

(1972) 07 KL CK 0026

High Court Of Kerala

Case No: S. A. No. 786 of 1967

Kaikolenda Ambu

APPELLANT

Vs

Kunnarukkaran Kunhambu And
Others

RESPONDENT

Date of Decision: July 26, 1972

Citation: (1973) KLJ 81

Hon'ble Judges: T.S. Krishnamoorthy Iyer, J

Bench: Single Bench

Advocate: M.M. Pareed Pillai and M.M. Abdul Khader AG, for the Appellant; T.V. Ramakrishnan, T.C. Mohandas, P.K. Suresh and G.K. Bharathan, for the Respondent

Final Decision: Allowed

Judgement

T.S. Krishnamoorthy Iyer, J.

This is an appeal by the defendant in O.S. 415 of 1961 on the file of the Munsiff's Court, Payyannur and it arises out of a suit for recovery of possession of the plaint property from the defendant on the ground that the property belongs to the tarwad of the plaintiffs. The defendant is the son of Kannan who is now dead and who was the prior karnavan of the plaintiffs" tarwad. It is alleged by the plaintiffs that the karnavan had by Ex. A-1 released his interest in the tarwad property in favour of the plaintiffs The karnavan had executed a registered kuzhikanam of the plaint property in favour of the defendant by Ex. B-1 dated 2-9-1953. The defendant claims possession on the basis of Ex. B-1. Though the trial court dismissed the suit, the learned judge in appeal allowed the same and the second appeal is directed against the judgment and decree of the court below. The courts below have found that Ex. A-1 was not acted upon and did not take effect. It was also found by the appellate judge that Ex. B-1 is not valid, in that it does not conform to the provisions of the Madras Marumakathayam Act. These two findings are in my view right and have only to be confirmed.

2. At the same time, I am of the view that it is not possible for the plaintiffs to recover possession of the property from the defendant. The defendant claims to be in possession of the property on the basis of Ex B-1. After the death of Kannan, subsequent to the Hindu Succession Act his interest in the tarwad property will devolve on his heirs the defendant being a heir of Kannan. The possession of the defendant of the plaint schedule property must, therefore, be treated as a possession of co-owner along with the remaining members of the tarwad in which case it is not possible for the members of the tarwad to recover possession of the property from the defendant. His possession as a co-owner will be considered to be a possession not only on his behalf but on behalf of all members of the tarwad. The remedy is only to institute a suit for partition. I, therefore, set aside the decree and judgment of the court below and dismiss the suit of the plaintiff. The appeal is thus allowed. The parties will bear their costs throughout.