(2012) 03 KL CK 0257

High Court Of Kerala

Case No: Regular Second Appeal . No. 788 of 2004 (B)

Narayanan Krishnan, Plavilakathu Veedu, Venpalavattom Desom, Anayara Village Trivandrum Taluk and Others	APPELLANT
Vs	
L. Krishnamma and Others	RESPONDENT

Date of Decision: March 23, 2012

Hon'ble Judges: Thomas P. Joseph, J

Bench: Single Bench

Advocate: R. Satish Kumar and Sri. T. Madhu, for the Appellant; L. Mohanan and Smt. Ligey Antony, for the Respondent

Final Decision: Dismissed

Judgement

Thomas. P. Joseph, J.

Plaintiffs in O.S.No.576/1996 of the IInd Additional Sub Court, Thiruvananthapuram who obtained a preliminary decree of partition but, lost it in A.S.No.219/2001 of the III rd Additional District Court, Thiruvananthapuram are the appellants before me. Plaintiffs claimed that they are the children of Dakshayani, daughter of Sivani, who is the daughter of Nachi perumal (Nachi Bhagawathy) of Valiyavilakom Tharwad and that respondents/defendants are the children of Lakshmikutty, daughter of Kali, a sister of Sivani. They claimed partition of the suit properties contending that in Ext.A1, partition deed, the said properties are allotted to the Valiyavilakom Tharwad.

2. Respondents/defendants denied that Sivani is the daughter of Nachiperumal. They also contended that properties are not available for partition.

3. Trial court granted a decree in favour of plaintiffs. Contesting defendants challenged that decree in A.S.No.219 of 2001. First appellate court found that there is not reliable or acceptable evidence to show that Sivani, grand mother of plaintiffs is the daughter of Nachiperumal so that, plaintiffs could claim partition of the suit

properties. First appellate court also found that Ext.A1, partition deed refers only the 6 items (items 17 to 22 in the plaint schedule) as allotted to the branch of Nachi perumal as B schedule but in the plaint schedule, partition of 22 items is sought for and plaintiffs were not able to say how they got right over item nos.1 to 16 of the plaint schedule. In that view of the matter, the appeal was allowed. Preliminary decree was set aside and the suit was dismissed. Hence, the second appeal.

4. It is contended by the learned counsel for plaintiffs that Exts.A1 and A2 would show that parties belonged to the same Tharwad. It is also contended that there is no reason why Ext.A1 would not have been acted upon to show that Sivani is the daughter of Nachiperumal.

5. I have heard learned counsel appearing for the respondents 1, 3, 5 and 6 who appeared on the application to condone the delay in filling this appeal.

6. In Ext.A1, partition deed it is stated that Sivani, grand mother of plaintiffs is the daughter of Nachiperumal of Valiyavilakom Tharwad. But in Ext.A2, the said Sivani is described as the daughter of Kali. The first appellate court took note of that glaring discrepancy, observed that no other acceptable evidence is produced to show that Sivani is the daughter of Nachiperumal and held that in the circumstances, plaintiffs cannot seek partition. The first appellate court also referred to Exts.A1 and A2 to say that even the address of Dakshayani, mother of plaintiffs is given in different ways in the said documents. The mere fact that the name of Sivani is engraved on some of the vessels of Valiyavilakom Tharwad as spoken by PWs 1 and 2 was found not sufficient to prove that plaintiffs are entitled to partition of the suit property set apart to Valiyavilakom Tharwad as per Ext.A1.

7. A further fact which the first appellate court noticed is that even as per Ext.A1, only plaint items 17 to 22 are allotted to Valiyavilakom Tharwad and plaintiffs were not able to say in what way they got right for partition of plaint items 1 to 16. The above findings are made by the first appellate court on the evidence on record and involves no substantial question of law required to be decided by this court.

Hence, this second appeal fails. It is dismissed.