

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

R.S.A.No. 375 of 2009 (C)

AGAINST THE JUDGMENT IN AS 11/2007 of THE SUB COURT, PALA DATED
02-12-2008

AGAINST THE JUDGMENT IN OS 25/2006 of MUNSIFF'S COURT, ERATTUPETTA
DATED 31-10-2006

APPELLANT-RESPONDENT-PLAINTIFF:

C.H.NABEEZA, W/O.HASSAN PILLA,
THOONGAMPARABIL HOUSE, ERATTUPETTA KARA.DO.VILLAGE
MEENACHIL TALUK.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS-APPELLANTS-DEFENDANTS:

1. K.H.ABDUL KAREEM,S/O.HASSAN,
CHEMMANACHALIL HOUSE, ERATTUPETTA KARA, DO.VILLAGE,
MEENACHIL TALUK.
2. C.H.PATHUMMA,W/O. MAMMUKUTTY,
MADUKKE ELAPPIL, NADACKAL KARA, ERATTUPETTA VILLAGE,
MEENACHIL TALUK.
3. C.H.BASHEER,S/O.HASSAN,
CHEMMENACHALILHOUSE,
ERATTUPETTA KARA, ERATTUPETTA VILLAGE,
MEENACHIL TALUK.
4. C.H.ABDUL SALAM,S/O.HASSAN OF DO...
DO.... DO....
5. C.H.NAZER,S/O.HASSAN OF DO... DO...
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6. C.H.NAZEER,S/O.HASSAN OF DO... DO....
DO.....
7. C.H. PAREETHUKANNU, S/O. HASSAN OF DO....DO....DO...

BY ADV. SRI.RAJEEV V.KURUP

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DST

"C.R."

P.B. SURESH KUMAR, J.

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R.S.A.No.375 of 2009

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Dated this the 15th day of October, 2015

J U D G M E N T

The plaintiff in a suit for partition is the appellant in this Second Appeal.

2. The properties sought to be partitioned belonged to Hassan, the father of the plaintiff. The defendants are the siblings of the plaintiff. Hassan died intestate. According to the plaintiff, $\frac{1}{14}$ share in the suit properties devolved on her on the death of Hassan. The suit was, therefore, filed seeking partition of the said share of the plaintiff. The defendants contended that Hassan had executed Ext.B1 gift deed in respect of an item of property in favour of the plaintiff on condition that the plaintiff will not have any claim in his remaining properties on his death and the plaintiff who accepted Ext.B1 gift subject to the condition attached to it, cannot claim partition in respect of the suit properties left behind by Hassan on his death.

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3. The trial court rejected the contention raised by the defendants and decreed the suit. However, in appeal, the appellate court reversed the decision of the trial court and dismissed the suit, accepting the contention of the defendants. The plaintiff, who is aggrieved by the decision of the appellate court, has thus come up in this Second Appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

5. The view taken by the appellate court, that the plaintiff, who accepted Ext.B1 gift with the condition that she will not claim any right in the remaining properties of her father, is not entitled to claim right over the remaining properties of her father, is in accordance with the dictum laid down by this Court in **Sarojini Amma v. Johnson** [2000(1) KLJ 728]. Obviously due to the aforesaid reason, the learned counsel for the appellant has not challenged the said finding of the appellate court. The argument of the learned counsel, on the other hand, was that after the death of Hassan, all the legal representatives of Hassan together had executed Ext.A5 gift deed in favour of the son of the first defendant, by which an item of property left behind by

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Hassan was gifted to him. According to the learned counsel, the conduct of the defendants in permitting the plaintiff to join along with them as one of the executants of Ext.A5 gift deed in her capacity as one of the legal representatives of deceased Hassan, precludes them from contending that the plaintiff is not entitled to a share in the suit properties in her capacity as one of the legal representatives of Hassan. In other words, the argument is that since the defendants accepted the plaintiff as one of the legal representatives of Hassan for executing Ext.A5 gift deed, they cannot be heard to contend that she is not entitled to a share in the properties left behind by Hassan.

6. I am unable to accept the argument of the learned counsel for the appellant. The question is whether the conduct of the defendants in permitting the plaintiff to join along with them as one of the legal representatives of their deceased father while executing a document in respect of one of the properties left behind by their father would estop the defendants from contending on the basis of Ext.B1 gift deed that the plaintiff is not entitled to a share in the properties of Hassan. Estoppel, as is well known, is a rule of evidence which prevents one party

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from denying the existence of fact which he represented as existing and upon which representation another person has been induced to act to his detriment. The principle upon which the rule of estoppel rests is that it would be inequitable and unjust if a person who has by a representation made or by conduct amounting to a representation induced another to act as he would not have otherwise done, is allowed to deny or repudiate the effect of a former representation to the detriment of the other. In other words, the principle of estoppel would be attracted only if there was a representation or promise or assurance on the part of a party and his opponent has acted upon the same to his detriment. The Apex Court has held in **R.S.Maddanappa v. Chandramma and another** (AIR 1965 SC 1812) that the object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith and therefore, where one person makes a misrepresentation to the other about a fact, he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation. In other words, if the party who is pleading the rule of estoppel as a bar knows the true

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state of affairs, it would not be open to him to plead estoppel because in the ordinary course of things it could not be presumed that he was actually misled by the representation or declaration made by the other party and altered his position to his prejudice.

[See **Chhaganlal Keshavlal Mehta v. Patel Narandas Haribhai** (AIR 1982 SC 121)]

7. Coming to the facts of the present case, as stated above, the contention is that since the defendants accepted the plaintiff as one of the legal representatives of Hassan in the matter of executing Ext.A5 gift in respect of an item of property left behind by Hassan, they cannot be heard to contend that she is not entitled to a share in the remaining properties of Hassan. It is beyond dispute that Ext.B1 gift was made by Hassan in favour of the plaintiff on condition that she will not have any right in his remaining properties on his death and the plaintiff has accepted Ext.B1 gift with the burden attached to it. Therefore, when Ext.A5 deed was executed by the plaintiff with the defendants, she was aware of the fact that she is not entitled to any share in the remaining properties of Hassan in her capacity as one of the legal representatives of Hassan and therefore, there was no question of

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the defendants misleading the plaintiff that she has a share in the remaining properties of Hassan for the purpose of joining with them to execute Ext.A5 gift deed. Likewise, by joining with the defendants in the matter of executing Ext.A5 gift deed, the plaintiff has not altered her position to her detriment in any manner. There is, therefore, no question of estoppel operating against the defendants as contended by the learned counsel of the appellant.

The Second Appeal, in the circumstances, is devoid of merits, and the same is, accordingly dismissed.

Sd/-

P.B. SURESH KUMAR,
JUDGE

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P.A. To Judge