

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RSA.No. 613 of 2015

**AS 17/2012 OF PRINCIPAL SUB COURT, IRINJALAKUDA
OS 147/2009 OF PRINCIPAL MUNSIF COURT, IRINJALAKUDA**

APPELLANT(S):

1. SATHYAN, AGED 55 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
2. SAVITHRI, AGED 51 YEARS,
D/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
3. SUGATHAN, AGED 50 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM TALUK,
TRICHUR DISTRICT.
4. BABU, AGED 48 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
5. SATHEESAN, AGED 46 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
6. USHA, AGED 42 YEARS,
D/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
7. AJITHAN, AGED 41 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.

PJ

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8. PRADEEP, AGED 39 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
9. SUMA, AGED 38 YEARS,
D/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.
10. DEVAYANI, AGED 89 YEARS,
W/O. LATE ELANTHOLIL VEETIL MADHAVAN
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT.

BY ADV. SRI.VINAY RAMDAS

RESPONDENT(S):

1. KRISHNANKUTTY, AGED 60 YEARS
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT-680 683.
2. VIJAYAN, AGED 53 YEARS,
S/O. LATE ELANTHOLIL VEETIL MADHAVAN,
PULLUR VILLAGE, PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT-680683.
3. RAVEENDRANATHAN, AGED 60 YEARS
S/O. PULLIKKAL KOCHURAMAN, PULLUR VILLAGE
PULLUR DESOM, MUKUNDAPURAM THALUK,
TRICHUR DISTRICT-680 683.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 5/10/2015 THE COURT ON 27-10-2015, DELIVERED THE FOLLOWING:

PJ

"C.R."

P.B.SURESH KUMAR, J.

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R.S.A.No.613 of 2015.

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Dated this the 27th day of October, 2015.

J U D G M E N T

Defendants 1 to 10 and 12 in a suit for partition are the appellants in this Second Appeal.

2. The property sought to be partitioned belonged to one Velu. Velu died in the year 1978. According to the plaintiff, he is the son of Velu and on the death of Velu, the suit property devolved on him and Madhavan, another son of Velu, being the surviving legal representatives of Velu. Defendants 1 to 10 are the successors of Madhavan. The plaintiff claimed partition of his one half right over the suit property. The defendants contended that the plaintiff is not the son of Velu and as such, he is not entitled to any share in the suit property. Alternatively, the defendants also contended that if at all the

plaintiff has any right over the suit property, the same is lost by adverse possession. The trial court rejected the case of the defendants and decreed the suit. The appellate court, on a reappraisal of the evidence, confirmed the decision of the trial court. The defendants referred to above, who are aggrieved by the concurrent decisions of the courts below have thus come up in this Second Appeal.

3. Heard the learned counsel for the appellants/defendants.

4. The learned counsel for the defendants has not challenged the concurrent findings rendered by the courts below against the defendants on the plea of adverse possession raised by them. The challenge, on the other hand, was against the finding on the issue as to the paternity of the plaintiff. One of the documents relied on by the courts below to hold that the plaintiff is the son of Velu is Ext.A6 extract of his school admission register. According to the learned counsel, the school admission register being a public document, in the light of the provisions contained in

Section 65 of the Indian Evidence Act, only a certified copy of the same can be produced to prove the contents of the same. It was contended by the learned counsel for the defendants that Ext.A6 is not a certified copy of the original, but only an extract of the original and hence, the same cannot be pressed into service to prove the contents of the original.

5. At the outset, I must state that the contention raised by the learned counsel for the appellants does not arise for consideration in this case as one of the defendants who gave evidence on behalf of the defendants as DW1 in the suit has admitted that the defendants have no dispute as to the contents of Ext.A6 school admission register. The relevant portion of the deposition of DW1 reads thus:

"A6 x A±R£ SkqO SvsO IÐLeV S\j¾fV. Af]Rs
Dça¨R¾¨Or]\ÿO fj¨o]sæV? Csæ."

In other words, the defendants admit the fact that in the school admission register of the plaintiff, the name of his

father is shown as Velu and their contention is only that the said entry in the school admission register of the plaintiff is incorrect. When the defendants admit the contents of the school admission register of the plaintiff, the contention raised as to the admissibility of Ext.A6 document, according to me, does not arise.

6. Even assuming that the defendants do not admit the contents of the school admission register of the plaintiff, I do not find any merit in the contention raised by the learned counsel for the defendants. Ext.A6 extract of the school admission register of the plaintiff has been proved through PW2, the Headmistress of the Government L.P. School, Parapukkara. PW2 has categorically stated that Ext.A6 is the extract of the school admission register of the plaintiff prepared and issued by her. In other words, PW2 is a person who has seen the original of the school admission register of the plaintiff and who maintains the stand that Ext.A6 is a true extract of the original. She has also stated that the relevant page of the admission register is now lost.

It is seen that the original of the school admission register was though produced by PW2 before the court, it was found that the relevant page of the original of the school admission register was completely destroyed. An endorsement to that effect is seen made by the presiding officer in the deposition sheet of the plaintiff. The said endorsement reads thus:

"The original register produced by the witness appears to be very old and the papers are seen in small bits after tearing due to oldness."

Now I shall deal with the argument of the learned counsel based on Section 65 of the Indian Evidence Act. Section 65 of the Indian Evidence Act reads thus:

"65. Cases in which secondary evidence relating to documents may be given :-

Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-

(a) when the original is shown or appear to be in the possession or power-

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

Section 65 clarifies that in case of (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In other words, the requirement of law is that

the contents of a public document is to be proved by producing a certified copy of the same. But, Section 65 also clarifies that in cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In other words, when the original has been destroyed or lost, any secondary evidence of the contents of the document is admissible. Ext.A6 extract of the school admission register of the plaintiff being a copy made from the original, the same has to be accepted as a secondary evidence of the said document, as defined under sub-section (3) of Section 63 of the said Act. Sub-section (5) of Section 63 of the said Act provides that oral accounts of the contents of a document given by some person who has himself seen it would also amount to secondary evidence of the contents of the document. As noticed above, PW2 has categorically stated that she has seen the original of the school admission register of the plaintiff and Ext.A6 is the true extract of the same prepared by her from the original. The evidence tendered by PW2 would also amount to secondary evidence

of the contents of the school admission register of the plaintiff. But, the question is as to whether the clarification given in respect of the cases coming under clause (c) of Section 65 applies to a public document. According to me, the rule that only a certified copy of the original is admissible as secondary evidence when the original is a public document is a provision intended to protect the originals of the public records from the danger to which they would be exposed by constant production in evidence. It does not apply when the original of the public document has been lost or destroyed. If the original is lost or destroyed, clarification given in respect of cases coming under clause (c) would apply to public documents as well. Otherwise, the contents of a public document cannot be proved, if its original is lost or destroyed, for, a certified copy cannot be obtained if the original is not in existence. A similar view has been taken by the Madras High Court in **Kunneth Odangat Kalandan v. Vayoth Palliyil Kunhunni Kidavu** (ILR Vol.VI Madras 80). In the light of the evidence

tendered by PW2 that the original of the school admission register of the plaintiff has been lost, Ext.A6 extract of the school admission register of the plaintiff as also the oral evidence tendered by PW2 that she has seen the original of the school admission register of the plaintiff and Ext.A6 is the extract of the same prepared by her, are admissible in evidence to prove the contents of the original.

7. Now, I shall deal with the contention of the defendants as to the correctness of the entry in the school admission register of the plaintiff as regards his father. Though the case set up by the plaintiff that he is the son of Velu was denied by the defendants in the written statement filed by them, there was no pleading in the written statement as regards the parents of the plaintiff. There is no dispute to the fact that Kunjipennu was the wife of Velu. DW1 has admitted in cross examination that the plaintiff is the son of Kunjipennu and the dispute is only as to his paternity. According to DW1, Velu was away in Colombo from 1940 to 1948 and the plaintiff was born during the said

period and therefore he is not the son of Velu. DW1 also admitted in cross examination that he does not know whether Kunjipennu had divorced Velu. In other words, the fact that the plaintiff was born during the subsistence of the marriage of Velu with Kunjipennu is not in dispute. Section 112 of the Indian Evidence Act provides that the fact that any person was born during the continuance of a valid marriage between his mother and the man shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at the time when he could have been begotten. As far as the present case is concerned, there is no convincing evidence to indicate that Velu had no access to Kunjipennu at the time when the plaintiff could have been begotten. The solitary statement made by DW1 during cross examination that Velu was away in Colombo from 1940 to 1948 cannot be accepted to hold that Velu had no access to Kunjipennu during the relevant period. Further, DW1 is a person born long after the birth of the

plaintiff and he has stated that the evidence tendered by him is based on the information which he received from his father. In other words, he has no direct knowledge of the facts in respect of which he gave evidence in cross examination. There is, therefore, no substance in the contention raised by the defendants that the entry in the school admission register of the plaintiff as regards his father is incorrect.

The Second Appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.