

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RSA.No. 266 of 2014 ()

AGAINST THE JUDGMENT AND DECREE IN AS 89/2008 of SUB COURT, OTTAPPALAM DATED 20-06-2013.

AGAINST THE JUDGMENT AND DECREE IN OS 283/2005 of MUNSIFF COURT, OTTAPPALAM DATED 31-01-2008.

APPELLANT(S)/RESPONDENTS/DEFENDANTS 2 & 3:

1. THE SECRETARY, KERALA STATE LIBRARY COUNCIL,
THIRUVANANTHAPURAM.
2. THE SECRETARY,
DISTRICT LIBRARY COUNCIL,
SULTHAN PET, PALAKKAD.

BY ADV. SRI.P.V.SURENDRANATH.

RESPONDENTS/APPELLANTS & RESPONDENT NO.2/PLAINTIFFS AND DEFENDANT NO.1.:

1. E. VIJAYAN, AGED 59 YEARS,
S/O. LATER SANKARA THARAKAN, EERATTUTHODI HOUSE,
THIRUNARAYANAPURAM AMSOM THIRUVAZHIYOOR DESOM,
OTTAPALAM TALUK.
2. CHANDRA SEKHARAN, AGED 65 YEARS,
S/O. LATER SANKARA THARAKAN, EERATTUTHODI HOUSE,
THIRUNARAYANAPURAM AMSOM, THIRUVAZHIYOOR DESOM,
OTTAPALAM TALUK.
3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADVS.SRI.SANTHEEP ANKARATH & SRI.Y.JAFAR KHAN
R3 BY GOVERNMENT PLEADER SRI.ABDUL RAHIMAN.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A No.266 of 2014

Dated this the 23rd day of July, 2015.

J U D G M E N T

Heard the learned counsel on both sides. Second respondent in this appeal died while the matter was pending before the lower appellate court. Learned counsel for the contesting respondents contended on the basis of ***Gopalan v. Nandini Narayanan (2015 (2) K.L.T S.N.4(Case No.5))*** that as the decree passed by the lower appellate court was in favour of deceased second respondent (who was the appellant before the lower appellate court), the decree cannot be said to be one against a dead person. In the above decision, learned Single Judge of this Court held as follows :

“While a decree passed against a dead person is generally treated as nullity (though not invariably in all cases), the position is different in a case where a decree is passed in favour of a dead person. Decisions are consistent in holding that in

the latter case the passing of such a decree is only an irregularity and not an illegality. A collateral attack on the basis of such a decree has no sanction of law. It binds the parties and continues to exist in law unless got rid of as per law. Such a decree cannot be ignored as if it is void or is a nullity. The contention therefore that the decree in O.S.307 of 1997 is null and void cannot be accepted. It is at best only voidable. The legal heirs of plaintiff can elect to stand by those decisions. The effect of abatement is that the legal heir cannot bring a fresh suit on same cause of action. The decree could not be treated as null and void. It could be said to be a voidable decree in which case, the decree had to be get rid of by the process known to law. There is no attempt from the side of the petitioner herein to get the decree set aside.”

2. In view of the above decision of this Court, the

matter need only be sent to the lower appellate court for impleading the legal heirs of deceased second respondent in this appeal (second appellant in the lower appellate court). For the limited purpose mentioned above, the matter is remitted back to the court below.

The parties shall appear before the court below on 17th August, 2015.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE.**

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