

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

RSA.No. 944 of 2014 (D)

**AS 6/2013 of SUB COURT, VADAKARA
OS 163/2010 of MUNSIF COURT, NADAPURAM**

APPELLANT/APPELLANT/PLAINTIFF :

**CHERUVALATH SUDHA, AGED 58 YEARS
D/O. KARTHYAYANI AMMA, RESIDING AT OTHAYOTHKOKIL
NADAKKUTHAZHA VILLAGE, PUDUPPANAM DESOM
VATAKARA TALUK, KOZHIKODE DISTRICT.**

BY ADV. SRI.MOHANAN V.T.K.

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. SUJATHA S NAMBIAR, AGED 49 YEARS,
D/O.KARTHYAYANI AMMA, POURNAMI NILAYAM
NEAR JAYA NAGAR, NO.4, PARVATHI NAGAR
KALAMPAKKAM POST, THIRUVAR CPT, THIRUVALLOOR
TAMIL NADU, PIN-602001.**
- 2. SISTER SUNITHA, AGED 41 YEARS,
CHERUVALATH HOUSE, TUNERI VILLAGE, TUNERI DESOM
VATAKARA TALUK, KOZHIKODE DISTRICT, PIN-673513.**
- 3. CHERUVALATH KARTHYAYANI AMMA, AGED 75 YEARS
W/O.KUTTINARAYANAN NAMBIAR, TUNERI VILLAGE
TUNERI DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT
PIN-673513.**

R3 BY ADV. SRI.ZUBAIR PULIKKOOL

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.No.944 of 2014

Dated this the 20th day of November, 2015

JUDGMENT

The plaintiff in a suit for declaration of title and consequential reliefs is the appellant in this second appeal.

2. The suit property belonged to Kuttinarayanan Nambiar. The third defendant is the wife of Kuttinarayanan Nambiar and the plaintiff and defendants 1 and 2 are their children. On the death of the Kuttinarayanan Nambiar, the suit property was partitioned as per Ext.A1 among the parties to the suit. On the same day, the third defendant executed Ext.A2 settlement deed in respect of her share over the suit property in favour of the plaintiff and defendants 1 and 2. Later, as per Ext.A3, the third defendant revoked Ext.A2 settlement deed. The suit was filed thereupon filed, alleging that the gift made as per Ext.A2 has been accepted by the donees and therefore, the same cannot be revoked. The third

defendant contested the suit contending that the gift made by her as per Ext.A2 has not been accepted by the donees and therefore, she is entitled to revoke the same. The trial court accepted the case of the third defendant and dismissed the suit. Though the plaintiff took up the matter in appeal, the appellate court on a reappraisal of the evidence on record confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against her has thus come up in this second appeal.

3. Heard the learned counsel for the appellant/plaintiff as also the learned counsel for the third respondent/3rd defendant.

4. The plaintiff, who alleges that the gift made as per Ext.A2 has been accepted by her, has not adduced any evidence, not even formal, to establish her case that she has accepted the gift. As such, it cannot be said that the view taken by the courts below that the plaintiff has not established the acceptance of the gift made as per Ext.A2 is incorrect or faulty in any manner.

5. The learned counsel for the appellant, relying on

the decision of this Court in **Gopalakrishnan v. Rajamma** [2006 (4) KLT 377], contended that a gift can be cancelled only by filing a suit and not by executing a unilateral document. According to the learned counsel, Ext.A3 document, in the circumstances, is invalid. In this context, the relief prayed for by the plaintiff in the suit is relevant. The relief claimed by the plaintiff reads thus:

“The Plaintiff claims declaration that the plaintiff, first defendant and second defendant have title to the plaint schedule property subject to the interest of the 3rd defendant under deed of settlement dated 23 March 2010 with consequential relief of injunction restraining the defendants from transferring the plaint schedule property against the sale deed of settlement in terms of the plaint.”

In the light of the aforesaid relief, the only question arose for consideration before the courts below was as to whether the plaintiff has established title to the suit property. I have found that in the absence of any evidence on the part of the plaintiff to prove the acceptance of Ext.A2 will, it cannot be said that the courts below went wrong in holding that the gift has not taken effect. If the gift has not taken effect, it cannot be said that the plaintiff has acquired any right over the property. In

the said view of the matter, there is no substance in the contention raised by the learned counsel for the appellant.

The second appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm