Kottayath Thekkekovilakath Sree Ranjini Amma Raja Vs P. Padmini Kettilamma

Court: High Court Of Kerala

Date of Decision: July 29, 2016

Citation: (2016) 4 ILRKerala 20 : (2016) 3 KerLJ 390 : (2016) 3 KLT 526

Hon'ble Judges: Mr. V. Chitambaresh and Mr. K. Harilal, JJ.

Bench: Division Bench

Advocate: Sri. T. Krishnan Unni (Sr.), Smt. P.A. Sheeja, Sri. Saju. S.A and Sri. K.C. Kiran, Advocates, for the Appellant; Sri. N. Subramaniam, Smt. Meera P. Menon, Smt. M.R. Mini, Smt. Meena. A, Smt. M.R. Mini and Sri. Jaykar. K.S, Advocates, in Sri. V. Binoy Ram,

Final Decision: Dismissed

Judgement

V. Chitambaresh, J.â€"We are disposing of the appeal suit nineteen years after its preferment by this judgment which is shorn off the unnecessary

details and may hence appear to be unconventional in form.

2. Only two contentions are urged by the appellants/defendants 1 to 3 in the appeal suit against the preliminary decree for partition of the property

belonging to a "kovilakam". The first contention is that no decree could have been passed to partition the school including its management in view

of Section 6 of the Kerala Education Act, 1958. The second contention is that Ext. B1 adoption deed should be construed as a settlement deed in

which case the property is not available for partition at all. There is however no dispute as regards the identity of property or the quantum of shares

in case the property is partible as has been found by the court below.

3. We heard Mr. T. Krishnanunni, Senior Advocate on behalf of the appellants and Mr. N. Subramaniam, Advocate on behalf of the contesting

respondents.

4. The plaint schedule property is land of extent 5 acres with a building thereon which houses the Kottayam Raja"s Secondary School functioning

under the Kerala Education Act, 1958. Section 6 thereof only prohibits sale, mortgage, lease, pledge, charge or transfer of possession in respect

of any property of an aided school except with permission. Previous permission should be obtained in writing from an officer not below the rank of

a District Educational Officer authorised by the Government. A partition is only a division of the pre-existing rights of the sharers and does not

amount to sale, mortgage, lease, pledge, charge or transfer of possession. Only the joint possession is severed and the rights of sharers already in

existence divided by metes and bounds in a partition of property. Even the management of a school can be the subject matter of partition and the

statutory bar is only against transferring the property of the school and not the school itself as a whole. The decisions in Maroli Balan v. Maroli

Dannu and others [1986 KLT 919 (DB)] and Jose v. Antony and others [2001(1) KLJ 555] on the scope of Section 6 of the Kerala Education

Act, 1958 are eloquent. The property if found partible can be put to auction amongst the parties or for public sale and only a physical division of

the school should be averted. It is for the alottee or the auction purchasers to have a Manager appointed in terms of Chapter III of the Kerala

Education Rules, 1959. We reject the contention that the decree for partition of the property wherein the school is situated is hit by Section 6 of

the Kerala Education Act, 1958.

5. The "kovilakam" was about to become extint at one point of time by reason of the fact that the only female then alive was issueless and had

passed the child bearing age. It was then that the members of the "Kovilakam" governed by the Madras Marumakkathayam Act hit upon the idea

of adopting the first defendant as a member of the "Kovilakam". Ext. B1 adoption deed dated 09.09.1948 was accordingly executed wherein the

then members of the "Kovilakam" were executant Nos. 1 to 3 and the adoptee - executant No. 4. It is recited therein that executant No. 4 and her

children would have the rights of junior members till the demise of executant Nos. 1 to 3. There is a further recital in Ext. B1 adoption deed that the

property would devolve on executant No. 4 and her children on the death of executant Nos. 1 to 3. An adoption need not be to a particular

person - man or woman - and there can be an adoption to the family under the Marumakkathayam law as noticed in Ext. A5 judgment. The said

judgment in appeal stems out of yet another suit for partition in the same family wherein copious reference is made to authoritative texts on the

subject.

6. It may incidentlly be stated that Ext. B1 adoption deed was the subject matter of interpretation in O.S. No. 75/1965 on the file of the court of

the Subordinate Judge of Tellicherry. The suit was for partition of some other property belonging to the "Kovilakam" to which the appellants and

other members were very much a party. Appeals therefrom as A.S. Nos. 131/1969 and 166/1969 were disposed of by a common judgment

dated 25.07.1973 by this court which was called for from the record section. It was categorically found therein that Ext. B1 deed cannot be

construed as a testamentary disposition and can be considered as ''nothing other than an adoption deed''. Moreover there was no scope for any

undivided member to bequeath any property by testamentary disposition when the Hindu Succession Act, 1956 was not even in the contemplation

of the parties.

7. The present contention that Ext. B1 deed should be construed as a family settlement or arrangement is equally untenable going by the

conspectus of events. A family settlement is normally entered into in lieu of partition to sink the disputes and bring harmony among the parties for

the benefit of the family as a whole. The decisions in Kale v. Director of Consolidation [(1976)3 SCC 119] and Maturi Pullaiah v. Maturi

Narasimhan [AIR 1966 SC 1836] are apposite to the context. There was no pre-existing right for executant No. 4 in the property and she was

adopted into the family of the ''Kovilakam'' only by Ext. B1 deed dated 19.09.1948. The plaint schedule property including the school building

was purchased by the karanavan of the "Kovilakam'' ten years after by sale deed dated 27.02.1958. The very concept of family settlement is to

give quietus to bona fide disputes and rival claims by a fair and equitable division or allotment of the property. Nobody has any case of lingering

disputes in the family and the recital in Ext. B1 deed as regards the vesting of the property is customary to reinforce adoption. It cannot therefore

by any stretch of imagination be held that Ext. B1 deed depicts a family settlement in respect of the plaint schedule property as is contended.

8. The plea of family settlement was not raised in O.S. No. 75/1965 wherein Ext. B1 deed was projected as a ''will'' only and the present exercise

is clearly an afterthought. We are not considering the question as to whether the appellants could aprobate and reprobate since it can technically be

contended that the suits relate to different property. The appellants who are executant No. 4 and her children cannot deny the share claimed by the

legal heirs of executant No. 3 of Ext. B1 deed. The court below has not erred in passing a preliminary decree for partition of the plaint schedule

property and this appeal is bereft of merit in the circumstances.

9. The Appeal Suit is dismissed. No costs.