

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

RFA.No. 793 of 2014 ()

OS 510/2011 of PRINCIPAL SUB COURT, NORTH PARAVUR

APPELLANT(S)/(SECOND DEFENDANT):

V.MURALIDHARAN AGED 38 YEARS
S/O.K.N.VALLI, NAMBOOTHIRIPARAMBU, POTTAN STREET
NORTH PARAVUR-683513.

BY ADVS.SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENT(S)/(PLAINTIFFS AND 3RD DEFENDANT):

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1. V.SIVANANDAN, AGED 50 YEARS
D 30/7, IIT CAMPUS, CHENNIA-600001.
 2. V.SELVARAJ, AGED 46 YEARS
154/207-C, PAZHANISWAMY COLONY, PONNAYYARAJAPURAM
COIMBATORE-641001.
 3. V.ALAMELU, AGED 42 YEARS
SARASWATHY NIVAS, UNRA-14, ULLAS NAGAR
THEKKUMBHAGAM, TRIPUNITHURA-682301.
 4. V.KRISHNAKUMAR, AGED 40 YEARS
S/O.KN.VALLI, NAMBOOTHIRIPARAMBU, POTTAN STREET
NORTH PARAVUR-683513.

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 18.12.2014, THE COURT ON 22-01-2015 DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & P.B.SURESH KUMAR, JJ.

R.F.A. No.793 of 2014

Dated 22nd January, 2015.

JUDGMENT

P.B.Suresh Kumar, J.

The second defendant in O.S. No.510 of 2011 on the file of the Court of the Principal Subordinate Judge, North Paravur is the appellant. Respondents 1 to 3 are the plaintiffs and respondent No.4 is the third defendant in the suit.

2. The suit was one for partition. The plaint schedule property belonged to late S. Venkitachalam Achari. According to the plaintiffs, Venkitachalam Achari married the mother of the plaintiffs Kanakammal first and on her death, he married the first defendant, the mother of defendants 2 and 3. It is stated that on the death of Venkitachalm Achari, the plaint schedule property devolved on the plaintiffs and the defendants and that plaintiffs are entitled to 2/12 shares in the property. It is also stated that the defendants who are residing in the plaint schedule property are not responding to the demand made by the plaintiffs for partition of the property and hence the suit.

3. The first defendant died pending the suit. The second defendant filed a written statement contending, inter alia, that the plaintiffs are not the children of late Venkitachalam Achari. The third defendant, however, conceded to the claim of the plaintiffs, in the written statement filed by him.

4. The court below, on an elaborate consideration of the facts and circumstances of the case, found that the plaintiffs are the children of the deceased Venkitachalam Achari in his wedlock with Kanakammal and they are therefore, entitled to the decree for partition sought for by them. Accordingly, a preliminary decree was passed and the same is under challenge in this appeal.

5. Heard the learned counsel for the appellant and perused the records.

6. The learned counsel for the appellant contended that the materials on record are not sufficient to hold that the plaintiffs are the children of late Venkitachalam Achari. We are unable to accept the said contention.

7. The first plaintiff gave evidence as PW1. The brother of the deceased mother of the plaintiffs gave evidence as PW2. Ext.A2 is the wedding invitation letter of the first plaintiff, wherein the name of the father of the first plaintiff is shown as S. Venkatachalam Achariar. Ext.A3 is the wedding invitation letter of the second defendant printed in the name of the first plaintiff. Ext.A11 is the notice issued by the Superintendent of Post Offices, Alwaye to the near relatives of late Venkitachalam Achari concerning the claim raised by the first defendant for the balance outstanding in the Savings Account of late Venkitachalam Achari. In Ext.P11, it is

stated that in the claim raised by the first defendant, the plaintiffs are shown as the near relatives of late Venkitachalam Achari. Ext.A12 is the S.S.L.C. Certificate of the first plaintiff, wherein the name of his father is shown as S. Venkatachalam. Ext.A13 is the birth certificate of the second plaintiff, wherein the name of his father was shown as Venkitachalam. Ext.A14 is the Aadhaar Card issued to the second plaintiff, wherein also name of his father is shown as Venkatasalam. The aforesaid documents have been proved through PW1. PW1 was not cross examined at all on the documents referred to above. True, no documentary evidence was adduced to prove the marriage of late S. Venkitachalam Achari with the mother of the plaintiffs. As indicated, PW2 is none other than the brother of the first wife of the Venkitachalam Achari. PW2 has deposed in his evidence that late Venkitachalam Achari had married his sister in the year 1950 in accordance with the religious rites and the plaintiffs are the children born to them out of the said wedlock. Even though he was cross examined at length, nothing was brought out in his cross examination to discredit the evidence tendered by PW2 as to the marriage of late Venkitachalam Achari with the mother of the plaintiffs. On an over all appreciation of the entire materials on record, we are of the view that the findings rendered by the court below that the plaintiffs are the children of

the deceased Venkitachalam Achari in his first marriage and that they are entitled to the decree sought for by them, are perfectly justified and do not call for any interference.

In the result, the appeal is dismissed *in limine*.

Sd/-

P.N. RAVINDRAN, JUDGE

Sd/-

P.B.SURESH KUMAR, JUDGE

smv

(true copy)