Karthyayani and Others Vs Cheeram Pennu and Others

Court: High Court Of Kerala

Date of Decision: Jan. 8, 1962

Citation: (1962) KLJ 358

Hon'ble Judges: T.C. Raghavan, J

Bench: Single Bench

Advocate: T.K. Narayana Pillai N and D. Narayanan Potti, for the Appellant; P. Gopalan Nair for Respondent 1, for the Respondent

Final Decision: Dismissed

Judgement

T.C. Raghavan, J.
The short question for decision in the second appeal is whether one Kochaiyan Krishnan, the father of respondents 1

and 2, was the last sole member of the Kanjirathumkal tarwad or whether the 1st appellant was also a member of the said tarwad. The lower

courts have given conflicting verdicts on this question, the trial court holding that it was not sufficiently established that Krishnan was the last sole

member and the lower appellate court taking the contrary view that Krishnan was the last sole member of the tarwad. The suit was for redemption

of a mortgage of 1089 evidenced by Ext. A executed by Kochaiyan Krishnan in favour of the 1st defendant, the other defendants being persons in

possession. The plaintiff-respondents alleged that Krishnan was the last sole member of the Kanjirathumkal tarwad and that after his death, they,

who are the daughters of Krishnan, were entitled to the equity of redemption. Defendants 9 and 10, who are the appellants in the second appeal,

contested the suit on the main allegations that the 9th defendant was also a member of the Kanjirathumkal tarwad; that Krishnan was not the sole

member thereof; and that after the death of Krishnan the 9th defendant was the person entitled to the property and not the plaintiffs, who were only

the personal heirs of Krishnan. The trial court, accepting the contention of the defendants, dismissed the suit; but on appeal the lower appellate

court reversed the said decision and decreed redemption. The lower appellate court further directed the contesting defendants to remove items 2

to 4, which are sheds standing on the property, within two months of the receipt of records in the trial court. It is this reversing judgment of the

lower appellate court that is being questioned in the second appeal.

2. The short question, as I have already mentioned, is whether Krishnan was the last sole member of the Kanjirathumkal tarwad. P. Ws. 1 to 3,

who are neighbours, have given evidence to establish the case of the plaintiffs, that their father was the last sole member of the tarwad. The oral

evidence of these witnesses has been read out to me and I do not think there are any serious discrepancies in their evidence so as to persuade me

to discard the testimony. This evidence is fully corroborated by the recitals in Ext. B of the year 1075, which is a copy of the Settlement enquiry in

respect of the plaint property. In this document one Aiyappen gives a statement. He says that the original Thandaper holder was his uncle, who had

three sisters, namely Chacky, Kali and Nangeli. He states further that Chacky had two children, his brother Narayanan and himself; that Kali had

two children, Kittan and Neeli; and that Nangeli had only one daughter Acharu. He states further that patta may be issued in the names of the three

branches of Chacky, Kali and Nangeli. On that basis patta appears to have also been granted in the names of Aiyappen, Kittan and Acharu.

Therefore at the time of Ext. B the members of the Kanjirathumakal tarwad were only those persons mentioned in that document.

3. The Plaintiffs'' further case is that Acharu had three children, Krishnan, Kunjan and Kochukutty alias Ittiathi, of whom the latter two, namely

Kunjan and Kochukutty alias Ittiathi, predeceased Krishnan. Thus Krishnan became the last sole member of his tarwad and the plaintiffs are his

children.

4. But it is seriously contended before me by the learned advocate of the appellants that Ext. B is not admissible in evidence. I do not agree. If

Aiyappen was a member of the Kanjirathumkal tarwad and if he gave such a statement as contained in Ext. B that statement is relevant in the

enquiry to find out the members of that tarwad at that time. Thus Ext. B is relevant and therefore admissible in evidence. The further question is

whether this statement has been properly proved. The contention of the learned advocate of the appellants is that, at any rate, this document has

not been properly proved for, nobody speaks to the genuineness or the correctness of the statement contained in Ext. B. This objection does not

appear to have been taken in the trial court at the time of making the document as an exhibit. It is well-settled that where the objection taken is not

to the admissibility of the document itself, but relates only to the mode of proof such objection should be taken at the trial before the document is

marked as an exhibit and admitted to the record. (Vide the observation of AIR 1943 83 (Privy Council)) which has been followed in a Full Bench

decision of this Court in Venkiteswara Kammathi Balakrishna Kammathi v. Anantha Pai Ganesha Pai (1954 K. L. T. 87). Therefore this

objection has to be overruled.

5. The case of the defendants is that Nangeli had another daughter by name Paru and the 9th defendant was Paru''s daughter. To prove this case

the 9th defendant has examined several witnesses. As rightly pointed out by the learned Subordinate Judge, their testimony is not convincing; nor is

it supported by any documentary evidence. Of course, a partition appears to have taken place under Ext. I in 1112, in which the plaint property

was also included. This proceeds on the basis that the 9th defendant was a member of the Kanjirathumkal tarwad. This document further indicates

that there were other members as well in the said tarwad. But these facts are not established by any reliable evidence. I have waded through the

long and meandering judgment of the learned Munsiff with considerable care and I find that the learned Munsiff has not approached the question

from the proper perspective, nor has he come to close grips with the real question in controversy. Therefore his finding on this question was rightly

reversed by the learned Subordinate Judge. The result is the second appeal has to be dismissed.

6. There is one question which deserves consideration and that is whether the learned Subordinate Judge was right in directing defendants 9 and

10 to remove items 2 to 4 from the property. I do not think that that direction can stand. Therefore I hold that defendants 9 and 10, i.e., the

appellants, are entitled to the value of items 2 to 4. These items being only sheds, I do not think that the valuation of these items should be done in

the suit itself. It may be done in execution. The second appeal is therefore dismissed and the appellants are directed to pay the costs of the second

appeal to the plaintiff-respondents. It is also directed that the execution court will value items 2 to 4 and the appellants are entitled to such value.