

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 427 of 2009 (A)

AGAINST THE ORDER IN I.A. NOS. 372/2007 AND 2416/2007 IN I.A. NO. 1330/2004 IN
OS 494/2001 of MUNSIF COURT, TALIPARAMBA DATED 06.09.2008

PETITIONER(S):

NANIYIL GOVINDAN,
S/O. LATE KRISHNAN
TALIPARAMBA AMSOM DESOM,
KEEZHATTOOR, KANNUR DIST.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S):

1. KANAMADATHIL PADMAVATHI
TALIPARAMBA AMSOM DESOM, KOOVODU, KANNUR DISTRICT
2. KANAMADATHIL GOURI, TALIPARAMBA
AMSOM DESOM, KOOVODU, KANNUR DISTRICT.
3. KANAMADATHIL MALLIKA, TALIPARAMBA
AMSOM DESOM, KOOVODU, KANNUR DISTRICT.
- *4. KANAMADATHIL SASIDHARAN,
TALIPARAMBA AMSOM DESOM, KOOVODU, KANNUR DISTRICT
(ADDRESS OF R4 CORRECTED)
5. KANAMADATHIL KRISHNAN,
TALIPARAMBA AMSOM DESOM , KANNUR DISTRICT
6. KANAMADATHIL CHEEYYAYI,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT
7. KANAMADATHIL GOVINDAN, TALIPARAMBA AMSOM
DESOM, KANNUR DISTRICT. (EXPIRED)
8. KANAMADATHIL GOPALAN, TALIPARAMBA
AMSOM DESOM, KANNUR DISTRICT.
9. POLA KALYANI, W/O. LATE KRISHNAN,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT.

10. POLA VIJAYAN, W/O. LATE KRISHNAN,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT.
11. POLA KOMALA, D/O. LATE KRISHNAN,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT.
12. POLA ALAKESAN, S/O. LATE KRISHNAN,
TALIPARAMBA AMSOM DESOM LANNUR DISTRICT.
13. POLA PRASANNA, W/O. NARAYANAN,
TALIPARAMBA AMSOM DESOM KANNUR DISTRICT.
14. POLA INDIRA, W/O. NARAYANAN,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT
15. POLA MANOHARAN, S/O. KRISHNAN,
TALIPARAMBA AMSOM DESOM, KANNUR DISTRICT.

ADDL. R16 TO R21 (AS LEGAL REPRESENTATIVES OF R7)

- ADDL.R16.** SMT. PANNERI MEENAKSHI,
W/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.
- ADDL.R17.** KANAMADATHIL DAMODARAN,
S/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.
- ADDL.R18.** KANAMADATHIL BALAKRISHNAN,
S/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.
- ADDL.R19.** KANAMADATHIL RADHA,
D/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.
- ADDL.R20.** KANAMADATHIL SOBHA,
D/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.
- ADDL.R21.** KANAMADATHIL PUSHPA,
D/O. KANAMADATHIL GOVINDAN,
KEEZHATTOOR DESOM,
TALIPARAMBA AMSOM,
TALIPARAMBA P.O., KANNUR DISTRICT.

WP(C).No. 427 of 2009 (A)

(ADDL. R16 TO R21 ARE IMPEADED AS PER ORDER IN I.A. NO. 9179/2009 DATED 05.08.2009)

***CORRECTED ADDRESS OF R4.**

**KANAMADATHIL SASIDHARAN,
TALIPARAMBA AMSOM DESOM,
KOOVODU, KANNUR PIN 670141.**

(ADDRESS OF R4 IS CORRECTED AS PER ORDER IN I.A. 9178/2009, DATED 5.08.2009)

**R9 - R13 & R15 BY ADV. SRI.P.U.SHAILAJAN
R1- R4 BY ADV. SRI.RAVI KRISHNAN
R8 BY ADV. SRI.M.G.SREEJITH
R8 BY ADV. SMT.K.ANILA (THIRUVALLA)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1: COPY OF THE PRELIMINARY DECREE IN O.S. NO. 494/2001 OF THE MUNSIFF COURT, TALIPARAMBA.
- EXT.P2: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.NO. 372/07 IN I.A. 1330/04 IN O.S. NO. 494/01.
- EXT.P3: COPY OF THE AFFIDAVIT IN SUPPORT OF I.A. NO. 2416/07 IN I.A. NO. 1330/04 IN O.S. 494/01.
- EXT.P4: COPY OF THE COMMON ORDER DATED 06.09.2008 IN I.A. NOS. 372/07 AND 2416/07 IN I.A. NO. 13308/04 IN O.S. NO. 494/01 OF THE MUNSIFF COURT, TALIPARAMBA.

RESPONDENTS' EXHIBITS:

- EXT.R10(a): COPY OF THE COUNTER STATEMENT FILED BY THESE RESPONDENTS IN I.A. NO. 372/2007.
- EXT.R10(b): COPY OF THE DEPOSITION OF THE PETITIONER HEREIN IN I.A. NO. 372/2007 BEFORE THE MUNSIFF'S COURT TALIPARAMBA AS PW1
- EXT.R10(c): COPY OF EXHIBIT B1, WHICH IS THE COPY OF THE APPLICATION FOR KARSHAKA THOZHILALI PENSION, SUBMITTED THE MOTHER OF THE PETITIONER.
- EXT.R10(d): COPY OF EXHIBIT B1(a) WHICH IS THE COPY OF THE MONEY ORDER RECEIPT.
- EXT.R10(e): COPY OF THE COVERING LETTER ISSUED BY THE HEADMASTER.
- EXT.R10(f): COPY OF THE SCHOOL ADMISSION REGISTER REGARDING THE PETITIONER.
- EXT.R10(g): COPY OF THE SCHOOL ADMISSION REGISTER REGARDING KAMALA.

//TRUE COPY//

P.A. TO JUDGE

P.BHAVADASAN, J.

W.P.C. No. 427 of 2009

Dated this the 05th day of August, 2015

J U D G M E N T

A short question that arises for consideration in this writ petition is whether dismissal of the application filed by the petitioner before this Court to implead him as legal heir of the first defendant, who died during the pendency of the suit, is proper.

2. The suit was one for partition. The first defendant was one Krishnan. There were four plaintiffs. The plaintiffs have 1/4th share each in the estate. The preliminary decree was passed on 02.06.2003 and plaintiffs filed final decree application as I.A.No.1330/2004. During the pendency of the final decree application, Krishnan died. It appears that the petitioners who filed the final decree applications brought some persons on the party array as the legal representatives of Krishnan.

3. Two petitions namely, I.A.No.372/2007 was filed by the petitioner and I.A.No.2416/2007 was filed by the mother of the petitioner seeking to bring themselves on the party array as the legal heirs of the deceased Krishnan. During the pendency of the petition, the petitioner in I.A.No.2416/2007 died and that petition became infructuous and what survived for consideration was only I.A.No.372/2007 filed by the petitioner herein.

4. The petitioner claimed to be the son of late Krishnan, who died during the pendency of the final decree proceedings, and he wanted to come on record as one of the legal heirs of late Krishnan.

5. The petition was strongly opposed by respondents 5, 7, 8, 9 and 11, who disputed them that the petitioner is the son of Krishnan and also disputed the status of Naniyil Cheeyayi, who is the petitioner in I.A.No.2416/2007 and who died during the pendency of the said petition.

6. Since there was a dispute among the legal heirs, the court conducted an enquiry as enjoined under Order XX Rule 5.

7. From the side of the petitioner, PWs 1 and 2 were examined and Exts. A1 to A3 were marked. From the contesting respondents' side, RW1 was examined and Exts. B1 and B2 were marked.

8. On an appreciation of the materials in the case, the trial court came to the conclusion that the petitioner in I.A.No.372/2007 had failed to establish that he is the son of Krishnan and dismissed the petition. It is the said order that is under challenge.

9. Sri. O.V.Maniprasad, the learned counsel appearing for the petitioner contended that the court below has not actually appreciated the evidence in the case and has based its decision on irrelevant considerations. The learned counsel went on to point out that the evidence of PW2, who speaks about the marriage between Krishnan and

the petitioner in I.A.No.2416/2007 i.e., Naniyil Cheeyayi, has not been properly considered. There is no reason to disbelieve him when he speaks that he had attended the marriage of Krishnan and Naniyil Cheeyayi. Further, Ext.A1, the electoral card shows that Krishnan is the father of the petitioner in I.A.No.372/2007. Ext.A3, which is similar to Ext.B2(a), the school admission register shows that the father of the petitioner is none other than Krishnan. These documents, according to the learned counsel for the petitioner, are sufficient to justify his claim that he is one of the legal heirs of late Krishnan.

10. The learned counsel appearing for the respondents on the other hand contended the court below has meticulously considered the evidence on record and has found that the claim made by the petitioner cannot be true. The learned counsel invited attention of this Court to Ext.B1, which is an application for pension submitted before the Grama Panchayat and pointed out that the said application

is dated 20.12.1991/1997. The learned counsel also drew attention of this Court to Column No. 7(b) and pointed out that it is shown therein that the spouse is not alive. Attention was also drawn to the endorsement on the reverse side of Ext.B1, wherein the application is allowed by order dated 12.12.2000. The learned counsel went on to point out that it is not in dispute that Krishnan died only on 20.09.2006. This betrays the claim made by the petitioner. Further, the learned counsel contended that two documents namely, Ext.A1 and B2(a) only make mention of the name of the parent as Krishnan and it does not show that it is Kanamadathil Krishnan. The crucial documents such as electoral list, ration card etc. have not been produced and on the available evidence, the lower court was justified in coming to the conclusion that there is no material to show that the petitioner is the legal heir of Krishnan. Therefore, no interference is called for.

11. At the outset itself, it may be mentioned that there is no clear evidence regarding the marriage between Krishnan and Naniyil Cheeyayi. PW2, of course, speaks about having attended the marriage, but the date is not specified. It is interesting to note that none from the family of the mother of the petitioner is examined. Apart from the above fact, Ext.B1 was a long way in probabilizing the fact that the claim made by the petitioner may not be true. Of course, it is unfortunate that at the time of evidence, the mother of the petitioner in I.A.No.372/2007, who is the petitioner in I.A.No.2416/2007, was laid up and could not give evidence. But nothing prevented the petitioner from producing other documents and examine witnesses to show that he is actually the son of Kanamadathil Krishnan. To add to the agony of the petitioner is the issuance of Ext.B2(b) by the Head Master of the school, who issued Ext.B2(a). It says that the petitioner in I.A.No.372/2007 has a sister case which the petitioner himself does not have. These materials cast a

doubt in the mind of the court below that there is want of materials to come to the conclusion that the petitioner is the son of Kanamadathil Krishnan.

12. The learned counsel appearing for the petitioner before this Court contended that in the decision reported in **Jaladi Suguna v. Satya Sai Central Trust & others** [AIR 2008 SC 2866], it was held that if there is a dispute between the persons as to who is the legal representative, that shall be decided in the same proceedings itself. He also relied on the decision reported in **Suresh Kumar Bansal v. Krishna Bansal and Another** [(2010) 2 SCC 162) and contended that the decision in a suit regarding the legalheirship is only a summary proceeding and it does not operate as res judicata and that dispute has to be tried independently by the person concerned approaching appropriate forums. It was therefore contended by the learned counsel for the petitioner that in view of the decision reported in **Suresh Kumar Bansal's** case (supra), even assuming that this

Court is to uphold the finding of the lower court, it may be clarified that, that will not prevent the petitioner from agitating his claim in the separate suit, if he is entitled to do so in accordance with law.

13. This Court finds no reason to interfere with the order of the court below. It seems to be based on materials on record. This writ petition is accordingly dismissed.

However, it is made clear that in view of the decision reported in **Suresh Kumar Bansal's** case (supra), the finding is only a summary proceeding and it will not stand in the way of the petitioner filing an independent suit for agitating his claim in the appropriate proceedings, if he is entitled to do so in accordance with law.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge