

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

RSA.No. 1202 of 2014 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 357/2009 of DISTRICT COURT,
PALAKKAD DATED 28-06-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 357/2005 of PRINCIPAL SUB COURT,
PALAKKAD DATED 31-07-2009.**

APPELLANT/APPELLANT/PLAINTIFF:

**T.RAVI, AGED 67 YEARS,
S/O.LATE SNEHALATHA AMMA,
FLAT NO. 5B, J.M.CASTLE,
KALOOR POST - 682 017,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR.
SRI.GEEN T.MATHEW.**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

**1. T.PUSHPA MOHAN, AGED 63 YEARS,
D/O.LATE SNEHALATHA AMMA, 1132/3, AISWARYAM,
MELINA MONGARU ATTAVAR POST - 575 001,
MANGALORE DISTRICT, KARNATAKA STATE.**

**2. T.JOTHI, AGED 66 YEARS,
S/O.LATE SNEHALATHA, A-5/12, NABARD NAGAR,
THAKAUR COMPLEX, MANDIVALI EAST POST - 400 019,
MUMBAI, MAHARASHTRA STATE.**

**R1 BY ADVS. SRI.A.R.GANGADAS.
SRI.A.R.GANGADAS.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.1202 of 2014

Dated this the 3rd day of June, 2015.

J U D G M E N T

Challenge in this appeal is against the concurrent findings of the trial court and lower appellate court that the plaintiff/appellant is not entitled to get a decree, in a suit for partition, against the respondents.

2. Heard the learned counsel for the appellant and the learned counsel appearing for the first defendant (caveator).

3. Averments in the plaint are that the plaintiff and defendants are children of late Snehalatha Amma and late K.Dhamodhara Menon and the parties followed erstwhile marumakkathayam law. The property shown in the plaint schedule belonged to Snehalatha Amma as per Ext.A1 assignment deed. According to the plaintiff, she died intestate on 02-05-2004. The property devolved upon the plaintiff and defendants as legal heirs of their deceased mother.

4. First defendant (contesting respondent) opposed the

plaint claim contending that the property shown in the plaint schedule was bequeathed by their mother as per a registered will dated 07-05-1979 (Ext.B1). As per the recitals in the will the property was exclusively set apart to the first defendant and both the plaintiff and second defendant were directed to be paid Rs.10,000/- each by the testator. It is also contended that the amounts stipulated in Ext.B1 will was paid by the first defendant to the plaintiff and second defendant which they received. The plaintiff has a contention that the said amount was later returned to the first defendant.

5. Learned counsel for the appellant contended that a vital legal question was omitted to be considered by the courts below. According to the learned counsel, the nucleus of the consideration for the property purchased in the name of their mother Snehalatha Amma was the sale proceeds of a property belonged to their father. Ext.A2 is the sale deed executed in

respect of that property by mother and children after death of Damodaran Menon and the sale proceeds were utilized for purchasing the property in the name of mother. According to the learned counsel for the appellant, this fact, which is undeniable, is a circumstance in favour of the plaintiff to contend that though the property was outstanding in the name of their mother, she was holding the property as a trustee for and on behalf of her children.

6. Per contra, learned counsel for the Caveator contended that this contention is incorrect and it was not raised at any point of time. Not only that, the provisions in the Benami Transactions (Prohibition) Act, 1988 (in short 'the Act') will prohibit raising such a contention. The definition of 'Benami Transaction' in Section 2(a) reads as follows :

““Benami transaction” means any transaction in which property is transferred

to one person for a consideration paid or provided by another person;”

7. Section 2(c) would show that “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property. Section 3 prohibits benami transaction in unequivocal terms. It says that no person shall enter into any benami transaction. Only exception carved out is the aspects mentioned in sub Section (2) of Section 3 of the Act. In fact, the dispute arose subsequent to the death of their father and so much so there is no occasion to apply the provision in sub Section 2 of Section 3 of the Act. In the light of these legal provisions, the appellant/plaintiff cannot be heard to contend that his mother is only a name lender or was holding the property in fiduciary capacity for and on behalf of her children. The legal embargo created by the said Act prevents the appellant from raising such a contention.

8. The will in question (Ext.B1) was properly proved in accordance with the provisions in the Evidence Act. Therefore, genuineness of the will cannot be doubted. If will is taken as proved, the plaintiff's claim for partition can only be a baseless one. There is no substantial question of law arising in this matter. Hence the appeal is dismissed. Considering the relationship between the parties, there is no order as to costs.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge