is the brother of deceased Madhavan Nair, who is the son of deceased Madhavan Nair. The 2nd defendant is the sister of deceased Madhavan Nair and Padmanabhan Nair. The 3rd defendant, Saraswathiamma is the daughter of Pappiamma Gouriamma and the 2nd defendant and defendants 4, 5, 6 and 7 are the children of Saraswathiamma. The plaint schedule properties

belonged to the family members including the deceased Madhavan Nair and others as per the gift deed. Among the persons in whose favour the gift deed was executed i.e. defendants 1 and 2 alone are alive. Claiming that the plaint schedule properties are to be partitioned into 3 shares and that one such share shall be allotted to plaintiffs, the suit was laid.

3. Defendants 1 to 3 resisted the suit. They contended that plaintiffs have no right over the suit property and they are not entitled to any share in the plaint schedule property. The property belonged to Puthenpurackal family which is a marumakkathayam family. The defendants admitted that the property was sold in court auction to Nair Karayogam and the Nair Karayogam re-conveyed the property to Puthenpurackal family, according to the defendants, as per Ext.A1 document. The specific contention taken is that the reconveyance is in favour of the Karanavers and their nephew and the female members of

the thavazhy of the family. Thus the properties are re-conveyed to Marumakkathayam family. If that be so, the members of the family alone are entitled to get share in the property. The deceased son of late Madhavan Nair or his legal heirs have not acquired any title or possession over the properties. On these contentions, they prayed for a dismissal of the suit.

4. Trial court raised necessary issues for consideration. The evidence consists of the testimony of PWs 1 and 2 and document marked as Ext.A1 from side of the plaintiffs. The defendants examined DW1.

5. On appreciation of materials before it, the court below came to the conclusion that Ext.A1 was executed in favour of the family and therefore the plaintiffs are not entitled to any share and non suited them. In appeal, the lower appellate court confirmed the decree. That brings the plaintiffs before this Court.

6. Notice was issued on the following substantial questions of law:

“(a) Since Madhavan Nair had expired after 17.6.1956, had not succession relating to his share over the property opened instantaneously on his death according to section 7 of the Hindu Succession Act and had it devolved upon his son Madhavan Nair?

(c) On the death of Madhavan nair (son) if his share over the plaint schedule property devolved upon his legal heirs-the plaintiffs, are the courts below justified in disallowing partition? Were not the plaintiffs entitled to get $\frac{1}{4}$ share of the plaint schedule property portioned and separated?”

7. The learned counsel appearing for the appellants contended that the finding of the court below that Ext.A1 is in favour of the Marumakkathayam family is erroneous. A reading of the document will show that it is a gift by few persons and it is very evident that they do not form a natural thavazhi. If that be so, they take it as tenants in common and Section 7 of the Hindu Succession Act governs

the parties. The courts below were in error in holding that Ext.A1 is in favour of a Marumakkathayam family. If it is in favour of a few persons named therein, as already stated, the learned counsel pointed out that there is no natural thavazhi to which the gift is made so as to make it a thavazhi property. This fundamental error committed by the courts below has resulted in passing a wrong decree.

8. The learned counsel appearing for the respondents on the other hand pointed out that it is indisputable that the property belonged to the family. It was sold in court auction for a debt due from the family and it was later re-conveyed to the family. Thus, it remained a family property. May be that a few persons are named in the document, that does not derogate from the fact that reconveyance was to the family. Both the courts below have concurrently found that Ext.A1 is in favour of Puthenpurackal family following the Marumakkathayam law. Being a concurrent finding on facts, the courts below held that no grounds are made out to

interfere with the judgments of the courts below.

9. It will be evident from the rival contentions that the sole issue that arises for consideration is the interpretation of Ext.A1 document. The question is whether on a reading of said document, one could say, it is in favour of a thavazhi or a family or it is in fact of the name mentioned therein. May be true that the property initially belonged to the family. It is not in dispute that it was sold in court sale and purchased by certain other persons. On the request being made by persons made mention of in Ext.A1, NSS Karayogam decided to re-convey the property to those members. The relevant recital reads as follows:

“ആയിരത്തിഒരുനൂറ്റിപന്ത്രണ്ടാമാണ്ടു മീനമാസം
ഇരുപത്തിമൂന്നാം തീയതി പനച്ചിക്കാടുപകുതിയിൽ ടി
കരയിൽ ഇരിങ്ങാടപ്പള്ളിൽ നിന്നും പുത്തൻപുരക്കൽ
വീട്ടിൽ ചാർക്കും നായർ കൃഷിക്കാർ രാമൻനായരുടെ
അനന്തിരവർ അറുപതുവയസ്സായ ശംകരൻനായരും
അൻപത്തേഴു വയസ്സായ നാരായണൻനായരും
അൻപത്തൊന്നു വയസ്സായ കൃഷ്ണൻ നായരും
ടിയാന്മാരുടെ അനന്തിരവർ ടിയിൽ ശംകരൻനായരുടെ
അനന്തിരവർ ഇരുപത്തിഏഴുവയസ്സായ മാധവൻ നായരും

ഇരുപതുവയസ്സായ പത്മനാഭൻനായരും ടിയിൽ സ്ത്രീകൾ ഗൃഹജോലിക്കാർ നാരായണിയമ്മ മകൾ നാൽപ്പത്തഞ്ചു വയസ്സായ പാപ്പിയമ്മയും ടി പാപ്പിയമ്മ മക്കൾ ഇരുപത്തിമൂന്നു വയസ്സായ ഗൗരിയമ്മയും വിദ്യാഭ്യാസം പത്തുവയസ്സായ മീനാക്ഷിക്കുട്ടിയും പേർക്കു”

10. The further recital reads as follows:

“നിങ്ങൾ യോഗത്തിൽ അപേക്ഷിച്ച പ്രകാരം പൊതുയോഗത്തിൽ അനുവദിച്ച ടി പൊതുയോഗത്തിലും കമ്മറ്റിയോഗത്തിലും ഞങ്ങൾ എഴുതിത്തരുന്നതിനു അധികാരപ്പെടുത്തിയതനുസരിച്ചു താഴെ പറയുന്ന സ്ഥലം നിങ്ങൾക്കു ദാനമെങ്കെ ഒഴിഞ്ഞഴുതി കൈവശപ്പെടുത്തി തന്നിരിക്കുന്നു. യാതൊരു വിധത്തിലും അന്യാധീനപ്പെടുത്താതെയും അർത്ഥാവകാശപ്പെടുത്താതെയും നിങ്ങൾ പേരിൽ കൂട്ടികരം തീർത്തും ദേഹണ്ഡങ്ങൾ ചെയ്തും പുരവച്ചുയിർത്തും പരമ്പരയാ അനുഭവിച്ചുകൊള്ളേണ്ടതും ഇതിനു വിപരീതമായി ചെയ്താൽ യാതൊരു അർത്ഥ ബാധ്യതയും കൂടാതെ ഒഴുപ്പിച്ചു എടുക്കുവാൻ കരയോഗത്തിലേക്കു അവകാശമുള്ളതും ആകുന്നു.”

11. The courts below felt that the reconveyance or the gift or the settlement as the case may be is to the family. It is difficult to accept the above finding. Probably, they are all members of the said family. But it is one thing to say that a gift or settlement is in favour of the family, it is quite

another thing to say that it is in favour those persons mentioned in the document. At any rate, it is difficult to come to the conclusion that reconveyance is to a natural thavazhy. Merely because property once belonged to the family, it does not ipso facto follow that reconveyance is to the family. These vital aspects have not been considered by the courts below. The courts below were carried away by the facts that members of the family had applied and NSS Karayogam had decided to re-convey the property to them. The courts below did not address to the question as to in whose favour the document was executed and what is the consequence thereof.

12. For the above reasons, this Court is unable to uphold the findings of the court below and it is felt that a fresh consideration of the matter is necessary at the hands of the trial court. The judgments and decrees of the courts below are set aside and the matter is remanded to the trial court for fresh consideration in accordance with law and in

the light of what has been stated above. Parties will be at liberty to amend their pleadings, if they so chose. They will be allowed to adduce further evidence. The application for amendment filed before this Court is closed with liberty to file fresh application before the trial court.

The parties shall appear before the trial court on **29.10.2015**. The trial court may make every endeavour to dispose of the suit as expeditiously as possible at any rate, within a period of six months from the date of appearance of the parties.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge