

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

RSA.No. 607 of 2015 ()

**OS 207/2009 of II ADDL.SUB COURT,KOZHIKODE
AS 86/2014 of ADDL. DISTRICT COURT - IV, KOZHIKODE**

APPELLANT/APPELLANT/PLAINTIFF :

**RADHAKRISHNAN, AGED 62 YEARS,
RETIRED ASSISTANT ENGINEER, K.S.E.B., S/O.LAE PALATTU,
KAMMILIYIL NARAYANAN NAIR REMYA, BEYPORE, NORTH P.O.,
KOZHIKODE-673 015.**

**BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI**

RESPONDENTS :

- 1. BHARGAVI AMMA, AGED 83 YEARS,
W/O.LATE PALATTU, KAMMILIYIL NARAYANAN NAIR REMYA,
BEYPORE AMSOM DESOM, KOZHIKODE-673 015.**
- 2. T.K.LAKSHMIKUTTY, AGED 59 YEARS,
D/O.LATE PALATTU, KAMMILIYIL NARAYANAN NAIR,
SANGEETHA, PP 1/599, NEAR CWRDM P.O.
PERINGALAM, PERINGALAM AMSOM AND DESOM
CHELAVOOR VILLAGE, KZOHICODE.**
- 3. T. MOHANDAS, AGE 56 YEARS,
S/O..LATE PALATTU, KAMMILIYIL NARAYANAN NAIR
CHAITANYA, BEYPORE AMSOM DESOM, KOZHIKODE-673 015.**
- 4. V.T. REGHUNATH, AGED 53 YEARS,
S/O..LATE PALATTU, KAMMILIYIL NARAYANAN NAIR,
FORMER DISTIRCT AND SESSIONS JUDGE, ARCHANA
BEYPORE NORTH, NADUVATTOM AMSOM DESOM,
KOZHIKODE-673 015.**
- 5. T. JAYAPRAKASH, AGED 50 YEARS,
S/O..LATE PALATTU, KAMMILIYIL NARAYANAN NAIR, ARCHANA
BEYPORE NORTH, NADUVATTOM AMSOM DESOM
KOZHIKODE - 673 015.**

BY ADV. SRI.V.T. RAGHUNATH

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 24-07-2015, THE COURT ON 13-08-2015 DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. No.607 OF 2015

Dated 13th August, 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 plaint schedule properties belonged to the father of the plaintiff, Narayanan Nair. The first defendant is the mother of the plaintiff and defendants 2 to 5 are his siblings. Narayanan Nair died on 23.12.2004. The case of the plaintiff is that on the death of Narayanan Nair, the plaint schedule properties devolved on the plaintiff and defendants and he is entitled to get his 1/6 share in the plaint schedule properties partitioned.

3. The defendants resisted the suit contending that the plaint schedule properties were disposed of by Narayanan Nair during his life time itself as per Ext.B1 will and Exts.B3 and B4 settlement deeds and as such, the plaintiff has no right in the said properties.

4. The trial court accepted the contention raised

by the defendants and dismissed the suit and the decision of the trial court has been confirmed by the appellate court. The plaintiff is aggrieved by the said decisions and hence this Second Appeal.

5. Heard the learned Senior Counsel for the appellant and the learned counsel for defendants 1, 3 and 5 who appeared through caveat.

6. Though it is alleged by the plaintiff in the plaint that Exts.B3 and B4 settlement deeds are vitiated, for, deceased Narayanan Nair was not having steady and disposable state of mind for about 15 years prior to his death, there is no pleading in the plaint regarding Ext.B1 will. The execution of Exts.B3 and B4 settlement deeds are seen proved by examining an attesting witness to the said documents. Defendants 4 and 5 in whose favour the said settlement deeds were executed have also given evidence to the effect that they accepted Exts.B3 and B4 settlement deeds and are in possession of the same. The trial court found that the plaintiff has not established the case pleaded by him that Narayanan

Nair was not having a steady and disposable state of mind for about 15 years prior to his death. As regards Ext.B1 will, even though there was no pleading regarding the said will in the plaint, the execution of the same was also proved by the defendants by examining DW3, an attesting witness to the same. The courts below concurrently found that the plaintiff could not establish any suspicious circumstances surrounding the execution of Ext.B1 will. In the aforesaid circumstances, I do not find any illegality in the decisions of the courts below.

7. The learned Senior Counsel for the appellant has not attacked Exts.B3 and B4 settlement deeds on any grounds. Instead, she contended that the execution of Ext.B1 will is vitiated on account of suspicious circumstances. Narayanan Nair had executed four different wills, viz., Exts.A9, A10, A11 and A12 prior to the execution of Ext.B1 will. A portion of the plaint schedule property was bequeathed to the plaintiff as per Ext.A10 will. Ext.A10 was executed in the year 1994. Likewise, as per the terms of Ext.A12 will also, a portion of the plaint schedule property was bequeathed in favour of the plaintiff.

Ext.A12 was executed in the year 2001. According to the learned Senior Counsel, in the said circumstances, Ext.B1 will executed excluding the plaintiff completely from inheriting the properties of the testator will have to be viewed with suspicion. I do not agree. First of all, the plaintiff cannot be heard to contend that Ext.B1 will is vitiated on account of suspicious circumstances on the basis of Exts.A10 and A12 wills, for, the specific case of the plaintiff was that deceased Narayanan Nair was not having a steady and disposable state of mind during the period during which the said wills were executed. Further, the conduct on the part of Narayanan Nair in executing several wills in respect of the very same property would only show that he was a person of wavering mind. Further, Ext.B1 will was executed by Narayanan Nair in favour of his wife. A will executed by a person in favour of his wife after cancelling the prior wills executed by him in favour of his children cannot be viewed with suspicion. At any rate, the same cannot be accepted as suspicious circumstance to hold that the will is vitiated. There is, therefore, no substance in the contention

raised by the learned Senior Counsel for the appellant.

In the result, the appeal is devoid of merits and the same is dismissed in limine.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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