

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

RP.No.1117 of 2015 IN RSA.1110/2003

AGAINST THE JUDGMENT IN RSA 1110/2003 of HIGH COURT OF KERALA
DATED 28.07.2015

REVIEW PETITIONERS (APPELLANTS IN THE SECOND APPEAL):

1. MRS.SARADHA SUGATHAN, AGED 65 YEARS,
ELANTHOLIL HOUSE, IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK, MANTHRIPURAM P.O.,
IRINJALAKUDA - 680 121.
2. MRS. SULOCHANA VISWANATHAN, AGED 60 YEARS,
HOUSE HOLD AFFAIRS, CHATHAMKUDATH HOUSE
EDAKULAM DESOM, POOMANGALAM VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, EDAKULAM
SOUTH , P.O.EDAKULAM, VIA IRINJALAKUDA.
3. MRS. VALSALA VISWAMBHARAN, AGED 67 YEARS,
HOUSE HOLD AFFAIRS, EKKADAN HOUSE, P.O.MUPLIYAM,
MUPLIYAM VILLAE, THRISSUR DISTRICT.
4. T.K.RAVEENDRANATHAN, AGED 50 YEARS,
S/O. KORU, THAIPARAMBIL HOUSE, KALPARAMBA,
POOMANGALAM VILALGE, MUKUNDAPURAM TALUK,
ARIPALAM - 680 688, THRISSUR DISTRICT.
5. T.K.SURAJBABU ALIAS SURESH, AGED 48 YEARS,
S/O. THAIPARAMBIL KORU, KALPARAMBA,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
P.O.ARIPALAM, THRISSUR DISTRICT.
6. T.K.UNNIKRISHNAN, AGED 41 YEARS,
COMPANY EMPLOYEE, KALPARAMBA, POOMANGALAM
VILLAGE, MUKUNDAPURAM TALUK, ARIPALAM P.O.,
TRISSUR DISTRICT.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS (RESPONDENTS IN THE SECOND APPEAL):

1. P.K.MANI @ VELAYUDHAN, AGED 66,
S/O. LATE PARAKKAL AYYAPAN, POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK (DIED).
2. KURUMBAKUTTY, AGED 96,
W/O. PARAKKAL LATE KOCHAYYAPPAN,
POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK (DIED).
3. SULOCHANA, AGED 59 YEARS,
W/O. ERUMAKKAT PARAMBIL KUNJITTY,
VALLIVATTAM VILLAGE, MUKUNDAPURAM,
VALLIVATTOM P.O. PIN 680 124.
4. CHITHRALEKHA,
WIFE OF KOLLENGARA K.K.RAVI, IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK, IRINJALAKUDA P.O. 680 121.
5. MADHAVI, AGED 89,
W/O. PARAKKAL KUNJUTTY, POOMANGALAM VILLAGE
MUKUNDAPURAM TALUK, ARIPPALAM P.O. PIN 680 688.
6. P.M.KOCHUPENNU, AGED 76 YEARS,
WIFE OF P.A.VELAYUDHAN, POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK, ARIPPALAM P.O, PIN 680 688.
7. P.M.KOCHAKKAN, AGED 61,
PLOT NO. 233, BLOCK D, RESERVE BANK STAFF QUARTERS,
BYCULLA, BOMBAY - 400 008 (DIED).
8. P.M.NARAYANI, AGED 71 YEARS
WIFE OF VELLIYATH NARAYANAN, MURIYADU VILLAGE
MUKUNDAPURAM TALUK, ANANTHAPURAM P.O. PIN 680 323.
9. JANAKY, AGED 68 YEARS
WIFE OF VAZHOOR SUBRAMANIAN, MADAIKONAM VILLAGE,
MUKUNDAPURAM TALUK, IRINJALAKUDA P.O. PIN 680 121.
10. CHANDRAVATHY, AGED 53 YEARS,
WIFE OF KIZHAKOODAN NARAYANAN, MADAIKONAM VILLAGE,
MUKUNDAPURAM TALUK, IRINJALAKUDA P.O PIN 680 121.
11. RAMAN, AGED 39,
S/O. THUDAMMA AND PERUKULLAM VELAYUDHAN,
PULLUT VILLAGE, MUKUNDAPURAM TALUK
IRINJALAKUDA P.O. PIN 680 121.

12. KUNJITTY, AGED 56,
S/O. ERUMAKATTUPARAMBIL KUNJUKANDH,
VALLIVATTAM VILLAGE, MUKUNDAPURAM TALUK
VALLIVATTOM P.O, PIN 680 124.
13. LONAPPAN, AGED 46,
MECHANIC, S/O. PALAMATHATHENGAL ABRAHAM,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK
ARIPPALAM P.O. PIN 680 688.
14. KRISHNA MENON, AGED 59,
S/O. PYNGAL, MADHAVIYAMMA, KIZHAKENCHALAKUDY
VILLAGE, MUKUNDAPURAM TALUK, CHALAKUDY - 680 307.
15. APPU, AGED 56,
S/O. KOMAPARUPARAMBIL RAVUNY, POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK, ARIPPALAM P.O.
KALPARAMBU. PIN 680 688.
16. VANAJA, AGED 36,
D/O. PARAKKEL KUJUTTY, POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK, ARIPPALAM P.O.
PIN 680 688.
17. THRESSIAMMA,
WIFE OF EDATHARA PARAMBIL LATE JOSEPH
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
18. ALBERT,
S/O. LATE JOSEPH, EDATHARAPARAMBIL HOUSE
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
19. BOBAN
S/O. LATE JOSEPH, EDATHARAPARAMBIL HOUSE
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
20. CHARLEY,
S/O. LATE JOSEPH, EDATHARAPARAMBIL HOUSE,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
21. DENNY,
S/O. LATE JOSEPH, EDATHARAPARAMBIL HOUSE,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.

22. EDDY
S/O. LATE JOSEPH, EDATHARAPARAMBIL HOUSE,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
23. KUNJIKALI,
W/O. LATE VELAYUDHAN, PARAKEL HOUSE,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
24. VIJAYAN,
S/O. LATE VELAYUDHAN, EX.CHIEF, LEELA BEACH HOTEL,
GOA, MODAL GOA NOW RESIDING AT PARACKAL HOUSE
ARIPPALAM P.O., KALPARAMBU. PIN 680 688.
25. USHA RAJAN
D/O. VELAYUDHAN, KOPATH HOUSE, VADKUMKARA VILLAGE
MUKUNDAPURAM TALUK, VELLANGALLOOR P.O. 680 662.
26. LATHIKA UNNI KRISHNAN
S/O.LATE VELAYUDHAN, URUNDOLY HOUSE,
VADAKKUMKARA VILLAGE, MUKUNDAPURAM TALUK,
MALA P.O. PIN 680732.
27. GOPY, S/O. LATE VELAYUDHAN
PARACKEL HOUSE, POOMANGALAM VILLAGE,
MUKUNDAPURAM TALUK, ARIPPALAM P.O. 680 688.
28. RENU
D/O. LATE VELAYUDHAN, PARAKAL HOUSE,
POOMANGALAM VILLAGE, MUKUNDAPURAM TALUK,
IRINJALAKUDA P.O, PIN 680 121.
29. P.K.SHEELA, AGED 46,
D/O. LATE P.M.KOCHAKKAN, B-25,
ASHISH SWAMI SAMARTH NAGAR, CROSS ROAD No.2,
LOKHANDWALLA COMPLEX, ANDHERI (W), MUMBAI - 400 053.
30. P.K.SHYLA, AGED 35 YEARS,
D/O. LATE P.M.KOCHAKKAN, B-25,
ASHISH SWAMI SAMARTH NAGAR, CROSS ROAD NO.2,
LOKHANDWALLA COMPLEX, ANDHERI (W), MUMBAI - 400 053.

R17 TO R19 & R22 BY ADV. SRI.T.N.MANOJ
R3, R4 & R12 BY ADV. SRI.K.A.SATHEESA BABU

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 01-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.BHAVADASAN, J.

Review Petition No.1117 OF 2015
IN
R.S.A No.1110 OF 2003

Dated this the 1st day of December, 2015.

O R D E R

Relying on the decisions in **Chakki Amma** vs. **Veeramani Iyer Sundara Iyer** (1955 KLT 101) and in **Kali Pennamma** vs. **St.Paul's Convent in Palluruthy** (AIR 1972 Kerala 185), this review petition has been filed to review the judgment dated 28.07.2015 in R.S.A No.1110/2003 whereby this Court dismissed the Regular Second Appeal.

2. The facts are given in detail in the judgment under review. However, the bare facts necessary to dispose of the review petition are as follows:

3. One Chathunny was the absolute owner and in possession of item No.1 property. He had three children by name, Kochayyappan, Kunjitti and Mani. After the death of Chathunny, the three sons partitioned the property as per Ext.A1.

Later, by Ext.B1 document, Kochayyappan and Mani assigned their property to one Theyyunni, a stranger. Theyyunni, in turn, by Ext.A2, assigned the property to Kunjitti who is the brother of Kochayyappan and Mani and thereby making Kunjitti the absolute owner of the property which was left behind by Chathunny. The suit was laid by the daughter of Kochayyappan challenging Exts.B1 and A2 characterising them as sham documents and contending that the assignors had retained possession and rights over the property even after those documents were executed. It was then contended that consequent on the death of Kochayyappan, being the daughter of Kochayyappan, the plaintiff is entitled to right over the properties of her father.

4. The courts below, relying on the decision in **Kamalakshy & Others** vs. **Narayani** (1967 KLT 1051), held that the parties are governed by Hindu Mitakshara Law as modified by the custom and holding that as per that law, plaintiff is not entitled to any right, non suited the plaintiff which was confirmed in appeal.

5. Before this Court, the contention regarding right of plaintiff was pursued and this Court found that essentially if, as a matter of fact, deeds executed by Kochayyappan and Mani in favour of Theyyunni was valid, then nothing more survives for consideration. This Court, while disposing of the matter, also observed that parties are governed by Hindu Mithakshara Law as modified by the custom.

6. It is true that in the decision in **Chakki Amma** vs. **Veeramani Iyer Sundara Iyer** (1955 KLT 101), it was held as follows:

“8. Once it was found that no rule of customary law in favour or against the plaintiffs was proved the only thing the learned Judge had to do was to proceed on the lines the learned District Munsiff did, namely, to apply some known rules of justice, equity and good conscience and decide the question of succession in the case accordingly. In the case of communities governed by customary law, when the Court found that the custom set up was not established, the invariable practice in Cochin in matters of succession and inheritance had been to apply the rules embodied in the Indian Succession Act. That was what was done regarding

Makkathayam Ezhuvas in the cases reported in 18 Cochin 88 and 21 Cochin 1. In 1124 (XL) Cochin 179 (F.B.) at page 189 Sir C.V.Ananthakrishna Iyer, C.J., observed:- "In the absence of sons, justice, equity and good conscience would suggest that the properties left by deceased should go to his daughters even though married." The question did not directly arise there nor did the case of competition between the married and unmarried daughters receive any consideration. If we are to follow the rules of the Indian Succession Act, on the death of Kunjan his widow become entitled to a third share and the residue had to be shared equally by the daughters, whether married or unmarried".

7. So also in the decision in **Kali Pennamma vs. St.Paul's Convent in Palluruthy** (AIR 1972 Kerala 185), it was held as follows:

"16. There is a similar provision in Section 24 of the Travancore-Cochin Civil Courts Act, 1951; but there is no such corresponding provision in the Kerala Civil Courts Act, 1958. Perhaps the above provision may be justified as one laying down the law in respect of the matters mentioned therein, and not one which fetters the duty of the Court to decide those matters according to law. Whatever that may be, this Court is not concerned with it, as such a

provision is not contained in the Kerala Act, as wrongly thought by the Full Bench. I do not also think that the above statutory provisions lays down a law contrary to the principle envisaged in 1955 Ker LT 101. The said provision only says-

(a) apply the Mohammadan law to Mohammadans and the Hindu law to Hindus;

(b) if there is a custom having the force of law, apply that to all parties; and

(c) in cases where no specific rule exists, namely the Mohammadan or the Hindu law as such does not apply, or a custom having the force of law does not exist, apply the principles of justice, equity and good conscience.

All that the decision in 1955 Ker LT 101, said was that the Hindu law as such did not apply, a custom having the force of law was not established, and that, therefore, the matter would be governed by the principles of justice, equity and good conscience".

8. The above decisions seem to suggest that females have right in the property. But, the said decisions have to be understand in the facts and circumstances of those cases. In the decision in **Chakki Amma vs. Veeramani Iyer Sundara Iyer** (1955 KLT 101), the court was concerned with the Thiyya Act of Cochin and therein the claim was made by the widow of the

person who owned the property. It is also significant to notice that in the said case the deceased has no sons and the daughters have raised claim of right over the property. In the decision in **Kali Pennamma vs. St.Paul's Convent in Palluruthy** (AIR 1972 Kerala 185), the question was with reference to Valan community. Of course, the decision in **Chakki Amma vs. Veeramani Iyer Sundara Iyer** (1955 KLT 101) was followed and was made use to dispose of the matter. But, none of these decisions is an authority for the proposition that daughters belonging to those two communities get right by birth in the property.

9. No such contention was taken in the present case also. The present suit proceeds on the basis that the document executed by Kochayyappan and Mani whereby they assigned the property which they obtained as per Ext.A1 partition deed to Theyyunni as per Ext.B1, is a sham document and that it was to screen the properties that the deed was executed.

10. Learned counsel appearing for the review petitioners sought to draw inspiration from Ext.A7 document which is said to

have been executed subsequently by the legal heirs of Kochayyappan, Mani and Kunjitti ignoring Exts.B1 and A2.

11. It must be noticed that Ext.A7 was the subject matter of another suit to which, of course, the plaintiff was not a party. But, the court noticed that the essential question was whether the deed executed by Kochayyappan and Mani namely, Ext.B1 was a sham document. The court found that there is no material to come to the conclusion that the said document is a sham document.

12. The grievance of the review petitioners is that the above issue was not specifically gone into by the court below and that has prejudiced the plaintiff.

13. This Court finds no merit in the above contention. On the materials on record and on appreciation of evidence, this Court came to the conclusion that there is nothing to indicate that Exts.B1 and A2 are sham documents. If that be so, the question of considering the customary law as to whether any right is conferred on the females does not arise for consideration. Merely because the courts below have not specifically adverted to

the fact that Exts.B1 and A2 are not sham documents, that does not mean that this Court cannot re-appraise the evidence to come to its own conclusion.

For the above reasons, this Court finds no merit in the review petition. It is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.