

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RSA.No. 338 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN AS NO.34/2004 of ADDITIONAL DISTRICT
COURT, IRINJALAKUDA DATED 20-03-2012

AGAINST THE DECREE AND JUDGMENT IN OS NO.91/2000 of PRINCIPAL SUB
COURT,IRINJALAKUDA DATED 28-10-2003

APPELLANT(APPELLANT IN THE LOWER APPELLATE COURT AND 5TH DEFENDANT IN
THE TRIAL COURT):

NIRMALA, W/O.KARANAYIL CHANDRASEKHARAN, AGED 59,
ETTUMANA DESOM, URAKAM VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADVS.DR.V.N.SANKARJEE
SRI.VN.MADHUSUDANAN
SMT.R.UDAYA JYOTHI
SRI.SAKIR.K.H.

RESPONDENT(S) (RESPONDENTS 1, 2, 5 TO 7, 9 TO 18 IN THE LOWER APPELLATE COURT
AND PLAINTIFFS 1 & 2, DEFENDANTS 1 TO 3, 6, 7 AND LEGAL HEIRS OF THE 3RD
PLAINTIFF, 4TH DEFENDANT & 4TH PLAINTIFF:

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1. RAJENDRAN, S/O.POOVATHUMKADAVIL KRISHNAN, AGED ABOUT 74,
LOKAMALESWARAM VILLAGE, DESOM, KODUNGALLUR TALUK,
THRISSUR DISTRICT-680 664.
 2. SAKUNTHALA, D/O.POOVATHUMKADAVIL KRISHNAN, AGED ABOUT 82,
PAPPINIVATTOM VILLAGE, POOVATHUMKADAVU DESOM,
KODUNGALLUR TALUK,THRISSUR DISTRICT-680 664.
 3. MUHAMMED, S/O.KHADER HAJI, PADIPPURAKKAKATH,
THIRUVANCHIKULAM DESOM, METHALA VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT-680664.
 4. PATHUKUTTY, W/O.MUHAMMED, PADIPPURAKKAKATH,
THIRUVANCHIKULAM DESOM, METHALA VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT-680664
 5. ABDUL LATHEEF, S/O.PADIPPURAKKAKATH MUHAMMED,
AZHIKODU JETTY P.O.,AZHIKODU VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT-680 666.
 6. SUDHAKARAN, S/O.KARIM PARAMBIL UNNIKRISHNAN
ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT-680665

7. GIRIJA, D/O.KARIM PARAMBIL UNNIKRISHNAN, ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
8. YESODA, W/O.VIJAYAN, POOVATHUMKADAVIL VIJAYAN, PAPPINIVATTOM VILLAGE,POOVATHUMKADAVU DESOM, KODUNGALLUR TALUK, THRISSUR DISTRICT-680 664.
9. JAYAKRISHNAN, S/O.POOVATHUMKADAVIL VIJAYAN, AGED ABOUT 58, POOVATHUMKADAVIL, PAPPINIVATTOM VILLAGE, POOVATHUMKADAVU DESOM,KODUNGALLUR TALUK, THRISSUR DISTRICT-680 664.
10. GOURI, W/O.KARANAYIL LATE PRABHAKARAN, ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
11. RAJENDRAN, S/O.KARANAYIL LATE PRABHAKARAN, ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
12. RAJITHA, D/O.LATE PRABHAKARAN, ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
13. AISHA, W/O.P.K.RAMAKRISHNAN, POOVATHUMKADAVIL HOUSE, PANANGAD P.O., ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
14. RAJASHREE, D/O.P.K.RAMAKRISHNAN, POOVATHUMKADAVIL HOUSE, PANANGAD P.O., ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.
15. JAYASREE, D/O.P.K.RAMAKRISHNAN, POOVATHUMKADAVIL HOUSE, PANANGAD P.O., ETTUMANA DESOM, URAKKAM VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT-680 665.

R1 BY ADV.SRI.RENJITH THAMPAN (SENIOR ADVOCATE)

R1 BY ADV.SMT.PR.REENA

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.338 of 2015

Dated this the 21st day of July, 2015

JUDGMENT

Appellant is the fifth defendant in a suit for declaration, permanent prohibitory injunction and recovery of possession on the strength of title over the plaint schedule properties. Admittedly, plaint A schedule property belonged to deceased Dhamayanthi. Her husband Sankaranarayanan predeceased her in the year 1983. Dhamayanthi died on 29.12.1998. She was having no issues. The case of the plaintiffs is that the defendants claimed right over the property owned by deceased Dhamayanthi and a portion was trespassed upon. Therefore, the suit was filed.

2. Appellant (fifth defendant) resisted the suit contending that the plaintiffs had no right over the property. Dhamayanthi was a person governed by Hindu Succession Act, 1956 (in short, "Act"). On her death, the property devolved on her siblings and not on the legal heirs of her husband. The appellant set up a custom that their family followed marumakkathayam law as customary law. These contentions were repelled by the trial court and the suit was decreed. The matter was taken

up before the first appellate court. That court also agreed with the findings of the trial court.

3. Heard the learned counsel for the appellant and the first respondent.

4. Ext.A1 is the impugned sale deed. Plaintiffs are the legal heirs of the husband of deceased Dhamayanthi. According to the plaintiffs, the property owned by Dhamayanthi after her death devolved according to Section 15(2)(b) of the Act. The contest of the appellant is that as Dhamayanthi was governed by marumakkathayam law, provisions of Section 17 of the Act should have been applied. The courts below concurrently found that the custom of marumakkathayam set up by the appellant was not proved. It is well settled that the parties being Thiyyas are governed by customary law. It is also well settled that in the absence of proof of any custom, the principles of Hindu Mithakshara Law will be applied as customary law to the members of the said community. This position has been firmly laid down by binding precedents of this Court. The courts below concurrently found that the appellant failed to establish that the parties are governed by marumakkathayam law. This finding is a question of fact which cannot be agitated in a second appeal, where the only concern is about substantial question of law. In the absence of any

substantial question of law arising in this appeal, I find no merit in the appeal. Hence, it is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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