

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RP.No. 175 of 2014 ()

(AGAINST THE JUDGMENT IN RSA.NO. 42/2014 DATED 22-01-2014)

REVIEW PETITIONER/APPELLANT:-

**CHERIYA AMMA,W/O.UKKU NAIR, AGED 79 YEARS,
KOROTH KUNNUMMEL, NERANGAL HOUSE,
PANNIKKOTTOOR P.O., PANNIKKOTTOOR AMSOM DESOM,
KOZHIKODE TALUK.**

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS/RESPONDENTS:-

- 1. S. ABHIJITH, (STUDENT),
S/O.LATE SATHYAN, 'AMBADI HOUSE',
NANMANDA P.O., NANMANDA AMSOM, DESOM,
KOZHIKODE TALUK. PIN-673 613**
- 2. ABHILAL,
S/O.LATE SATHYAN, 'AMBADI HOUSE', NANMANDA P.O.,
NANMANDA AMSOM, DESOM,
REPRESENTED BY GUARDIAN AND MOTHER SUGATHAKUMARI,
D/O.KUTTYADI JANAKI AMMA, 'AMBADI HOUSE', NANMANDA P.O.,
NANMANDA AMSOM, DESOM, KOZHIKODE TALUK-673 572**
- 3. PADMINI, D/O.CHERIYA AMMA,
KOROTH KUNNUMMEL, NERANGAL HOUSE,
PANNIKKOTTOOR P.O., PANNIKKOTTOOR AMSOM, DESOM,
KOZHIKODE TALUK. PIN-673 572**
- 4. SIVADASAN NAIR,S/O.CHEROOTTY AMMA,
KOROTH KUNNUMMEL, NERANGAL HOUSE,
PANNIKKOTTOOR P.O., PANNIKKOTTOOR AMSOM, DESOM,
KOZHIKODE TALUK. PIN-673 572**

R1 & R2 BY ADV. SRI.S.SUJIN

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

R.P.No.175 of 2014

in

R.S.A. No.42 of 2014

Dated 3rd November, 2015.

O R D E R

The appellant seeks review of the judgment in the second appeal. The appellant is the first defendant in the suit from which the second appeal arose. The suit was for a declaration that Ext.B2 cancellation deed is void ab initio and not binding on the suit property.

2. The suit property originally belonged to the grandfather of the plaintiffs. He executed Ext.B1 gift deed in respect of the same in favour of the plaintiffs during their minority on 29.6.2000. Later, by Ext.B2, the grandfather of the plaintiffs cancelled Ext.B1 gift deed on 4.9.2000. The suit was filed, in the said circumstances, seeking the aforesaid relief

alleging that Ext.B1 gift has been accepted by the mother of the plaintiffs and that therefore, the cancellation of the document is invalid. The review petitioner contended that Ext.B1 gift has not been accepted by the donee and therefore, the donor was competent to revoke the gift by executing the cancellation deed. The trial court rejected the contention of the first defendant and decreed the suit and the appellate court confirmed the decision of the trial court. The review petitioner challenged the said decisions in the second appeal and the same was dismissed by this Court at the admission stage itself as per the judgment sought to be reviewed holding that sufficient evidence is available on record to indicate that the gift has been accepted by the donee and that therefore the impugned decisions are in order.

3. Heard the learned counsel for the review petitioner as also the learned counsel for the respondents.

4. The learned counsel for the review petitioner contended that there is absolutely no material on record to indicate that Ext.B1 gift has been accepted by the mother of

the plaintiffs on their behalf. He also pointed out that while this Court had stated in the judgment sought to be reviewed that there is sufficient evidence to show that the gift has been accepted, the positive overt acts, on the basis of which an inference of acceptance can be made has not been referred to by this Court in the judgment. True, this Court has not stated the materials on record from which it could be inferred that the gift has been accepted by the mother of the plaintiffs as contended by the plaintiffs. Ext.B1 gift deed was executed on 29.6.2000 and the same was cancelled by the donor on 4.9.2000. It is beyond dispute that the only issue arose in the suit was as to whether Ext.B1 gift has been accepted by the mother of the plaintiffs on behalf of the plaintiffs, as claimed by them. A perusal of the decisions of the courts below indicates that the first defendant had contended in the written statement filed by him that the father of the plaintiffs Sathyan had rights over a few other thavazhy properties held by his mother and since the mother of the plaintiffs took the stand on the death of Sathyan that she is not interested in getting the rights over the

thavazhi properties of the mother of Sathyan, Ext.B1 gift deed has been executed by the father of Sathyan in favour of the plaintiffs in lieu of the due share of Sathyan in the thavazhy properties of his mother. It is trite that slightest evidence is sufficient to infer acceptance of a gift. From the contention of the first defendant as indicated above, the courts below took the view that the execution of Ext.B1 gift deed is with the knowledge of the mother of the plaintiffs. When the defendants themselves admit that the mother of the plaintiffs took the stand that she does not require any share in the thavazhi properties of the mother of her husband and that Ext.B1 gift deed has been executed in lieu of the share of the father of the plaintiffs in the thavazhy properties of his mother, there is no reason for the court to infer that the mother of the plaintiffs has not accepted the said gift. It is in the said circumstances, this Court took the view that sufficient evidence is available on record to infer that the mother of the plaintiffs has accepted the gift on behalf of the plaintiffs. There is no error apparent on the face of record warranting interference, in exercise of the review

jurisdiction. The review petition is, therefore, devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)